2015

SENATE
JUDICIARY II

MINUTES

Committee Name	MEMBER	ROOM No.	PHONE No.
SENATE JUDICIARY II	Co-Chair Tamara Barringer	620	733-5653
SENATE JUDICIARY II	Co-Chair Warren Daniel	623	715-7823
SENATE JUDICIARY II	Co-Chair Shirley B. Randleman	628	733-5743
SENATE JUDICIARY II	Sen. John M. Alexander, Jr	2115	733-5850
SENATE JUDICIARY II	Sen. Chad Barefoot	308	715-3036
SENATE JUDICIARY II	Sen. Stan Bingham	625	733-5665
SENATE JUDICIARY II	Sen. Angela R. Bryant	516	733-5878
SENATE JUDICIARY II	Sen. Bill Cook	525	715-8293
SENATE JUDICIARY II	Sen. David L. Curtis	410	715-3038
SENATE JUDICIARY II	Sen. Jim Davis	408	733-5875
SENATE JUDICIARY II	Sen. Jeff Jackson	1104	715-8331
SENATE JUDICIARY II	Sen. Joyce Krawiec	2117	733-7850
SENATE JUDICIARY II	Sen. Paul A. Lowe, Jr	1121	733-5620
SENATE JUDICIARY II	Sen. Tom McInnis	2106	733-5953
SENATE JUDICIARY II	Sen. Erica Smith-Ingram	1118	715-3040
SENATE JUDICIARY II	Sen. Terry Van Duyn	1025	715-3001
SENATE JUDICIARY II	Sen. Andy Wells	2113	733-5876
SENATE JUDICIARY II	Sen. Mike Woodard	518	733-4809
SENATE JUDICIARY II	Research Bill Patterson	545	733-2578
SENATE JUDICIARY II	Research Janice Paul	545	733-2578
SENATE JUDICIARY II	Committee Clerk Andy Perrigo	623	715-7823
SENATE JUDICIARY II	Committee Clerk Gloria Whitehead	620	733-5653
SENATE JUDICIARY II	Committee Clerk Patrick Limer	628	733-5743

North Carolina General Assembly
Through Senate Committee on
Judiciary II

2015-2016 Biennium
Leg. Day: H-135/S-137

Date: 10/29/2015
Time: 5:16:30 PM

Bill	Introducer	Short Title		Latest Action	Date In	Date Out
H 7	Speciale	Amend Firearm Restoration Law.	*S	Re-ref Com On Judiciary II	04/06/2015	
H 39	Davis	Labor/Up Amusement Device Penalties.	*R	Ch. SL 2015-152	06/01/2015	06/30/2015
H 79	Glazier	Contempt for 50C/Scope of Stay for Appeals.	*R	Ch. SL 2015-25	05/05/2015	05/12/2015
H 82	Stevens	Execution/Nonsecure Custody Order/Child Abuse.	*R	Ch. SL 2015-43	05/05/2015	05/12/2015
H 100	Cleveland	Record of Excusals from Jury Duty.	*S	Re-ref Com On Redistricting	05/12/2015	06/04/2015
H 134	Glazier	Soliciting Prostitution/Immunity for Minors.	*R	Ch. SL 2015-183	07/20/2015	07/23/2015
H 173	Stam	Omnibus Criminal Law Bill.	*R	Ch. SL 2015-247	07/13/2015	07/23/2015
H 174	Bradford	Landlord/Tenant-Foreclosure & Evict. Changes.	*R	Ch. SL 2015-178	07/13/2015	07/23/2015
H 273	Jackson	Clarify Cond. Discharge Law/No DWI Expunge.	*R	Ch. SL 2015-150	05/22/2015	06/29/2015
H 293	Stevens	Adoption Law Changes.	*R	Ch. SL 2015-54	03/31/2015	05/12/2015
H 297	Burr	End Marketing/Sale Unborn Children Body Parts.	*R	Ch. SL 2015-265	04/06/2015	09/22/2015
H 303	Horn	Dispute Resolution Amendments.	*S	Re-ref Com On Appropriations/Base Budget	05/14/2015	05/19/2015
H 308	Zachary	Clarify Reasonable Health Insur/LTC Ombudsman.	*R	Ch. SL 2015-220	05/07/2015	05/21/2015
H 315	Stevens	Sheriff & Landlord/Tenant-Writs of Poss. Chg.	*R	Ch. SL 2015-55	05/12/2015	05/21/2015
H 341	Jackson	Controlled Substances/NBOMe & Other Drugs.	R	Ch. SL 2015-162	06/24/2015	07/14/2015

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H 352	Torbett	Standard of Proof/Public Safety Dispatchers.	*R	Ch. SL 2015-71	05/12/2015	06/02/2015
H 355	Reives	Evidence Passed Vehicle is a School Bus.	*S	Re-ref Com On Rules and Operations of the Senate	05/07/2015	05/21/2015
H 357	Stam	Toxicology Reports/District Court.	*S	Ref To Com On Judiciary II	04/16/2015	
H 376	Jordan	Civ Pro/Modernize Expert Discovery.	*R	Ch. SL 2015-153	06/04/2015	06/30/2015
H 383	Glazier	Clarify Statutory Scheme/Sex Offenses.	*R	Ch. SL 2015-181	06/24/2015	07/16/2015
H 397	Glazier	Clarify Protections/Exploitation of Elders.	*R	Ch. SL 2015-182	06/24/2015	07/21/2015
H 446	Jordan	Amend Statutes Governing Bail Bondsmen.	*R	Ch. SL 2015-180	07/16/2015	07/23/2015
H 465	Schaffer	Women and Children's Protection Act of 2015.	*R	Ch. SL 2015-62	04/27/2015	05/27/2015
H 477	Malone	LEO Privacy Protection.	*S	Re-ref Com On Judiciary II	07/13/2015	
H 479	Pittman	Auto Salvage Dealer Protection Act.	S	Re-ref to Judiciary II. If fav, re-ref to Commerce	05/22/2015	
H 513	Bryan	Real Property/Technical Corrections.	*R	Ch. SL 2015-56	05/11/2015	05/19/2015
H 529	Baskerville	NC Drivers License Restoration Act.	*R	Ch. SL 2015-186	05/22/2015	07/21/2015
H 532	McGrady	WC/Truck Driver Status.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	07/22/2015	07/23/2015
H 561	Blackwell	School System Auth. Re: Legal Proceedings.	*H	Conferees Changed	06/04/2015	06/25/2015
H 562	Schaffer	Amend Firearm Laws.	*R	Ch. SL 2015-195	07/22/2015	07/23/2015
H 584	Glazier	Use of Position/Letters of Reference.	*R	Ch. SL 2015-208	07/13/2015	07/23/2015
H 595	Whitmire	Military Experience/LEO Cert. Requirements.	*R	Ch. SL 2015-49	05/05/2015	05/14/2015
H 597	Bishop	Mediated Settlement Agreements.	*R	Ch. SL 2015-57	05/05/2015	05/07/2015
H 607	Meyer	Allow Protected Consumer Security Freezes.	*R	Ch. SL 2015-193	07/13/2015	07/23/2015

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North Carolina General Assembly
Through Senate Committee on
Judiciary II

H 615	McNeill	Probation Violation Court Costs.	*S	Ref to Judiciary II. If fav, re-ref to Finance	06/10/2015	
H 659	Horn	Controlled Substances/Update Precursor List.	*R	Ch. SL 2015-32	05/11/2015	05/14/2015
H 669	Stevens	Juvenile Law Changes/Abuse/Neglect/Dependency.	*R	Ch. SL 2015-136	06/04/2015	06/29/2015
H 691	Whitmire	Assault on National Guard Member.	*R	Ch. SL 2015-74	04/30/2015	05/21/2015
H 721	Bryan	Subdivision Ordinance/Land Develop. Changes.	*R	Ch. SL 2015-187	05/22/2015	07/16/2015
H 774	Daughtry	Restoring Proper Justice Act.	*R	Ch. SL 2015-198	04/30/2015	07/23/2015
H 814	Riddell	The William C. Lindley, Jr. SUDEP Law.	*R	Ch. SL 2015-211	06/30/2015	07/16/2015
H 847	Jordan	Parental Rights and Med. Treatment of Minors.	*S	Re-ref Com On Judiciary II	07/16/2015	
H 870	Jordan	Cert. of Title/Manuf. Home Changes.	*S	Re-ref Com On Judiciary II	06/01/2015	
H 879	Jordan	Juvenile Code Reform.	*R	Ch. SL 2015-58	05/05/2015	05/07/2015
S 2	Berger	Magistrates Recusal for Civil Ceremonies.	*R	Ch. SL 2015-75	02/18/2015	02/24/2015
S 29	Curtis	DOB Redaction Requests For Public Documents.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	02/09/2015	03/23/2015
S 53	Krawiec	Cities/Overgrown Vegetation Notice.	H	Ref to the Com on Local Government, if favorable, Regulatory Reform	02/11/2015	03/10/2015
S 60	Bingham	No-Contact Order/No Expiration.	*R	Ch. SL 2015-91	02/11/2015	03/09/2015
S 71	Lee	Stagger RRC Member Terms.	H	Ref To Com On Rules, Calendar, and Operations of the House	02/16/2015	03/24/2015
S 75	Jackson	Labor/Up Amusement Device Penalties.	*S	Re-ref Com On Agriculture/Environment/Natural Resources	02/16/2015	04/16/2015
S 82	Bingham	Vital Records Integrity Act.	*R	Ch. SL 2015-197	02/16/2015	03/09/2015
S 83	Bingham	Criminal Law/Filing False Document.	*R	Ch. SL 2015-87	02/16/2015	04/23/2015
S 123	Hartsell	Uniform Fraudulent Transfer Act.	*R	Ch. SL 2015-23	03/02/2015	03/17/2015

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North Carolina General Assembly
Through Senate Committee on
Judiciary II

S 124	Hartsell	Modernize Assumed Business Name Statutes.	*H	Ref to the Com on Judiciary II, if favorable, Rules, Calendar, and Operations of the House	03/09/2015	03/17/2015
S 154	Bingham	Clarifying the Good Samaritan Law.	*R	Ch. SL 2015-94	03/09/2015	04/02/2015
S 162	McKissick	Automatic License Plate Readers.	*R	Ch. SL 2015-190	04/15/2015	04/23/2015
S 198	Robinson	Persons Under 18 in Confinement Facilities.	*S	Re-ref Com On Appropriations/Base Budget	03/18/2015	04/21/2015
S 199	Randleman	Funds Deposited with Clerk of Court.	*R	Ch. SL 2015-216	03/18/2015	03/24/2015
S 205	Jackson	WC/Truck Drivers' Status.	S	Re-ref Com On Judiciary II	03/16/2015	
S 238	Stein	Stalking by GPS/Criminal Offense.	*R	Ch. SL 2015-282	03/23/2015	04/15/2015
S 288	Cook	Amend Laws Regarding Mental Commitment Bars.	*H	Ref to the Com on Rules, Calendar, and Operations of the House, if favorable, Judiciary I	03/23/2015	04/23/2015
S 298	Alexander	School Bus Cameras/Civil Penalties.	*H	Re-ref Com On Appropriations	04/01/2015	04/21/2015
S 310	Daniel	Domestic Violence/Bail & Aggravating Factor.	S	Re-ref Com On Judiciary I	03/23/2015	03/24/2015
S 311	Bingham	Register of Deeds/Filing False Marriage Docs.	R	Ch. SL 2015-53	03/24/2015	04/02/2015
S 331	Daniel	Juvenile Code Reform.	S	Re-ref Com On Judiciary II	04/15/2015	
S 332	Daniel	Register of Deeds-POA Indexing Fees.	*R	Ch. SL 2015-227	03/26/2015	04/06/2015
S 343	Tillman	Student Assault on Teacher/Felony Offense.	*H	Re-ref to the Com on Children, Youth, and Families, if favorable, Judiciary III	04/15/2015	04/28/2015
S 345	Meredith	Limit Storage Duration for Damaged Vehicle.	*R	Ch. SL 2015-188	04/15/2015	04/21/2015
S 351	Stein	Collect DNA All Violent Felony Arrests.	S	Re-ref Com On Appropriations/Base Budget	03/23/2015	05/07/2015
S 356	Rabin	Electronic Ads/Property Seized by Police.	S	Re-ref Com On Judiciary II	03/25/2015	
S 362	Hartsell	Amend Certain Expunction Laws.	S	Re-ref Com On Judiciary II	03/26/2015	

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Judiciary II

S 378	Bingham	Increase Punishment/Misd. Death by Vehicle.	*H	Conf Com Appointed	03/26/2015	04/28/2015
S 386	Curtis	Registers of Deeds/UCC Recording Fees.	*R	Ch. SL 2015-206	03/26/2015	04/14/2015
S 386	Curtis	Registers of Deeds/UCC Recording Fees.	*R	Ch. SL 2015-206	04/15/2015	04/15/2015
S 418	Jackson	Amend Statutory Rape/15 Yrs. Old or Younger.	S	Re-ref Com On Judiciary II	03/30/2015	
S 419	Hise	Limit Revolving Door Employment.	H	Ref to the Com on State Personnel, if favorable, Judiciary I	04/16/2015	04/23/2015
S 445	Krawiec	Burt's Law.	*R	Ch. SL 2015-36	04/06/2015	04/16/2015
S 462	Hartsell	Public Authorities/Nonprofit Corporations.	*R	Ch. SL 2015-122	03/30/2015	04/14/2015
S 466	Hartsell	Self-Settled Trusts.	S	Re-ref to Judiciary II. If fav, re-ref to Finance	03/30/2015	
S 467	Hartsell	WC/Nonprofit Corp. Volunteers & Officers.	S	Re-ref Com On Judiciary II	03/30/2015	
S 468	Hartsell	Trust Taxable Income Clarification.	*S	Re-ref Com On Finance	03/30/2015	04/16/2015
S 471	Hartsell	Modernize Collection Agency Laws.	S	Re-ref to Judiciary II. If fav, re-ref to Insurance	03/30/2015	
S 488	Pate	Amend Uniform Interstate Family Support Act.-AB	*R	Ch. SL 2015-117	03/30/2015	04/06/2015
S 489	Pate	DHHS Child Support Recommendations.-AB	S	Re-ref Com On Judiciary II	03/30/2015	
S 503	Jackson	Sex Offense With Student/Charter Schools.	H	Re-ref Com On Judiciary III	04/09/2015	04/28/2015
S 516	Tucker	LEO Privacy Protection.	S	Re-ref Com On Judiciary II	03/30/2015	
S 519	Jackson	Amend Child Custody Laws.	*R	Ch. SL 2015-278	03/30/2015	04/28/2015
S 570	Bryant	Expunction/Boat Violation.	*H	Re-ref Com On Finance	04/06/2015	04/21/2015
S 570	Bryant	Expunction/Boat Violation.	*H	Re-ref Com On Finance	04/23/2015	04/28/2015
S 578	Barringer	Transition Certain Abuse Investigations/DCDEE.	*R	Ch. SL 2015-123	04/22/2015	04/23/2015

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S 610	Smith-Ingram	Healthy Pregnancies/Prisoners and Detainees.	S	Re-ref Com On Health Care	04/22/2015	04/28/2015
$ S 611	**Smith-Ingram**	**The I WILL Act.**	**S**	**Re-ref to Judiciary II. If fav, re-ref to Appropriations/Base Budget**	**04/22/2015**	
S 614	McKissick	Expand Grandparent Visitation Rights.	S	Re-ref to Judiciary II. If fav, re-ref to Health Care	04/15/2015	
S 661	Newton	Private Labs Must Comply with CODIS.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	04/09/2015	04/16/2015
S 671	Apodaca	DL Restoration/DWI Treatment Court.	*H	Re-ref Com On Finance	04/09/2015	07/21/2015
S 678	Gunn	Amend Debt Collection Statutes.	*R	Ch. SL 2015-177	04/09/2015	04/28/2015
$ S 685	**Lee**	**IDS Efficiency Act.**	**S**	**Re-ref to Judiciary II. If fav, re-ref to Appropriations/Base Budget**	**04/20/2015**	
S 699	McKissick	Protect LEO Home Address/Other Information.	*R	Ch. SL 2015-225	04/23/2015	04/29/2015
S 709	Hartsell	Dispute Resolution Amendments.	S	Re-ref to Judiciary II. If fav, re-ref to Appropriations/Base Budget	04/15/2015	

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Senate Committee on Judiciary II
Tuesday, February 24, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:15 AM on February 24, 2015 in Room 1124/1224 of the Legislative Building. 16 members were present.

Senator Warren Daniel, Chair, presided.

Pages: Mary Grace MConnell of Harrisburg, Kayla Smith of Raleigh, Riley Klocke of Gastonia
Sgt. Arms: Matt Urben, Giles Jeffreys, Anderson Meadows, Charles Marsalis

SB 2 Magistrates Recusal for Civil Ceremonies. (Senator Berger)
Sen. Bingham moved to have the PCS: PCS S2-CSTG-1 brought up for consideration rather than discussing the original bill. The motion carried.
Sen. Buck Newton presented the bill to the committee with the help of the committee's legal staff, Amy Jo Johnson. At least eight different members of the committee brought up questions. There were a few members of the public that stood up to speak on the bill:
Chris Sgro of Equality NC; Sara Preston of the ACLU of NC; George Teague of the NC Assn. of Register of Deeds; and, John Rustin of the NC Family Policy Council.

After discussion, Sen. Bingham motioned for finding the original bill as unfavorable but favorable as to the PCS. The motion was seconded by Sen. Barefoot. Motion carried. The bill was reported out by the clerk "Unfavorable as to the original bill, Favorable as to the Committee Substitute.

The meeting adjourned at 11:17 am.

Senator Warren Daniel, Chair
Presiding

Andy Perrigo, Committee Clerk

Senate Committee on Judiciary II
Tuesday, February 24, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 2	Magistrates Recusal of Civil Ceremonies.	Senator Berger

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

FILED SENATE
Jan 28, 2015
S.B. 2
PRINCIPAL CLERK

S D

SENATE DRS15021-ST-2 (10/20)

Short Title:	Magistrates Recusal of Civil Ceremonies.	(Public)
Sponsors:	Senator Berger (Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO ALLOW MAGISTRATES AND REGISTERS OF DEEDS TO RECUSE THEMSELVES FROM PERFORMING DUTIES RELATED TO MARRIAGE CEREMONIES DUE TO SINCERELY HELD RELIGIOUS OBJECTION.

The General Assembly of North Carolina enacts:

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

"**§ 51-5.5. Recusal of certain public officials.**

(a) Every magistrate has the right to recuse from performing all lawful marriages under this Chapter based upon any sincerely held religious objection. Such recusal shall be upon notice to the chief district court judge and is in effect for at least six months from the time delivered to the chief district court judge. The recusing magistrate may not perform any marriage under this Chapter until the recusal is rescinded in writing. The chief district court judge shall ensure that all individuals issued a marriage license seeking to be married before a magistrate may marry.

(b) Every assistant register of deeds and deputy register of deeds has the right to recuse from issuing all lawful marriage licenses under this Chapter based upon any sincerely held religious objection. Such recusal shall be upon notice to the Register of Deeds and is in effect for at least six months from the time delivered to the Register of Deeds. The recusing assistant or deputy register may not issue any marriage license until the recusal is rescinded in writing. The Register of Deeds shall ensure for all applicants for marriage licenses to be issued a license upon satisfaction of the requirements as set forth in Article 2 of this Chapter.

(c) If, and only if, all magistrates in a jurisdiction have recused under subsection (a) of this section, the chief district court judge shall notify the Administrative Office of the Courts. The Administrative Office of the Courts shall ensure that a magistrate is available in that jurisdiction for performance of marriages for the times required under G.S. 7A-292(b). Only for the duration of the time the Administrative Office of the Courts has not designated a magistrate to perform marriages in that jurisdiction, the chief district court judge shall be deemed a magistrate for the purposes of performing marriages under this Chapter.

(d) No magistrate, assistant register of deeds, or deputy register of deeds may be charged or convicted under G.S. 14-230 or G.S. 161-27, or subjected to a disciplinary action, due to a good-faith recusal under this section."

SECTION 2. G.S. 14-230 reads as rewritten:

"**§ 14-230. Willfully failing to discharge duties.**

(a) If any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or

of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense.

(b) No magistrate recusing in accordance with G.S. 51-5.5 may be charged under this section for recusal to perform marriages in accordance with Chapter 51 of the General Statutes."

SECTION 3. G.S. 161-27 reads as rewritten:

"**§ 161-27. Register of deeds failing to discharge duties; penalty.**

(a) If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a Class 1 misdemeanor, and he shall be removed from office.

(b) No Register of Deeds recusing in accordance with G.S. 51-5.5 may be charged under this section for recusal to issue marriage licenses in accordance with Chapter 51 of the General Statutes."

SECTION 4. G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths.
(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina.
(3) When authorized by the chief district judge, to take depositions and examinations before trial.
(4) To issue subpoenas and capiases valid throughout the county.
(5) To take affidavits for the verification of pleadings.
(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41.
(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes.
(8) To take acknowledgments of instruments, as provided in G.S. 47-1.
(9) To perform the marriage ceremony, as provided in G.S. 51-1.
(10) To take acknowledgment of a written contract or separation agreement between husband and wife.
(11) Repealed by Session Laws 1973, c. 503, s. 9.
(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
(13) Repealed by Session Laws 1973, c. 503, s. 9.
(14) To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction proceedings when the office of the clerk of superior court is closed.
(15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel pursuant to Article 36 of this Chapter.
(16) To appoint an umpire to determine motor vehicle liability policy diminution in value, as provided in G.S. 20-279.21(d1).

(b) The authority granted to magistrates under G.S. 51-1 and subsection (a) of this section is a responsibility given to the collective magistrates in a county and is not a duty imposed upon each individual magistrate. The chief district court judge shall ensure that

marriages before a magistrate are available to be performed at least a total of 10 hours per week, over at least three business days per week."

SECTION 5. Any magistrate who resigned, or was terminated from, his or her office between October 6, 2014, and the effective date of this act may apply to fill any vacant position of magistrate. Notwithstanding any other provision of law, with respect to any magistrate who resigned his or her office between October 6, 2014, and the effective date of this act, and who is subsequently reappointed as a magistrate within 90 days after the effective date of this act:

(1) For the period of time between that magistrate's resignation and his or her resumption of service upon reappointment, the magistrate shall not receive salary or other compensation and shall not earn leave. However, the magistrate shall be considered to have been serving as a magistrate during that period for purposes of determining continuous service, length of aggregate service, anniversary date, longevity pay rate, and the accrual of vacation and sick leave.

(2) For purposes of the Teachers' and State Employees' Retirement System and the calculation of benefits under that System, (i) the magistrate shall be considered to have been an employee under G.S. 135-1(10) during the break in service, (ii) the period of the break in service shall be counted as membership service under G.S. 135-1(14), and (iii) the magistrate shall be deemed to have earned compensation under G.S. 135-1(7a) during the break in service at the rate of compensation that would have applied had there been no break in service.

(3) The Judicial Department shall pay and submit both the employee and employer contributions to the Retirement Systems Division on behalf of the magistrate as though that magistrate had been in active service during the period in question. Those contributions shall be submitted within 90 days of the magistrate's resumption of service and shall not be subject to penalties or interest if submitted within that 90-day period.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 2
PROPOSED COMMITTEE SUBSTITUTE S2-PCS45048-TG-1

Short Title: Magistrates Recusal for Civil Ceremonies. (Public)

Sponsors:

Referred to:

February 2, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW MAGISTRATES, ASSISTANT REGISTERS OF DEEDS, AND DEPUTY REGISTERS OF DEEDS TO RECUSE THEMSELVES FROM PERFORMING DUTIES RELATED TO MARRIAGE CEREMONIES DUE TO SINCERELY HELD RELIGIOUS OBJECTION.

The General Assembly of North Carolina enacts:

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

"**§ 51-5.5. Recusal of certain public officials.**

(a) Every magistrate has the right to recuse from performing all lawful marriages under this Chapter based upon any sincerely held religious objection. Such recusal shall be upon notice to the chief district court judge and is in effect for at least six months from the time delivered to the chief district court judge. The recusing magistrate may not perform any marriage under this Chapter until the recusal is rescinded in writing. The chief district court judge shall ensure that all individuals issued a marriage license seeking to be married before a magistrate may marry.

(b) Every assistant register of deeds and deputy register of deeds has the right to recuse from issuing all lawful marriage licenses under this Chapter based upon any sincerely held religious objection. Such recusal shall be upon notice to the register of deeds and is in effect for at least six months from the time delivered to the register of deeds. The recusing assistant or deputy register may not issue any marriage license until the recusal is rescinded in writing. The register of deeds shall ensure for all applicants for marriage licenses to be issued a license upon satisfaction of the requirements as set forth in Article 2 of this Chapter.

(c) If, and only if, all magistrates in a jurisdiction have recused under subsection (a) of this section, the chief district court judge shall notify the Administrative Office of the Courts. The Administrative Office of the Courts shall ensure that a magistrate is available in that jurisdiction for performance of marriages for the times required under G.S. 7A-292(b). Only for the duration of the time the Administrative Office of the Courts has not designated a magistrate to perform marriages in that jurisdiction, the chief district court judge or such other district court judge as may be designated by the chief district court judge shall be deemed a magistrate for the purposes of performing marriages under this Chapter.

(d) No magistrate, assistant register of deeds, or deputy register of deeds may be charged or convicted under G.S. 14-230 or G.S. 161-27, or subjected to a disciplinary action, due to a good-faith recusal under this section."

SECTION 2. G.S. 14-230 reads as rewritten:

"**§ 14-230. Willfully failing to discharge duties.**

(a) If any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense.

(b) No magistrate recusing in accordance with G.S. 51-5.5 may be charged under this section for recusal to perform marriages in accordance with Chapter 51 of the General Statutes."

SECTION 3. G.S. 161-27 reads as rewritten:

"**§ 161-27. Register of deeds failing to discharge duties; penalty.**

(a) If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a Class 1 misdemeanor, and he shall be removed from office.

(b) No assistant register of deeds or deputy register of deeds recusing in accordance with G.S. 51-5.5 may be charged under this section for recusal to issue marriage licenses in accordance with Chapter 51 of the General Statutes."

SECTION 4. G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths.
(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina.
(3) When authorized by the chief district judge, to take depositions and examinations before trial.
(4) To issue subpoenas and capiases valid throughout the county.
(5) To take affidavits for the verification of pleadings.
(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41.
(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes.
(8) To take acknowledgments of instruments, as provided in G.S. 47-1.
(9) To perform the marriage ceremony, as provided in G.S. 51-1.
(10) To take acknowledgment of a written contract or separation agreement between husband and wife.
(11) Repealed by Session Laws 1973, c. 503, s. 9.
(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
(13) Repealed by Session Laws 1973, c. 503, s. 9.
(14) To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction proceedings when the office of the clerk of superior court is closed.
(15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel pursuant to Article 36 of this Chapter.
(16) To appoint an umpire to determine motor vehicle liability policy diminution in value, as provided in G.S. 20-279.21(d1).

(b) The authority granted to magistrates under G.S. 51-1 and subdivision (a)(9) of this section is a responsibility given collectively to the magistrates in a county and is not a duty imposed upon each individual magistrate. The chief district court judge shall ensure that marriages before a magistrate are available to be performed at least a total of 10 hours per week, over at least three business days per week."

SECTION 5. Any magistrate who resigned, or was terminated from, his or her office between October 6, 2014, and the effective date of this act may apply to fill any vacant position of magistrate. Notwithstanding any other provision of law, with respect to any magistrate who resigned his or her office between October 6, 2014, and the effective date of this act, and who is subsequently reappointed as a magistrate within 90 days after the effective date of this act:

(1) For the period of time between that magistrate's resignation and his or her resumption of service upon reappointment, the magistrate shall not receive salary or other compensation and shall not earn leave. However, the magistrate shall be considered to have been serving as a magistrate during that period for purposes of determining continuous service, length of aggregate service, anniversary date, longevity pay rate, and the accrual of vacation and sick leave.

(2) For purposes of the Teachers' and State Employees' Retirement System and the calculation of benefits under that System, (i) the magistrate shall be considered to have been an employee under G.S. 135-1(10) during the break in service, (ii) the period of the break in service shall be counted as membership service under G.S. 135-1(14), and (iii) the magistrate shall be deemed to have earned compensation under G.S. 135-1(7a) during the break in service at the rate of compensation that would have applied had there been no break in service.

(3) The Judicial Department shall pay and submit both the employee and employer contributions to the Retirement Systems Division on behalf of the magistrate as though that magistrate had been in active service during the period in question. Those contributions shall be submitted within 90 days of the magistrate's resumption of service and shall not be subject to penalties or interest if submitted within that 90-day period.

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

SENATE BILL 2:
Magistrates Recusal of Civil Ceremonies

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 23, 2015
Introduced by:	Sen. Berger	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition S2-CSTG-1		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 2 would establish procedures by which magistrates can be recused from performing all lawful marriages and assistant and deputy registers of deeds can be recused from issuing all lawful marriage licenses, based upon any sincerely held religious objection. The recusal would be for a minimum of six months and would continue until the recusal is rescinded in writing. Officials so recusing themselves would not be subject to prosecution for failing to perform the duties imposed upon them by law.***

Each register of deeds would be required to ensure that all qualified applicants for marriage licenses are issued a license, and each chief district court judge would be required to ensure that marriages performed by a magistrate are available to be performed during at least ten hours per week over at least three business days.

The PCS would also provide protection against loss of employment and retirement benefits for magistrates who resigned or were terminated from their position between October 6, 2014 and the effective date of this act, and who are subsequently reappointed to the position of magistrate within 90 days after the act's effective date. The PCS makes several technical changes to the original bill.

CURRENT LAW: G.S. 51-8 requires all registers of deeds to issue marriage licenses to persons authorized to be married under the laws of this State. Magistrates are authorized to perform marriage ceremonies pursuant to G.S. 51-1 and G.S. 7A-292. Magistrates (G.S. 14-230) and registers of deeds (G.S. 161-27) are also subject to prosecution for a Class 1 misdemeanor for willfully omitting, neglecting or refusing to discharge any of the duties of his or her office, and are also subject to being discharged from office.

BILL ANALYSIS: Section 1 would enact a new G.S. 51-5.5 granting each magistrate the right to be recused from performing all lawful marriages upon the basis of a sincerely held religious belief, and granting each assistant and deputy register of deeds the right to be recused from issuing all marriage licenses.

The period of recusal would be a minimum of six months, beginning with the date on which the magistrate provides notice to the chief district court judge, or the date on which the assistant or deputy register of deeds provides notice to the register of deeds. Until the recusal is rescinded in writing, a recused magistrate would not be permitted to perform any marriage ceremonies and a recused assistant or deputy register of deeds would not be permitted to issue any marriage licenses.

Each register of deeds would be required to ensure that marriage licenses are issued to all qualified persons applying for them, and each chief district court judge would be required to ensure that all persons issued a marriage license and wishing to be married by a magistrate are able to do so. Magistrates, assistant registers of deeds, and deputy registers of deeds who recuse themselves would not be subject to prosecution for willful failure to carry out the duties of their office, nor would they be subject to a disciplinary action for a good-faith recusal.

In the event of recusals by all of the magistrates in a jurisdiction, then upon notification of that fact by the chief district court judge, the Administrative Office of the Courts (AOC) would be required to ensure the availability of a magistrate in that jurisdiction for performance of marriages for at least ten hours each week over at least three business days per week. During any period of time between notification and the AOC's provision of a magistrate, the chief district court judge, or another district court judge designated by the chief district court judge, would be deemed a magistrate for the purposes of performing marriages.

Sections 2 and 3 of the bill would amend current statutes making it a Class 1 misdemeanor for magistrates and registers of deeds to willfully fail to discharge any duty of their office, to provide immunity from such prosecution for those recusing themselves under new G.S. 51-1.1.

Section 4 of the bill would amend G.S. 7A-292 by adding a new subsection (b) to provide that the magistrates' statutory authority to perform marriages is a collective grant of responsibility to all magistrates and is not a duty imposed upon individual magistrates. This new subsection would also require each chief district court judge to ensure that marriages before a magistrate are available to be performed each week for at least 10 total hours over three business days.

Under Section 5 of the bill, magistrates who resigned or were terminated from their office between October 6, 2014, and the effective date of this act, would be permitted to apply for any vacant position of magistrate. Any such magistrate who is reappointed within 90 days after the effective date of this act would be credited with the time between their resignation and their resumption of service for purposes of determining employment benefits dependent upon time of service, including calculation of benefits due under the Teachers' and State Employees' Retirement System. The Judicial Department would be required to pay both the employee and employer contributions for such reappointed magistrates to the Retirement Systems Division for the period of the break in service.

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

BACKGROUND: On October 6, 2014, the United States Supreme Court declined to hear an appeal from a decision by the Fourth Circuit Court of Appeals striking down Virginia's ban on same-sex marriage.[1] On October 14, 2014, a federal district court judge issued a ruling declaring unconstitutional the State constitution's ban on same-sex marriage approved by voters in 2012.[2] Following these rulings, a number of State magistrates resigned from their positions on the basis of their religious objection to same-sex marriage.

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[1] Rainey v. Bostic, 135 S. Ct. 286, 190 L. Ed. 2d 140 (2014)
[2] Fisher–Borne v. Smith, 14 F.Supp.3d 695 (M.D.N.C.2014).

SENATE BILL 2:
Magistrates Recusal of Civil Ceremonies

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 23, 2015
Introduced by:	Sen. Berger	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 2 would establish procedures by which magistrates can be recused from performing all lawful marriages and assistant and deputy registers of deeds can be recused from issuing all lawful marriage licenses, based upon any sincerely held religious objection. The recusal would be for a minimum of six months and would continue until the recusal is rescinded in writing. Persons so recusing themselves would not be subject to prosecution for failing to perform the duties imposed upon them by law.***

Each register of deeds would be required to ensure that all qualified applicants for marriage licenses are issued a license, and each chief district court judge to ensure that marriages performed by a magistrate are available to be performed during at least ten hours each week over at least three business days.

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CURRENT LAW: G.S. 51-8 requires all registers of deeds to issue marriage licenses to persons authorized to be married under the laws of this State. Magistrates are authorized to perform marriage ceremonies pursuant to G.S. 51-1 and G.S. 7A-292. It is a Class 1 misdemeanor for any magistrate (G.S. 14-230) or register of deeds (G.S. 161-27) to willfully omit, neglect or refuse to discharge any of the duties of his or her office.

BILL ANALYSIS: Section 1 would enact a new G.S. 51-5.5 granting each magistrate the right to be recused from performing all lawful marriages upon the basis of a sincerely held religious belief, and granting each assistant and deputy register of deeds the right to be recused from issuing all marriage licenses.

The period of recusal would be a minimum of six months, beginning with the date on which the magistrate provides notice to the chief district court judge, or the date on which the assistant or deputy register of deeds provides notice to the register of deeds. Until the recusal is rescinded in writing, a recused magistrate would not be permitted to perform any marriage ceremonies and a recused assistant or deputy register of deeds would not be permitted to issue any marriage licenses.

Each register of deeds would be required to ensure that marriage licenses are issued to all qualified persons applying for them, and each chief district court judge would be required to ensure that all persons issued a marriage license and wishing to be married by a magistrate are able to do so. Magistrates, assistant registers of deeds, and deputy registers of deeds who recuse themselves would not be subject to prosecution for willful failure to carry out the duties of their office, nor would they be subject to a disciplinary action for a good-faith recusal.

In the event that all magistrates in a jurisdiction were to recuse themselves, then upon notification of that fact by the chief district court judge, the Administrative Office of the Courts (AOC) would be required to ensure the availability of a magistrate in that jurisdiction for performance of marriages for at least ten

hours each week over at least three business days per week. During any period of time between notification and the AOC's provision of a magistrate, the chief district court judge or another district court judge designated by the chief district court judge would be deemed a magistrate for the purposes of performing marriages.

Sections 2 and 3 of the bill would amend current statutes making it a Class 1 misdemeanor for magistrates and registers of deeds to willfully fail to discharge any duty of their office, to provide immunity from such prosecution for those recusing themselves under new G.S. 51-1.1.

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

BACKGROUND: On October 6, 2014, the United States Supreme Court declined to hear an appeal from a decision by the Fourth Circuit Court of Appeals striking down Virginia's ban on same-sex marriage.[1] On October 14, 2014, a federal district court judge issued a ruling declaring unconstitutional the State constitution's ban on same-sex marriage approved by voters in 2012.[2] Following these rulings, a number of State magistrates resigned from their positions on the basis of their religious objection to same-sex marriage.

[1] Rainey v. Bostic, 135 S. Ct. 286, 190 L. Ed. 2d 140 (2014)
[2] Fisher–Borne v. Smith, 14 F.Supp.3d 695 (M.D.N.C.2014).

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, February 24, 2015

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

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

SB **2** Magistrates Recusal of Civil Ceremonies.

Draft Number:	S2-PCS45048-TG-1
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator E.S. Newton will handle SB 2



SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.
Chris Sgro ✓	Equality North Carolina	SB2
Jeff Thigpen ✓	Guilford County Register of Deeds	SB2
Sarah Preston ✓	ACLU-NC	SB2
George Teague	NC Assn of Reg Deeds	SB2
~~Janie Fitzgerald~~	NC Values	SB2
✓ John Rustin	NC Family Policy Council	SB2

- Jan Bryant

VISITOR REGISTRATION SHEET

Senate Judiciary II

(Committee Name)

2/24/15

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
[illegible]	A. Lind + Assoc
Keith Brannum	Congressman David Price
Jack McC[illegible]	McClure Co[illegible]
MIKE MANN	NCBA

09-22-2012

VISITOR REGISTRATION SHEET

Senate Judiciary II

(Committee Name)

2/24/2015

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Sarah Preston	ACLU-NC
Susan Vick	Duke
Ryan D'Mello	Gov's Office
Philip Isley	BMCD
Heaven Hyun Estelan	Intern
[illegible]	Intern
ERIN FLECK	Senate Staff
Patsy Keever	Chair NCDP
Meredith Kirsch	[illegible]
Andy Brandon	DPS
Jamie Ethridge	NC Values
Drew Cather	[illegible]
Canaan Haire	NVA
Mike Caputo	NC HHSA

09-22-2012

VISITOR REGISTRATION SHEET

Senate Judiciary II

(Committee Name)

2/24/15

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
JONAH HELMANN	EQUALITY NC
CHRIS SGRO	EQUALITY NC
[illegible]	NMRS
Cagle McLeod	Troutman Sanders
Rob Schofield	NC Policy Watch
Marissa Jarrell	K+L Gates
Anna Beam Greene	NC Family Action
REV. BARB CREECH	CAL
Chris Agnew	DOJ
Fred Aikens	ofc of Sen Blue
[illegible]	[illegible]
[illegible]	[illegible]
STEVEN WEBB	NCBBA
Fred Baron	Baron & Budd
TOM MURRY	AOC
[illegible]	CAA
[illegible]	JCLS

09-22-2012

Senate Committee on Judiciary II
Thursday, March 5, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:05 AM on March 5, 2015 in Room 1124/1224 of the Legislative Building. 13 members were present.

Senator Shirley B. Randleman, Chair, presided.

Pages: Ann-Hunter Carraway of Wake Forest, Wilker Ballantine of Wilmington, Russhian Jones IV of Enfield.
Sgt. at Arms: Matt Urban, Donna Blake

SB 60 No-Contact Order/No Expiration. (Senator Bingham)
Co-Chair Daniel moved to have the PCS: PCS S60-CSTJ-3 brought up for consideration rather than discussing the original bill. The motion carried.
Senator Bingham presented the bill to the committee.
There was no further discussion and Senator J. Davis moved to find the original bill unfavorable, but favorable as to the PCS. The motion carried. The bill was reported out by the clerk "Unfavorable as to bill, but favorable as to committee substitute bill."

SB 82 Vital Records Integrity Act. (Senator Bingham)
Senator Bingham presented the bill to the committee with the help of the committee's legal staff, Jan Paul. A few members made remarks about the bill. Staff attorney Karen Cochrane-Brown passed around a document exhibiting the traits of a document that this bill affected. A member of the public asked a clarifying question of the bill: Chip Killian from Nelson Mullins.
After discussion, Senator Cook moved to find the original bill favorable. Senator J. Jackson seconded the motion. The motion carried. The bill was reported out by the clerk "Favorable"

The meeting adjourned at 10:25 am.

Shirley B. Randleman — Patrick Limer

Senator Shirley B. Randleman, Chair
Presiding

Patrick Limer, Committee Clerk

Senate Committee on Judiciary II
Thursday, March 5, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 60	No Contact Order/No Expiration.	Senator Bingham
SB 82	Vital Records Integrity Act.	Senator Bingham

Presentations

Other Business

Adjournment

SENATE BILL 60

Short Title:	No Contact Order/No Expiration.	(Public)
Sponsors:	Senators Bingham (Primary Sponsor); Bryant, Hise, Randleman, and Sanderson.	
Referred to:	Rules and Operations of the Senate.	

February 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A NON-EXPIRING, PERMANENT CIVIL NO-CONTACT ORDER MAY BE ISSUED AGAINST A SEX OFFENDER ON BEHALF OF THE CRIME VICTIM AND TO ESTABLISH THE PROCEDURE FOR OBTAINING SUCH AN ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 50D.**

"**Permanent Civil No-Contact Order Against Sex Offender On Behalf of Crime Victim.**

"**§ 50D-1. Definitions.**

The following definitions apply in this Chapter:

(1) Permanent civil no-contact order. – A permanent injunction that prohibits any contact by a respondent with the victim of a sex offense for which the respondent is convicted.

(2) Respondent. – The person who committed the sex offense.

(3) Sex offense. – Any criminal offense that requires registration under Article 27A of Chapter 14 of the General Statutes.

(4) Victim. – The person against whom the sex offense was committed.

"**§ 50D-2. Commencement of action; filing fees not permitted; assistance.**

(a) An action is commenced under this Chapter by filing a verified complaint for a permanent civil no-contact order in district court or by filing a motion in any existing civil action, by any of the following:

(1) A person who is the victim of a sex offense that occurs in this State.

(2) A competent adult who resides in this State on behalf of a minor child who is the victim of a sex offense that occurs in this State.

(3) A competent adult who resides in this State on behalf of an incompetent adult who is the victim of a sex offense that occurs in this State.

(b) No court costs or attorneys' fees shall be assessed for the filing or service of the complaint, or the service of any orders, except as provided in G.S. 1A-1, Rule 11.

(c) An action commenced under this Chapter may be filed in any county permitted under G.S. 1-82 or where the respondent was convicted of the sex offense.

(d) If the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further unlawful conduct, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50D-3. Process for action for permanent civil no-contact order.**

(a) Any action for a permanent civil no-contact order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer within 10 days of the date of service. Attachments to the summons shall include the complaint for the permanent civil no-contact order.

(b) Service of the summons and attachments shall be by the sheriff by personal delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the respondent cannot with due diligence be served by the sheriff by personal delivery, the respondent may be served by publication by the complainant in accordance with Rule 4(j1) of the Rules of Civil Procedure.

(c) The court may enter a permanent civil no-contact order by default for the remedy sought in the complaint if the respondent has been served in accordance with this section and fails to answer as directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50D-4. Hearsay exception.**

In proceedings for an order or prosecutions for violation of an order under this Chapter, the prior sexual activity or the reputation of the victim is inadmissible except when it would be admissible in a criminal prosecution under G.S. 8C, Rule 412.

"**§ 50D-5. Remedy.**

(a) If the court finds all of the following, the court may issue a permanent civil no-contact order:

(1) The respondent was convicted of committing a sex offense against the victim.

(2) The victim did not seek a permanent no-contact order under G.S. 15A-1340.50.

(3) Reasonable grounds exist for the victim to fear future contact with the respondent.

(4) Process was properly served on the respondent.

(5) The respondent answered the complaint and notice of hearing was given, or the respondent failed to answer the complaint and is in default.

(b) The court may grant one or more of the following forms of relief in a permanent civil no-contact order under this Chapter:

(1) Order the respondent not to threaten, visit, assault, molest, or otherwise interfere with the victim.

(2) Order the respondent not to follow the victim, including at the victim's workplace.

(3) Order the respondent not to harass the victim.

(4) Order the respondent not to abuse or injure the victim.

(5) Order the respondent not to contact the victim by telephone, written communication, or electronic means.

(6) Order the respondent to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present.

(7) Order other relief deemed necessary and appropriate by the court.

(c) No permanent civil no-contact order shall be issued under this Chapter without notice to the respondent.

"**§ 50D-6. Duration.**

A permanent civil no-contact order issued pursuant to this Chapter remains effective for the lifetime of the respondent.

"**§ 50D-7. Notice of orders.**

(a) The clerk of court shall deliver, on the same day that a permanent civil no-contact order is issued, a certified copy of that order to the sheriff.

(b) If the respondent was not present in court when the order was issued, the respondent may be served in the manner provided for service of process in civil proceedings in accordance with Rule 4(j) of the Rules of Civil Procedure. If the summons has not yet been served upon the respondent, it shall be served with the order.

(c) A copy of the order shall be issued promptly to and retained by the police department of the municipality of the victim's residence. If the victim's residence is not located in a municipality or is located in a municipality with no police department, copies shall be issued promptly to and retained by the sheriff and the county police department, if any, of the county in which the victim's residence is located.

(d) Any order modifying or revoking any permanent civil no-contact order shall be promptly delivered to the sheriff by the clerk of court and served in a manner provided for service of process in accordance with the provisions of this section.

"**§ 50D-8. Enforcement.**

A victim may file a motion for contempt for violation of an order entered pursuant to this Chapter.

"**§ 50D-9. Violation.**

(a) A person who knowingly violates an order entered pursuant to this Chapter is guilty of a Class A1 misdemeanor.

(b) A permanent civil no-contact order entered pursuant to this Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court. A law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a permanent civil no-contact order.

"**§ 50D-10. Remedies not exclusive.**

The remedies provided by this Chapter are not exclusive but are additional to other remedies provided under law."

SECTION 2. The Administrative Office of the Courts shall develop the appropriate forms to implement the processes provided under Chapter 50D of the General Statutes as enacted by this act.

SECTION 3. This act becomes effective October 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 60
PROPOSED COMMITTEE SUBSTITUTE S60-CSTJ-3 [v.1]

3/4/2015 5:42:31 PM

Short Title: No Contact Order/No Expiration. (Public)

Sponsors:

Referred to:

February 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A NON-EXPIRING, PERMANENT CIVIL NO-CONTACT ORDER MAY BE ISSUED AGAINST A SEX OFFENDER ON BEHALF OF THE CRIME VICTIM AND TO ESTABLISH THE PROCEDURE FOR OBTAINING SUCH AN ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 50D.**

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"**§ 50D-1. Definitions.**

The following definitions apply in this Chapter:

(1) Permanent civil no-contact order. – A permanent injunction that prohibits any contact by a respondent with the victim of a sex offense for which the respondent is convicted.

(2) Respondent. – The person who committed the sex offense.

(3) Sex offense. – Any criminal offense that requires registration under Article 27A of Chapter 14 of the General Statutes.

(4) Victim. – The person against whom the sex offense was committed.

"**§ 50D-2. Commencement of action; filing fees not permitted; assistance.**

(a) An action is commenced under this Chapter by filing a verified complaint for a permanent civil no-contact order in district court or by filing a motion in any existing civil action, by any of the following:

(1) A person who is the victim of a sex offense that occurs in this State.

(2) A competent adult who resides in this State on behalf of a minor child who is the victim of a sex offense that occurs in this State.

(3) A competent adult who resides in this State on behalf of an incompetent adult who is the victim of a sex offense that occurs in this State.

(b) No court costs or attorneys' fees shall be assessed for the filing or service of the complaint, or the service of any orders, except as provided in G.S. 1A-1, Rule 11.

(c) An action commenced under this Chapter may be filed in any county permitted under G.S. 1-82 or where the respondent was convicted of the sex offense.

(d) If the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further unlawful conduct, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50D-3. Process for action for permanent civil no-contact order.**

(a) Any action for a permanent civil no-contact order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer within 10 days of the date of service. Attachments to the summons shall include the complaint for the permanent civil no-contact order.

(b) Service of the summons and attachments shall be by the sheriff by personal delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the respondent cannot with due diligence be served by the sheriff by personal delivery, the respondent may be served by publication by the complainant in accordance with Rule 4(j1) of the Rules of Civil Procedure.

(c) The court may enter a permanent civil no-contact order by default for the remedy sought in the complaint if the respondent has been served in accordance with this section and fails to answer as directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50D-4. Hearsay exception.**

In proceedings for an order or prosecutions for violation of an order under this Chapter, the prior sexual activity or the reputation of the victim is inadmissible except when it would be admissible in a criminal prosecution under G.S. 8C, Rule 412.

"**§ 50D-5. Remedy.**

(a) If the court finds all of the following, the court may issue a permanent civil no-contact order:

(1) The respondent was convicted of committing a sex offense against the victim.

(2) The victim did not seek a permanent no-contact order under G.S. 15A-1340.50.

(3) Reasonable grounds exist for the victim to fear future contact with the respondent.

(4) Process was properly served on the respondent.

(5) The respondent answered the complaint and notice of hearing was given, or the respondent failed to answer the complaint and is in default.

(b) The court may grant one or more of the following forms of relief in a permanent civil no-contact order under this Chapter:

(1) Order the respondent not to threaten, visit, assault, molest, or otherwise interfere with the victim.

(2) Order the respondent not to follow the victim, including at the victim's workplace.

(3) Order the respondent not to harass the victim.

(4) Order the respondent not to abuse or injure the victim.

(5) Order the respondent not to contact the victim by telephone, written communication, or electronic means.

(6) Order the respondent to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present.

(7) Order other relief deemed necessary and appropriate by the court.

(c) No permanent civil no-contact order shall be issued under this Chapter without notice to the respondent.

"**§ 50D-6. Duration.**

A permanent civil no-contact order issued pursuant to this Chapter remains effective for the lifetime of the respondent.

"**§ 50D-7. Notice of orders.**

(a) The clerk of court shall deliver, on the same day that a permanent civil no-contact order is issued, a certified copy of that order to the sheriff.

(b) If the respondent was not present in court when the order was issued, the respondent may be served in the manner provided for service of process in civil proceedings in accordance with Rule 4(j) of the Rules of Civil Procedure. If the summons has not yet been served upon the respondent, it shall be served with the order.

(c) A copy of the order shall be issued promptly to and retained by the police department of the municipality of the victim's residence. If the victim's residence is not located in a municipality or is located in a municipality with no police department, copies shall be issued promptly to and retained by the sheriff and the county police department, if any, of the county in which the victim's residence is located.

(d) Any order modifying or revoking any permanent civil no-contact order shall be promptly delivered to the sheriff by the clerk of court and served in a manner provided for service of process in accordance with the provisions of this section.

"**§ 50D-8. Enforcement.**

A victim may file a motion for contempt for violation of an order entered pursuant to this Chapter.

"**§ 50D-9. Recission.**

At any time after the issuance of the order, the victim may make a motion to rescind the permanent no contact order. If the court determines that reasonable grounds for the victim to fear any future contact with the respondent no longer exist, the court may rescind the permanent no contact order.

"**§ 50D-10. Violation.**

(a) A person who knowingly violates an order entered pursuant to this Chapter is guilty of a Class A1 misdemeanor.

(b) A permanent civil no-contact order entered pursuant to this Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court. A law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a permanent civil no-contact order.

"**§ 50D-11. Remedies not exclusive.**

The remedies provided by this Chapter are not exclusive but are additional to other remedies provided under law."

SECTION 2. The Administrative Office of the Courts shall develop the appropriate forms to implement the processes provided under Chapter 50D of the General Statutes as enacted by this act, including amending the Rules of Recordkeeping to require the Clerk of Superior Court to retain the records of an action filed under this Chapter.

SECTION 3. This act becomes effective October 1, 2015.

SENATE BILL 60:
No Contact Order/No Expiration

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 4, 2015
Introduced by:	Sen. Bingham	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S60-CSTJ-3		

SUMMARY: The Proposed Committee Substitute to Senate Bill 60 would allow a victim of a sexual offense to obtain a permanent civil no-contact order against the person convicted of committing the offense.

CURRENT LAW: North Carolina law currently provides several procedures to grant relief to a victim of domestic violence or sexual offense against the person who committed the prohibited acts.

- Chapter 50B of the General Statutes authorizes a court to issue a protective order that offers various types of relief to a victim of domestic violence.
- Chapter 50C of the General Statutes permits a victim of non-consensual sexual conduct or stalking to obtain a temporary or a permanent civil no-contact order against the person who committed the conduct if the victim is not in a personal relationship with the person. A permanent no-contact order issued under this Chapter is effective for a specific period of time not to exceed one year, but may be extended one or more times.
- G.S. 15A-1340.50 allows a crime victim to obtain a permanent no-contact order prohibiting future contact by a convicted sex offender when the sex offender is sentenced at trial. The no-contact order is effective for the lifetime of the defendant.

SB 60 would create a new Chapter 50D of the North Carolina General Statutes to allow a sexual assault victim to obtain a permanent civil no-contact order against a registered sex offender when the victim did not request a permanent no-contact order at the time the sex offender was sentenced.

BILL ANALYSIS: The PCS to SB 60 would rovide that a permanent civil no-contact order may be issued on behalf of the victim of a sex offense against the person convicted of committing a criminal offense against the victim that requires registration under the Sex Offender and Public Protection Registration Program. Specifically, the PCS would do the following:

Section 1

- Provide that any of the following persons may file a complaint or motion in district court to obtain the no-contact order (G.S. 50D-2(a)):
  - A victim of a sex offense that occurred in the State.
  - A competent adult who is a North Carolina resident, on behalf of a minor who resides in the State and is the victim of a sex offense that occurred in the State.
  - A competent adult who is a North Carolina resident, of behalf of an incompetent adult who resides in the State and is a victim of a sex offense that occurred in the State.
- Establish the civil procedure for filing a complaint or motion for a no-contact order, the procedure for serving summons on the respondent, and the procedure for the issuance of the no-contact order.(G.S. 50D-2, G.S. 50D-3.)

- Provide that information as to the prior sexual activity or reputation is inadmissible in proceedings under this Chapter unless it would be admissible under the Rules of Evidence in a criminal prosecution. (G.S. 50D-4.)

- Provide that the Court must find all of the following before issuing a no-contact order (G.S. 50D-5(a)):
    - The respondent was convicted of committing a sex offense against the complaining victim.
    - The victim did not seek a permanent criminal no-contact order under G.S. 15A-1340.50.
    - Reasonable grounds exist for the victim to fear future contact with the respondent.
    - Process was properly served on the respondent.
    - The respondent answered the complaint and notice of hearing was given, or the respondent failed to answer the complaint and is in default.

- Set out the various forms of relief the court may include in the no-contact order. (G.S. 50D-5(b)).

- Provide that the duration of the no-contact order is for the lifetime of the respondent. (G.S. 50D-6.)

- Specify the requirements for giving the respondent notice of the issuance of a no-contact order. (G.S. 50D-7.)

- Provide that a victim who is granted a no-contact order may file a motion for contempt against the respondent for a violation of the no-contact order. (G.S. 50D-8.)

- Provide that the victim may make a motion to rescind the permanent no-contact order and the court may rescind the order upon a finding that reasonable grounds for the victim to fear future contact with the respondent no longer exist. (G.S. 50D-9.)

- Provide that a respondent who knowingly violates a no-contact order is guilty of a Class A1 misdemeanor, and direct law enforcement agencies to enforce the no-contact order without further order of the court. (G.S. 50D-10.)

- Provide that the remedies provided under Chapter 50D are not exclusive. (G.S. 50D-11.)

Section 2

- Direct the Administrative Office of the Courts to develop appropriate forms or rules necessary to implement the processes established in Chapter 50D, including any rules relating to records retention.

EFFECTIVE DATE: This act becomes effective October 1, 2015.

Emily Johnson, Staff Attorney, substantially contributed to this summary.

SENATE BILL 82
Corrected Copy 2/19/15

Short Title:	Vital Records Integrity Act.	(Public)
Sponsors:	Senators Bingham (Primary Sponsor); and J. Davis.	
Referred to:	Judiciary II.	

February 16, 2015

A BILL TO BE ENTITLED

AN ACT TO ENSURE THE INTEGRITY OF BIRTH RECORDS PRESENTED FOR REGISTRATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 161 of the General Statutes is amended by adding a new section to read:

"**§ 161-14.02. Registration of documents or instruments purporting to impact official birth records.**

Prior to recording a document or instrument that (i) purports to impact an official record of birth meeting the requirements of G.S. 161-14 and (ii) is not a birth registration or birth certificate, an amendment of a birth certificate, or a certificate of identification as defined in Article 4 of Chapter 130A of the General Statutes, the Register of Deeds shall conspicuously mark the first page of the document or instrument with the following statement:

"THIS DOCUMENT IS NOT AN OFFICIAL BIRTH RECORD.""

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

SENATE BILL 82:
Vital Records Integrity Act

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 4, 2015
Introduced by:	Sen. Bingham	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	Second Edition		Staff Attorney

SUMMARY: Senate Bill 82 adds a new provision to the law governing the duties of registers of deeds in connection with the registration of certain documents purporting to impact official birth records. The new provision requires that the register of deeds mark the first page of the document with a statement that the document is not an official birth record.

CURRENT LAW:

Under current law, the register of deeds of each county must file copies of birth certificates furnished by the local registrar and keep an index of the certificates. These certificates are open to inspection and examination and copies can be provided to any person upon request. Certified copies can be provided under more limited circumstances.

The law also authorizes the register of deeds to record and file documents related to persons for business and other purposes.

In addition, the register of deeds is authorized to collect a fee of ten dollars for various services related to preparation of papers for registration of birth certificates, amendment of birth records, legitimations, and furnishing certified copies of birth certificates. The fee is twenty dollars for preparation of papers for registration in the same county with one certified copy.

BILL ANALYSIS:

Senate Bill 82 adds a new section to the law requiring that prior to recording certain documents or instruments, which purport to impact an official birth record, the register of deeds must mark the first page of the document or instrument with the following statement:

"THIS DOCUMENT IS NOT AN OFFICIAL BIRTH RECORD."

This requirement only applies to documents or instruments that are not a birth registration or birth certificate, an amendment of a birth certificate, or a certificate of identification.

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

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2005 OCT 31 01:07 PM
BK:19559 PG:267-275 FEE:$33.00

INSTRUMENT # 2005217174

2005217174

MOORISH REPUBLIC FEDERAL GOVERNMENT

Moorish Aboriginal,Indigenous,Sovereign

AFFIDAVIT,CERTIFICATE OF NATURAL LIVE BIRTH

I Noble: Amur Mashuq El, being the Qazi (Chief Magistrate) of the

GREAT SEAL MOORISH NATION, ABORGINAL, INDIGENOUS REPUBLIC FEDERAL GOVERNMENT

Do hereby Affirm that said offspring (name): Kerh Setep Bey

Gender: Male Nationality: *MOOR*

Was birthed on the 4 day of August 1972 A.D., to the parents of :

Natural Mother (name): Sharon Yvone Reid

Natural Father (name): Frederick Cleveland Harris

I also declare before De Jure Natural Divine Universal Law and the De Jure Laws of the Organic Continental united States for America Republic that Kerh Setep Bey was birthed as an Free Sovereign, Aboriginal, Indigenous, Moorish American National of the Indigenous Moorish Nation,...Political Status: Freehold by birthright and inheritance. And is an direct blood descendant of the Original Aboriginal Inhabitants of the land and soil known as the Americas, and the true legal lawful National Sovereigns of the Continental united States, North, South, and Central American Republic(s), Northwest Africa / Amexem / America (Al Maghrib)

"Not in the corporate body politics of the Union States Society Republic"

Parent(s) Signature(s): Sharon Yvone Reid

Frederick Cleveland Harris

Witness: Amur Mashuq El
(Waszir Al' Rais)

Witness: Rahyma El Bey

CONTINENTAL UNITED STATES

01-23-64;12:10PM;

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Monday, March 09, 2015

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

FAVORABLE

SB **82** Vital Records Integrity Act.

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 **60** No Contact Order/No Expiration.

Draft Number:	S60-PCS25073-TJ-3
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Stan Bingham will handle SB 82
Senator Stan Bingham will handle SB 60



SENATE JUDICIARY II GUEST SIGN-IN

NAME	ORGANIZATION	BILL NO.
Phoebe Landon	Brooks Pierce	
Annaliese Dolph	Dolph Law	
Sarah Preston	ACLU-NC	
Tom Murry	NCAOC	

SENATE JUDICIARY II GUEST SIGN-IN

NAME	ORGANIZATION	BILL NO.
CASANDRA SKINNER	NCAOC	
Isabel Vila-Garcia	NCAR	
Colleen Kochanek	NCCADV	
[illegible]	[illegible]	
Phillip Isley	BMG	
Mildred Spearman	NCAOC	

Senate Committee on Judiciary II
Tuesday, March 10, 2015 at 10:30 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:30 AM on March 10, 2015 in Room 1124/1224 of the Legislative Building. 11 members were present.

Sen. Tamara Barringer, presided.

Asst. Sargent-at-Arms: Anderson Meadows, Donna Blake

Pages: Yvon'ne Lyle of Raleigh (Sen. Blue), Carson Honeycutt of Pinehurst (Sen. Tillman) and Greyson Willard of Moncure (Sen. Foushee).

SB 53 Cities/Overgrown Vegetation Notice. (Senators Krawiec, Lowe)
After a motion from Sen. Lowe to hear the bill, Sen. Krawiec presented the bill with the assistance of Research Staff, Giles Perry. There was a bit of discussion, but there was no one from the public that signed up to speak. Sen. Lowe motioned to report out the bill. Sen. J. Davis seconded the motion. Sen. Barringer called for a voice vote. The bill was voted out favorable (original) and reported to the Senate Principal Clerk as Favorable. Sen. Krawiec is expected to handle the bill on the Senate floor.

The meeting adjourned at 10:52 am.

Select or Type Name of Presiding Chair
Presiding

Andy Perrigo, Committee Clerk

Senate Committee on Judiciary II
Tuesday, March 10, 2015, 10:30 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 53	Cities/Overgrown Vegetation Notice.	Senator Krawiec Senator Lowe

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 53*

Short Title:	Cities/Overgrown Vegetation Notice.	(Public)
Sponsors:	Senators Krawiec and Lowe (Primary Sponsors).	
Referred to:	Rules and Operations of the Senate.	

February 11, 2015

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CITIES TO PROVIDE ANNUAL NOTICE TO CHRONIC VIOLATORS OF OVERGROWN VEGETATION ORDINANCES BY REGULAR MAIL AND POSTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-200 reads as rewritten:

"**§ 160A-200. Annual notice to chronic violators of overgrown vegetation ordinances.**

(a) A municipality may notify a chronic violator of the municipality's overgrown vegetation ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The initial annual notice shall be served by registered or certified mail. When service is attempted by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected. A chronic violator is a person who owns property whereupon, in the previous calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance.

(b) Repealed by Session Laws 2009-19, s. 1, effective April 30, 2009."

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

SENATE BILL 53:
Cities/Overgrown Vegetation Notice

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 5, 2015
Introduced by:	Sens. Krawiec, Lowe	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 53 would change the requirements for the annual notice to a chronic violator of a municipal overgrown vegetation ordinance by authorizing the sending of notice by regular mail and by posting on the premises.

[As introduced, this bill was identical to H44, as introduced by Reps. Conrad, Lambeth, Hanes, Terry, which is currently in House Local Government, if favorable, Regulatory Reform.]

CURRENT LAW: Current law requires that the initial annual notice to a chronic violator of a municipal overgrown vegetation ordinance be sent by registered or certified mail.

BILL ANALYSIS: Senate Bill 53 would change the requirements for the annual notice to a chronic violator of a municipal overgrown vegetation ordinance as follows:

- To provide that if service is attempted by registered and certified mail, *notice can also be sent by regular mail*;
- To provide that service will be deemed sufficient if the certified mail is unclaimed or refused, but the *regular mail is not returned with 10 days of mailing*; and
- To require that a copy of the *notice also be posted on the premises, if regular mail notice is used.*

The proposed change would create the same notice procedure currently provided in law for chronic violators of a municipal nuisance ordinance (G.S. 160A-200.1), or for notice of other municipal orders or complaints (G.S. 160A-445).

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

BACKGROUND: Under current law, a municipality can enact an overgrown vegetation ordinance, charge a chronic violator of the ordinance for the expense of remedying violations, and collect the cost of remedying violations in the same manner as collection of unpaid property taxes. (G.S. 160A-174, G.S. 160A-175, and G.S. 160A-193; Art 26 of Chapter 105 of the General Statutes.)

Current law defines a "chronic violator" of an overgrown vegetation ordinance as a person who owns property on which, in the previous calendar year, the municipality took remedial action at least three times under an overgrown vegetation ordinance (G.S. 160A-200).

Giles Perry, counsel to the House Committee on Local Government, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, March 10, 2015

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

FAVORABLE

SB **53** Cities/Overgrown Vegetation Notice.

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

TOTAL REPORTED: 1

Senator Joyce Krawiec will handle SB 53



VISITOR REGISTRATION SHEET

Senate Judiciary II

(Committee Name)

3/10/15

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Sarah Collins	NCLM
Julie White	NCMMC
ALLEN JONES	City of Winston Salem
Phoebe Landon	Brooks Pierce
Ole Madsen	hear4nc.org

09-22-2012

1118

VISITOR REGISTRATION SHEET

Senate Judiciary II

(Committee Name)

3/10/15

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Donna Clarke	Dept Gov
Rhian Merwald	Williams Mullen
Phil? Barefoot	McGuireWoods

09-22-2012

Senate Committee on Judiciary II
Tuesday, March 17, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:03 AM on March 17, 2015 in Room 1124/1224 of the Legislative Building. 16 members were present.

Senator Warren Daniel, Chair, presided.

Asst. Sargent-at-Arms: Donna Blake; Ed Kesler
Pages: Nicholas Oddo of Wake Forest (Barefoot); Ethan Walton of Wilson (Newton); Geche Barg of Charlotte (Rucho); Regina Wiechert of Spring Lake (Rabin).

SB 123 Uniform Fraudulent Transfer Act. (Senator Hartsell)
This bill was replaced by a Proposed Committee Substitute. The long title did not change. The motion to consider the PCS was made by Sen. Bingham and seconded. The bill was presented by Sen. Hartsell and explained by Floyd Lewis, Revisor of Statutes. There was no public opposition to the bill. Sen. Bingham motioned for a favorable report and that motion carried. This PCS was reported out as 'Unfavorable as to the bill, Favorable as the Proposed Committee Substitute."

SB 124 Modernize Assumed Business Name Statutes. (Senator Hartsell)
This bill, like SB 123, came from the General Statutes Commission. Sen. Hartsell presented the original bill with help from Bly Hall, Asst. Revisor of statutes. Like SB123, this bill makes technical changes to the law. There was no public opposition to the bill. After a short committee discussion, Sen. Bingham made a motion to give a favorable report. The committee agreed. The bill was reported to the Senate Principle Clerk as 'Favorable' and the sequential referral to Appropriations stayed in place.

The meeting adjourned at 10:42 am.

Senator Warren Daniel, Chair
Presiding

Andy Perrigo, Committee Clerk

Senate Committee on Judiciary II
Tuesday, March 17, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

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Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 123	Uniform Fraudulent Transfer Act.	Senator Hartsell
SB 124	Modernize Assumed Business Name Statutes.	Senator Hartsell

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SENATE BILL 123*

Short Title:	Uniform Fraudulent Transfer Act.	(Public)
Sponsors:	Senator Hartsell (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

February 27, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UNIFORM FRAUDULENT TRANSFER ACT TO ADOPT THE AMENDMENTS APPROVED BY THE UNIFORM LAW COMMISSION IN 2014 AND TO MAKE RELATED CONFORMING AND TECHNICAL AMENDMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. AMENDMENTS TO THE UNIFORM FRAUDULENT TRANSFER ACT

SECTION 1. Article 3A of Chapter 39 of the General Statutes reads as rewritten:

"Article 3A.

"Uniform ~~Fraudulent Transfer~~ Voidable Transactions Act.

"§ 39-23.1. Definitions.

~~As used in this Article:~~In this Article, the following definitions apply:

(1) ~~"Affiliate" means:~~Affiliate. – Any of the following:

a. A person ~~who~~ that directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person ~~who~~ that holds the ~~securities,~~securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or
2. Solely to secure a debt, if the person has not in fact exercised the power to ~~vote;~~vote.

b. A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person ~~who~~ that directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person ~~who~~ that holds the ~~securities,~~securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or
2. Solely to secure a debt, if the person has not in fact exercised the power to ~~vote;~~vote.

c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the ~~debtor; or~~debtor.

d. A person ~~who~~ that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) ~~"Asset" means property~~ Asset. – Property of a debtor, but the term does not ~~include:~~include any of the following:

a. Property to the extent it is encumbered by a valid ~~lien;~~lien.

b. Property to the extent it is generally exempt under nonbankruptcy ~~law; or~~law.

c. An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) ~~"Claim" means~~ Claim. – Except as used in "claim for relief," a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) ~~"Creditor" means a~~ Creditor. – A person ~~who~~ that has a claim.

(5) ~~"Debt" means liability~~ Debt. – Liability on a claim.

(6) ~~"Debtor" means a~~ Debtor. – A person ~~who~~ that is liable on a claim.

(6a) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(7) ~~"Insider" includes:~~Insider. – Includes any of the following:

a. If the debtor is an ~~individual,~~individual:

1. A relative of the debtor or of a general partner of the debtor;
2. A partnership in which the debtor is a general partner;
3. A general partner in a partnership in which the debtor is a general partner; or
4. A corporation of which the debtor is a director, officer, or person in ~~control;~~control.

b. If the debtor is a ~~corporation,~~corporation:

1. A director of the debtor;
2. An officer of the debtor;
3. A person in control of the debtor;
4. A partnership in which the debtor is a general partner;
5. A general partner in a partnership in which the debtor is a general partner; or
6. A relative of a general partner, director, officer, or person in control of the ~~debtor;~~debtor.

c. If the debtor is a ~~partnership,~~partnership:

1. A general partner in the debtor;
2. A relative of a general partner in, a general partner of, or a person in control of the debtor;
3. Another partnership in which the debtor is a general partner;
4. A general partner in a partnership in which the debtor is a general partner; or
5. A person in control of the ~~debtor;~~debtor.

d. An affiliate, or an insider of an affiliate as if the affiliate were the ~~debtor; and~~debtor.

e. A managing agent of the debtor.

(8) ~~"Lien" means a~~ Lien. – A charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(8a) Organization. – A person other than an individual.

(9) ~~"Person" means an~~ Person. – An individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) ~~"Property" means anything~~ Property. – Anything that may be the subject of ownership.

(10a) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) ~~"Relative" means an~~ Relative. – An individual related by consanguinity within the third degree as determined in accordance with G.S. 104A-1, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(11a) Sign. – With present intent to authenticate or adopt a record, to do any of the following:

a. Execute or adopt a tangible symbol.

b. Attach to or logically associate with the record an electronic symbol, sound, or process.

(12) ~~"Transfer" means every~~ Transfer. – Every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) ~~"Valid lien" means a~~ Valid lien. – A lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

"§ 39-23.2. Insolvency.

(a) A debtor is insolvent ~~if~~ if, at a fair valuation, the sum of the debtor's debts is greater than ~~all~~ the sum of the debtor's ~~assets at a fair valuation.~~assets.

(b) A debtor ~~who~~ that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

~~(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.~~

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making transfer voidable under this Article.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

"§ 39-23.3. Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of G.S. 39-23.4(a)(2) and G.S. 39-23.5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

"**§ 39-23.4. ~~Transfers fraudulent as to present and future creditors.~~Transfer or obligation voidable as to present or future creditor.**

(a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

a. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

b. Intended to incur, or believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;

(3) The transfer or obligation was disclosed or concealed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor's assets;

(6) The debtor absconded;

(7) The debtor removed or concealed assets;

(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) The transfer occurred shortly before or shortly after a substantial debt was incurred;

(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor;

(12) The debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as they became due; and

(13) The debtor transferred the assets in the course of legitimate estate or tax planning.

(c) A creditor making a claim for relief under subsection (a) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

"**§ 39-23.5. ~~Transfers fraudulent as to present creditors.~~Transfer or obligation voidable as to present creditor.**

(a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(c) Subject to G.S. 39-23.2(b), a creditor making a claim for relief under subsection (a) or subsection (b) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

"§ 39-23.6. When transfer is made or obligation is incurred.

For the purposes of this Article:

(1) A transfer is made:

a. With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against ~~whom~~ which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

b. With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this Article that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this Article, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

a. If oral, when it becomes effective between the parties; or

b. If evidenced by a ~~writing,~~ record, when the ~~writing executed~~ record signed by the obligor is delivered to or for the benefit of the obligee.

"§ 39-23.7. Remedies of ~~creditors.~~creditor.

(a) In an action for relief against a transfer or obligation under this Article, a creditor, subject to the limitations in G.S. 39-23.8, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee ~~in accordance with the procedure prescribed by Article 35 of Chapter 1 of the General Statutes;~~if available under applicable law; and

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil ~~procedure,~~procedure:

a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

b. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

c. Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

"**§ 39-23.8. Defenses, liability, and protection of ~~transferee.~~transferee or obligee.**

(a) A transfer or obligation is not voidable under G.S. 39-23.4(a)(1) against a person ~~who~~ that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(b) To the extent a transfer is avoidable in an action by a creditor under G.S. 39-23.7, the following rules apply:

(1) Except as otherwise provided in this section, ~~to the extent a transfer is voidable in an action by a creditor under G.S. 39-23.7(a)(1),~~ the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

~~(1)~~a. The first transferee of the asset or the person for whose benefit the transfer was made; or

~~(2)~~b. ~~Any subsequent transferee other than a~~ An immediate or mediate transferee of the first transferee, other than:

1. A good-faith transferee ~~who~~ that took for ~~value or from any subsequent transferee.~~value; or
2. An immediate or mediate good-faith transferee of a person described in sub-sub-subdivision 1. of this sub-subdivision.

(2) Recovery pursuant to G.S. 39-23.7(a)(1) or (b) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in sub-subdivision (1)a. or (1)b. of this section.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this Article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain ~~any~~ an interest in the asset transferred;

(2) Enforcement of ~~any~~ an obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under G.S. 39-23.4(a)(2) or G.S. 39-23.5 if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with Article 9 of Chapter 25 of the General Statutes, the Uniform Commercial ~~Code.~~Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(f) A transfer is not voidable under G.S. 39-23.5(b):

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was ~~made unless~~ made, except to the extent the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor, and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(g) The following rules determine the burden of proving matters referred to in this section:

(1) A party that seeks to invoke subsection (a), (d), (e), or (f) of this section has the burden of proving the applicability of that subsection.

(2) Except as otherwise provided in subdivisions (3) and (4) of this subsection, the creditor has the burden of proving each applicable element of subsection (b) or (c) of this section.

(3) The transferee has the burden of proving the applicability to the transferee of sub-sub-subdivision (b)(1)b.1. or 2. of this section.

(4) A party that seeks adjustment under subsection (c) of this section has the burden of proving the adjustment.

(h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

"**§ 39-23.9. Extinguishment of ~~cause of action.~~claim for relief.**

A ~~cause of action~~ claim for relief with respect to a ~~fraudulent or~~ voidable transfer or obligation under this Article is extinguished unless action is brought:

(1) Under G.S. 39-23.4(a)(1), ~~within~~ not later than four years after the transfer was made or the obligation was incurred or, if later, ~~within~~ not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under G.S. 39-23.4(a)(2) or G.S. 39-23.5(a), ~~within~~ not later than four years after the transfer was made or the obligation was incurred; or

(3) Under G.S. 39-23.5(b), ~~within~~ not later than one year after the transfer was ~~made or the obligation was incurred.~~made.

"**§ 39-23.9A. Governing law.**

(a) In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim for relief in the nature of a claim for relief under this Article is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

"**§ 39-23.9B. Application to series organization.**

(a) In this section, the following definitions apply:

(1) Protected series. – An arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in subdivision (2) of this subsection.

(2) Series organization. – An organization that, pursuant to the law under which it is organized, has all the following characteristics:

a. The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.

b. Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only,

and not against the property of or associated with the organization or other protected series of the organization.

c. Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(b) A series organization and each protected series of the organization is a separate person for purposes of this Article, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

"**§ 39-23.10. Supplementary provisions.**

Unless displaced by the provisions of this Article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

"**§ 39-23.11. Uniformity of application and construction.**

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it.

"**§ 39-23.11A. Relation to Electronic Signatures in Global and National Commerce Act.**

This Article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

"**§ 39-23.12. Short title.**

This ~~Article~~ Article, which was formerly cited as the Uniform Fraudulent Transfer Act, may be cited as the Uniform ~~Fraudulent Transfer~~ Voidable Transactions Act."

PART II. RELATED CONFORMING AND TECHNICAL AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES

SECTION 2. G.S. 50-13.4(f) reads as rewritten:

"(f) Remedies for enforcement of support of minor children shall be available as ~~herein provided.~~follows:

(1) The court may require the person ordered to make payments for the support of a minor child to secure the ~~same~~ payments by means of a bond, mortgage or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the execution of an assignment of wages, salary or other income due or to become due.

(2) If the court requires the transfer of real or personal property or an interest therein as provided in subsection (e) of this section as a part of an order for payment of support for a minor child, or for the securing thereof, the court may also enter an order which shall transfer title as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

...

(6) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be appointed in ~~action~~ actions for child support as in other cases.

(7) A minor child or other person for whose benefit an order for the payment of child support has been entered shall be a creditor within the meaning of Article 3A of Chapter 39 of the General Statutes pertaining to ~~fraudulent conveyances.~~voidable transactions.

...."

SECTION 3. G.S. 50-16.7(h) reads as rewritten:

"(h) A dependent spouse for whose benefit an order for the payment of alimony or postseparation support has been entered shall be a creditor within the meaning of Article 3A of Chapter 39 of the General Statutes pertaining to ~~fraudulent conveyances.~~voidable transactions."

PART III. EFFECTIVE DATE, APPLICABILITY PROVISIONS, AND AUTHORIZATION FOR THE PRINTING OF OFFICIAL AND DRAFTERS' COMMENTS

SECTION 4. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Uniform Voidable Transactions Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 5. This act becomes effective October 1, 2015, and applies to a transfer made or obligation incurred on or after that date. For purposes of this section, a transfer is made and an obligation is incurred at the time provided in G.S. 39-23.6, as amended by this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 123*
PROPOSED COMMITTEE SUBSTITUTE S123-PCS45158-MN-1

Short Title: Uniform Fraudulent Transfer Act. (Public)

Sponsors:

Referred to:

February 27, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UNIFORM FRAUDULENT TRANSFER ACT TO ADOPT THE AMENDMENTS APPROVED BY THE UNIFORM LAW COMMISSION IN 2014 AND TO MAKE RELATED CONFORMING AND TECHNICAL AMENDMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. AMENDMENTS TO THE UNIFORM FRAUDULENT TRANSFER ACT

SECTION 1. Article 3A of Chapter 39 of the General Statutes reads as rewritten:

"Article 3A.

"Uniform ~~Fraudulent Transfer~~ Voidable Transactions Act.

"§ 39-23.1. Definitions.

~~As used in this Article:~~In this Article, the following definitions apply:

(1) ~~"Affiliate" means:~~Affiliate. – Any of the following:

a. A person ~~who~~ that directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person ~~who~~ that holds the ~~securities,~~securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or
2. Solely to secure a debt, if the person has not in fact exercised the power to ~~vote;~~vote.

b. A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person ~~who~~ that directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person ~~who~~ that holds the ~~securities,~~securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or
2. Solely to secure a debt, if the person has not in fact exercised the power to ~~vote;~~vote.

c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the ~~debtor; or~~debtor.

d. A person ~~who~~ that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) ~~"Asset" means property~~ Asset. – Property of a debtor, but the term does not ~~include:~~include any of the following:

a. Property to the extent it is encumbered by a valid ~~lien;~~lien.

b. Property to the extent it is generally exempt under nonbankruptcy ~~law; or~~law.

c. An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) ~~"Claim" means~~ Claim. – Except as used in "claim for relief," a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) ~~"Creditor" means a~~ Creditor. – A person ~~who~~ that has a claim.

(5) ~~"Debt" means liability~~ Debt. – Liability on a claim.

(6) ~~"Debtor" means a~~ Debtor. – A person ~~who~~ that is liable on a claim.

(6a) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(7) ~~"Insider" includes:~~Insider. – Includes any of the following:

a. If the debtor is an ~~individual;~~individual:

1. A relative of the debtor or of a general partner of the debtor;
2. A partnership in which the debtor is a general partner;
3. A general partner in a partnership in which the debtor is a general partner; or
4. A corporation of which the debtor is a director, officer, or person in ~~control;~~control.

b. If the debtor is a ~~corporation,~~corporation:

1. A director of the debtor;
2. An officer of the debtor;
3. A person in control of the debtor;
4. A partnership in which the debtor is a general partner;
5. A general partner in a partnership in which the debtor is a general partner; or
6. A relative of a general partner, director, officer, or person in control of the ~~debtor;~~debtor.

c. If the debtor is a ~~partnership,~~partnership:

1. A general partner in the debtor;
2. A relative of a general partner in, a general partner of, or a person in control of the debtor;
3. Another partnership in which the debtor is a general partner;
4. A general partner in a partnership in which the debtor is a general partner; or
5. A person in control of the ~~debtor;~~debtor.

d. An affiliate, or an insider of an affiliate as if the affiliate were the ~~debtor; and~~debtor.

e. A managing agent of the debtor.

(8) ~~"Lien" means a~~ Lien. – A charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(8a) Organization. – A person other than an individual.

(9) ~~"Person" means an~~ Person. – An individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) ~~"Property" means anything~~ Property. – Anything that may be the subject of ownership.

(10a) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) ~~"Relative" means an~~ Relative. – An individual related by consanguinity within the third degree as determined in accordance with G.S. 104A-1, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(11a) Sign. – With present intent to authenticate or adopt a record, to do any of the following:

a. Execute or adopt a tangible symbol.

b. Attach to or logically associate with the record an electronic symbol, sound, or process.

(12) ~~"Transfer" means every~~ Transfer. – Every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(13) ~~"Valid lien" means a~~ Valid lien. – A lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

"§ 39-23.2. Insolvency.

(a) A debtor is insolvent ~~if~~ if, at a fair valuation, the sum of the debtor's debts is greater than ~~all~~ the sum of the debtor's ~~assets at a fair valuation.~~assets.

(b) A debtor ~~who~~ that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

~~(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.~~

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making transfer voidable under this Article.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

"§ 39-23.3. Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of G.S. 39-23.4(a)(2) and G.S. 39-23.5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

"**§ 39-23.4. ~~Transfers fraudulent as to present and future creditors.~~Transfer or obligation voidable as to present or future creditor.**

(a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

a. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

b. Intended to incur, or believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;

(3) The transfer or obligation was disclosed or concealed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor's assets;

(6) The debtor absconded;

(7) The debtor removed or concealed assets;

(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) The transfer occurred shortly before or shortly after a substantial debt was incurred;

(11) The debtor transferred the essential assets of the business to a lienor ~~who~~ *that* transferred the assets to an insider of the debtor;

(12) The debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as they became due; and

(13) The debtor transferred the assets in the course of legitimate estate or tax planning.

(c) A creditor making a claim for relief under subsection (a) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

"**§ 39-23.5. ~~Transfers fraudulent as to present creditors.~~Transfer or obligation voidable as to present creditor.**

(a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(c) Subject to G.S. 39-23.2(b), a creditor making a claim for relief under subsection (a) or subsection (b) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

"§ 39-23.6. When transfer is made or obligation is incurred.

For the purposes of this Article:

(1) A transfer is made:

a. With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against ~~whom~~ which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

b. With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this Article that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this Article, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

a. If oral, when it becomes effective between the parties; or

b. If evidenced by a ~~writing,~~ record, when the ~~writing executed~~ record signed by the obligor is delivered to or for the benefit of the obligee.

"§ 39-23.7. Remedies of ~~creditors.~~creditor.

(a) In an action for relief against a transfer or obligation under this Article, a creditor, subject to the limitations in G.S. 39-23.8, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee ~~in accordance with the procedure prescribed by Article 35 of Chapter 1 of the General Statutes;~~if available under applicable law; and

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil ~~procedure,~~procedure:

a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

b. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

c. Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

"**§ 39-23.8. Defenses, liability, and protection of ~~transferee.~~transferee or obligee.**

(a) A transfer or obligation is not voidable under G.S. 39-23.4(a)(1) against a person ~~who~~ that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(b) To the extent a transfer is avoidable in an action by a creditor under G.S. 39-23.7(a)(1), the following rules apply:

(1) Except as otherwise provided in this section, ~~to the extent a transfer is voidable in an action by a creditor under G.S. 39-23.7(a)(1),~~ the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

~~(1)~~a. The first transferee of the asset or the person for whose benefit the transfer was made; or

~~(2)~~b. ~~Any subsequent transferee other than a~~ An immediate or mediate transferee of the first transferee, other than:

1. A good-faith transferee ~~who~~ that took for ~~value or from any subsequent transferee.~~value; or
2. An immediate or mediate good-faith transferee of a person described in sub-sub-subdivision 1. of this sub-subdivision.

(2) Recovery pursuant to G.S. 39-23.7(a)(1) or G.S. 39-23.7(b) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in sub-subdivision a. or b. of subdivision (1) of this subsection.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this Article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain ~~any~~ an interest in the asset transferred;

(2) Enforcement of ~~any~~ an obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under G.S. 39-23.4(a)(2) or G.S. 39-23.5 if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with Article 9 of Chapter 25 of the General Statutes, the Uniform Commercial ~~Code.~~Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(f) A transfer is not voidable under G.S. 39-23.5(b):

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was ~~made unless~~ made, except to the extent the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor, and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(g) The following rules determine the burden of proving matters referred to in this section:

(1) A party that seeks to invoke subsection (a), (d), (e), or (f) of this section has the burden of proving the applicability of that subsection.

(2) Except as otherwise provided in subdivisions (3) and (4) of this subsection, the creditor has the burden of proving each applicable element of subsection (b) or (c) of this section.

(3) The transferee has the burden of proving the applicability to the transferee of sub-sub-subdivision (b)(1)b.1. or 2. of this section.

(4) A party that seeks adjustment under subsection (c) of this section has the burden of proving the adjustment.

(h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

"**§ 39-23.9. Extinguishment of ~~cause of action.~~claim for relief.**

A ~~cause of action~~ claim for relief with respect to a ~~fraudulent or~~ voidable transfer or obligation under this Article is extinguished unless action is brought:

(1) Under G.S. 39-23.4(a)(1), ~~within~~ not later than four years after the transfer was made or the obligation was incurred or, if later, ~~within~~ not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under G.S. 39-23.4(a)(2) or G.S. 39-23.5(a), ~~within~~ not later than four years after the transfer was made or the obligation was incurred; or

(3) Under G.S. 39-23.5(b), ~~within~~ not later than one year after the transfer was ~~made or the obligation was incurred.~~made.

"**§ 39-23.9A. Governing law.**

(a) In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim for relief in the nature of a claim for relief under this Article is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

"**§ 39-23.9B. Application to series organization.**

(a) In this section, the following definitions apply:

(1) Protected series. – An arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in subdivision (2) of this subsection.

(2) Series organization. – An organization that, pursuant to the law under which it is organized, has all the following characteristics:

a. The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.

b. Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only,

and not against the property of or associated with the organization or other protected series of the organization.

c. Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(b) A series organization and each protected series of the organization is a separate person for purposes of this Article, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

"**§ 39-23.10. Supplementary provisions.**

Unless displaced by the provisions of this Article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

"**§ 39-23.11. Uniformity of application and construction.**

This ~~act~~ Article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it.

"**§ 39-23.11A. Relation to Electronic Signatures in Global and National Commerce Act.**

This Article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

"**§ 39-23.12. Short title.**

This ~~Article~~ Article, which was formerly cited as the Uniform Fraudulent Transfer Act, may be cited as the Uniform ~~Fraudulent Transfer~~ Voidable Transactions Act."

PART II. RELATED CONFORMING AND TECHNICAL AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES

SECTION 2. G.S. 50-13.4(f) reads as rewritten:

"(f) Remedies for enforcement of support of minor children shall be available as ~~herein provided.~~follows:

(1) The court may require the person ordered to make payments for the support of a minor child to secure the ~~same~~ payments by means of a bond, mortgage or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the execution of an assignment of wages, salary or other income due or to become due.

(2) If the court requires the transfer of real or personal property or an interest therein as provided in subsection (e) of this section as a part of an order for payment of support for a minor child, or for the securing thereof, the court may also enter an order which shall transfer title as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

...

(6) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be appointed in ~~action~~ actions for child support as in other cases.

(7) A minor child or other person for whose benefit an order for the payment of child support has been entered shall be a creditor within the meaning of Article 3A of Chapter 39 of the General Statutes pertaining to ~~fraudulent conveyances.~~voidable transactions.

...."

SECTION 3. G.S. 50-16.7(h) reads as rewritten:

"(h) A dependent spouse for whose benefit an order for the payment of alimony or postseparation support has been entered shall be a creditor within the meaning of Article 3A of Chapter 39 of the General Statutes pertaining to ~~fraudulent conveyances.~~voidable transactions."

PART III. EFFECTIVE DATE, APPLICABILITY PROVISIONS, AND AUTHORIZATION FOR THE PRINTING OF OFFICIAL AND DRAFTERS' COMMENTS

SECTION 4. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Uniform Voidable Transactions Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 5. This act becomes effective October 1, 2015, and applies to a transfer made or obligation incurred on or after that date. For purposes of this section, a transfer is made and an obligation is incurred at the time provided in G.S. 39-23.6, as amended by this act.

SENATE BILL 123:
Uniform Fraudulent Transfer Act

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 16, 2015
Introduced by:	Sen. Hartsell	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S123-CSMN-1		

SUMMARY: ***The PCS to Senate Bill 123 would amend the Uniform Fraudulent Transfer Act (UFTA) to adopt the amendments approved by the Uniform Law Commission in 2014 and to make related conforming and technical amendments, as recommended by the General Statutes Commission. The PCS makes technical changes to the bill.***

CURRENT LAW AND BACKGROUND: The law relating to fraudulent conveyances has been governed by an Act of the Parliament of England since 1376, during the reign of Edward III, and codified in this State since at least 1854. In North Carolina, the Uniform Fraudulent Transfer Act currently comprises Article 3A of Chapter 39 of the General Statutes. Under the UFTA, a "fraudulent transfer" occurs when a debtor transfers property to a third party with the intent to hinder, delay or defraud creditors, or, in the event that the debtor was insolvent at the time of the transfer, the debtor received less than reasonably equivalent value for the property. The UFTA provides a remedy for creditors against such third-party transferees by allowing a fraudulent transfer to be "voided," that is, treated as though it never happened. As a result, the value of the property is returned to the debtor or to the debtor's estate.

BILL ANALYSIS: The Uniform Law Commission adopted a series of amendments to the UFTA and remamed it the "Uniform Voidable Transfers Act. The specifics of the Proposed Committee Substitute to Senate Bill 123 are contained in the memo of the General Statutes Commission that is attached to this summary.

EFFECTIVE DATE: This act becomes effective October 1, 2015, and applies to a transfer made or obligation incurred on or after that date.

Bly Hall, Assistant Revisor of Statutes and Staff Attorney, Legislative Bill Drafting Division, substantially contributed to this summary.

O. Walker Reagan
Director

Research Division
(919) 733-2578

GENERAL STATUTES COMMISSION
300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM

To: Senate Committee on Judiciary II
From: General Statutes Commission
Re: SB 123 (Uniform Fraudulent Transfer Act)
Date: March 16, 2015

General Comments

This bill amends the Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes, which establishes the circumstances under which a transfer of property or incurrence of obligation by a debtor is voidable as to a creditor and sets forth the remedies of a creditor with respect to the transfer or obligation. The bill is based on the amendments to the Uniform Fraudulent Transfer Act that were approved in 2014 by the National Conference of Commissioners on Uniform State Laws to address several narrowly-defined issues. In general, the amendments:

- Change the name of the Uniform Fraudulent Transfer Act (the "Act") to the "Uniform Voidable Transactions Act."
- Make stylistic changes that are not intended to change the meaning of the Act, such as consistently using the word "voidable" instead of "fraudulent" to denote a transfer or obligation for which the Act provides a remedy.
- Define the new terms "electronic," "organization," "record," and "sign." § 39-23.1.
- Delete the special definition of "insolvency" applicable to partnerships, thereby subjecting partnerships to the general definition of "insolvency" in the Act. § 39-23.2.
- Add uniform provisions allocating the burden of proof and defining the standard of proof with respect to claims and defenses under the Act. §§ 39-23.2(b), 39-23.4(c), 39-23.5(c), and 39-23.8(g) and (h).
- Replace references in the Act to a "writing" with "record" in order to accommodate modern technology. § 39-23.6(5).
- Refine several provisions relating to defenses available to a transferee or obligee. § 39-23.8.
- Add a choice of law provision for claims governed by the Act. § 39-23.9A.
- Respond to the emergence of the "series organization" as a significant form of business organization by providing that each "protected series" of a "series organization" is to be treated as a person for purposes of the Act. § 39-23.9B.
- Add a standard provision found in uniform acts that addresses the Act's relationship to the Electronic Signatures in Global and National Commerce Act (also known as "E-Sign"). § 39-23.11A.
- Make related conforming and technical amendments to other sections of the General Statutes.

Both the Business Law and Bankruptcy Law Sections of the North Carolina Bar Association have approved the amendments and support their passage.

Specific Comments

Section 1 retitles the Uniform Fraudulent Transfer Act (the "Act") as the "Uniform Voidable Transactions Act" because fraud never has been a necessary element of a claim under the Act and the Act has always applied to the incurrence of an obligation as well as the transfer of property. Section 1 also amends various sections of the Act and adds three new sections to the Act.

§ 39-23.1 is amended to make stylistic and conforming changes to the definitions, to add definitions of "electronic," "organization," "record," and "sign," and to expand the definition of "transfer" to add "license" as a mode of disposing of or parting with assets.

§ 39-23.2, which defines "insolvency" for purposes of the Act, is amended to:

- Clarify that the general definition of "insolvency" in subsection (a) requires a "fair valuation" of the debtor's debts as well as the debtor's assets.
- Clarify that the nonpayment of debts as the result of a bona fide dispute are not counted under subsection (b), which establishes a rebuttable presumption of insolvency from the fact of general nonpayment of debts as they become due.
- Provide that the presumption under subsection (b) imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.
- Delete the special definition of "insolvency" for partnerships in subsection (c), thereby subjecting partnerships to the general definition of "insolvency" in subsection (a). Subsection (c), which counts the assets of a general partner as assets of the partnership for purposes of determining the partnership's insolvency, is deleted because (i) it is no longer the case that all general partners are liable for all debts of the partnership under some modern partnership statutes and (ii) there is not a good reason to credit a partnership with the net worth of its general partners when a non-partnership entity whose debts are guaranteed by contract receives no credit for the net worth of its guarantor.

§ 39-23.4, which defines the transfers and obligations that are voidable as to present or future creditors, is amended to make conforming and technical changes and to add subsection (c) stating that a creditor making a claim for relief under the section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

§ 39-23.5, which defines the transfers and obligations that are voidable as to present creditors, is amended to make conforming and technical amendments and to add subsection (c) stating that a creditor making a claim for relief under the section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

§ 39-23.6, which states when a transfer is made or an obligation is incurred for purposes of the Act, is amended to make a technical change and to change "writing" to "record" and "writing executed" to "record signed" to accommodate modern technology.

§ 39-23.7, which provides a nonexclusive list of remedies available to a creditor in an action for relief against a transfer or obligation under the Act, is amended to make technical changes and to substitute "if available under applicable law" for "in accordance with the

procedure prescribed by Article 35 of Chapter 1 of the General Statutes." This change avoids the need to include a cross-reference to the specific statutes applicable to attachment and other provisional remedies because of the possibility of creating a litigation issue in the event that the cross-reference does not correctly identify the statutes applicable to provisional remedies that are in force when litigation ensues and the likelihood that the cross-reference may not be updated if the proper reference later changes.

§ 39-23.8, which provides defenses to an avoidance action and prescribes the measure of liability of a transferee or obligee under the Act, is amended to make formatting, stylistic, and clarifying changes and the following additional changes:

- Subsection (a) provides a defense to the transferee of a transfer made or the obligee of an obligation incurred by a debtor with intent to hinder, delay or defraud any creditor of the debtor if the transferee or obligee "took in good faith" and "for a reasonably equivalent value." The subsection is amended to provide that the reasonably equivalent value must be given to the debtor in order for the transferee or obligee to qualify for the complete defense.
- Subsection (b) provides a defense to a subsequent transferee (i.e., a transferee other than the first transferee) that took in good faith and for value and to a subsequent good-faith transferee from such a person, but in each case only to an action on a money judgment. Subsection (b) is amended to make it consistent with §§ 550(a) and (b) of the Bankruptcy Code by providing that the defense applies to recovery of or from the transferred property or its proceeds, by levy or otherwise, as well as to an action for money judgment.
- Subdivision (e)(2) provides a defense for a constructively voidable transfer (i.e., a transfer that is voidable for reasons other than intent by the debtor to hinder, delay or defraud any creditor of the debtor) if the transfer resulted from the enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code (Secured Transactions). Subdivision (e)(2) is amended to exclude from that defense a "strict foreclosure," (i.e., an acceptance by the secured party of collateral in whole or partial satisfaction of the obligation it secures, without a public sale or judicial foreclosure.) The protection of a strict foreclosure from a voidable transfer challenge is not appropriate if the secured party accepts collateral having a value in excess of the secured obligation and afterwards the debtor is insolvent, the debtor is unable to pay the debtor's debts as they become due, or the debtor is left with unreasonably small capital.
- New subsections (g) and (h) address the burden and standard of proof with respect to proving defenses under this section. In general, the person who invokes the defense carries the burden of establishing the defense by a preponderance of the evidence.

§ 39-23.9, which provides periods of limitation for bringing an action with respect to a voidable transfer or obligation, is amended to make the following stylistic changes:

- The phrase "fraudulent or" is deleted as being unnecessary and the term "cause of action" is change to "claim for relief" because the latter term is used in several new provisions in the Act and in modern uniform acts.
- In subdivisions (1), (2), and (3), "within" is changed to "not later than" because the latter wording is preferred in modern uniform acts.
- In subdivision (3), the phrase "or the obligation was incurred" is deleted because § 39-23.5(b), the insider preference provision, by its terms applies only to a transfer of property; it does not apply to the incurrence of an obligation.

New § 39-23.9A addresses potential choice of law disputes by providing a clear choice of law provision for transactions governed by the Act. Under this section, the voidable transactions law applicable to a transfer or obligation is the law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. Under this section, a claim for relief under the Act is governed by the law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. A debtor who is an individual is located at the individual's "principal residence," and a debtor that is an organization is located at its place of business or, if it has more than one place of business, at its chief executive office.

New § 39-23.9B addresses "series organizations," which have emerged as a form of business organization, by providing that the Act applies to the "protected series" of a series organization. In general, subsection (a) defines a series organization as an organization that, under the authority of its state governing law, has created one or more protected series that owns assets separately from the assets of the organization or any other protected series and incurs liability that will be enforceable only against the assets of that protected series. Under subsection (b), a series organization and each protected series of the series organization is a separate person for purposes of the Act. New § 39-23.9B does not itself authorize or prohibit the creation of protected series or series organizations.

New § 39-23.11A is a standard provision in uniform acts that has the effect of opting out of the federal statute applicable to electronic records and signatures, the Electronic Signatures in Global and National Commerce Act (also known as "E-Sign").

§ 39-23.12 is amended to change the short title of the Article from "Uniform Fraudulent Transfer Act" to "Uniform Voidable Transactions Act" to conform to the change in the title of the Act.

Section 2 amends G.S. 50-13.4(f) to make several technical changes and to replace "fraudulent conveyances" with "voidable transactions" in the phrase "Article 3A of Chapter 31 of the General Statutes pertaining to fraudulent conveyances."

Section 3 amends G.S. 50-16(h) to replace "fraudulent conveyances" with "voidable transactions" in the phrase "Article 3A of Chapter 31 of the General Statutes pertaining to fraudulent conveyances."

Section 4 authorizes the printing of official comments and drafters comments.

Section 5 provides that the amendments become effective October 1, 2015, and apply to a transfer made or obligation incurred on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 124*

Short Title:	Modernize Assumed Business Name Statutes.	(Public)
Sponsors:	Senator Hartsell (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

February 27, 2015

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE LAW GOVERNING THE USE OF ASSUMED BUSINESS NAMES, TO APPROPRIATE FUNDS FOR THE PURPOSE, AND TO MAKE RELATED CONFORMING AND TECHNICAL AMENDMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. ASSUMED BUSINESS NAME ACT

SECTION 1. Article 14 of Chapter 66 of the General Statutes is repealed.

SECTION 2. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 14A.

"Assumed Business Name Act.

"**§ 66-71.1. Short title.**

This Article may be cited as the "Assumed Business Name Act."

"**§ 66-71.2. Statement of purpose.**

The purpose of this Article is to afford the public a means of ascertaining the real names of persons engaging in business in this State under an assumed business name by requiring those persons to register the assumed business name as provided in this Article.

"**§ 66-71.3. Definitions.**

The following definitions apply in this Article:

(1) Assumed business name. –

a. In the case of an individual, any name other than the real name of the individual.

b. In the case of a partnership other than a limited liability partnership or limited partnership, any name other than the real names of all the general partners of the partnership.

c. In the case of a limited liability partnership, any name other than the name registered with the Secretary of State.

d. In the case of a limited partnership, any name other than the name stated in its certificate of limited partnership filed with the Secretary of State.

e. In the case of a limited liability company, any name other than the name stated in its articles of organization filed with the Secretary of State.

f. In the case of a corporation, any name other than the corporate name stated in its articles of incorporation filed with the Secretary of State.

g. In the case of a trust, any name other than the name specified in the trust instrument or, if the trust instrument does not specify a name for the trust, any name other than the name of the trustee and a designation of the trust for which the trustee is acting.

h. In the case of any other person, any name other than the real name of the person.

(2) Person. – Includes an individual, partnership, limited partnership, limited liability partnership, limited liability company, corporation, association, society, organization, joint venture, business trust, trust, governmental entity, or any other legal or commercial entity.

"**§ 66-71.4. Filing of certificate; exception.**

(a) Before any person engages in business in this State under an assumed business name, the person must file an assumed business name certificate in the office of the register of deeds of the county in which the person is or will be engaged in business. If the person is or will be engaged in business in multiple counties, filing is required in only one of those counties.

(b) A separate assumed business name certificate must be filed for each assumed business name under which a person engages in business in this State.

(c) A limited liability partnership, limited partnership, limited liability company, or corporation that engages in business under a name that is its real name with the legal entity designation required by G.S. 55D-20 omitted is not required to file an assumed business name certificate under this Article.

"**§ 66-71.5. Contents of certificate.**

An assumed business name certificate must include:

(1) The assumed business name.

(2) The real name of the person engaging in business under the assumed business name. If the business is a partnership other than a limited liability partnership or limited partnership, the assumed business name certificate must include the real names of five general partners or of all the general partners, whichever is fewer.

(3) The type of business.

(4) The street address of the principal place of business.

(5) Each county where the person uses or will be using the assumed business name to engage in business.

"**§ 66-71.6. Execution of certificate.**

An assumed business name certificate must be executed as follows:

(1) In the case of an individual, the certificate must be signed by the individual.

(2) In the case of a partnership or limited partnership, the certificate must be signed by a general partner.

(3) In the case of a corporation or limited liability company, the certificate must be signed in the name of the corporation or limited liability company by an individual authorized to act for the corporation or limited liability company.

(4) In the case of any other person, the certificate must be signed in the name of the person by an individual authorized to act for the person.

"**§ 66-71.7. Amendment of certificate.**

Any person that has filed an assumed business name certificate must, within 60 days after a change in any of the information required in the assumed business name certificate, file a

certificate of amendment in the office of the register of deeds of the county in which the assumed business name certificate was filed. The certificate must be executed in the same manner as required under G.S. 66-71.6 for the execution of an assumed business name certificate and must set forth:

(1) The assumed business name and the real name of the person engaging in business under the assumed business name as stated in the original, or most recently amended, assumed business name certificate.

(2) The book and page number of the original filing.

(3) The identification number assigned to the assumed business name by the Secretary of State (SOS ID).

(4) How the assumed business name certificate is to be amended.

"**§ 66-71.8. Withdrawal of assumed business name.**

Any person filing an assumed business name certificate as required by this Article may, upon ceasing to engage in business in this State under the assumed business name, withdraw the assumed business name by filing a certificate of withdrawal in the office of the register of deeds of the county in which the assumed business name certificate was filed. The certificate must be executed in the same manner as required under G.S. 66-71.6 for the execution of an assumed business name certificate and must set forth:

(1) The assumed business name being withdrawn.

(2) The book and page number of the original filing.

(3) The identification number assigned to the assumed business name by the Secretary of State (SOS ID).

(4) The real name of the person engaging in business under the assumed business name and that person's current address.

(5) A statement that the person has ceased engaging in business under the assumed business name.

(6) The effective date of the withdrawal if it is not to be effective upon the filing of the certificate of withdrawal.

"**§ 66-71.9. Secretary of State to maintain a centralized, statewide database of assumed business name information.**

(a) The Secretary of State shall develop, implement, and maintain a searchable online database of assumed business name information reported under G.S. 66-71.10. The system must allow information to be entered and retrieved from the system by the registers of deeds and must be available for searches by the public.

(b) The Secretary of State may adopt rules to implement the statewide online database.

"**§ 66-71.10. Register of deeds to index certificates; transmission of data to central database.**

(a) The register of deeds of each county must index in accordance with Article 2 of Chapter 161 of the General Statutes every assumed business name with respect to which an assumed business name certificate, a certificate of amendment, or a certificate of withdrawal has been filed in that county.

(b) Not later than 30 days after the date a certificate under this Article is filed, the register of deeds must transmit a scanned image of the certificate to the Secretary of State and enter into the central database maintained by the Secretary of State under G.S. 66-71.9 the assumed business name, the real name of each person engaging in business under that name, the type of certificate, the county in which the certificate was filed, and, in the case of a certificate of amendment or certificate of withdrawal, the identification number assigned to the assumed business name by the Secretary of State (SOS ID).

"**§ 66-71.11. Forms.**

(a) The Land Records Management Advisory Committee established under G.S. 147-54.3 may develop forms for the documents required or permitted to be filed by this Article, but their use is not mandatory.

(b) Any person, including the registers of deeds, may make available the forms developed under subsection (a) of this section.

"**§ 66-71.12. Effect of filing certificate.**

(a) An assumed business name certificate filed under this Article is effective upon filing and remains in effect until withdrawn under G.S. 66-71.8.

(b) Compliance with this Article does not confer any exclusive rights to the use of an assumed business name in this State.

"**§ 66-71.13. Copy of certificate prima facie evidence.**

A copy of a certificate filed under this Article, duly certified by the register of deeds of the office in which it was filed, is prima facie evidence of the facts required to be stated in the certificate.

"**§ 66-71.14. Consequences of signing false certificate or violating Article.**

(a) A person signing a certificate under this Article that the person knows is false in any material respect with intent that the certificate be delivered to the register of deeds for filing is guilty of a Class 1 misdemeanor.

(b) A person failing to file an assumed business name certificate or a certificate of amendment as required by this Article is liable to any person injured by the failure for the reasonable expenses, including attorneys' fees, incurred by the person in ascertaining, for a reasonable purpose, the information required to be stated in the assumed business name certificate or certificate of amendment. The expenses may be awarded in a civil action.

"**§ 66-71.15. Expiration of certificates filed under Article 14; transition provisions.**

(a) All certificates of assumed name filed under former Article 14 of this Chapter expire July 1, 2021, and the provisions of that former Article continue to apply to them until that date except as provided in this section. On or after that date, any person that (i) is listed as an owner of the business in a certificate of assumed name filed under that former Article and (ii) desires to continue engaging in business in this State under the assumed business name after that date must file an assumed business name certificate under this Article.

(b) At least one person listed as an owner of the business in a certificate of assumed name under former Article 14 of this Chapter must file an assumed business name certificate before the certificate of assumed name expires under subsection (a) of this section if any of the following occur:

(1) A general partnership would have been required to file a new certificate of assumed name under former G.S. 66-68(c) due to the withdrawal or addition of a partner.

(2) Any of the information in the certificate of assumed name required under former G.S. 66-68(a) has changed and the person desires to continue engaging in business in this State.

(c) No person shall file a new certificate of assumed name under former Article 14 of this Chapter on or after July 1, 2016. Any document or other record filed on or after that date to register an assumed business name is deemed to be filed under this Article, even if it is described as a certificate of assumed name rather than an assumed business name certificate or if it expressly refers to former Article 14 of this Chapter.

(d) A person that filed a certificate of assumed name that has not expired may withdraw the assumed name under the provisions of former G.S. 66-68(f). Any such withdrawal is deemed to be a withdrawal under former G.S. 66-68(f), even if it is described as a withdrawal under this Article.

(e) No person shall file a certificate of amendment under this Article to a certificate of assumed name filed under former Article 14 of this Chapter. If any such amendment is

nevertheless filed, it is not effective as a certificate of amendment or as an assumed business name certificate under this Article.

(f) The register of deeds shall not transmit a scanned image to the Secretary of State, or enter any of the information required by G.S. 66-71.10 into the central database maintained by the Secretary of State, of any withdrawal or transfer of an assumed name or any amendment to a certificate of assumed name when the certificate of assumed name to which the withdrawal, transfer, or amendment relates was filed before July 1, 2016.

(g) Other than this section, this Article does not apply to a certificate of assumed name or a withdrawal of an assumed name under former Article 14 of this Chapter."

PART II. RELATED CONFORMING AND TECHNICAL AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES

SECTION 3.(a) G.S. 1-69.1 reads as rewritten:

"**§ 1-69.1. Unincorporated associations and partnerships; suit by or against.**

(a) Except as provided in subsection (b) of this section:

(1) All unincorporated associations, organizations or societies, or general or limited partnerships, foreign or domestic, whether organized for profit or not, may ~~hereafter~~ sue or be sued under the name by which they are commonly known and called, or under which they are ~~doing~~ engaging in business, to the same extent as any other legal entity established by law and without naming any of the individual members composing it.

(2) Any judgments and executions against any such association, organization or society shall bind its real and personal property in like manner as if it were incorporated.

(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege ~~the specific location of the recordation required by G.S. 66-68.~~ that it has filed a certificate of assumed name under former Article 14 of Chapter 66 of the General Statutes or an assumed business name certificate under Article 14A of Chapter 66 of the General Statutes.

(b) Unincorporated nonprofit associations are subject to Chapter 59B of the General Statutes and not this section."

SECTION 3.(b) Effective July 1, 2021, G.S. 1-69.1(a)(3), as amended by this section, reads as rewritten:

"(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege that it has filed ~~a certificate of assumed name under former Article 14 of Chapter 66 of the General Statutes or~~ an assumed business name certificate under Article 14A of Chapter 66 of the General Statutes."

SECTION 4. G.S. 53-208.7(a) reads as rewritten:

"(a) Each application for a license under this Article shall be made in writing, under oath, and in a form prescribed by the Commissioner. For all applicants, each application shall contain:

(1) The exact name of the applicant, the applicant's principal address, any assumed ~~or trade~~ business name used by the applicant in the conduct of its business, and the location of the applicant's business records.

...."

SECTION 5. G.S. 55D-20(d) reads as rewritten:

"(d) The use of assumed business names or fictitious names, as provided for in ~~Chapter 66,~~ Chapter 66 of the General Statutes, is not affected by this Chapter or by Chapter 55, 55A, 57D, or 59 of the General Statutes."

SECTION 6. G.S. 58-70-5 reads as rewritten:

"**§ 58-70-5. Application to Commissioner for permit.**

(a) Any person, firm, corporation or association desiring to secure a permit as provided by G.S. 58-70-1, shall make application to the Commissioner of Insurance for each location at which ~~such~~ the person, firm, corporation or association desires to carry on the collection agency business as ~~hereinafter defined. Such~~defined in this Article. The applicant shall be entitled to a permit upon submission to the Commissioner of Insurance of the following:

~~(a)~~(1) The name, trade name if any, street address, and telephone number of the applicant, including any home office address and telephone number, if ~~different;~~different.

~~(b)~~(2) If the applicant is a corporation,

~~(1)~~a. A certified copy of the board of director's resolution authorizing the submission of the application;

~~(2)~~b. An authenticated copy of the Articles of Incorporation and all amendments thereto;

~~(3)~~c. An authenticated copy of the bylaws or other governing instruments;

~~(4)~~d. If the applicant is a foreign corporation, a copy of the certificate of authority to transact business in this State issued by the North Carolina Secretary of ~~State;~~ State.

(3) If the applicant is a partnership, an authenticated copy of the then current partnership agreement.

(4) If an assumed business name is used, certificates showing that the assumed business name has been filed as required by Article 14A of Chapter 66 of the General Statutes.

(5) A surety bond as required by G.S. 58-70-20. In the case of an alien corporation, the surety bond requirements shall be double the amount set by G.S. 58-70-20.

(6) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, and officer actively engaged in the collection agency business, containing: the name of the collection agency, the name and address of the individual completing the form, the positions held by the individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of the individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings.

(7) A statement sworn to by an appropriate corporate officer, partner, or individual proprietor giving a description of the collection method to be employed in this State.

(8) A statement certifying that there are no unsatisfied judgments against the applicant.

(9) A list of all telephone numbers assigned to or to be used by the applicant in the operation of the collection agency.

(10) The appropriate permit fee as required by G.S. 58-70-35.

(11) A balance sheet as of the last day of the month prior to the date of submission of the application, certified true and correct by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets, current liabilities, and positive net worth of the applicant.

(12) The address of the location at which the applicant will make those records of its collection agency business described in G.S. 58-70-25 available for inspection by the Commissioner of Insurance.

(13) A statement certifying that no officer, individual proprietor, or partner of the applicant has been convicted of a felony involving moral turpitude or any violation of any State or federal debt collection law.

(14) If the collection agency's office or records, as described in G.S. 58-70-25, are located outside of North Carolina, a statement sworn to by an appropriate corporate officer, partner, or individual proprietor consenting to and authorizing the reimbursement, to the Commissioner by the collection agency, of expenses incurred by the Commissioner in conducting routine examinations, audits, and in investigating written complaints against the collection agency or its employees. All reimbursements shall be paid to the Commissioner no more than 30 days after the date of billing. In the case of an alien corporation, the sworn statement must provide that the corporation will make available to the Commissioner for his inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the corporation.

(15) If the applicant is a foreign corporation, a statement authorizing the Commissioner to be its agent for service of process, which shall be administered pursuant to the provisions of G.S. 58-16-30.

(b1) In addition to the information required by ~~subsection (b)~~ subdivision (a)(2) of this section, if the applicant is an alien corporation, the corporation must be owned or majority controlled ultimately by a parent entity incorporated or organized under the laws of the United States or any jurisdiction within the United States, and the alien corporation may only service accounts held by an affiliate or subsidiary of the same parent entity. For purposes of this subsection, "control" is defined by G.S. 58-19-5(2). Should the alien corporation be sold to an entity unrelated to the parent entity, notice shall be provided to the Department of the pending sale 30 days in advance of the sale. Provision of Form 8-K, properly filed with the Securities and Exchange Commission, shall be deemed compliance with the notice requirement of this subsection. In the event of a sale, the new parent entity shall provide evidence to the Department within 30 days of the sale of its and the alien corporation's compliance with the requirements of this section. In the event that the new parent entity does not provide the evidence within 30 days after the sale, the alien corporation's permit shall be automatically suspended until the Department is provided the evidence of compliance which is satisfactory to the ~~Commissioner;~~Commissioner.

~~(c) If the applicant is a partnership, an authenticated copy of the then current partnership agreement;~~

~~(d) If the trade name is used, certificates showing that the trade name has been filed as required by G.S. 66-68;~~

~~(e) A surety bond as required by G.S. 58-70-20. In the case of an alien corporation, the surety bond requirements shall be double the amount set by G.S. 58-70-20;~~

~~(f) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, and officer actively engaged in the collection agency business, containing: the name of the collection agency, the name and address of the individual completing the form, the positions held by the individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of the individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings;~~

~~(g) A statement sworn to by an appropriate corporate officer, partner, or individual proprietor giving a description of the collection method to be employed in North Carolina;~~

~~(h) A statement certifying that there are no unsatisfied judgments against the applicant;~~

~~(i) A list of all telephone numbers assigned to, or to be used by the applicant in the operation of the collection agency;~~

~~(j) The appropriate permit fee as required by G.S. 58-70-35;~~

~~(k) A balance sheet as of the last day of the month prior to the date of submission of the application, certified true and correct by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets, current liabilities and positive net worth of the applicant;~~

~~(l) The address of the location at which the applicant will make those records of its collection agency business described in G.S. 58-70-25 available for inspection by the Commissioner of Insurance.~~

~~(m) A statement certifying that no officer, individual proprietor or partner of the applicant has been convicted of a felony involving moral turpitude, or any violation of any State or federal debt collection law.~~

~~(n) If the collection agency's office or records, as described in G.S. 58-70-25, are located outside of North Carolina, a statement sworn to by an appropriate corporate officer, partner, or individual proprietor consenting to and authorizing the reimbursement, to the Commissioner by the collection agency, of expenses incurred by the Commissioner in conducting routine examinations, audits, and in investigating written complaints against the collection agency or its employees. All reimbursements shall be paid to the Commissioner no more than 30 days after the date of billing. In the case of an alien corporation, the sworn statement must provide that the corporation will make available to the Commissioner for his inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the corporation;~~

~~(o) If the applicant is a foreign corporation, a statement authorizing the Commissioner to be its agent for service of process, which shall be administered pursuant to the provisions of G.S. 58-16-30.~~

(p) In the case of an alien corporation, when the corporation is in violation of this Article, the parent entity must agree to cure the violation by the alien corporation.

(q) For purposes of this Article, the following definitions apply:

(1) "Alien corporation" means a company incorporated or organized under the laws of any jurisdiction outside of the United States.

(2) "Foreign corporation" means a company incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.

(r) If the applicant is a subsidiary in a holding company system and if the applicant's ultimate parent regularly files financial information with the U.S. Securities and Exchange Commission, in lieu of complying with ~~subsection (k)~~ subdivision (a)(11) of this section, the applicant may file the ultimate parent company's balance sheet as of the most recent fiscal year-end, as certified by the ultimate parent's independent auditors, and accompanied by a guarantee of the applicant's performance from the ultimate parent company for the benefit of the Department, limited to those portions of this Article that are applicable to the applicant.

(s) After a permit is issued by the Commissioner, the permittee's ultimate parent, as specified in subsection (r) of this section, shall remain responsible for the guarantee of performance as provided in subsection (r) of this section notwithstanding any change in the corporate structure of the ultimate parent company. If the permittee is acquired by any other person that has control over the permittee, the controlling person shall provide its own guarantee of performance as provided in subsection (r) of this section for the permittee to retain its permit. If the permittee does not have an ultimate parent company, it shall file its own balance sheet as specified in ~~subsection (k)~~subdivision (a)(11) of this section."

SECTION 7. G.S. 59-84.1 reads as rewritten:

"**§ 59-84.1. Partnership to comply with ~~"assumed name" statute;~~Assumed Business Name Act; income taxation.**

(a) Every partnership other than a limited partnership shall comply with, and be subject to, the provisions of ~~Articles 14~~ Articles 14A and 15 of Chapter 66 of the General Statutes in all cases in which the ~~same~~ Articles are applicable.

...."

SECTION 8. G.S. 62-115 reads as rewritten:

"**§ 62-115. Issuance of partnership franchises.**

No franchise shall be issued under this Article to two or more persons until ~~such~~ the persons have executed a partnership agreement, filed a copy of ~~said~~ the agreement with the Commission, and indicated to the Commission, in writing, that they have complied with ~~Article 14~~ Article 14A of Chapter 66 of the General Statutes relating to ~~doing~~ engaging in business under an assumed business name."

SECTION 9. G.S. 66-262 reads as rewritten:

"**§ 66-262. Filing information.**

(a) Each filing submitted to the Secretary shall contain all of the following information:

(1) The name or names, including any assumed business names, under which the telephonic seller is doing or intends to do business in this State.

...."

PART III. APPROPRIATION

SECTION 10. There is appropriated from the General Fund to the Department of Secretary of State the sum of two hundred fourteen thousand five hundred thirty-five dollars ($214,535) for the 2015-2016 fiscal year to develop and implement the database required by G.S. 66-71.9, as enacted by this act.

PART IV. EFFECTIVE DATE AND APPLICABILITY PROVISIONS

SECTION 11. Section 10 of this act becomes effective July 1, 2015. The remainder of this act becomes effective July 1, 2016. This act does not affect a civil action or proceeding commenced or a right accrued before July 1, 2016.

SENATE BILL 124:
Modernize Assumed Business Name Statutes

2015-2016 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to Appropriations/Base Budget	**Date:**	March 16, 2015
Introduced by:	Sen. Hartsell	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 124 would modernize the law governing the use of assumed business names, would appropriate funds for that purpose, and would make related conforming and technical amendments, as recommended by the General Statutes Commission.***

CURRENT LAW: Currently, the statutory provisions governing engaging in business under an assumed name are codified in Article 14 of Chapter 66 of the General Statutes, *"Business Under Assumed Name Regulated."*

BILL ANALYSIS: Senate Bill 124 would repeal current Article 14 of Chapter 66 of the General Statutes, and codify the *"Assumed Business Name Act"* as G.S. 66-71.1 through G.S. 66-71.15, and make related conforming and technical amendments to other sections of the General Statutes.

The details of Senate Bill 124 are contained in the memorandum of the General Statutes Commission, attached to this summary.

EFFECTIVE DATE: Section 10 of this act becomes effective July 1, 2015. The remainder of this act becomes effective July 1, 2016. This act does not affect a civil action or proceeding commenced or a right accrued before July 1, 2016.

Floyd M. Lewis, Staff Attorney, Legislative Bill Drafting Division and Revisor of Statutes, substantially contributed to this summary.

O. Walker Reagan
Director

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Research Division
(919) 733-2578

GENERAL STATUTES COMMISSION
300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM

To: Senate Committee on Judiciary II
From: General Statutes Commission
Re: SB 124 (Modernize Assumed Business Name Statutes)
Date: March 16, 2015

General Comments

This bill would update the law governing the use of assumed business names by replacing current Article 14 of Chapter 66 of the General Statutes (Article 14), entitled "Business Under Assumed Name Regulated," with a more modern Article 14A, entitled "Assumed Business Name Act." The bill was developed with the assistance of representatives of the North Carolina Department of the Secretary of State, the North Carolina Association of Registers of Deeds, and different sections of the North Carolina Bar Association.

Current Article 14 provides important protection to the public by requiring persons that engage in business in this State under an assumed name to make the identity of the business' true owners available to the public through filings with the registers of deeds. Generally, current Article 14 requires any person, before engaging in business in this State under an assumed name, to file a certificate with the register of deeds of each county in which business is to be engaged. The certificate must include the assumed name and the real name and address of each owner of the business. Failure to file is a Class 3 misdemeanor; it can also result in a $50.00 civil penalty collectable in a civil action by any person demanding that the certificate be filed if it is not filed within seven days after the demand is made.

Current Article 14 was originally enacted in 1913 and has not been substantially revised since that time. In the intervening decades, portions of current Article 14 have become obsolete or in conflict with more recent statutes. Business practices have changed. More businesses are operating in multiple counties in the State. As reported to the General Statutes Commission, many businesses may not be in compliance with Article 14, especially those operating statewide or in multiple counties. The penalty provisions have become ineffective. In particular, the criminal provision (i) has become disproportionate to the penalties for failing to file similar business-related documents, (ii) is only likely to be applied to individuals (not entities), and, as a result, (iii) is arguably unfair.

Proposed new Article 14A would make the following changes:

- Modernize language and style, provide additional guidance on "real names" for entities and partnerships, and conform outdated conflicting provisions to more recent law;
- Provide for amending certificates of assumed name, and eliminates a provision for transferring assumed names that reportedly caused confusion in practice;
- Eliminate two exceptions to the filing requirement for an obsolete exclusion and for licensed professions whose boards met certain requirements, as described more completely below;

- Replace the penalty provisions with (i) a new provision allowing for recovery of expenses incurred in locating "true owners" who fail to file and (ii) a new Class 1 misdemeanor for filing a knowingly false certificate.
- Require the creation of a statewide database, searchable by the public, of assumed business name information, which, as a result, would eliminate (i) the requirement for filing with the register of deeds in each county in which a business is operated under an assumed name, and (ii) the possible need to search 100 separate registers of deeds offices for an assumed name filing.

Specific Comments

Proposed **§ 66-71.1** ("Short title") authorizes citation of the Article by its title, "Assumed Business Name Act." The more precise term "assumed business name" is used instead of the current term "assumed name" because, consistent with the current Article 14, the filing requirements only apply to a person who "engages in business" in this State under an assumed name (a d/b/a).

Proposed **§ 66-71.2** ("Statement of purpose") is new, although the purpose has not changed ("to afford the public a means of ascertaining the real names of persons engaging in business in this State under an assumed business name").

Proposed **§ 66-71.3** ("Definitions") defines the terms "assumed business name" and "person" as used in Article 14A. There is no definitions section in Article 14, which merely requires filing before engaging in business "under an assumed name or under any designation, name or style other than the real name of the owner or owners thereof." The proposed definition of "assumed business name" is consistent with current G.S. 66-68(a) and provides greater clarity as to the "real names" of some types of entities and partnerships not currently addressed.

Proposed **§ 66-71.4** ("Filing of certificate; exception"), consistent with the current G.S. 66-68, requires any person engaging in business in this State under an assumed business name to first file an assumed business name certificate in the office of the register of deeds of the county in which the person is or will be engaged in business. The current law requires a person that is engaged in business in multiple counties to file a certificate of assumed name in each county. Due to the provision for a searchable, state-wide data-base (see proposed §§ 66-71.9 and 66-71.10), proposed § 66-71.4 changes this requirement to require filing in only one of those counties. A separate certificate is still required, however, for different assumed business names used by the same person.

Proposed **§ 66-71.4** also clarifies that a limited liability partnership, limited partnership, limited liability company, or corporation that merely drops its legal entity designation (LLP, LP, LLC, or Inc.) does not need to file an assumed business name certificate.

Proposed **§ 66-71.5** ("Contents of certificate"), consistent with current G.S. 66-68, requires an assumed business name certificate to include the assumed business name, the real name of the person engaging in business under the assumed business name (termed the "owner or owners" in G.S. 66-68), and an address. The new statute specifies that the address must be the street address of the principal place of business. The new statute adds two requirements, the type of business and the listing of each county where the person uses or will be using the assumed business name to engage in business. The last provision substitutes for the current law's

requirement for filing with the register of deeds in each of these counties. Because there is no requirement in this Article for names to be unique, the new requirements should help the public distinguish between, e.g., Paul the Pieman in Buncombe and Henderson Counties, a baker, from a different Paul the Pi-man in Pender, New Hanover, and Brunswick Counties, a mathematics tutor.

Proposed **§ 66-71.5** also reduces the filing compliance burden on large partnerships by requiring that no more than five partners be listed in the assumed name certificate. The requirement of current G.S. 66-68 that a partnership must file a new certificate of assumed name, signed by each partner, every time a partner leaves or joins the partnership is quite burdensome for a very large partnership that is required to file under Article 14. Requiring the names of at least five partners for larger partnerships should give a member of the public a sufficient basis to obtain the names of all the partners.

Proposed **§ 66-71.6** ("Execution of certificate") specifies who should execute an assumed business name certificate. There are three changes from current G.S. 66-68(b). First, in the case of a partnership, only one general partner is required to sign, rather than each general partner. Second, rather than specifying particular corporate officers, the new statute requires only that the person signing be authorized to act for the corporation or LLC. Third, the new statute does not continue the requirement in current G.S. 66-68(b) that the certificate be acknowledged when executed, which may better accommodate the electronic filing of assumed business name certificates.

Proposed **§ 66-71.7** ("Amendment of certificate") is new. It requires the filing of a properly executed certificate of amendment within 60 days after a change in any of the information required in the assumed business name certificate. The purpose is to ensure that the information on file with the registers of deeds is kept current. The only method for updating such information in current Article 14 is the filing of a new certificate of assumed name.

Proposed **§ 66-71.8** ("Withdrawal of assumed business name"), consistent with current G.S. 66-68(f), provides for the withdrawal of an assumed business name when it is no longer being used and specifies the contents of a properly executed certificate of withdrawal. There are two changes to the required contents. First, where current G.S. 66-68(f) requires a certificate of withdrawal to include the date of filing of the original certificate, proposed § 66-71.8 requires the register of deeds' book and page number and the identification number assigned by the Secretary of State, both of which are needed to associate the certificate of withdrawal with the related earlier filing. Second, the new provision does not bring forward the 20-day limit on delayed effective dates.

Please note that proposed new Article 14A does not bring forward G.S. 66-68(f)'s provisions for a transfer of an assumed name. Reportedly, the provision for both a certificate of withdrawal and a certificate of transfer of assumed name has caused confusion among small business owners as to which they should file. Given that the new owners must file a new certificate of assumed name in any event under the current statute, the General Statutes Commission decided that both provisions were not really needed.

Proposed **§ 66-71.9** ("Secretary of State to maintain a centralized, statewide database of assumed business name information") is new. It requires the Secretary of State to develop, implement, and maintain a searchable online database, available to the public, of assumed

business name information reported by the registers of deeds under proposed § 66-71.10. Currently, if a search of one register of deeds' records does not produce a d/b/a registration, the searcher cannot know whether none was ever filed in any county or whether there was a filing in another, perhaps adjacent county. The searcher would need to check the records of multiple different registers of deeds, and even then would not be sure nothing was filed until all 100 counties were checked. The centralized database will make it necessary to search only one location.

Proposed **§ 66-71.10(a)** (section catchline "Register of deeds to index certificates; transmission of data to central database") effectively brings forward current G.S. 66-69 but conforms it to the requirements of Article 2 of Chapter 161, on the duties of the registers of deeds.

Proposed **§ 66-71.10(b)** is new. It requires the registers of deeds, not later than 30 days after the date of filing, to transmit a scanned image of a certificate filed under Article 14A to the Secretary of State and to enter into the central database maintained by the Secretary of State specified information from the certificate. The 30-day time limit is the same as the time by which a record filed with the register of deeds must be indexed, and the information to be entered into the statewide database is essentially the indexing information plus the list of counties in which the assumed business name will be used and the Secretary of State's identification number, if any, from the certificate being filed.

Proposed **§ 66-71.11** ("Forms") is new. It authorizes the Land Records Management Advisory Committee established under G.S. 147-54.3 to develop forms that may be used in complying with Article 14A and authorizes any person, including the registers of deeds, to make these forms available. New forms will be needed because somewhat different information is required under new Article 14A.

Proposed **§ 66-71.12** ("Effect of filing certificate") has no express counterpart in current Article 14. It provides that an assumed business name certificate is effective upon filing and remains in effect until withdrawn and that compliance with Article 14A does not confer any exclusive rights to the use of an assumed business name in this State, which is consistent with current law.

Proposed **§ 66-71.13** ("Copy of certificate prima facie evidence") brings forward current G.S. 68-69.1 in more modern language.

Proposed **§ 66-71-14** ("Consequences of signing false certificate or violating Article") replaces the current penalty provisions of G.S. 66-71 with two new provisions:

- Signing a certificate that a person knows is false in any material respect with intent that the certificate be delivered to the register of deeds for filing is a Class 1 misdemeanor. This provision is included due to the removal of the acknowledgment requirement. It is similar to criminal provisions for other fraudulent filings.
- Failure to file a certificate as required by Article 14A makes a person liable to anyone injured by the failure for the reasonable expenses, including attorneys' fees, incurred in discovering the information that should have been stated in the certificate. The expenses may be awarded in a civil action. The intent was to remedy the harm caused by the failure to file.

Proposed **§ 66-71-15** ("Expiration of certificates filed under Article 14; transition provisions") is new. Subsection (a) provides for the expiration of existing certificates of assumed name on July 1, 2021. Anyone that intends to continue engaging in business under an assumed business name must file a new certificate. The expiration and re-registration is needed ensure that all currently active assumed business names are incorporated into the new statewide database. Subsections (b) through (g) are transitional provisions.

Please note that the following provisions in current Article 14 were not brought forward:

(1) **G.S. 66-71(b)**, which provides that the failure of any person to comply with Article 14 does not prevent a recovery by the person in any civil action commenced in the courts of this State, in light of opinions of the North Carolina Court of Appeals holding that the contrary requirements of **G.S. 1-69.1** are mandatory and that the failure of an unincorporated association and partnership to satisfy the requirements is not exonerated by **G.S. 66-71(b)**.

(2) **G.S. 66-68(d)**, which exempts businesses with no physical presence whose only activities in a county are calls by traveling salespersons and mail order sales. The exemption was reported as obsolete.

(3) **G.S. 66-68(e)**, which exempts from the assumed name filing requirement any partnership or limited liability company engaged in rendering professional services as defined in **G.S. 55B-2(6)** if certain conditions are met. The Commission believes the exemption is not being utilized and, after soliciting comments from the affected licensing boards and professions, did not receive any comments expressing a need for retaining the exemption.

The bill also makes related conforming and technical amendments to other sections of the General Statutes and appropriates funds to the Secretary of State for the 2015-2016 fiscal year to develop and implement the central database. Except as otherwise provided, the proposed effective date is July 1, 2016.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, March 17, 2015

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

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

SB **123** Uniform Fraudulent Transfer Act.

Draft Number:	S123-PCS45158-MN-1
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

This is Report #2 of 2 from the Senate Judiciary II Committee that met on March 17, 2015.

Senator Fletcher Hartsell will handle SB 123



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, March 17, 2015

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

FAVORABLE

SB **124** Modernize Assumed Business Name Statutes.

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

TOTAL REPORTED: 1

Senator Fletcher Hartsell will handle SB 124



SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Dick Taylor	NCAJ	—
Michael Houser	THC6	
JEGOODMAN	KC CHAMBER	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Judy Martin	NCARD	SB124
Wayne Rash	NCARD	SB 124
P. Angelica Simmons	NGCA	SB1118
Jared Cates	CFA	SB288

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Chip Kilbride	Nelson Mullins	
Phillip Bryan	BMCD	
Tarus Pridgen	Photographer	
Kim Crouch	NCBA	
ARMAND PERRY	NCBA	
Jeremy Browner	NCBA	
Paul Tosa	Info-Tech	
DWAYNE BEAMON	SOS	
Haley Haynes	SOS	
Jamie Cegielski	NCAOSA	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Kara Weishaar	JA	
[illegible]	NMRS	
Nathan Batts	NCBA	
David Farrell	NCLTA	
John DelGrosso	Brubaker+Assoc	
Rhian Merwald	Williams Mullen	
Renny Hurley	School of Gov.	
Zach Wilson	Ice Barrier	
William A. Webb	Shanahan Law Group	
Susan Vick	Duke Energy	

Senate Committee on Judiciary II
Thursday, March 19, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:05 AM on March 19, 2015 in Room 1124/1224 of the Legislative Building. 12 members were present.

Senator Shirley B. Randleman, Chair, presided.

Pages: Nicholas Oddo of Wake forest, Regina Wiechert of Spring Lake, Kaelan McCone of Greensboro, William Comer of Winston-Salem.
Sgt. at Arms: Donna Blake, Matt Urban

SB 29 DOB Redaction Requests For Public Documents. (Senator Curtis)
Senator Bryant moved to have the PCS: PCS S29-CSTJ-2 brought up for consideration rather than discussing the original bill. The motion was seconded by Senator McInnis. The motion carried.
Senator Curtis presented the bill to the committee. At least four different members had questions or comments relating to the bill which were answered by the bill sponsor, the Chair, or the committee's legal staff.
Two members of the public spoke to the bill: Chip Killian in support for the Registers of Deeds, John Bussian against for news groups.
After discussion, Senator Cook moved for finding the original bill unfavorable but favorable as to the PCS. The motion carried. The bill was reported out by the clerk as "Unfavorable as to bill, but favorable as to committee substitute bill."

The meeting adjourned at 10:26 am.

Senator Shirley B. Randleman, Chair
Presiding

Patrick Limer, Committee Clerk

Senate Committee on Judiciary II
Thursday, March 19, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 29	DOB Redaction Requests For Public Documents.	Senator Curtis

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 29

Short Title:	DOB Redaction Requests For Public Documents.	(Public)
Sponsors:	Senators Curtis (Primary Sponsor); and Krawiec.	
Referred to:	Rules and Operations of the Senate.	

February 5, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW REGISTERS OF DEEDS AND CLERKS OF COURT TO REDACT DATES OF BIRTH FROM CERTAIN PUBLIC RECORDS TO PROTECT THE PUBLIC FROM IDENTITY THEFT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.10(f) reads as rewritten:

"**§ 132-1.10. Social security numbers and other personal identifying information.**

...

(f) Any person has the right to request that a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet Website available to the general public or an Internet Web site available to the general public used by a register of deeds or court to display public records by the register of deeds or clerk of court, the person's ~~social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record.~~ personal identifying information as described in this subsection. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the ~~social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords~~ personal identifying information, as described in this subsection, to be redacted. The request for redaction shall be considered a public record with access restricted to the register of deeds, the clerk of court, their staff, or upon order of the court. The register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(1) The register of deeds or clerk of court shall, upon receipt of a request made pursuant to this subsection, comply with the request for redaction for the following personal information displayed in a manner described in this subsection:

a. Social Security number.
b. Employer taxpayer identification number.
c. Drivers license number.
d. State identification number.
e. Passport number.
f. Checking or savings account number.
g. Credit or debit card number.
h. Personal identification (PIN) code or passwords.

(2) Upon receipt of a request made pursuant to this subsection, the register of deeds may comply with the request for redaction of all, or a portion of, the requestor's date of birth from any land records displayed in a manner described in this subsection."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 29
PROPOSED COMMITTEE SUBSTITUTE S29-CSTJ-2 [v.2]
3/16/2015 6:44:48 PM

Short Title: DOB Redaction Requests For Public Documents. (Public)

Sponsors:

Referred to:

February 5, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW REGISTERS OF DEEDS AND CLERKS OF COURT TO REDACT CERTAIN IDENTIFYING INFORMATION FROM CERTAIN PUBLIC RECORDS TO PROTECT THE PUBLIC FROM IDENTITY THEFT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.10(f) reads as rewritten:

"**§ 132-1.10. Social security numbers and other personal identifying information.**

...

(f) Any person has the right to request that a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet Website available to the general public or an Internet Web site available to the general public used by a register of deeds or court to display public records by the register of deeds or clerk of court, the person's ~~social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record.~~ personal identifying information as described in this subsection. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the ~~social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords~~ personal identifying information, as described in this subsection, to be redacted. The request for redaction shall be considered a public record with access restricted to the register of deeds, the clerk of court, their staff, or upon order of the court. The register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation. Except as prohibited by some other provision of law:

(1) The register of deeds or clerk of court shall, upon receipt of a request made pursuant to this subsection, comply with the request for redaction for the following personal information displayed in a manner described in this subsection:



a. Social Security number.
b. Employer taxpayer identification number.
c. Drivers license number.
d. State identification number.
e. Passport number.
f. Checking or savings account number.
g. Credit or debit card number.
h. Personal identification (PIN) code or passwords.

(2) Upon receipt of a request made pursuant to this subsection, the register of deeds may comply with the request for redaction of all, or a portion of, the requestor's date of birth from any land records displayed in a manner described in this subsection."

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

SENATE BILL 29:
DOB Redaction Requests For Public Documents

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 18, 2015
Introduced by:	Sen. Curtis	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S29-CSTJ-2		

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 29 would amend a subsection of the public records law that permits the redaction of specified personal identifying information from certain records filed, recorded, or maintained by a State or local government agency in order to provide for the protection of personal information that might lead to identity theft.***

CURRENT LAW: G.S. 132-1.10(f) permits a person to ask a register of deeds or clerk of court to redact specified identifying information from any publicly available Internet Web site, lists the information that may be redacted, and outlines the process for making the request.

BILL ANALYSIS: The PCS to Senate Bill 29 would make organizational and technical changes to G.S. 132-1.10(f). It would also require the register of deeds or clerk of court to comply with the request for redaction of the listed information in the manner described in subsection (f), and give the register of deeds the authority to comply with a request for redaction of all or a portion of the requestor's date of birth from any land records.

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

BACKGROUND: G.S. 132-1.10 was originally enacted as part of the Identity Theft Protection Act of 2005 to provide for the protection of personal and credit information that might lead to identity theft, by requiring State and local agencies to protect social security numbers and other personal identifying information.

O. Walker Reagan
Director

S29-SMTJ-13 CSTJ-2 -V1

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, March 19, 2015

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

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

SB **29** DOB Redaction Requests For Public Documents.

Draft Number:	S29-PCS25122-TJ-2
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator David Curtis will handle SB 29



SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Elizabeth Robinson	NCEMA	
Phillip Bass	BMS	
Sam Skinner	NCAGC	
Lexi Morgan	NCRMA	
Phoebe Landon	Brooks Pierce	
Sarah Preston	ACLU-NC	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Ally Peckman	Peckman Law	
Austin Pruitt	Ferguson	
Amanda Honaker	Troutman Sanders	
Chip Killian	Nelson Mullins	
David Finn, II	NCCPA	
Laura Wakely	NCCUL	
J BUSSIAN	NCPA	
ROBERT GLAZER	NCADA	
LUKE CZUBAI	NCADA	
Chris Agan	DOJ	

Senate Committee on Judiciary II
Tuesday, March 24, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:00 AM on March 24, 2015 in Room 1124/1224 of the Legislative Building. 13 members were present. Attending Sergeants-at-Arm: Terry Barnhardt, Steve Wilson, and Hal Roach. Attending pages: Grace Ward of Fuquay-Varina (Sen. Barefoot); Ashlyn Worthington of Cary (Sen. J. Davis); Noah Ontjes of Raleigh (Sen. Stein); Sam Crouse of Spruce Pine (Sen. Hise); Pernay Golla of Morrisville (Sen. Stein); and Ryan Perrigo of Roxboro (Sen. Woodard).

Senator Tamara Barringer, Chair, presided.

SB 71 Stagger RRC Member Terms. (Senator Lee) Sen. Lee presented the bill. There was no discussion and Sen. J. Davis motioned for a Favorable report, Sen. Curtis seconded that motion. The committee reported the bill to the Senate Principal Clerk (SPC) as Favorable, with no sequential nor recommended referrals.

SB 199 Funds Deposited with Clerk of Court. (Senator Randleman) Sen. Randleman presented the bill. Mildred Spearman of the NCAOC spoke in favor of the bill. Sen. McInnis inquired about the interest rates. Research staff's Jan Paul answered Sen. McInnis by pointing out the authority of the Clerk to invest the money. There was a bit of discussion regarding how the process of how funds are handled. Sen. Cook motioned, Sen. Lowe seconded, that the bill receive a Favorable report. The bill was reported to the SPC as Favorable, with no sequential nor recommended referrals.

The meeting adjourned at 10:15.

Senator Tamara Barringer, Chair
Presiding

Andy Perrigo, Committee Clerk

Senate Committee on Judiciary II
Tuesday, March 24, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 71	Stagger RRC Member Terms.	Senator Lee
SB 199	Funds Deposited with Clerk of Court.	Senator Randleman

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 71

Short Title:	Stagger RRC Member Terms.	(Public)
Sponsors:	Senator Lee (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

February 12, 2015

A BILL TO BE ENTITLED

AN ACT TO REESTABLISH STAGGERED TERMS FOR THE MEMBERSHIP OF THE RULES REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 143B-30.1 and Section 2.50 of S.L. 2013-353, the terms of membership on the Rules Review Commission shall be modified as follows:

(1) The term of Margaret Currin that is set to expire June 30, 2015, shall be extended for one year and expire June 30, 2016.

(2) The term of John Hemphill that is set to expire June 30, 2015, shall be extended for one year and expire June 30, 2016.

(3) The term of Jeffrey Hyde that is set to expire June 30, 2015, shall be extended for one year and expire June 30, 2016.

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

SENATE BILL 71:
Stagger RRC Member Terms

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 23, 2015
Introduced by:	Sen. Lee	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 303 would extend the terms of three members of the Rules Review Commission by one year.***

CURRENT LAW: The Rules Review Commission ("Commission") comprises ten members, five appointed by the Speaker and five appointed by the President Pro Tempore. Each member serves a two-year term. Pursuant to G.S. 143B-30.1(b), the terms were originally staggered so that in one year, two of the Speaker's appointees' terms and three of the President Pro Tempore's appointees' terms would expire, while in the next year, three of the Speaker's appointees' terms and two of the President Pro Tempore's appointees' terms would expire.

In 2013, the President Pro Tempore appointed five persons and the Speaker appointed three persons to serve on the Commission, with all eight terms expiring on June 30 2015.[1] One of the President Pro Tempore's 2013 appointees did not take the oath of office and that position has remained vacant. In 2014, the Speaker appointed two persons to serve on the Commission with terms expiring on June 30, 2016.[2]

The current terms of the members of the Commission are not staggered as contemplated under the statute, because all five terms allocated to appointees of the President Pro Tempore will expire on June 30, 2015, rather than two.

BILL ANALYSIS: Senate Bill 303 extends the terms of three of the President Pro Tempore's appointees to the Commission by one year to June 30, 2016. With this change, terms will expire for three of the Speaker's appointees and for one of the President Pro Tempore's appointees in 2015. If the President Pro Tempore appoints another member to fill the current vacancy, then that appointee's term will also expire in 2015. Then, in 2016, the terms of two of the Speaker's appointees and three of the President Pro Tempore's appointees will expire.

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

[1] S.L. 2013-360, ss. 1.48, 2.50.
[2] S.L. 2014-116, s. 2.34.

O. Walker Reagan
Director

S71-SMTG-8 E1 -V1

Research Division
(919) 733-2578

SENATE BILL 199

Short Title:	Funds Deposited with Clerk of Court.	(Public)
Sponsors:	Senator Randleman (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 10, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT OF FUNDS IN A SINGLE ACCOUNT ON DEPOSIT WITH THE CLERK OF SUPERIOR COURT ABOVE WHICH THE EXCESS MUST BE INVESTED PURSUANT TO STATUTORY REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-112 reads as rewritten:

"(b) When money in a single account in excess of ~~two thousand dollars ($2,000)~~five thousand dollars ($5,000) is received by the clerk by virtue or color of his or her office and it can reasonably be expected that the money will remain on deposit with the clerk in excess of six months from date of receipt, the money exceeding ~~two thousand dollars ($2,000)~~five thousand dollars ($5,000) shall be invested by the clerk within 60 days of receipt in investments authorized by this section. The first ~~two thousand dollars ($2,000)~~five thousand dollars ($5,000) of these accounts and money in a single account totaling less than ~~two thousand dollars ($2,000),~~five thousand dollars ($5,000), received by the clerk by virtue or color of his or her office, shall be invested, or administered, or invested and administered, by the clerk in accordance with regulations promulgated by the Administrative Officer of the Courts. This subsection shall not apply to cash bonds or to money received by the clerk to be disbursed to governmental units."

SECTION 2. This act becomes effective July 1, 2015.

SENATE BILL 199:
Funds Deposited with Clerk of Court

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 23, 2015
Introduced by:	Sen. Randleman	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 199 would increase the amount of funds in a single account on deposit with the Clerk of Superior Court above which the excess must be invested pursuant to statutory requirements.

BACKGROUND: The Clerk of superior Court is required to receive, administer, invest and disburse sums of money, e.g., specified insurance or other moneys for minors and incapacitated adults, cash bonds, money in payment of judgments, proceeds of an execution sale, surplus funds from foreclosures, and storage and repair liens, and fines, costs, forfeitures, restitution and supervision fees in criminal cases.

CURRENT LAW: G.S. 7A-112, *"Investment of funds in clerk's hands,"* authorizes the clerk of the superior court to invest funds in specified securities. G.S. 7A-112(b) requires the clerk of superior court to invest within 60 days of receipt funds in excess of $2,000 when it can reasonably be expected that the money will remain on deposit with the clerk for more than six months from the date of their receipt. G.S. 7A-112(b) further specifies that the first $2,000 of these accounts and money in a single account totaling less than $2,000 must be invested and administered in accordance with regulations promulgated by the Administrative Officer of the Courts.

BILL ANALYSIS: Senate Bill 199 would increase the dollar amount of the monies in question from $2,000 to $5,000.

EFFECTIVE DATE: This act becomes effective July 1, 2015.

O. Walker Reagan
Director

S199-SMTJ-16 E1 -V1

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, March 24, 2015

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

FAVORABLE

SB **71** Stagger RRC Member Terms.

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

SB **199** Funds Deposited with Clerk of Court.

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

TOTAL REPORTED: 2

Senator Michael Lee will handle SB 71
Senator Shirley Randleman will handle SB 199



VISITOR REGISTRATION SHEET

Judiciary II
(Committee Name)

3-24-15
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Julian Mann	OAH
Donna Clark	UNC Dept Gout.
Barbara Moore	Conf of Clerks of S Ct
Tom Mann	NCAOC

09-22-2012

VISITOR REGISTRATION SHEET

Judiciary II
(Committee Name)

3-24-15
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Lexi Morgan	NCFMA
Phoebe Landon	Brooks Pierce
[illegible]	Gov. Office
Rhian Menwald	WM
Phillip Isley	BLUE
[illegible]	NCACC
Mildred Spearman	NCAOC

09-22-2012

Senate Committee on Judiciary II
Tuesday, March 31, 2015 at 10:15 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:15 AM on March 31, 2015 in Room 1124/1224 of the Legislative Building. 13 members were present.

Senator Warren Daniel, Chair, presided.

SB 83 Criminal Law/Filing False Document. (Senator Bingham)
Sen. Bingham presented this bill. After a question by Sen. Bryant and explanation from Jan Paul of Research, Sen. Bingham determined that more work was needed on the bill would need to be amended. The bill was pulled from the agenda.

SB 154 Clarifying the Good Samaritan Law. (Senator Bingham)
Sen. Bingham agreed to pull this bill from the agenda after taking questions from the committee regarding immunity. There were public speakers on this bill: Tessie Sanford of NC Harm, Eddie Caldwell of the NC Sheriff's Association, and Fred Baggett of the NC Association of Chiefs of Police.

Neither bill was reported out of committee.

The meeting adjourned at 11:30 am.

Senator Warren Daniel, Chair
Presiding

Andy Perrigo, Committee Clerk

Senate Committee on Judiciary II
Tuesday, March 31, 2015, 10:15 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 83	Criminal Law/Filing False Document.	Senator Bingham
SB 154	Clarifying the Good Samaritan Law.	Senator Bingham

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

FILED SENATE
Feb 12, 2015
S.B. 83
PRINCIPAL CLERK

S

D

SENATE DRS15045-MQ-16 (01/16)

Short Title:	Criminal Law/Filing False Document.	(Public)
Sponsors:	Senator Bingham (Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CLASS I FELONY TO KNOWINGLY PRESENT FOR FILING A DOCUMENT THAT CONTAINS MATERIALLY INACCURATE INFORMATION FOR AN IMPROPER PURPOSE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.26. Filing false documents.**

It shall be unlawful for any person to present a document for filing with the register of deeds or clerk of superior court that the person knows is false or contains materially inaccurate or misleading information with the intent that the recorded document be used to alter an identity, defraud another person or entity, or circumvent legal name change procedures. A violation of this section shall be a Class I felony."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 154
PROPOSED COMMITTEE SUBSTITUTE S154-CSTG-4 [v.2]

3/30/2015 12:03:38 PM

Short Title: Clarifying the Good Samaritan Law. (Public)

Sponsors:

Referred to:

March 4, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE OPERATION OF THE LIMITED IMMUNITY FROM PROSECUTION FOR CERTAIN DRUG- OR ALCOHOL-RELATED OFFENSES COMMITTED BY AN INDIVIDUAL EXPERIENCING A DRUG- OR ALCOHOL-RELATED OVERDOSE AND AN INDIVIDUAL WHO SEEKS MEDICAL ASSISTANCE FOR AN INDIVIDUAL EXPERIENCING A DRUG- OR ALCOHOL-RELATED OVERDOSE, TO PROVIDE ADDITIONAL REQUIREMENTS AND CONDITIONS THAT MUST BE MET BEFORE THE LIMITED IMMUNITY IS ESTABLISHED, TO PROVIDE THAT A PERSON SHALL NOT BE SUBJECT TO SANCTIONS FOR A VIOLATION OF A CONDITION OF RELEASE, PROBATION, OR PAROLE IF BASED UPON AN INCIDENT FOR WHICH THE PERSON RECEIVED IMMUNITY, TO PROVIDE THAT A LAW ENFORCEMENT OFFICER OR PROSECUTING ATTORNEY SHALL NOT BE SUBJECT TO CIVIL LIABILITY FOR ARRESTING, CHARGING, OR PROSECUTING A PERSON ENTITLED TO IMMUNITY IF THE LAW ENFORCEMENT OFFICER OR PROSECUTING ATTORNEY ACTED IN GOOD FAITH, TO PROVIDE THAT A PHARMACIST MAY DISPENSE AN OPIOID ANTAGONIST UPON RECEIVING A PRESCRIPTION ISSUED IN ACCORDANCE WITH G.S. 90-106.2, AND TO PROVIDE THAT A PHARMACIST WHO DISPENSES AN OPIOID ANTAGONIST IN ACCORDANCE WITH G.S. 90-106.2 IS IMMUNE FROM CERTAIN CIVIL OR CRIMINAL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-96.2 reads as rewritten:

"**§ 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.~~Limited Immunity for Samaritan. – A person shall not be prosecuted for any of the

offenses listed in subsection (c3) of this section if all of the following requirements and conditions are met:

(1) The person sought medical assistance for an individual experiencing a drug-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.

(2) The person acted in good faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance.

(3) The person provided his or her own name to the 911 system or to a law enforcement officer upon arrival.

(4) The person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(5) The evidence for prosecution of the offenses listed in subsection (c3) of this section 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.~~Limited Immunity for Overdose Victim. – The immunity described in subsection (b) of this section shall extend to the person who experienced the drug-related overdose if all of the requirements and conditions listed in subdivisions (1), (2), (4), and (5) of subsection (b) of this section are satisfied.

(c1) Probation or Release. – A person shall not be subject to any sanction for a violation of a condition of pretrial release, condition of probation, or condition of parole, if the sanction is based on an offense for which the person is immune from prosecution under subsection (b) or (c) of this section.

(c2) Civil Liability for Arrest, Charges, or Prosecution. – In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer or prosecuting attorney who, acting in good faith, arrests, charges, or prosecutes a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the arrest, filing of charges, or prosecution.

(c3) Covered Offenses. – A person shall have limited immunity from prosecution under subsections (b) and (c) of this section for only the following offenses:

(1) A misdemeanor violation of G.S. 90-95(a)(3).

(2) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine.

(3) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin.

(4) A violation of G.S. 90-113.22.

(d) ~~Nothing~~Construction. – Nothing in this section shall be construed to ~~bar~~do any of the following:

(1) Bar the admissibility of any evidence obtained in connection with the investigation and prosecution of (i) other crimes committed by a person who otherwise qualifies for limited immunity under this ~~section.~~section or (ii) any crimes committed by a person who does not qualify for limited immunity under this section.

(2) Limit any seizure of evidence or contraband otherwise permitted by law.

(3) Limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation of, or to effectuate an

arrest for, any offense other than an offense listed in subsection (c3) of this section.

(4) Limit or abridge the authority of a probation officer to conduct drug testing of persons on pretrial release, probation, or parole."

SECTION 2. G.S. 18B-302.2 reads as rewritten:

"**§ 18B-302.2. Medical treatment; limited immunity.**

(a) Limited Immunity for Samaritan. – Notwithstanding any other provision of law, a person under the age of 21 shall not be prosecuted for a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages if ~~law enforcement, including campus safety police, became aware of the possession or consumption of alcohol by the person solely because the person was seeking medical assistance for another individual. This section shall apply if, when seeking medical assistance on behalf of another, the person did all of the following:~~all of the following requirements and conditions are met:

(1) The person sought medical assistance for an individual experiencing an alcohol-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.

(1a) ~~Acted~~The person acted in good ~~faith,~~faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance.

(2) ~~Used~~The person provided his or her own name ~~when contacting authorities.~~to the 911 system or to a law enforcement officer upon arrival.

~~(3) Remained with the individual needing medical assistance until help arrived.~~

(4) The person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(5) The evidence for prosecution of a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages was obtained as a result of the person seeking medical assistance for the alcohol-related overdose.

(b) Limited Immunity for Overdose Victim. – The immunity described in subsection (a) of this section shall extend to the person who needed medical assistance if the requirements in subdivisions (1), (1a), (4), and (5) of subsection (a) are satisfied.

(c) Probation or Release. – A person shall not be subject to any sanction for a violation of a condition of pretrial release, condition of probation, or condition of parole, if the sanction is based on an offense for which the person is immune from prosecution under subsection (a) or (b) of this section.

(d) Civil Liability for Arrest, Charges, or Prosecution. – In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer or prosecuting attorney who, acting in good faith, arrests, charges, or prosecutes a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the arrest, filing of charges, or prosecution."

SECTION 3. G.S. 90-106.2 reads as rewritten:

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

...

(b) A practitioner acting in good faith and exercising reasonable care may directly or by standing order prescribe 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 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.

(b1) A pharmacist may dispense an opioid antagonist to a person described in subsection (b) of this section pursuant to a prescription issued in accordance with subsection (b) of this section. For purposes of this section, the term "pharmacist" is as defined in G.S. 90-85.3.

...

(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 an opioid antagonist pursuant to subsection (b) of this section.

(2) Any pharmacist who dispenses an opioid antagonist pursuant to subsection (b1) of this section.

~~(2)~~(3) Any person who administers an opioid antagonist pursuant to subsection (c) of this section."

SECTION 4. This act is effective when it becomes law and applies to offenses committed on or after that date.

SENATE BILL 154:
Clarifying the Good Samaritan Law

2015-2016 General Assembly

Committee:	Senate Judiciary 11	**Date:**	March 30, 2015
Introduced by:	Sen. Bingham	**Prepared by:**	Bill Patterson
Analysis of:	PCS to First Edition S154-CSTG-4		Committee Counsel

SUMMARY: The PCS for Senate Bill 154 would:

1) ***impose additional requirements that must be met before a person can receive immunity from criminal prosecution under G.S. 90-96.2 and G.S. 18B-302;***
2) ***prohibit the imposition of sanctions for violations of conditions of pretrial release, probation or parole based on an offense for which the person is entitled to immunity under G.S. 90-96.2 and G.S. 18B-302;***
3) ***grant immunity from civil liability to law enforcement officers and prosecutors who in good faith arrest, charge, or prosecute persons later found to be entitled to immunity under G.S. 90-96.2 and G.S. 18B-302;***
4) ***provide that nothing in G.S. 90-96.2 bars admission of evidence of crimes by a person not entitled to immunity, limits seizure of evidence or contraband otherwise permitted by law, limits a law enforcement officer's authority to detain or take into custody a person during an arrest for or investigation of offenses other than those for which limited immunity is provided in G.S. 90-96.2, or limits a probation offer's authority to conduct drug testing on persons on pretrial release, probation, or parole; and***
5) ***amend G.S. 90-106.2 to authorize pharmacists to dispense an opiate antagonist prescribed in accordance with this section to a person at risk of experiencing an opiate-related overdose or to a family member, friend, or other person in a position to assist that person, and to grant pharmacists immunity from civil and criminal liability for dispensing an opiate antagonist pursuant to this authority.***

The PCS makes technical and conforming changes to the First Edition of the bill.

CURRENT LAW: Under G.S. 90-96.2 of the Controlled Substances Act, a person acting in good faith when seeking medical assistance for an individual suffering from a drug-related overdose is immune from criminal prosecution for the following offenses if the evidence supporting prosecution was obtained as a result of the person seeking medical assistance for the drug-related overdose:

- misdemeanor possession of drug paraphernalia in violation of G.S. 90-113.22
- misdemeanor possession of a controlled substance in violation of G.S. 90-95(a)(3)
- felony possession of less than one gram of cocaine in violation of G.S. 90-95(a)(3)
- felony possession of less than one gram of heroin in violation of G.S. 90-95(a)(3)

In addition, the person suffering from a drug-related overdose and needing medical assistance is immune from criminal prosecution for these offenses if the evidence supporting prosecution was obtained as a result of the drug-related overdose and the person's need for medical assistance.

Evidence obtained in connection with an investigation of other crimes committed by a person entitled to this limited immunity remains admissible in a prosecution for those other crimes.

Under G.S. 18B-302.2, a person under the age of 21 is immune from prosecution for underage possession or consumption of alcoholic beverages if law enforcement became aware of the offense solely because the person was seeking medical assistance for another individual and all of the following conditions are met:

- the person sought medical assistance in good faith upon the reasonable belief that he or she was the first to call for medical assistance
- the person identified himself or herself when contacting authorities
- the person remained with the person needing assistance until help arrived

Under G.S. 90-106.2 of the Controlled Substances Act, a practitioner acting in good faith and exercising reasonable care is authorized to prescribe naloxone hydrochloride, a prescription medication used to counter the effects of opiate overdose, to a person at risk of experiencing an opiate-related overdose or to a family member, friend, or other person in a position to assist a person who is at risk of experiencing an opiate-related overdose. The prescribing practitioner, and any person receiving the drug from the practitioner who exercises reasonable care in administering the drug to a person under the good faith belief that the person is experiencing an opiate-related overdose, are immune from any civil or criminal liability for actions authorized under G.S. 90-106.2.

BILL ANALYSIS:

Section 1 of the PCS would amend G.S. 90-96.2 to:

- require all of the following conditions to be met in order for a person to receive immunity from prosecution for the specified drug-related offenses:
  (1) the person sought medical assistance for the drug-related overdose by contacting 911, a law enforcement officer, or emergency medical services personnel;
  (2) the person acted in good faith when seeking medical assistance in the reasonable belief that he or she was the first to call for assistance;
  (3) the person identified himself or herself when contacting 911 or to a law enforcement officer upon arrival;
  (4) the person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search; and
  (5) the evidence supporting prosecution was obtained as a result of the person seeking medical assistance for the drug-related overdose
- provide immunity from prosecution for the same offenses to the person needing medical assistance if requirements (1), (2), (4) and (5) all have been met
- prohibit imposing a sanction on a person for violating a condition of pretrial release, probation or parole if the sanction is based on an offense for which that person is immune from prosecution under this section
- provide immunity from civil liability to a law enforcement officer or prosecuting attorney for the good faith arrest, charge, or prosecution of a person who is subsequently found to be entitled to immunity under this section
- provide that G.S. 90-96.2:
  - does not bar the admission of evidence obtained in connection with the investigation and prosecution of any crimes committed by a person who does not qualify for limited immunity under G.S. 90-96.2;

- does not limit the seizure of evidence or contraband otherwise permitted by law
- does not limit a law enforcement officer's authority to detain or take into custody any person as part of an investigation of or arrest for any offense other than the four offenses for which limited immunity is available under G.S. 90-96.2
- does not limit a probation officer's authority to conduct drug testing of persons on pretrial release, probation, or parole

Section 2 of the PCS would amend G.S. 18B-302.2 to do the following:

- require all of the following conditions to exist in order for a person to receive immunity from prosecution for underage possession or consumption of alcohol:
  (1) the person sought medical assistance for an individual experiencing an alcohol-related overdose by contacting 911, a law enforcement officer, or emergency medical services personnel;
  (2) the person acted in good faith when seeking medical assistance in the reasonable belief that he or she was the first to call for assistance;
  (3) the person identified himself or herself when contacting 911 or to a law enforcement officer upon arrival;
  (4) the person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search; and
  (5) the evidence supporting prosecution was obtained as a result of the person seeking medical assistance for the alcohol-related overdose
- provide immunity from prosecution for underage possession or consumption of alcohol to the person needing medical assistance if requirements (1), (2), (4) and (5) all have been met
- prohibit imposing a sanction on a person for violating a condition of pretrial release, probation or parole if the sanction is based on an offense for which that person is immune from prosecution under this section
- provide immunity from civil liability to a law enforcement officer or prosecuting attorney for the good faith arrest, charge, or prosecution of a person who is subsequently found to be entitled to immunity under this section

Section 3 of the PCS would amend G.S. 90-106.2 to authorize a pharmacist to dispense an opioid antagonist to a person at risk of experiencing an opiate-related overdose or to a family member, friend, or other person in a position to assist a person at such risk, pursuant to a prescription issued by a practitioner in accordance with G.S. 90-106.2(b), and would grant the pharmacist immunity from any civil or criminal liability for doing so.

EFFECTIVE DATE: This act is effective when it becomes law and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

Senate Judiciary II

(Committee Name)

3/31/2015

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Andy Walsh	SA
Kara Weishaar	SA
Rebecca Murdock	Sentencing Commission

09-22-2012

VISITOR REGISTRATION SHEET

Senate Judiciary II

(Committee Name)

3/31/2015

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Agnieszka McCort	UNC IPRC
Ray Sanford	UNC IPRC / NCHRC

09-22-2012

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
[illegible]	NCBA	
Tom Maher	NCAOC	
Philip Isley	BMG	
Anna Roberts	Pub Sc Group	
Eddie Caldwell	NC Sheriffs' Assn.	
David Follin	VB	
Kim Crouch	NCBA	
Andy Brandon	DPS	
Andy DeRoin	NC Harm Reduction Coalition	
✓ [illegible]	Tarheel Community Cares, Inc.	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
CASANDRA SKINNER	NCAOC	
Barbara Moore	Conf of Clerks DSpCt	
Jan Kennedy	CSC - New Hanover Co.	
Jessica Eddy	GI	SB154
Mildred Spearman	NCAOC	
Chip Killian	Nelson Mullins	
Fred Baggett	Police Chiefs Assn	
Sarah Preston	ACLU-NC	
Dianne Carden Glenn	NCHRC	
Loftin Wilson	NCHRC	SB154
Tessie Castillo	NCHRC	SB154
Nicole Diaz Nelson	NCHRC	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.
Kay Sanford	NC Harm Reduction Coalition / NCHRC	SB154
✓ Jessie Castillo	NCHRC	SB154
J Zirbel	Rainbow Community Cares	SB154
Gary Cohen / COHEN	Nelson Mullins	SB154
✓ Eddie Caldwell	- Sheriff's Assoc	S154
✓ Fred Baggett	- Assoc of Police Chiefs	S154

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.

Senate Committee on Judiciary II
Thursday, April 2, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:05 AM on April 2, 2015 in Room 1124/1224 of the Legislative Building. 14 members were present.

Senator Shirley B. Randleman, Chair, presided.

Pages: Alex Epley of Jacksonville, Hannah Ross Patten of Concord, Will Patten of Concord, Adelle Patten of Concord.
Sgt. at Arms: Donna Black, Giles Jeffreys, Anderson Meadows.

SB 154 Clarifying the Good Samaritan Law. (Senator Bingham)
Senator J. Davis moved to have the PCS: PCS S154-CSTG-4 brought up for consideration rather than discussing the original bill. Senator Alexander seconded the motion. The motion carried.
Senator Bingham explained the bill with help of the committee's legal staff, Bill Patterson.
A few members spoke in favor of the bill. After minimal discussion, Senator J. Davis moved to find the original bill as unfavorable but favorable as to the PCS. The motion carried. The bill was reported out by the clerk "Unfavorable as to bill, but favorable as to committee substitute bill."

SB 488 Amend Uniform Interstate Family Support Act.-AB (Senator Pate)
Senator J. David moved to have the PCS: PCS S488-CSTJ-10 brought up for consideration rather than discussing the original bill. Senator McInnis seconded the motion. The motion carried.
Senator Pate presented the bill to the committee. A few members had questions about the bill which were answered by the bill sponsor as well as staff attorney, Jan Paul.
After discussion, Senator Bingham moved for finding the original bill as unfavorable but favorable as to the PCS. Senator Lowe seconded the motion. The motion carried. The bill was reported out by the clerk "Unfavorable as to bill, but favorable as to committee substitute bill."

SB 489 DHHS Child Support Recommendations.-AB (Senator Pate)
This bill was held over without discussion.

SB 311 Register of Deeds/Filing False Marriage Docs. (Senator Bingham)
Senator Bingham presented the bill to the committee. There was minimal discussion from the committee.
A member of the public spoke in favor of the bill: Wayne Rash for the NC Assn. of Register of Deeds.
After discussion, Senator Cook moved for a favorable report to the original bill. The motion carried. The bill was reported out by the clerk "Favorable."

SB 332 Register of Deeds-POA Indexing Fees. (Senator Daniel)

Senator Cook moved to have the PCS: PCS S332-CSTG-5 brought up for consideration rather than discussing the original bill. Senator Alexander seconded the motion. The motion carried. Co-Chair Daniel presented the bill to the committee. At least two members had questions or comments about the bill. One member of the public spoke to the bill: Wayne Rash in favor for the NC Assn. of Register of Deeds.
After discussion, Senator Bingham moved for finding the original bill as unfavorable but favorable as to the PCS, with a serial referral to Senate Finance. The motion carried. The bill was reported out by the clerk "Unfavorable as to bill, but favorable as to committee substitute bill" with a note indicating the serial referral to Senate Finance.

The meeting adjourned at 10:30 am.

Senator Shirley B. Randleman, Chair
Presiding

Patrick Limer, Committee Clerk

Senate Committee on Judiciary II
Thursday, April 2, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 154	Clarifying the Good Samaritan Law.	Senator Bingham
SB 488	Amend Uniform Interstate Family Support Act.-AB	Senator Pate
SB 489	DHHS Child Support Recommendations.-AB	Senator Pate
SB 311	Register of Deeds/Filing False Marriage Docs.	Senator Bingham
SB 332	Register of Deeds-POA Indexing Fees.	Senator Daniel

Presentations

Other Business

Adjournment

SENATE BILL 154

Short Title:	Clarifying the Good Samaritan Law.	(Public)
Sponsors:	Senator Bingham (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 4, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY HOW THE LIMITED IMMUNITY FROM PROSECUTION FOR CERTAIN DRUG- OR ALCOHOL-RELATED OFFENSES COMMITTED BY AN INDIVIDUAL EXPERIENCING A DRUG- OR ALCOHOL-RELATED OVERDOSE AND AN INDIVIDUAL WHO SEEKS MEDICAL ASSISTANCE FOR AN INDIVIDUAL EXPERIENCING A DRUG- OR ALCOHOL-RELATED OVERDOSE OPERATES, TO PROVIDE ADDITIONAL REQUIREMENTS AND CONDITIONS THAT MUST BE MET BEFORE THE LIMITED IMMUNITY IS ESTABLISHED, TO PROVIDE THAT A PERSON SHALL NOT BE SUBJECT TO SANCTIONS FOR A VIOLATION OF A CONDITION OF RELEASE, PROBATION, OR PAROLE IF BASED OFF AN INCIDENT FOR WHICH THE PERSON RECEIVED IMMUNITY, TO PROVIDE THAT A LAW ENFORCEMENT OFFICER OR PROSECUTING ATTORNEY SHALL NOT BE SUBJECT TO CIVIL LIABILITY FOR ARRESTING, CHARGING, OR PROSECUTING A PERSON ENTITLED TO IMMUNITY IF THE LAW ENFORCEMENT OFFICER OR PROSECUTING ATTORNEY ACTED IN GOOD FAITH, TO PROVIDE THAT A PHARMACIST MAY DISPENSE AN OPIOID ANTAGONIST UPON RECEIVING A PRESCRIPTION ISSUED IN ACCORDANCE WITH G.S. 90-106.2, AND TO PROVIDE THAT A PHARMACIST WHO DISPENSES AN OPIOID ANTAGONIST IN ACCORDANCE WITH G.S. 90-106.2 IS IMMUNE FROM CERTAIN CIVIL OR CRIMINAL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-96.2 reads as rewritten:

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

(a) ~~As used in this section, "drug-related overdose" means an~~Definitions. – The following definitions apply in this section:

(1) Drug-related overdose. – 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.

(2) Good faith. – The term does not include seeking medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(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.~~Limited Immunity for Samaritan. – A person shall not be prosecuted for any of the offenses listed in subsection (c3) of this section if all of the following requirements and conditions are met:

(1) The person sought medical assistance for an individual experiencing a drug-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.

(2) The person acted in good faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance.

(3) The person provided his or her own name to the 911 system or to a law enforcement officer upon arrival.

(4) The evidence for prosecution of the offenses listed in subsection (c3) of this section 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.~~Limited Immunity for Overdose Victim. – The immunity described in subsection (b) of this section shall extend to the person who experienced the drug-related overdose if all of the requirements and conditions listed in subdivisions (1), (2), and (4) of subsection (b) of this section are satisfied.

(c1) Probation or Release. – A person shall not be subject to any sanction for a violation of a condition of pretrial release, condition of probation, or condition of parole, if the sanction is based on an incident for which the person would receive immunity under subsection (b) or (c) of this section.

(c2) Civil Liability for Arrest, Charges, or Prosecution. – In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer or prosecuting attorney who, acting in good faith, arrests, charges, or prosecutes a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the arrest, filing of charges, or prosecution.

(c3) Covered Offenses. – A person shall have limited immunity from prosecution under subsections (b) and (c) of this section for only the following offenses:

(1) A misdemeanor violation of G.S. 90-95(a)(3).

(2) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine.

(3) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin.

(4) A violation of G.S. 90-113.22.

(d) ~~Nothing~~Construction. – Nothing in this section shall be construed to ~~bar~~do any of the following:

(1) Bar the admissibility of any evidence obtained in connection with the investigation and prosecution of (i) other crimes committed by a person who otherwise qualifies for limited immunity under this ~~section.~~section or (ii) any crimes committed by a person who does not qualify for limited immunity under this section.

(2) Limit any seizure of evidence or contraband otherwise permitted by law.

(3) Limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense other than an offense listed in subsection (c3) of this section.

(4) Limit or abridge the authority of a probation officer to conduct drug testing of persons on pretrial release, probation, or parole."

SECTION 2. G.S. 18B-302.2 reads as rewritten:

"**§ 18B-302.2. Medical treatment; limited immunity.**

(a) Limited Immunity for Samaritan. – Notwithstanding any other provision of law, a person under the age of 21 shall not be prosecuted for a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages if ~~law enforcement, including campus safety police, became aware of the possession or consumption of alcohol by the person solely because the person was seeking medical assistance for another individual. This section shall apply if, when seeking medical assistance on behalf of another, the person did all of the following:~~all of the following requirements and conditions are met:

(1) The person sought medical assistance for an individual experiencing an alcohol-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.

(1a) ~~Acted~~The person acted in good ~~faith,~~faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance. The term "good faith" has the same meaning as in G.S. 90-96.2.

(2) ~~Used~~The person provided his or her own name ~~when contacting authorities.~~to the 911 system or to a law enforcement officer upon arrival.

~~(3) Remained with the individual needing medical assistance until help arrived.~~

(4) The evidence for prosecution of a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages was obtained as a result of the person seeking medical assistance for the alcohol-related overdose.

(b) Limited Immunity for Overdose Victim. – The immunity described in subsection (a) of this section shall extend to the person who needed medical assistance if the requirements in subdivisions (1), (1a), and (4) of subsection (a) are satisfied.

(c) Probation or Release. – A person shall not be subject to any sanction for a violation of a condition of pretrial release, condition of probation, or condition of parole, if the sanction is based on an incident for which the person would receive immunity under subsection (a) or (b) of this section.

(d) Civil Liability for Arrest, Charges, or Prosecution. – In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer or prosecuting attorney who, acting in good faith, arrests, charges, or prosecutes a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the arrest, filing of charges, or prosecution."

SECTION 3. G.S. 90-106.2 reads as rewritten:

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

...

(b) A practitioner acting in good faith and exercising reasonable care may directly or by standing order prescribe 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 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.

(b1) A pharmacist may dispense an opioid antagonist to a person described in subsection (b) of this section pursuant to a prescription issued in accordance with subsection (b) of this section. For purposes of this section, the term "pharmacist" is as defined in G.S. 90-85.3.

...

(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 an opioid antagonist pursuant to subsection (b) of this section.

(2) Any pharmacist who dispenses an opioid antagonist pursuant to subsection (b1) of this section.

~~(2)~~(3) Any person who administers an opioid antagonist pursuant to subsection (c) of this section."

SECTION 4. This act is effective when it becomes law and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 154
PROPOSED COMMITTEE SUBSTITUTE S154-CSTG-4 [v.7]

4/1/2015 3:15:40 PM

Short Title: Clarifying the Good Samaritan Law. (Public)

Sponsors:

Referred to:

March 4, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE OPERATION OF THE LIMITED IMMUNITY FROM PROSECUTION FOR CERTAIN DRUG- OR ALCOHOL-RELATED OFFENSES COMMITTED BY AN INDIVIDUAL EXPERIENCING A DRUG- OR ALCOHOL-RELATED OVERDOSE AND AN INDIVIDUAL WHO SEEKS MEDICAL ASSISTANCE FOR AN INDIVIDUAL EXPERIENCING A DRUG- OR ALCOHOL-RELATED OVERDOSE, TO PROVIDE ADDITIONAL REQUIREMENTS AND CONDITIONS THAT MUST BE MET BEFORE THE LIMITED IMMUNITY IS ESTABLISHED, TO PROVIDE THAT A PERSON SHALL NOT BE SUBJECT TO ARREST OR REVOCATION OF PRETRIAL RELEASE, PROBATION, PAROLE OR POST-RELEASE IF BASED UPON AN OFFENSE FOR WHICH THE PERSON IS IMMUNE FROM PROSECUTION, TO PROVIDE THAT A LAW ENFORCEMENT OFFICER SHALL NOT BE SUBJECT TO CIVIL LIABILITY FOR ARRESTING OR CHARGING A PERSON ENTITLED TO IMMUNITY FROM PROSECUTION IF THE LAW ENFORCEMENT OFFICER ACTED IN GOOD FAITH, TO PROVIDE THAT A PHARMACIST MAY DISPENSE AN OPIOID ANTAGONIST UPON RECEIVING A PRESCRIPTION ISSUED IN ACCORDANCE WITH G.S. 90-106.2, AND TO PROVIDE THAT A PHARMACIST WHO DISPENSES AN OPIOID ANTAGONIST IN ACCORDANCE WITH G.S. 90-106.2 IS IMMUNE FROM CERTAIN CIVIL OR CRIMINAL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-96.2 reads as rewritten:

"**§ 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.~~Limited Immunity for Samaritan. – A person shall not be prosecuted for any of the

offenses listed in subsection (c3) of this section if all of the following requirements and conditions are met:

(1) The person sought medical assistance for an individual experiencing a drug-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.

(2) The person acted in good faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance.

(3) The person provided his or her own name to the 911 system or to a law enforcement officer upon arrival.

(4) The person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(5) The evidence for prosecution of the offenses listed in subsection (c3) of this section 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.~~Limited Immunity for Overdose Victim. – The immunity described in subsection (b) of this section shall extend to the person who experienced the drug-related overdose if all of the requirements and conditions listed in subdivisions (1), (2), (4), and (5) of subsection (b) of this section are satisfied.

(c1) Probation or Release. – A person shall not be subject to arrest or revocation of pretrial release, probation, parole or post-release if the arrest or revocation is based on an offense for which the person is immune from prosecution under subsection (b) or (c) of this section. The arrest of a person for an offense for which subsection (b) or (c) of this section may provide the person with immunity will not itself be deemed to be a commission of a new criminal offense in violation of a condition of the person's pretrial release, condition of probation, or condition of parole or post-release.

(c2) Civil Liability for Arrest or Charges. – In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer who, acting in good faith, arrests or charges a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the arrest or filing of charges.

(c3) Covered Offenses. – A person shall have limited immunity from prosecution under subsections (b) and (c) of this section for only the following offenses:

(1) A misdemeanor violation of G.S. 90-95(a)(3).

(2) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine.

(3) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin.

(4) A violation of G.S. 90-113.22.

(d) ~~Nothing~~Construction. – Nothing in this section shall be construed to ~~bar~~do any of the following:

(1) Bar the admissibility of any evidence obtained in connection with the investigation and prosecution of (i) other crimes committed by a person who otherwise qualifies for limited immunity under this ~~section.~~section or (ii) any crimes committed by a person who does not qualify for limited immunity under this section.

(2) Limit any seizure of evidence or contraband otherwise permitted by law.

(3) Limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation of, or to effectuate an arrest for, any offense other than an offense listed in subsection (c3) of this section.

(4) Limit or abridge the authority of a probation officer to conduct drug testing of persons on pretrial release, probation, or parole."

SECTION 2. G.S. 18B-302.2 reads as rewritten:

"**§ 18B-302.2. Medical treatment; limited immunity.**

(a) Limited Immunity for Samaritan. – Notwithstanding any other provision of law, a person under the age of 21 shall not be prosecuted for a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages if ~~law enforcement, including campus safety police, became aware of the possession or consumption of alcohol by the person solely because the person was seeking medical assistance for another individual. This section shall apply if, when seeking medical assistance on behalf of another, the person did all of the following:~~all of the following requirements and conditions are met:

(1) The person sought medical assistance for an individual experiencing an alcohol-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.

(1a) ~~Acted~~The person acted in good ~~faith,~~faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance.

(2) ~~Used~~The person provided his or her own name ~~when contacting authorities.~~to the 911 system or to a law enforcement officer upon arrival.

~~(3) Remained with the individual needing medical assistance until help arrived.~~

(4) The person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(5) The evidence for prosecution of a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages was obtained as a result of the person seeking medical assistance for the alcohol-related overdose.

(b) Limited Immunity for Overdose Victim. – The immunity described in subsection (a) of this section shall extend to the person who needed medical assistance if the requirements in subdivisions (1), (1a), (4), and (5) of subsection (a) are satisfied.

(c) Probation or Release. – A person shall not be subject to arrest or revocation of pretrial release, probation, parole or post-release if the arrest or revocation is based on an offense for which the person is immune from prosecution under subsection (a) or (b) of this section. The arrest of a person for an offense for which subsection (a) or (b) of this section may provide the person with immunity will not itself be deemed to be a commission of a new criminal offense in violation of a condition of the person's pretrial release, condition of probation, or condition of parole or post-release.

(d) Civil Liability for Arrest or Charges. – In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer who, acting in good faith, arrests or charges a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the arrest or filing of charges."

SECTION 3. G.S. 90-106.2 reads as rewritten:

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

...

(b) A practitioner acting in good faith and exercising reasonable care may directly or by standing order prescribe 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 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.

(b1) A pharmacist may dispense an opioid antagonist to a person described in subsection (b) of this section pursuant to a prescription issued in accordance with subsection (b) of this section. For purposes of this section, the term "pharmacist" is as defined in G.S. 90-85.3.

...

(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 an opioid antagonist pursuant to subsection (b) of this section.

(2) Any pharmacist who dispenses an opioid antagonist pursuant to subsection (b1) of this section.

~~(2)~~(3) Any person who administers an opioid antagonist pursuant to subsection (c) of this section."

SECTION 4. This act is effective when it becomes law and applies to offenses committed on or after that date.

SENATE BILL 154:
Clarifying the Good Samaritan Law

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 30, 2015
Introduced by:	Sen. Bingham	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition S154-CSTG-4		

SUMMARY: The PCS for Senate Bill 154 would do the following:

1) ***impose additional requirements that must be met before a person can receive immunity from criminal prosecution under G.S. 90-96.2 and G.S. 18B-302;***
2) ***prohibit arresting a person or revoking a person's pretrial release, probation, parole or post-release based on an offense for which that person is entitled to immunity under G.S. 90-96.2 and G.S. 18B-302;***
3) ***grant immunity from civil liability to law enforcement officers who in good faith arrest or charge persons later found to be entitled to immunity under G.S. 90-96.2 and G.S. 18B-302;***
4) ***provide that nothing in G.S. 90-96.2 bars admission of evidence of crimes by a person not entitled to immunity, limits seizure of evidence or contraband otherwise permitted by law, limits a law enforcement officer's authority to detain or take into custody a person during an arrest for or investigation of offenses other than those for which limited immunity is provided in G.S. 90-96.2, or limits a probation offer's authority to conduct drug testing on persons on pretrial release, probation, or parole; and***
5) ***amend G.S. 90-106.2 to authorize pharmacists to dispense an opiate antagonist prescribed in accordance with this section to a person at risk of experiencing an opiate-related overdose or to a family member, friend, or other person in a position to assist that person, and to grant pharmacists immunity from civil and criminal liability for dispensing an opiate antagonist pursuant to this authority.***

The PCS makes technical and conforming changes to the bill.

CURRENT LAW: Under G.S. 90-96.2 of the Controlled Substances Act, a person acting in good faith when seeking medical assistance for an individual suffering from a drug-related overdose is immune from criminal prosecution for the following offenses if the evidence supporting prosecution was obtained as a result of the person seeking medical assistance for the drug-related overdose:

- misdemeanor possession of drug paraphernalia in violation of G.S. 90-113.22
- misdemeanor possession of a controlled substance in violation of G.S. 90-95(a)(3)
- felony possession of less than one gram of cocaine in violation of G.S. 90-95(a)(3)
- felony possession of less than one gram of heroin in violation of G.S. 90-95(a)(3)

In addition, the person suffering from a drug-related overdose and needing medical assistance is immune from criminal prosecution for these offenses if the evidence supporting prosecution was obtained as a result of the drug-related overdose and the person's need for medical assistance.

Evidence obtained in connection with an investigation of other crimes committed by a person entitled to this limited immunity remains admissible in a prosecution for those other crimes.

Under G.S. 18B-302.2, a person under the age of 21 is immune from prosecution for underage possession or consumption of alcoholic beverages if law enforcement became aware of the offense solely because the person was seeking medical assistance for another individual and all of the following conditions are met:

- the person sought medical assistance in good faith upon the reasonable belief that he or she was the first to call for medical assistance
- the person identified himself or herself when contacting authorities
- the person remained with the person needing assistance until help arrived

Under G.S. 90-106.2 of the Controlled Substances Act, a practitioner acting in good faith and exercising reasonable care is authorized to prescribe naloxone hydrochloride, a prescription medication used to counter the effects of opiate overdose, to a person at risk of experiencing an opiate-related overdose or to a family member, friend, or other person in a position to assist a person who is at risk of experiencing an opiate-related overdose. The prescribing practitioner, and any person receiving the drug from the practitioner who exercises reasonable care in administering the drug to a person under the good faith belief that the person is experiencing an opiate-related overdose, are immune from any civil or criminal liability for actions authorized under G.S. 90-106.2.

BILL ANALYSIS:

Section 1 of the PCS would amend G.S. 90-96.2 to:

- require all of the following conditions to be met in order for a person to receive immunity from prosecution for the specified drug-related offenses:
  - (1) the person sought medical assistance for the drug-related overdose by contacting 911, a law enforcement officer, or emergency medical services personnel;
  - (2) the person acted in good faith when seeking medical assistance in the reasonable belief that he or she was the first to call for assistance;
  - (3) the person identified himself or herself when contacting 911 or to a law enforcement officer upon arrival;
  - (4) the person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search; and
  - (5) the evidence supporting prosecution was obtained as a result of the person seeking medical assistance for the drug-related overdose
- provide immunity from prosecution for the same offenses to the person needing medical assistance if requirements (1), (2), (4) and (5) all have been met
- prohibit arresting a person or revoking a person's pretrial release, probation, parole or post-release based on an offense for which that person is immune from prosecution under this section
- provide immunity from civil liability to a law enforcement officer who, in good faith, arrests or charges a person who is subsequently found to be entitled to immunity under this section
- provide that G.S. 90-96.2:
  - does not bar the admission of evidence obtained in connection with the investigation and prosecution of any crimes committed by a person who does not qualify for limited immunity under G.S. 90-96.2;
  - does not limit the seizure of evidence or contraband otherwise permitted by law

- does not limit a law enforcement officer's authority to detain or take into custody any person as part of an investigation of or arrest for any offense other than the four offenses for which limited immunity is available under G.S. 90-96.2
- does not limit a probation officer's authority to conduct drug testing of persons on pretrial release, probation, or parole

Section 2 of the PCS would amend G.S. 18B-302.2 to do the following:

- require all of the following conditions to exist in order for a person to receive immunity from prosecution for underage possession or consumption of alcohol:
  (1) the person sought medical assistance for an individual experiencing an alcohol-related overdose by contacting 911, a law enforcement officer, or emergency medical services personnel;
  (2) the person acted in good faith when seeking medical assistance in the reasonable belief that he or she was the first to call for assistance;
  (3) the person identified himself or herself when contacting 911 or to a law enforcement officer upon arrival;
  (4) the person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search; and
  (5) the evidence supporting prosecution was obtained as a result of the person seeking medical assistance for the alcohol-related overdose
- provide immunity from prosecution for underage possession or consumption of alcohol to the person needing medical assistance if requirements (1), (2), (4) and (5) all have been met
- prohibit arresting a person or revoking a person's pretrial release, probation, parole or post-release based on an offense for which that person is immune from prosecution under this section
- provide immunity from civil liability to a law enforcement officer who, in good faith, arrests or charges a person who is subsequently found to be entitled to immunity under this section

Section 3 of the PCS would amend G.S. 90-106.2 to authorize a pharmacist to dispense an opioid antagonist to a person at risk of experiencing an opiate-related overdose or to a family member, friend, or other person in a position to assist a person at such risk, pursuant to a prescription issued by a practitioner in accordance with G.S. 90-106.2(b), and would grant the pharmacist immunity from any civil or criminal liability for doing so.

EFFECTIVE DATE: This act is effective when it becomes law and applies to offenses committed on or after that date.

SENATE BILL 488

Short Title:	Amend Uniform Interstate Family Support Act.-AB	(Public)
Sponsors:	Senators Pate (Primary Sponsor); and Hise.	
Referred to:	Rules and Operations of the Senate.	

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA).

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 52C of the General Statutes reads as rewritten:

"**Chapter 52C.**

"**Uniform Interstate Family Support Act.**

"Article 1.

"General Provisions.

...

"**§ 52C-1-101. Definitions.**

As used in this ~~Article, unless the context clearly requires otherwise, the term:~~Chapter:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing ~~state.~~state or foreign country.

(2a) "Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

(2b) "Department" means the North Carolina Department of Health and Human Services, Division of Social Services.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(3a) "Foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

a. Which has been declared under the law of the United States to be a foreign reciprocating country;

b. Which has established a reciprocal arrangement for child support with this state as provided in G.S. 52C-3-308;

c. Which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this Chapter; or

d. In which the Convention is in force with respect to the United States.

(3b) "Foreign support order" means a support order of a foreign tribunal.

(3c) "Foreign tribunal" means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.

(4) "Home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six-months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this ~~State.~~state.

(6) "Income-withholding order" means an order or other legal process directed to ~~a payer of income~~an obligor's employer, other debtor, or payor as defined under Chapter 110 of the General Statutes, to withhold support from the income of the obligor.

~~(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.~~

(8) "Initiating tribunal" means the ~~authorized tribunal in an initiating state.~~tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

(8a) "Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

(9) "Issuing state" means the state in which a tribunal issues a support order or ~~renders~~ a judgment determining ~~parentage.~~parentage of a child.

(10) "Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or ~~renders~~ a judgment determining ~~parentage.~~parentage of a child.

(11) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(12) "Obligee" means:

a. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order ~~has been issued~~ or a judgment determining parentage of a child has been ~~rendered;~~issued;

b. A ~~state~~ foreign country, state, or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual ~~obligee; or~~obligee in place of child support;

c. An individual seeking a judgment determining parentage of the individual's ~~child.~~child;

d. A person that is a creditor in a proceeding under Article 7 of this Chapter.

(13) "Obligor" means an ~~individual,~~individual who, or the estate of a ~~decedent:~~decedent that:

a. ~~Who owes~~Owes or is alleged to owe a duty of support;
b. ~~Who is~~Is alleged but has not been adjudicated to be a parent of a child;~~ or~~
c. ~~Who is~~Is liable under a support ~~order.~~order; or
d. Is a debtor in a proceeding under Article 7 of this Chapter.

(13a) "Outside this state" means a location in another state or country other than the United States, whether or not the country is a foreign country.

(13b) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13c) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Register" means to file in a tribunal of this state a support order or judgment determining ~~paternity in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.~~parentage of a child issued in another state or foreign country.

(15) "Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered.

(16) "Responding state" means a state in which a ~~proceeding~~ petition or comparable pleading for support or to determine parentage of a child is filed or to which a ~~proceeding~~ petition or comparable pleading is forwarded for filing from ~~an initiating state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.~~another state or foreign country.

(17) "Responding tribunal" means the authorized tribunal in a responding ~~state.~~state or foreign country.

(18) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession ~~subject to~~under the jurisdiction of the United States. The term ~~includes:~~includes an Indian nation or tribe.

~~a. An Indian tribe; and~~
~~b. A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.~~

(20) "Support enforcement agency" means a public ~~official~~official, governmental entity, or private agency authorized ~~to seek:~~to:

a. ~~Enforcement~~ Seek enforcement of support orders or duties of support;
b. ~~Establishment~~ Seek establishment or modification of child support;
c. ~~Determination of parentage; or~~Request determination of parentage of a child;
d. ~~To~~ Attempt to locate obligors or their ~~assets.~~assets; or
e. Request determination of the controlling child support order.

(21) "Support order" means a judgment, decree, ~~or~~ order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, ~~arrears,~~arrearages, retroactive support, or ~~reimbursement, and~~reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorneys' fees, and other relief.

(22) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine ~~paternity, except that, for matters heard in this State, tribunal means the General Court of Justice, District Court Division.~~parentage of a child.

"**§ 52C-1-102. ~~District court has jurisdiction under this Act.~~State tribunal and support enforcement agency.**

(a) The General Court of Justice, District Court ~~Division~~ Division, is the ~~court authorized to hear matters under this Act.~~tribunal of this state.

(b) The Department and the county child support agencies under G.S. 110-141 are the support enforcement agencies of this state.

"**§ 52C-1-103. ~~Remedies.~~Remedies cumulative.**

(a) Remedies provided by this ~~Act~~ Chapter are cumulative and do not affect the availability of remedies under other ~~law.~~law or the recognition of a foreign support order on the basis of comity.

(b) This Chapter does not:

(1) Provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(2) Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this Chapter.

"**§ 52C-1-104. Application of Chapter to resident of foreign country and foreign support proceeding.**

(a) A tribunal of this state shall apply Articles 1 through 6 and, as applicable, Article 7 of this Chapter, to a support proceeding involving:

(1) A foreign support order;

(2) A foreign tribunal; or

(3) An obligee, obligor, or child residing in a foreign country.

(b) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Articles 1 through 6 of this Chapter.

(c) Article 7 of this Chapter applies only to a support proceeding under the Convention. In such a proceeding, if a provision of Article 7 is inconsistent with Articles 1 through 6 of this Chapter, Article 7 controls.

"Article 2.

"Jurisdiction.

"~~Part 1. Extended Personal Jurisdiction.~~

"**§ 52C-2-201. Bases for jurisdiction over nonresident.**

(a) In a proceeding to ~~establish, enforce, or modify~~establish or enforce a support order or to determine ~~parentage,~~parentage of a child, a tribunal of this ~~State~~ state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) The individual is personally served with a summons and complaint within this ~~State;~~state;

(2) The individual submits to the jurisdiction of this ~~State~~ state by ~~consent,~~ consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) The individual resided with the child in this ~~State;~~state;

(4) The individual resided in this ~~State~~ state and provided prenatal expenses or support for the child;

(5) The child resides in this ~~State~~ state as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in this ~~State~~ state and the child may have been conceived by that act of intercourse; or

~~(7) The individual asserted paternity in an affidavit which has been filed with the clerk of superior court; or~~

(8) There is any other basis consistent with the constitutions of this ~~State~~ state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of the state to modify a child support order of another state unless the requirements of G.S. 52C-6-611 are met, or, in the case of a foreign support order, unless the requirements of G.S. 52C-6-615 are met.

"§ 52C-2-202. ~~Procedure when exercising jurisdiction over nonresident.~~Duration of personal jurisdiction.

~~A court of this State exercising personal jurisdiction over a nonresident under G.S. 52C-2-201 may apply G.S. 52C-3-315 to receive evidence from another state, and G.S. 52C-3-317 to obtain discovery through a tribunal of another state. In all other respects, Articles 3 through 7 of this Chapter do not apply and the tribunal shall apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this Chapter.~~

Personal jurisdiction acquired by a tribunal of this state in a proceeding under this Chapter or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by G.S. 52C-2-205, 52C-2-206, and 52C-2-211.

~~"Part 2. Proceedings Involving Two or More States.~~

"§ 52C-2-203. Initiating and responding tribunal of state.

Under this Chapter, a tribunal of this ~~State~~ state may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another ~~state.~~state or foreign country.

"§ 52C-2-204. Simultaneous ~~proceedings in another state.~~proceedings.

(a) A tribunal of this ~~State~~ state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state or foreign country only if:

(1) The petition or comparable pleading in this ~~State~~ state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other ~~state;~~state or the foreign country;

(2) The contesting party timely challenges the exercise of jurisdiction in the other ~~state;~~state or the foreign country; and

(3) If relevant, this ~~State~~ state is the home state of the child.

(b) A tribunal of this ~~State~~ state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(1) The petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this ~~State~~ state for filing a responsive pleading challenging the exercise of jurisdiction by this ~~State;~~state;

(2) The contesting party timely challenges the exercise of jurisdiction in this ~~State;~~state; and

(3) If relevant, the other state or foreign country is the home state of the child.

"§ 52C-2-205. Continuing, exclusive ~~jurisdiction.~~jurisdiction to modify child support order.

(a) A tribunal of this ~~State issuing~~state that has issued a child support order consistent with the law of this ~~State~~ state has and shall exercise continuing, exclusive jurisdiction ~~over a~~to modify its child support ~~order:~~order if the order is the controlling order and:

(1) ~~As long as this State remains~~At the time of the filing of a request for modification, this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) ~~Until all of the parties who are individuals have filed written consents with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.~~Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this ~~State issuing~~state that has issued a child support order consistent with the law of this ~~State~~ state may not exercise ~~its continuing~~ continuing, exclusive jurisdiction to modify the order ~~if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this Chapter.~~if:

(1) All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify that order and assume continuing, exclusive jurisdiction; or

(2) Its order is not the controlling order.

~~(c) If a child support order of this State is modified by a tribunal of another state pursuant to a law substantially similar to this Chapter, a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:~~

~~(1) Enforce the order that was modified as to amounts accruing before the modification;~~

~~(2) Enforce nonmodifiable aspects of that order; and~~

~~(3) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.~~

(d) ~~A tribunal of this State shall recognize the continuing, exclusive jurisdiction of~~If a tribunal of another state ~~which~~ has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to ~~this Chapter.~~that Act that modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d1) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

~~(f) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.~~

"§ 52C-2-206. ~~Enforcement and modification of support order by tribunal having continuing jurisdiction.~~Continuing jurisdiction to enforce child support order.

(a) A tribunal of this ~~State~~ state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to ~~enforce or modify a support order issued in that state.~~enforce:

(1) The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

(2) A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal of this ~~State~~ state having ~~continuing, exclusive~~continuing jurisdiction over a support order may act as a responding tribunal to enforce ~~or modify~~ the order. ~~If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply G.S. 52C-3-315 to receive evidence from another state and G.S. 52C-3-317 to obtain discovery through a tribunal of another state.~~

~~(c) A tribunal of this State which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.~~

~~"Part 3. Reconciliation of Multiple Orders.~~

"§ 52C-2-207. ~~Recognition~~ Determination of controlling child support order.

(a) If a proceeding is brought under this Chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be ~~so~~ recognized.

(b) If a proceeding is brought under this Chapter, and two or more child support orders have been issued by tribunals of this ~~State or another state~~state, another state, or a foreign country with regard to the same obligor and same child, a tribunal of this ~~State~~ state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules ~~in determining~~and by order shall determine which order ~~to recognize for purposes of continuing, exclusive jurisdiction:~~controls and must be recognized:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the order of that tribunal ~~controls and must be so recognized.~~controls.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this ~~Chapter,~~Chapter:

a. ~~an~~ An order issued by a tribunal in the current home state of the child ~~controls and must be so recognized, but if~~controls; or

b. If an order has not been issued in the current home state of the child, the order most recently issued ~~controls and must be so recognized.~~controls.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the tribunal of this ~~State having jurisdiction over the parties~~state shall issue a child support order, which ~~controls and must be so recognized.~~controls.

(c) If two or more child support orders have been issued for the same obligor and ~~child and if the obligor or the individual obligee resides in this State,~~same child, upon request of a party ~~may request~~who is an individual or that is a support enforcement agency, a tribunal of

this ~~to State~~state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls ~~and must be so recognized~~ under subsection (b) of this section. ~~The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by a certified copy of every support order in the effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.~~The request may be filed with a registration for enforcement or registration for modification pursuant to Article 6 of this Chapter or may be filed as a separate proceeding.

(c1) A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section ~~is the tribunal that has continuing, exclusive~~has continuing jurisdiction ~~under G.S. 52C-2-205.~~to the extent provided in G.S. 52C-2-205 or G.S. 52C-2-206.

(e) A tribunal of this ~~State which~~ state that determines by order ~~the identity of~~which is the controlling order under subdivision (b)(1) or (2) or subsection (c) of this ~~section~~ section, or ~~which~~ that issues a new controlling order under subdivision (b)(3) of this ~~section~~ section, shall state in that ~~order the~~ order:

(1) The basis upon which the tribunal made its ~~determination.~~determination;

(2) The amount of the prospective support, if any; and

(3) The total amount of consolidated arrears and accrued interest, if any, under all of the order after all payments made are credited as provided by G.S. 52C-2-209.

(f) Within 30 days after issuance of an order determining ~~the identity of~~ which is the controlling order, the party obtaining the order shall file a certified copy of ~~it with~~ the order in each tribunal that issued or registered an earlier order of child support. A party ~~who obtains~~or support enforcement agency obtaining the order ~~and~~ that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this Chapter.

"§ 52C-2-208. ~~Multiple child~~Child support orders for two or more obligees.

In responding to ~~multiple~~ registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another ~~state,~~state or foreign country, a tribunal of this ~~State~~ state shall enforce those orders in the same manner as if the ~~multiple~~ orders had been issued by a tribunal of this ~~State.~~state.

"§ 52C-2-209. Credit for payments.

~~Amounts collected and credited~~A tribunal of this state shall credit amounts collected for a particular period pursuant to ~~a support order~~any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of ~~another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this State.~~this state, another state, or a foreign country.

"§ 52C-2-210. Application of this Chapter to nonresident subject to personal jurisdiction.

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this Chapter, under other law of this state relating to a support order, or recognizing a foreign support order may receive evidence from outside this state pursuant to G.S. 52C-3-316, communicate with a tribunal outside this state pursuant to G.S. 52C-3-317, and obtain

discovery through a tribunal outside this state pursuant to G.S. 52C-3-318. In all other respects, Articles 3 through 6 of this Chapter do not apply and the tribunal shall apply the procedural and substantive law of this state.

"**§ 52C-2-211. Continuing, exclusive jurisdiction to modify spousal support order.**

(a) A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

(b) A tribunal of this state may not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

(1) An initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or

(2) A responding tribunal to enforce or modify its own spousal support order.

"Article 3.

"Civil Provisions of General Application.

"**§ 52C-3-301. Proceedings under this Chapter.**

(a) Except as otherwise provided in this Chapter, this Article applies to all proceedings under this Chapter.

~~(b) This Chapter provides for the following proceedings:~~

~~(1) Establishment of an order for spousal support or child support pursuant to Article 4 of this Chapter;~~

~~(2) Enforcement of a support order and income withholding order of another state without registration pursuant to Article 5 of this Chapter;~~

~~(3) Registration of an order for spousal support or child support of another state or enforcement pursuant to Article 6 of this Chapter;~~

~~(4) Modification of an order for child support or spousal support issued by a tribunal of this State pursuant to Article 2, Part 2 of this Chapter;~~

~~(5) Registration of an order for child support of another state for modification pursuant to Article 6 of this Chapter;~~

~~(6) Determination of paternity pursuant to Article 7 of this Chapter; and~~

~~(7) Assertion of jurisdiction over nonresidents pursuant to Article 2, Part 1 of this Chapter.~~

(c) An individual petitioner or a support enforcement agency may ~~commence~~ initiate a proceeding authorized under this Chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent.

"**§ 52C-3-302. ~~Action~~ Proceeding by minor parent.**

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

"**§ 52C-3-303. Application of law of this ~~State.~~ state.**

Except as otherwise provided ~~by~~ in this Chapter, a responding tribunal of this ~~State:~~state shall:

(1) ~~Shall apply~~Apply the procedural and substantive ~~law, including the rules on choice of law,~~law generally applicable to similar proceedings originating in this ~~State~~ state and may exercise all powers and provide all remedies available in those proceedings; and

(2) ~~Shall determine~~Determine the duty of support and the amount payable in accordance with the law and support guidelines of this ~~State.~~state.

"**§ 52C-3-304. Duties of initiating tribunal.**

(a) Upon the filing of a petition authorized by this Chapter, an initiating tribunal of this ~~State~~ state shall forward ~~three copies of~~ the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If ~~a responding state has not enacted this act or a law or procedure substantially similar to this act,~~requested by the responding tribunal, a tribunal of this ~~State may~~state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding ~~State~~ tribunal is in a foreign ~~jurisdiction, the tribunal may~~country, upon request, the tribunal of this state shall specify the amount of support ~~sought~~ sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding ~~state.~~foreign tribunal.

"**§ 52C-3-305. Duties and powers of responding tribunal.**

(a) When a responding tribunal of this ~~State~~ state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to G.S. 52C-3-301(c) it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this ~~State.~~state, to the extent ~~otherwise authorized~~not prohibited by law, may do one or more of the following:

(1) ~~Issue~~ Establish or enforce a support order, modify a child support order, determine the controlling child support order, or ~~render a judgment to~~ determine ~~parentage;~~parentage of a child;

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) Order income withholding;

(4) Determine the amount of any arrears, and specify a method of payment;

(5) Enforce orders by civil or criminal contempt, or both;

(6) Set aside property for satisfaction of the support order;

(7) Place liens and order execution on the obligor's property;

(8) Order an obligor to keep the tribunal informed of the obligor's current residential address, electronic-mail address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) Issue an order for arrest for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the order for arrest in any local and ~~State~~ state computer systems for criminal warrants;

(10) Order the obligor to seek appropriate employment by specified methods;

(11) Award reasonable attorneys' fees and other fees and costs; and

(12) Grant any other available remedy.

(c) A responding tribunal of this ~~State~~ state shall include in a support order issued under this Chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this ~~State~~ state may not condition the payment of a support order issued under this Chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this ~~State~~ state issues an order under this Chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount

stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

"§ 52C-3-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this ~~State,~~ ~~it~~state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal ~~in this State~~ of this state or another state and notify the petitioner where and when the pleading was sent.

"§ 52C-3-307. Duties of support enforcement agency.

(a) ~~A support enforcement agency of this State, upon request, shall provide services to a petitioner in a proceeding under this Chapter.~~In a proceeding under this Chapter, a support enforcement agency of this state, upon request, shall provide the following:

(1) Services to a petitioner residing in a state.

(2) Services to a petitioner requesting services through a central authority of a foreign country as described in G.S. 52C-1-102(3a)a. or d.

A support enforcement agency of this state may provide services to a petitioner who is an individual not residing in a state.

(b) A support enforcement agency of this state that is providing services to the petitioner ~~as appropriate~~ shall:

(1) Take all steps necessary to enable an appropriate tribunal ~~in this State or another state~~of this state, another state, or a foreign country to obtain jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time, and place for a hearing;

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of ~~a written~~ notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(5) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of ~~a written~~ communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(b1) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts to:

(1) Ensure that the order to be registered is the controlling order; or

(2) If two or more child support orders exist and the identity of the controlling order has not been determined, ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(b2) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(b3) A support enforcement agency of this state shall request a tribunal of this state to issue a child support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to G.S. 52C-3-318.

(c) This Chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

"§ 52C-3-308. ~~Representation of obligee.~~Duty of Department.

~~It shall be the duty of the district attorney to represent the obligee in proceedings authorized by this Chapter unless alternative arrangements are made by the obligee. An obligee may employ private counsel to represent the obligee in proceedings authorized by this Chapter.~~

(a) If the Department determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the Department may order the agency to perform its duties under this Chapter or may provide those services directly to the individual.

(b) The Department may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

"**§ 52C-3-308.1. Private counsel.**

An individual may employ private counsel to represent the individual in proceedings authorized by this Chapter.

"**§ 52C-3-309. Duties of ~~State~~ state information agency.**

(a) The Department ~~of Health and Human Services, Division of Social Services, is designated as the State~~is the state information agency under this Chapter.

(b) The ~~State~~ state information agency shall:

(1) Compile and maintain a current list, including addresses, of the tribunals in this ~~State~~ state which have jurisdiction under this Chapter and any support enforcement agencies in this ~~State~~ state and transmit a copy to the state information agency of every other state;

(2) Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) Forward to the appropriate tribunal in the ~~place~~ county in this ~~State~~ state in which the ~~individual~~ obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this Chapter received from ~~an initiating tribunal or the state information agency of the initiating state;~~ another state or a foreign country; and

(4) Obtain information concerning the location of the obligor and the obligor's property within this ~~State~~ state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, drivers licenses, and social security.

"**§ 52C-3-310. Pleadings and accompanying documents.**

(a) ~~A~~ In a proceeding under this Chapter, a petitioner seeking to establish ~~or modify a support order or~~a support order, to determine parentage ~~in a proceeding under this Chapter~~of a child, or to register and modify a support order of a tribunal of another state or a foreign country must ~~verify the~~ file a petition. Unless otherwise ordered under G.S. 52C-3-311, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the ~~obligee,~~obligee or the parent and alleged parent and the name, sex, residential address, social security number, and date of birth of each child for ~~whom~~ whose benefit support is ~~sought.~~sought or whose parentage is to be determined. ~~The~~ Unless filed at the time of registration, the petition must be accompanied by a ~~certified~~ copy of any support order ~~in effect.~~known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

"**§ 52C-3-311. Nondisclosure of information in exceptional circumstances.**

~~Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this Chapter.~~ If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

"**§ 52C-3-312. Costs and fees.**

(a) The petitioner shall not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorneys' fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding ~~state,~~state or foreign country, except as provided by other law. Attorneys' fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorneys' fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6 of this Chapter, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

"**§ 52C-3-313. Limited immunity of petitioner.**

(a) Participation by a petitioner in a proceeding under this Chapter before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this ~~State~~ state to participate in a proceeding under this Chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this Chapter committed by a party while present in this ~~State~~ state to participate in the proceeding.

…

"**§ 52C-3-315. Special rules of evidence and procedure.**

(a) The physical presence of ~~the petitioner in a responding~~a nonresident party who is an individual in a tribunal of this ~~State~~ state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining ~~parentage.~~parentage of a child.

(b) ~~A verified petition,~~An affidavit, a document substantially complying with federally mandated forms, ~~and~~ or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under ~~oath~~ penalty of perjury by a party or witness residing ~~in another~~outside this state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(d) Copies of bills for testing for ~~parentage,~~parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days

before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from ~~another~~ outside this state to a tribunal of this ~~State~~ state by telephone, telecopier, or other electronic means that do not provide an original ~~writing~~ record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this Chapter, a tribunal of this ~~State may~~state shall permit a party or witness residing ~~in another~~outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other ~~location in that state.~~location. A tribunal of this ~~State~~ state shall cooperate with other tribunals ~~of other states~~ in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communication between spouses does not apply in a proceeding under this Chapter.

(i) The defense of immunity based on the relationship of ~~husband and wife~~marital partners or parent and child does not apply in a proceeding under this Chapter.

(j) A voluntary acknowledgement of paternity, certified as a true copy, is admissible to establish parentage of the child.

"§ 52C-3-316. Communications between tribunals.

A tribunal of this ~~State~~ state may communicate with a tribunal ~~of another~~outside this state in ~~writing, or by telephone~~a record or by telephone, electronic mail, or other means, to obtain information concerning the ~~laws of that state,~~laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a ~~proceeding in the other state.~~proceeding. A tribunal of this ~~State~~ state may furnish similar information by similar means to a tribunal ~~of another~~outside this state.

"§ 52C-3-317. Assistance with discovery.

A tribunal of this ~~State may request~~ state may:

(1) Request a tribunal ~~of another~~outside this state to assist in obtaining ~~discovery,~~discovery; and

(2) ~~upon~~ Upon request, may compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal ~~of another~~outside this state.

"§ 52C-3-318. Receipt and disbursement of payments.

(a) A support enforcement agency or tribunal of this ~~State~~ state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

(1) Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (b) of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

"Article 4.

"Establishment of Support ~~Order.~~Order or Determination of Parentage.

"§ 52C-4-401. ~~Petition to establish~~Establishment of support order.

(a) If a support order entitled to recognition under this Chapter has not been issued, a responding tribunal of this ~~State~~ state with personal jurisdiction over the parties may issue a support order if:

(1) The individual seeking the order resides in another state; or

(2) The support enforcement agency seeking the order is located ~~in another~~ outside this state.

(b) The tribunal may issue a temporary child support order ~~if:~~if the tribunal determines that such an order is appropriate and the individual ordered to pay is any of the following:

(1) ~~The respondent has signed a verified statement acknowledging parentage;~~A presumed father of the child.

(2) ~~The respondent has been determined by or pursuant to law to be the parent; or~~Petitioning to have his paternity adjudicated.

(3) ~~There is other clear and convincing evidence that the respondent is the child's parent.~~Identified as the father of the child through genetic testing.

(4) An alleged father who has declined to submit to genetic testing.

(5) Shown by clear and convincing evidence to be the father of the child.

(6) An acknowledged father as provided by Chapter 110 of the General Statutes.

(7) The mother of the child.

(8) An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to G.S. 52C-3-305.

"§ 52C-4-402. Proceeding to determine parentage.

A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this Chapter or a law or procedure substantially similar to this Chapter.

"Article 5.

"Enforcement of Order of Another State Without Registration.

"§ 52C-5-501. Employer's receipt of income-withholding order of another state.

(a) An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person ~~or entity~~ defined or identified as the obligor's employer or payor under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this ~~State. In the event that an obligor is receiving unemployment compensation benefits from the Division of Employment Security (DES) in accordance with G.S. 96-17, an income-withholding order issued in another state may be sent to the DES without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer or the DES shall:~~state.

~~(1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;~~

~~(2) Immediately provide a copy of the order to the obligor; and~~

~~(3) Distribute the funds as directed in the withholding order. The DES shall not withhold an amount to exceed twenty-five percent (25%) of the unemployment compensation benefits.~~

(b) Repealed by Session Laws 1997-433, s. 10.8.

"§ 52C-5-502. Employer's compliance with income-withholding order of another state.

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this ~~State.~~state.

(c) Except as otherwise provided in subsection (d) of this section and G.S. 52C-5-503, the employer shall withhold and distribute the funds as directed in the income-withholding order by complying with terms of the order which specify:

(1) The duration and amount of periodic payments of current child support, stated as a sum certain;

(2) The person ~~or agency~~ designated to receive payments and the address to which the payments are to be forwarded;

(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) The employer's fee for processing an income-withholding order;

(2) The maximum amount permitted to be withheld from the obligor's income; and

(3) The times within which the employer must implement the income-withholding order and forward the child support payment.

"§ 52C-5-503. ~~Compliance with multiple~~Employer's compliance with two or more income-withholding orders.

If an obligor's employer receives ~~multiple~~ two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the ~~multiple~~ orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for ~~multiple~~ two or more child support obligees.

"§ 52C-5-504. Immunity from civil liability.

An employer ~~who~~ that complies with an income-withholding order issued in another state in accordance with this Article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

"§ 52C-5-505. Penalties for noncompliance.

An employer ~~who~~ that willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this ~~State.~~state.

"§ 52C-5-506. Contest by obligor.

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this ~~State~~ state by registering the order in a tribunal of this state and filing a contest to that order as provided in Article 6 of this Chapter or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this ~~State. G.S. 52C-6-604 applies to the contest.~~state.

(b) The obligor shall give notice of the contest to:

(1) A support enforcement agency providing services to the obligee;

(2) Each employer that has directly received an income-withholding ~~order;~~order relating to the obligor; and

(3) The person ~~or agency~~ designated to receive payments in the income-withholding order or, if no person ~~or agency~~ is designated, to the obligee.

"§ 52C-5-507. Administrative enforcement of orders.

(a) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued ~~by a tribunal of~~in another state or a foreign country may send the documents required for registering the order to a support enforcement agency of this ~~State.~~state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this ~~State~~ state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Chapter.

"Article 6.

"~~Enforcement~~ Registration, Enforcement, and Modification of Support ~~Order After Registration.~~Order.

"Part 1. Registration ~~and~~ for Enforcement of Support Order.

"§ 52C-6-601. Registration of order for enforcement.

A support order or ~~an~~ income-withholding order issued ~~by a tribunal of~~in another state or a foreign support order may be registered in this ~~State~~ state for enforcement.

"§ 52C-6-602. Procedure to register order for enforcement.

(a) ~~A~~ Except as otherwise provided in G.S. 52C-7-706, a support order or income-withholding order of another state or a foreign support order may be registered in this ~~State~~ state by sending the following ~~documents and information~~records to the appropriate tribunal ~~for the county in which the obligor resides in this State:~~in this state:

(1) A letter of transmittal to the tribunal requesting registration and enforcement;

(2) Two copies, including one certified copy, of ~~all orders~~the order to be registered, including any modification of ~~an~~ the order;

(3) A sworn statement by the ~~party seeking~~person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) The name of the obligor and, if known:

a. The obligor's address and social security number;

b. The name and address of the obligor's employer and ~~another~~ any other source of income of the obligor; and

c. A description and the location of property of the obligor in this ~~State~~ state not exempt from execution; and

(5) ~~The~~ Except as otherwise provided in G.S. 52C-3-311, the name and address of the obligee and, if applicable, the ~~agency or~~ person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as ~~a~~ an order of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this ~~State~~ state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall do each of the following:

(1) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section.
(2) Specify the order alleged to be the controlling order, if any.
(3) Specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

"§ 52C-6-603. Effect of registration for enforcement.

(a) A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this ~~State.~~state.

(b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this ~~State.~~state.

(c) Except as otherwise provided in this ~~Article,~~Chapter, a tribunal of this ~~State~~ state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

"§ 52C-6-604. Choice of law.

(a) ~~The~~ Except as otherwise provided in subsection (d) of this section, the law of the issuing state or foreign country governs all of the following:

(1) The nature, extent, amount, and duration of current payments ~~and other obligations of support and the~~ under a registered support order.
(2) The computation and payment of ~~arrears~~ arrearages and accrual of interest on the arrearages under the ~~order.~~support order.
(3) The existence and satisfaction of other obligations under the support order.

(b) In a proceeding for ~~arrears,~~arrears under a registered support order, the statute of limitations ~~under the laws of this State~~of this state, or of the issuing ~~state,~~state or foreign country, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.

(d) After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

"Part 2. Contest of Validity ~~of~~ or Enforcement.

"§ 52C-6-605. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) ~~The~~ A notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this ~~State;~~state;
(2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after ~~notice;~~notice, unless the registered order is under G.S. 52C-7-707;
(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged ~~arrears and precludes further contest of that order with respect to any matter that could have been asserted;~~arrearages; and

(4) Of the amount of any alleged ~~arrears.~~arrearages.

(b1) If the registering party asserts that two or more orders are in effect, a notice must also do each of the following:

(1) Identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any.

(2) Notify the nonregistering party of the right to a determination of which is the controlling order.

(3) State that the procedures provided in subsection (b) of this section apply to the determination of which is the controlling order.

(4) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(c) Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable.

"§ 52C-6-606. Procedure to contest validity or enforcement of registered support order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this ~~State~~ state shall request a hearing within ~~20 days after notice of the registration.~~the time required by G.S. 52C-6-605. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrears pursuant to G.S. 52C-6-607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

"§ 52C-6-607. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) The issuing tribunal lacked personal jurisdiction over the contesting party;

(2) The order was obtained by fraud;

(3) The order has been vacated, suspended, or modified by a later order;

(4) The issuing tribunal has stayed the order pending appeal;

(5) There is a defense under the law of this ~~State~~ state to the remedy sought;

(6) Full or partial payment has been made; ~~or~~

(7) The statute of limitations under G.S. 52C-6-604 precludes enforcement of some or all of the ~~arrears.~~alleged arrearages; or

(8) The alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this section, a tribunal may stay enforcement of ~~the~~ a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this ~~State.~~state.

(c) If the contesting party does not establish a defense under subsection (a) of this section to the validity or enforcement of ~~the~~ a registered support order, the registering tribunal shall issue an order confirming the order.

"§ 52C-6-608. Confirmed order.

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

"Part. 3. Registration and Modification of Child Support ~~Order.~~Order of Another State.

"§ 52C-6-609. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this ~~State~~ state in the same manner provided in ~~Part 1 of this Article~~G.S. 52C-6-601 through G.S. 52C-6-608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

"§ 52C-6-610. Effect of registration for modification.

A tribunal of this ~~State~~ state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this ~~State,~~state, but the registered support order may be modified only if the requirements of G.S. 52C-6-611 or G.S. 52C-6-613 have been met.

"§ 52C-6-611. Modification of child support order of another state.

(a) ~~After~~ If G.S. 52C-6-613 does not apply, upon petition, a tribunal of this state may modify a child support order issued in another state ~~has been~~ which is registered in this ~~State, the responding tribunal of this State may modify that order only if G.S. 52C-6-613 does not apply and~~state if, after notice and ~~hearing it~~ hearing, the tribunal finds that:

(1) The following requirements are met:

a. ~~The~~ Neither the child, nor the ~~individual obligee,~~obligee who is an individual, ~~and the obligor do not reside~~nor the obligor resides in the issuing state;

b. A petitioner who is a nonresident of this ~~State~~ state seeks modification; and

c. The respondent is subject to the personal jurisdiction of the tribunal of this ~~State;~~state; or

(2) ~~The~~ This state is the residence of the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this ~~State~~ state and all of the parties who are individuals have filed ~~a written consent~~consents in a record in the issuing tribunal for a tribunal of this ~~State~~ state to modify the support order and assume continuing, exclusive ~~jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this act, the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child support order.~~jurisdiction.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this ~~State,~~state, and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this ~~State~~ state may not modify any aspect of a child support order that may not be modified under the law of the issuing ~~state.~~state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under G.S. 52C-2-207 establishes the aspects of the support order which are nonmodifiable.

(c1) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(d) On the issuance of an order by a tribunal of this state modifying a child support order issued in another state, ~~a~~ the tribunal of this ~~State~~ state becomes the tribunal of continuing, exclusive jurisdiction.

(d1) Notwithstanding subsections (a) through (c1) of this section and G.S. 52C-2-201(b), a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

(1) One party resides in another state; and

(2) The other party resides outside the United States.

(e) Repealed by Session Laws 1997-443, s. 10.12.

"§ 52C-6-612. Recognition of order modified in another state.

~~A~~ If a child support order issued by a tribunal of this ~~State shall recognize a modification of its earlier child support order~~state is modified by a tribunal of another state which assumed jurisdiction pursuant to ~~a law substantially similar to this Chapter and, upon request, except as otherwise provided in this Chapter, shall:~~the Uniform Interstate Family Support Act, a tribunal of this state:

(1) ~~Enforce the~~ May enforce its order that was modified only as to ~~amounts~~ arrears and interest accruing before the modification;

~~(2) Enforce only nonmodifiable aspects of that order;~~

(3) ~~Provide~~ May provide other appropriate relief ~~only~~ for violations of ~~that~~ its order which occurred before the effective date of the modification; and

(4) ~~Recognize~~ Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

"§ 52C-6-613. Jurisdiction to modify child support order of another state when individual parties reside in this ~~State.~~state.

(a) If all of the parties who are individuals reside in this ~~State~~ state and the child does not reside in the issuing state, a tribunal of this ~~State~~ state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this ~~State~~ state exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2 of this Chapter, this Article, and the procedural and substantive law of this ~~State~~ state to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 of this Chapter do not apply.

...

"Part 4. Registration and Modification of Foreign Child Support Order.

"§ 52C-6-615. Jurisdiction to modify child support order of foreign country.

(a) Except as otherwise provided in G.S. 52C-7-711, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child support order otherwise required of the individual pursuant to G.S. 52C-6-611 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(b) An order issued by a tribunal of this state modifying a foreign child support order pursuant to this section is the controlling order.

"§ 52C-6-616. Procedure to register child support order of foreign country for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the Convention may register that order in this state under G.S. 52C-6-601 through G.S. 52C-6-608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification.

"Article 7.

"~~Determination of Parentage.~~Support Proceeding Under Convention.

"§ 52C-7-701. ~~Proceeding to determine parentage.~~Definitions.

~~(a) A tribunal of this State may serve as an initiating or responding tribunal in a proceeding brought under this Chapter or a law substantially similar to this Chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.~~

~~(b) In a proceeding to determine parentage, a responding tribunal of this State shall apply the procedural and substantive law of this State and the rules of this State on choice of law.~~

As used in this Article:

(1) "Application" means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

(2) "Central authority" means the entity designated by the United States or a foreign country described in G.S. 52C-1-101(3a)d. to perform the functions specified in the Convention.

(3) "Convention support order" means a support order of a tribunal of a foreign country described in G.S. 52C-1-101(3a)d.

(4) "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States.

(5) "Foreign central authority" means the entity designated by a foreign country described in G.S. 52C-1-101(3a)d. to perform the functions specified in the Convention.

(6) "Foreign support agreement" means an agreement for support in a record that:

a. Is enforceable as a support order in the country of origin;

b. Has been (i) formally drawn up or registered as an authentic instrument by a foreign tribunal or (ii) authenticated by or concluded, registered, or filed with a foreign tribunal; and

c. May be reviewed and modified by a foreign tribunal.

The term includes a maintenance arrangement or authentic instrument under the Convention.

(7) "United States central authority" means the Secretary of the United States Department of Health and Human Services.

"**§ 52C-7-702. Applicability.**

This Article applies only to a support proceeding under the Convention. In such a proceeding, if a provision of this Article is inconsistent with Articles 1 through 6 of this Chapter, this Article controls.

"**§ 52C-7-703. Relationship of Department of United States central authority.**

The Department is recognized as the agency designated by the United States central authority to perform specific functions under the Convention.

"**§ 52C-7-704. Initiation by Department of support proceeding under Convention.**

(a) In a support proceeding under this Article, the Department shall do the following:

(1) Transmit and receive applications.

(2) Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(b) The following support proceedings are available to an obligee under the Convention:

(1) Recognition or recognition and enforcement of a foreign support order.

(2) Enforcement of a support order issued or recognized in this state.

(3) Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child.

(4) Establishment of a support order if recognition of a foreign support order is refused under G.S. 52C-7-708(b)(2), (4), or (9).

(5) Modification of a support order of a tribunal of this state.

(6) Modification of a support order of a tribunal of another state or foreign country.

(c) The following support proceedings are available under the Convention to an obligor against which there is an existing support order:

(1) Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state.

(2) Modification of a support order of a tribunal of this state.

(3) Modification of a support order of a tribunal of another state or a foreign country.

(d) A tribunal of this state may not require security, bond, or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the Convention.

"**§ 52C-7-705. Direct request.**

(a) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(b) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, G.S. 52C-7-706 through G.S. 52C-7-713 apply.

(c) In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:

(1) A security, bond, or deposit is not required to guarantee the payment of costs and expenses; and

(2) An obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

(d) A petitioner filing a direct request is not entitled to assistance from the Department or the county child support agency.

(e) This Article does not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

"**§ 52C-7-706. Registration of Convention support order.**

(a) Except as otherwise provided in this Article, a party who is an individual or a support enforcement agency seeking recognition of a Convention support order shall register the order in this state as provided in Article 6 of this Chapter.

(b) Notwithstanding G.S. 52C-3-310 and G.S. 52C-6-602(a), a request for registration of a Convention support order must be accompanied by:

(1) A complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;

(2) A record stating that the support order is enforceable in the issuing country;

(3) If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an

opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) A record showing the amount of arrears, if any, and the date the amount was calculated;

(5) A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(c) A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of this state may vacate the registration of a Convention support order without the filing of a contest under G.S. 52C-7-707 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a Convention support order.

"**§ 52C-7-707. Contest of registered Convention support order.**

(a) Except as otherwise provided in this Article, G.S. 52C-6-605 through G.S. 52C-6-608 apply to a contest of a registered Convention support order.

(b) A party contesting a registered Convention support order shall file a contest not later than 30 days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than 60 days after notice of the registration.

(c) If the nonregistering party fails to contest the registered Convention support order by the time specified in subsection (b) of this section, the order is enforceable.

(d) A contest of a registered Convention support order may be based only on grounds set forth in G.S. 52C-7-708. The contesting party bears the burden of proof.

(e) In a contest of a registered Convention support order, a tribunal of this state:

(1) Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) May not review the merits of the order.

(f) A tribunal of this state deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

"**§ 52C-7-708. Recognition and enforcement of registered Convention support order.**

(a) Except as otherwise provided in subsection (b) of this section, a tribunal of this state shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered Convention support order:

(1) Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard.

(2) The issuing tribunal lacked personal jurisdiction consistent with G.S. 52C-2-201.

(3) The order is not enforceable in the issuing country.

(4) The order was obtained by fraud in connection with a matter of procedure.

(5) A record transmitted in accordance with G.S. 52C-7-706 lacks authenticity or integrity.

(6) A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed.

(7) The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this Chapter in this state.

(8) Payment, to the extent alleged arrears have been paid in whole or in part.

(9) In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

a. If the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

b. If the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal.

(10) The order was made in violation of G.S. 52C-7-711.

(c) If a tribunal of this state does not recognize a Convention support order under subdivision (b)(2), (4), or (9) of this section, then:

(1) The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and

(2) The Department and the county child support agency shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under G.S. 52C-7-704.

"**§ 52C-7-709. Partial enforcement.**

If a tribunal of this state does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a Convention support order.

"**§ 52C-7-710. Foreign support agreement.**

(a) Except as otherwise provided in subsections (c) and (d) of this section, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by each of the following:

(1) A complete text of the foreign support agreement.

(2) A record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(c) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(d) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds any of the following:

(1) Recognition and enforcement of the agreement is manifestly incompatible with public policy.

(2) The agreement was obtained by fraud or falsification.

(3) The agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this Chapter in this state.

(4) The record submitted under subsection (b) of this section lacks authenticity or integrity.

(e) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

"**§ 52C-7-711. Modification of Convention child support order.**

(a) A tribunal of this state may not modify a Convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of this state does not modify a Convention child support order because the order is not recognized in this state, G.S. 52C-7-708(c) applies.

"**§ 52C-7-712. Personal information; limit on use.**

Personal information gathered or transmitted under this Article may be used only for the purposes for which it was gathered or transmitted.

"**§ 52C-7-713. Record in original language; English translation.**

A record filed with a tribunal of this state under this Article must be in the original language and, if not in English, must be accompanied by an English translation.

"Article 8.

"Interstate Rendition.

"**§ 52C-8-801. Grounds for rendition.**

(a) For purposes of this Article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this Chapter.

(b) The Governor of this ~~State~~ state may:

(1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this ~~State~~ state with having failed to provide for the support of an obligee; or

(2) On the demand ~~by~~ of the governor of another state, surrender an individual found in this ~~State~~ state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this Chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

"**§ 52C-8-802. Conditions of rendition.**

(a) Before making demand that the governor of another state surrender an individual charged criminally in this ~~State~~ state with having failed to provide for the support of an obligee, the Governor of this ~~State~~ state may require a prosecutor of this ~~State~~ state to demonstrate that at least 60 days previously the obligee has initiated proceedings for support pursuant to this Chapter or that the proceeding would be of no avail.

(b) If, under this Chapter or a law substantially similar to this ~~Chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act,~~Chapter, the governor of another state makes a demand that the Governor of this ~~State~~ state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

"Article 9.

"Miscellaneous Provisions.

"**§ 52C-9-901. Uniformity of application and construction.**

~~This Chapter shall be applied and construed to effectuate its general purpose to make uniform~~In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to ~~the~~ its subject ~~of this Chapter~~matter among states ~~enacting~~ that enact it.

"**§ 52C-9-901.1. Transitional provision.**

This Chapter applies to proceedings begun on or after the effective date of this Chapter to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered.

...."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 488
PROPOSED COMMITTEE SUBSTITUTE S488-CSTJ-10 [v.1]
4/1/2015 5:37:58 PM

Short Title: Amend Uniform Interstate Family Support Act.-AB (Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA).

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 52C of the General Statutes reads as rewritten:

"**Chapter 52C.**

"**Uniform Interstate Family Support Act.**

"Article 1.

"General Provisions.

...

"**§ 52C-1-101. Definitions.**

As used in this ~~Article, unless the context clearly requires otherwise, the term:~~Chapter:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing ~~state.~~state or foreign country.

(2a) "Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

(2b) "Department" means the North Carolina Department of Health and Human Services, Division of Social Services.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(3a) "Foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

a. Which has been declared under the law of the United States to be a foreign reciprocating country;

b. Which has established a reciprocal arrangement for child support with this state as provided in G.S. 52C-3-308;

c. Which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this Chapter; or

d. In which the Convention is in force with respect to the United States.

(3b) "Foreign support order" means a support order of a foreign tribunal.

(3c) "Foreign tribunal" means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.

(4) "Home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six-months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this ~~State.~~state.

(6) "Income-withholding order" means an order or other legal process directed to ~~a payer of income~~an obligor's employer, other debtor, or payor as defined under Chapter 110 of the General Statutes. to withhold support from the income of the obligor.

~~(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.~~

(8) "Initiating tribunal" means the ~~authorized tribunal in an initiating state.~~tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

(8a) "Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

(9) "Issuing state" means the state in which a tribunal issues a support order or ~~renders~~ a judgment determining ~~parentage.~~parentage of a child.

(10) "Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or ~~renders~~ a judgment determining ~~parentage.~~parentage of a child.

(11) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(12) "Obligee" means:

a. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order ~~has been issued~~ or a judgment determining parentage of a child has been ~~rendered.~~issued;

b. A ~~state~~ foreign country, state, or political subdivision *of a state* to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual ~~obligee; or~~obligee in place of child support;

c. An individual seeking a judgment determining parentage of the individual's ~~child.~~child; or

d. A person that is a creditor in a proceeding under Article 7 of this Chapter.

(13) "Obligor" means an ~~individual.~~individual who, or the estate of a ~~decedent:~~decedent that:
  a. ~~Who owes~~Owes or is alleged to owe a duty of support;
  b. ~~Who is~~Is alleged but has not been adjudicated to be a parent of a child; ~~or~~
  c. ~~Who is~~Is liable under a support ~~order.~~order; or
  d. Is a debtor in a proceeding under Article 7 of this Chapter.

(13a) "Outside this state" means a location in another state or country other than the United States, whether or not the country is a foreign country.

(13b) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13c) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Register" means to file in a tribunal of this state a support order or judgment determining ~~paternity in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.~~parentage of a child issued in another state or a foreign country.

(15) "Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered.

(16) "Responding state" means a state in which a ~~proceeding~~ petition or comparable pleading for support or to determine parentage of a child is filed or to which a ~~proceeding~~ petition or comparable pleading is forwarded for filing from ~~an initiating state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.~~another state or a foreign country.

(17) "Responding tribunal" means the authorized tribunal in a responding ~~state.~~state or a foreign country.

(18) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession ~~subject to~~under the jurisdiction of the United States. The term ~~includes:~~includes an Indian nation or tribe.
  ~~a. An Indian tribe; and~~
  ~~b. A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.~~

(20) "Support enforcement agency" means a public ~~official~~ official, governmental entity, or private agency authorized ~~to seek:~~to:
  a. ~~Enforcement~~ Seek enforcement of support orders or duties of support;
  b. ~~Establishment~~ Seek establishment or modification of child support;
  c. ~~Determination of parentage; or~~Request determination of parentage of a child;
  d. ~~To~~ Attempt to locate obligors or their ~~assets.~~assets; or

e. Request determination of the controlling child support order.

(21) "Support order" means a judgment, decree, ~~or~~ order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or a foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, ~~arrears.~~arrearages, retroactive support, or ~~reimbursement, and~~reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorneys' fees, and other relief.

(22) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine ~~paternity, except that, for matters heard in this State, tribunal means the General Court of Justice, District Court Division.~~parentage of a child.

"§ 52C-1-102. ~~District court has jurisdiction under this Act.~~State tribunal and support enforcement agency.

(a) The General Court of Justice, District Court ~~Division~~ Division, is the ~~court authorized to hear matters under this Act.~~tribunal of this state.

(b) The Department and the county child support agencies under G.S. 110-141 are the support enforcement agencies of this state.

"§ 52C-1-103. ~~Remedies.~~Remedies cumulative.

(a) Remedies provided by this ~~Act~~ Chapter are cumulative and do not affect the availability of remedies under other ~~law.~~law or the recognition of a foreign support order on the basis of comity.

(b) This Chapter does not:

(1) Provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(2) Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this Chapter.

"§ 52C-1-104. Application of Chapter to resident of foreign country and foreign support proceeding.

(a) A tribunal of this state shall apply Articles 1 through 6 and, as applicable, Article 7 of this Chapter, to a support proceeding involving:

(1) A foreign support order;

(2) A foreign tribunal; or

(3) An obligee, obligor, or child residing in a foreign country.

(b) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Articles 1 through 6 of this Chapter.

(c) Article 7 of this Chapter applies only to a support proceeding under the Convention. In such a proceeding, if a provision of Article 7 is inconsistent with Articles 1 through 6 of this Chapter, Article 7 controls.

"Article 2.

"Jurisdiction.

~~"Part 1. Extended Personal Jurisdiction.~~

"§ 52C-2-201. Bases for jurisdiction over nonresident.

(a) In a proceeding to ~~establish, enforce, or modify~~establish or enforce a support order or to determine ~~parentage.~~parentage of a child, a tribunal of this ~~State~~state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) The individual is personally served with a summons and complaint within this ~~State;~~state;

(2) The individual submits to the jurisdiction of this ~~State~~ state by ~~consent,~~ consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) The individual resided with the child in this ~~State;~~state;

(4) The individual resided in this ~~State~~ state and provided prenatal expenses or support for the child;

(5) The child resides in this ~~State~~ state as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in this ~~State~~ state and the child may have been conceived by that act of intercourse; or

~~(7) The individual asserted paternity in an affidavit which has been filed with the clerk of superior court; or~~

(8) There is any other basis consistent with the constitutions of this ~~State~~ state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of the state to modify a child support order of another state unless the requirements of G.S. 52C-6-611 are met, or, in the case of a foreign support order, unless the requirements of G.S. 52C-6-615 are met.

"§ 52C-2-202. ~~Procedure when exercising jurisdiction over nonresident.~~Duration of personal jurisdiction.

~~A court of this State exercising personal jurisdiction over a nonresident under G.S. 52C-2-201 may apply G.S. 52C-3-315 to receive evidence from another state, and G.S. 52C-3-317 to obtain discovery through a tribunal of another state. In all other respects, Articles 3 through 7 of this Chapter do not apply and the tribunal shall apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this Chapter.~~

Personal jurisdiction acquired by a tribunal of this state in a proceeding under this Chapter or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by G.S. 52C-2-205, 52C-2-206, and 52C-2-211.

~~"Part 2. Proceedings Involving Two or More States.~~

"§ 52C-2-203. Initiating and responding tribunal of state.

Under this Chapter, a tribunal of this ~~State~~ state may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another ~~state.~~state or foreign country.

"§ 52C-2-204. Simultaneous ~~proceedings in another state.~~proceedings.

(a) A tribunal of this ~~State~~ state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state or foreign country only if:

(1) The petition or comparable pleading in this ~~State~~ state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other ~~state;~~state or the foreign country;

(2) The contesting party timely challenges the exercise of jurisdiction in the other ~~state;~~state or the foreign country; and

(3) If relevant, this ~~State~~ state is the home state of the child.

(b) A tribunal of this ~~State~~ state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(1) The petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this ~~State~~ state for filing a responsive pleading challenging the exercise of jurisdiction by this ~~State:~~state:

(2) The contesting party timely challenges the exercise of jurisdiction in this ~~State:~~state: and

(3) If relevant, the other state or foreign country is the home state of the child.

"§ 52C-2-205. Continuing, exclusive ~~jurisdiction.~~jurisdiction to modify child support order.

(a) A tribunal of this ~~State issuing~~state that has issued a child support order consistent with the law of this ~~State~~ state has and shall exercise continuing, exclusive jurisdiction ~~over a~~to modify its child support ~~order:~~order if the order is the controlling order and:

(1) ~~As long as this State remains~~At the time of the filing of a request for modification, this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) ~~Until all of the parties who are individuals have filed written consents with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.~~Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this ~~State issuing~~state that has issued a child support order consistent with the law of this ~~State~~ state may not exercise ~~its continuing~~ continuing, exclusive jurisdiction to modify the order ~~if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this Chapter.~~if:

(1) All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify that order and assume continuing, exclusive jurisdiction; or

(2) Its order is not the controlling order.

~~(c) If a child support order of this State is modified by a tribunal of another state pursuant to a law substantially similar to this Chapter, a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:~~

~~(1) Enforce the order that was modified as to amounts accruing before the modification;~~

~~(2) Enforce nonmodifiable aspects of that order; and~~

~~(3) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.~~

(d) ~~A tribunal of this State shall recognize the continuing, exclusive jurisdiction of~~If a tribunal of another state ~~which~~ has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to ~~this Chapter.~~that Act that modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d1) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

~~(f) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.~~

"§ 52C-2-206. ~~Enforcement and modification of support order by tribunal having continuing jurisdiction.~~Continuing jurisdiction to enforce child support order.

(a) A tribunal of this ~~State~~ state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to ~~enforce or modify a support order issued in that state.~~enforce:

(1) The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

(2) A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal of this ~~State~~ state having ~~continuing, exclusive~~continuing jurisdiction over a support order may act as a responding tribunal to enforce ~~or modify~~ the order. ~~If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply G.S. 52C-3-315 to receive evidence from another state and G.S. 52C-3-317 to obtain discovery through a tribunal of another state.~~

~~(c) A tribunal of this State which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.~~

~~"Part 3. Reconciliation of Multiple Orders.~~

"§ 52C-2-207. ~~Recognition~~ Determination of controlling child support order.

(a) If a proceeding is brought under this Chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be ~~so~~ recognized.

(b) If a proceeding is brought under this Chapter, and two or more child support orders have been issued by tribunals of this ~~State or another state~~state, another state, or a foreign country with regard to the same obligor and same child, a tribunal of this ~~State~~ state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules ~~in determining~~and by order shall determine which order ~~to recognize for purposes of continuing, exclusive jurisdiction:~~controls and must be recognized:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the order of that tribunal ~~controls and must be so recognized.~~controls.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this ~~Chapter,~~Chapter:

a. ~~an~~ An order issued by a tribunal in the current home state of the child ~~controls and must be so recognized, but if~~controls; or

b. If an order has not been issued in the current home state of the child, the order most recently issued ~~controls and must be so recognized.~~controls.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the tribunal of this ~~State having jurisdiction over the parties~~state shall issue a child support order, which ~~controls and must be so recognized.~~controls.

(c) If two or more child support orders have been issued for the same obligor and ~~child and if the obligor or the individual obligee resides in this State.~~same child, upon request of a party ~~may request~~who is an individual or that is a support enforcement agency, a tribunal of

this ~~to State~~state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls ~~and must be so recognized~~ under subsection (b) of this section. ~~The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by a certified copy of every support order in the effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.~~The request may be filed with a registration for enforcement or registration for modification pursuant to Article 6 of this Chapter or may be filed as a separate proceeding.

(c1) A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section ~~is the tribunal that has continuing, exclusive~~has continuing jurisdiction ~~under G.S. 52C-2-205~~to the extent provided in G.S. 52C-2-205 or G.S. 52C-2-206.

(e) A tribunal of this ~~State which~~state that determines by order ~~the identity of~~which is the controlling order under subdivision (b)(1) or (2) or subsection (c) of this ~~section~~section, or ~~which~~that issues a new controlling order under subdivision (b)(3) of this ~~section~~section, shall state in that ~~order the~~ order:

(1) The basis upon which the tribunal made its ~~determination.~~determination;

(2) The amount of the prospective support, if any; and

(3) The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by G.S. 52C-2-209.

(f) Within 30 days after issuance of an order determining ~~the identity of~~which is the controlling order, the party obtaining the order shall file a certified copy of ~~it with~~the order in each tribunal that issued or registered an earlier order of child support. A party ~~who obtains~~or support enforcement agency obtaining the order ~~and~~that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(g) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this Chapter.

"§ 52C-2-208. ~~Multiple child~~Child support orders for two or more obligees.

In responding to ~~multiple~~registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another ~~state.~~state or a foreign country, a tribunal of this ~~State~~state shall enforce those orders in the same manner as if the ~~multiple~~orders had been issued by a tribunal of this ~~State.~~state.

"§ 52C-2-209. Credit for payments.

~~Amounts collected and credited~~A tribunal of this state shall credit amounts collected for a particular period pursuant to ~~a support order~~any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of ~~another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this State.~~this state, another state, or a foreign country.

"§ 52C-2-210. Application of this Chapter to nonresident subject to personal jurisdiction.

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this Chapter, under other law of this state relating to a support order, or recognizing a foreign support order may receive evidence from outside this state pursuant to G.S. 52C-3-316, communicate with a tribunal outside this state pursuant to G.S. 52C-3-317, and obtain

discovery through a tribunal outside this state pursuant to G.S. 52C-3-318. In all other respects, Articles 3 through 6 of this Chapter do not apply and the tribunal shall apply the procedural and substantive law of this state.

"**§ 52C-2-211. Continuing, exclusive jurisdiction to modify spousal support order.**

(a) A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

(b) A tribunal of this state may not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

(1) An initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or

(2) A responding tribunal to enforce or modify its own spousal support order.

"Article 3.

"Civil Provisions of General Application.

"**§ 52C-3-301. Proceedings under this Chapter.**

(a) Except as otherwise provided in this Chapter, this Article applies to all proceedings under this Chapter.

~~(b) This Chapter provides for the following proceedings:~~

~~(1) Establishment of an order for spousal support or child support pursuant to Article 4 of this Chapter;~~

~~(2) Enforcement of a support order and income withholding order of another state without registration pursuant to Article 5 of this Chapter;~~

~~(3) Registration of an order for spousal support or child support of another state or enforcement pursuant to Article 6 of this Chapter;~~

~~(4) Modification of an order for child support or spousal support issued by a tribunal of this State pursuant to Article 2, Part 2 of this Chapter;~~

~~(5) Registration of an order for child support of another state for modification pursuant to Article 6 of this Chapter;~~

~~(6) Determination of paternity pursuant to Article 7 of this Chapter; and~~

~~(7) Assertion of jurisdiction over nonresidents pursuant to Article 2, Part 1 of this Chapter.~~

(c) An individual petitioner or a support enforcement agency may ~~commence~~ initiate a proceeding authorized under this Chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent.

"**§ 52C-3-302. ~~Action~~ Proceeding by minor parent.**

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

"**§ 52C-3-303. Application of law of this ~~State.~~ state.**

Except as otherwise provided ~~by~~ in this Chapter, a responding tribunal of this ~~State:~~state shall:

(1) ~~Shall apply~~Apply the procedural and substantive ~~law, including the rules on choice of law.~~law generally applicable to similar proceedings originating in this ~~State~~ state and may exercise all powers and provide all remedies available in those proceedings; and

(2) ~~Shall determine~~Determine the duty of support and the amount payable in accordance with the law and support guidelines of this ~~State.~~state.

"§ 52C-3-304. Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by this Chapter, an initiating tribunal of this ~~State~~ state shall forward ~~three copies of~~ the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If ~~a responding state has not enacted this act or a law or procedure substantially similar to this act,~~ requested by the responding tribunal, a tribunal of this ~~State may~~ state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding ~~State~~ tribunal is in a foreign ~~jurisdiction, the tribunal may~~ country, upon request, the tribunal of this state shall specify the amount of support ~~sought~~ sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding ~~state~~ foreign tribunal.

"§ 52C-3-305. Duties and powers of responding tribunal.

(a) When a responding tribunal of this ~~State~~ state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to G.S. 52C-3-301(c) it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this ~~State~~ state, to the extent ~~otherwise authorized~~ not prohibited by law, may do one or more of the following:

(1) ~~Issue~~ Establish or enforce a support order, modify a child support order, determine the controlling child support order, or ~~render a judgment to~~ determine ~~parentage~~ parentage of a child;

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) Order income withholding;

(4) Determine the amount of any arrears, and specify a method of payment;

(5) Enforce orders by civil or criminal contempt, or both;

(6) Set aside property for satisfaction of the support order;

(7) Place liens and order execution on the obligor's property;

(8) Order an obligor to keep the tribunal informed of the obligor's current residential address, electronic-mail address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) Issue an order for arrest for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the order for arrest in any local and ~~State~~ state computer systems for criminal warrants;

(10) Order the obligor to seek appropriate employment by specified methods;

(11) Award reasonable attorneys' fees and other fees and costs; and

(12) Grant any other available remedy.

(c) A responding tribunal of this ~~State~~ state shall include in a support order issued under this Chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this ~~State~~ state may not condition the payment of a support order issued under this Chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this ~~State~~ state issues an order under this Chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount

stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

"§ 52C-3-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this ~~State, it~~state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal ~~in this State~~ of this state or another state and notify the petitioner where and when the pleading was sent.

"§ 52C-3-307. Duties of support enforcement agency.

(a) ~~A support enforcement agency of this State, upon request, shall provide services to a petitioner in a proceeding under this Chapter.~~In a proceeding under this Chapter, a support enforcement agency of this state, upon request, shall provide the following:

(1) Services to a petitioner residing in a state.

(2) Services to a petitioner requesting services through a central authority of a foreign country as described in G.S. 52C-1-102(3a)a. or d.

A support enforcement agency of this state may provide services to a petitioner who is an individual not residing in a state.

(b) A support enforcement agency of this state that is providing services to the petitioner ~~as appropriate~~ shall:

(1) Take all steps necessary to enable an appropriate tribunal ~~in this State or another state~~of this state, another state, or a foreign country to obtain jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time, and place for a hearing;

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of ~~a written~~ notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(5) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of ~~a written~~ communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(b1) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts to:

(1) Ensure that the order to be registered is the controlling order; or

(2) If two or more child support orders exist and the identity of the controlling order has not been determined, ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(b2) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(b3) A support enforcement agency of this state shall issue or request a tribunal of this state to issue a child support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to G.S. 52C-3-318.

(c) This Chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

"§ 52C-3-308. ~~Representation of obligee.~~Duty of Department.

~~It shall be the duty of the district attorney to represent the obligee in proceedings authorized by this Chapter unless alternative arrangements are made by the obligee. An obligee may employ private counsel to represent the obligee in proceedings authorized by this Chapter.~~

(a) If the Department determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the Department may order the agency to perform its duties under this Chapter or may provide those services directly to the individual.

(b) The Department may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

"**§ 52C-3-308.1. Private counsel.**

An individual may employ private counsel to represent the individual in proceedings authorized by this Chapter.

"**§ 52C-3-309. Duties of ~~State~~ state information agency.**

(a) The Department ~~of Health and Human Services, Division of Social Services, is designated as the State~~is the state information agency under this Chapter.

(b) The ~~State~~ state information agency shall:

(1) Compile and maintain a current list, including addresses, of the tribunals in this ~~State~~ state which have jurisdiction under this Chapter and any support enforcement agencies in this ~~State~~ state and transmit a copy to the state information agency of every other state;

(2) Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) Forward to the appropriate tribunal in the ~~place~~ county in this ~~State~~ state in which the ~~individual~~ obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this Chapter received from ~~an initiating tribunal or the state information agency of the initiating state;~~ another state or a foreign country; and

(4) Obtain information concerning the location of the obligor and the obligor's property within this ~~State~~ state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, drivers licenses, and social security.

"**§ 52C-3-310. Pleadings and accompanying documents.**

(a) ~~A~~ In a proceeding under this Chapter, a petitioner seeking to establish ~~or modify a support order or~~a support order, to determine parentage ~~in a proceeding under this Chapter~~of a child, or to register and modify a support order of a tribunal of another state or a foreign country must ~~verify the~~ file a petition. Unless otherwise ordered under G.S. 52C-3-311, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the ~~obligee,~~obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for ~~whom~~ whose benefit support is ~~sought~~sought or whose parentage is to be determined. ~~The~~ Unless filed at the time of registration, the petition must be accompanied by a ~~certified~~ copy of any support order ~~in effect~~known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

"§ 52C-3-311. Nondisclosure of information in exceptional circumstances.

~~Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this Chapter.~~ If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

"§ 52C-3-312. Costs and fees.

(a) The petitioner shall not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorneys' fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding ~~state.~~state or foreign country, except as provided by other law. Attorneys' fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorneys' fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6 of this Chapter, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

"§ 52C-3-313. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding under this Chapter before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this ~~State~~ state to participate in a proceeding under this Chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this Chapter committed by a party while present in this ~~State~~ state to participate in the proceeding.

...

"§ 52C-3-315. Special rules of evidence and procedure.

(a) The physical presence of ~~the petitioner in a responding~~a nonresident party who is an individual in a tribunal of this ~~State~~ state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining ~~parentage.~~parentage of a child.

(b) ~~A verified petition,~~An affidavit, a document substantially complying with federally mandated forms, ~~and~~ or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under ~~oath~~ penalty of perjury by a party or witness residing ~~in another~~outside this state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(d) Copies of bills for testing for ~~parentage,~~parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days

before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from ~~another~~ outside this state to a tribunal of this ~~State~~ state by telephone, telecopier, or other electronic means that do not provide an original ~~writing~~ record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this Chapter, a tribunal of this ~~State may~~state shall permit a party or witness residing ~~in another~~outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other ~~location in that state.~~location. A tribunal of this ~~State~~ state shall cooperate with other tribunals ~~of other states~~ in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communication between spouses does not apply in a proceeding under this Chapter.

(i) The defense of immunity based on the relationship of ~~husband and wife~~marital partners or parent and child does not apply in a proceeding under this Chapter.

(j) A voluntary acknowledgement of paternity, certified as a true copy, is admissible to establish parentage of the child.

"§ 52C-3-316. Communications between tribunals.

A tribunal of this ~~State~~ state may communicate with a tribunal ~~of another~~outside this state in ~~writing, or by telephone~~a record or by telephone, electronic mail, or other means, to obtain information concerning the ~~laws of that state.~~laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a ~~proceeding in the other state.~~proceeding. A tribunal of this ~~State~~ state may furnish similar information by similar means to a tribunal ~~of another~~outside this state.

"§ 52C-3-317. Assistance with discovery.

A tribunal of this ~~State may request~~ state may:

(1) Request a tribunal ~~of another~~outside this state to assist in obtaining ~~discovery.~~discovery; and

(2) ~~upon~~ Upon request, may compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal ~~of another~~outside this state.

"§ 52C-3-318. Receipt and disbursement of payments.

(a) A support enforcement agency or tribunal of this ~~State~~ state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

(1) Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (b) of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

"Article 4.

"Establishment of Support ~~Order.~~Order or Determination of Parentage.

"§ 52C-4-401. ~~Petition to establish~~Establishment of support order.

(a) If a support order entitled to recognition under this Chapter has not been issued, a responding tribunal of this ~~State~~ state with personal jurisdiction over the parties may issue a support order if:

(1) The individual seeking the order resides ~~in another~~outside this state; or

(2) The support enforcement agency seeking the order is located ~~in another~~ outside this state.

(b) The tribunal may issue a temporary child support order ~~if:~~if the tribunal determines that such an order is appropriate and the individual ordered to pay is any of the following:

(1) ~~The respondent has signed a verified statement acknowledging parentage;~~A presumed father of the child.

(2) ~~The respondent has been determined by or pursuant to law to be the parent; or~~Petitioning to have his paternity adjudicated.

(3) ~~There is other clear and convincing evidence that the respondent is the child's parent.~~Identified as the father of the child through genetic testing.

(4) An alleged father who has declined to submit to genetic testing.

(5) Shown by clear and convincing evidence to be the father of the child.

(6) An acknowledged father as provided by Chapter 110 of the General Statutes.

(7) The mother of the child.

(8) An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to G.S. 52C-3-305.

"§ 52C-4-402. Proceeding to determine parentage.

A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this Chapter or a law or procedure substantially similar to this Chapter.

"Article 5.

"Enforcement of Order of Another State Without Registration.

"§ 52C-5-501. Employer's receipt of income-withholding order of another state.

(a) An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person ~~or entity~~ defined or identified as the obligor's employer or payor under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this ~~State. In the event that an obligor is receiving unemployment compensation benefits from the Division of Employment Security (DES) in accordance with G.S. 96-17, an income-withholding order issued in another state may be sent to the DES without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer or the DES shall:~~state.

~~(1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;~~

~~(2) Immediately provide a copy of the order to the obligor; and~~

~~(3) Distribute the funds as directed in the withholding order. The DES shall not withhold an amount to exceed twenty-five percent (25%) of the unemployment compensation benefits.~~

(b) Repealed by Session Laws 1997-433, s. 10.8.

"§ 52C-5-502. Employer's compliance with income-withholding order of another state.

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this ~~State.~~state.

(c) Except as otherwise provided in subsection (d) of this section and G.S. 52C-5-503, the employer shall withhold and distribute the funds as directed in the income-withholding order by complying with terms of the order which specify:

(1) The duration and amount of periodic payments of current child support, stated as a sum certain;

(2) The person ~~or agency~~ designated to receive payments and the address to which the payments are to be forwarded;

(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) The employer's fee for processing an income-withholding order;

(2) The maximum amount permitted to be withheld from the obligor's income; and

(3) The times within which the employer must implement the income-withholding order and forward the child support payment.

"**§ 52C-5-503. ~~Compliance with multiple~~Employer's compliance with two or more income-withholding orders.**

If an obligor's employer receives ~~multiple~~ two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the ~~multiple~~ orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for ~~multiple~~ two or more child support obligees.

"**§ 52C-5-504. Immunity from civil liability.**

An employer ~~who~~ that complies with an income-withholding order issued in another state in accordance with this Article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

"**§ 52C-5-505. Penalties for noncompliance.**

An employer ~~who~~ that willfully fails to comply with an income-withholding order issued ~~by~~ in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this ~~State.~~state.

"**§ 52C-5-506. Contest by obligor.**

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this ~~State~~ state by registering the order in a tribunal of this state and filing a contest to that order as provided in Article 6 of this Chapter, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this ~~State. G.S. 52C-6-604 applies to the contest.~~state.

(b) The obligor shall give notice of the contest to:

(1) A support enforcement agency providing services to the obligee;

(2) Each employer that has directly received an income-withholding ~~order;~~order relating to the obligor; and

(3) The person ~~or agency~~ designated to receive payments in the income-withholding order or, if no person ~~or agency~~ is designated, to the obligee.

"§ 52C-5-507. Administrative enforcement of orders.

(a) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued ~~by a tribunal of~~in another state or a foreign ~~country~~ support order may send the documents required for registering the order to a support enforcement agency of this ~~State.~~state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this ~~State~~ state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Chapter.

"Article 6.

"~~Enforcement~~ Registration, Enforcement, and Modification of Support ~~Order After Registration.~~Order.

"Part 1. Registration ~~and~~ for Enforcement of Support Order.

"§ 52C-6-601. Registration of order for enforcement.

A support order or ~~an~~ income-withholding order issued ~~by a tribunal of~~in another state or a foreign support order may be registered in this ~~State~~ state for enforcement.

"§ 52C-6-602. Procedure to register order for enforcement.

(a) ~~A~~ Except as otherwise provided in G.S. 52C-7-706, a support order or income-withholding order of another state or a foreign support order may be registered in this ~~State~~ state by sending the following ~~documents and information~~records to the appropriate tribunal ~~for the county in which the obligor resides in this State:~~in this state:

(1) A letter of transmittal to the tribunal requesting registration and enforcement;

(2) Two copies, including one certified copy, of ~~all orders~~the order to be registered, including any modification of ~~an~~ the order;

(3) A sworn statement by the ~~party seeking~~person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) The name of the obligor and, if known:

a. The obligor's address and social security number;

b. The name and address of the obligor's employer and ~~another~~ any other source of income of the obligor; and

c. A description and the location of property of the obligor in this ~~State~~ state not exempt from execution; and

(5) ~~The~~ Except as otherwise provided in G.S. 52C-3-311, the name and address of the obligee and, if applicable, the ~~agency or~~ person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as ~~a~~ an order of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this ~~State~~ state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall do each of the following:

(1) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section.

(2) Specify the order alleged to be the controlling order, if any.

(3) Specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

"§ 52C-6-603. Effect of registration for enforcement.

(a) A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this ~~State.~~state.

(b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this ~~State.~~state.

(c) Except as otherwise provided in this ~~Article.~~Chapter, a tribunal of this ~~State~~ state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

"§ 52C-6-604. Choice of law.

(a) ~~The~~ Except as otherwise provided in subsection (d) of this section, the law of the issuing state or foreign country governs all of the following:

(1) The nature, extent, amount, and duration of current payments ~~and other obligations of support and the~~ under a registered support order.

(2) The computation and payment of ~~arrears~~ arrearages and accrual of interest on the arrearages under the ~~order.~~support order.

(3) The existence and satisfaction of other obligations under the support order.

(b) In a proceeding for ~~arrears.~~arrears under a registered support order, the statute of limitations ~~under the laws of this State~~of this state, or of the issuing ~~state.~~state or foreign country, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.

(d) After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

"Part 2. Contest of Validity ~~of~~ or Enforcement.

"§ 52C-6-605. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) ~~The~~ A notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this ~~State;~~state;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after ~~notice;~~notice, unless the registered order is under G.S. 52C-7-707;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged ~~arrears and precludes further contest of that order with respect to any matter that could have been asserted;~~arrearages; and

(4) Of the amount of any alleged ~~arrears.~~arrearages.

(b1) If the registering party asserts that two or more orders are in effect, a notice must also do each of the following:

(1) Identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any.

(2) Notify the nonregistering party of the right to a determination of which is the controlling order.

(3) State that the procedures provided in subsection (b) of this section apply to the determination of which is the controlling order.

(4) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(c) Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable.

"§ 52C-6-606. Procedure to contest validity or enforcement of registered support order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this ~~State~~ state shall request a hearing within ~~20 days after notice of the registration.~~the time required by G.S. 52C-6-605. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrears pursuant to G.S. 52C-6-607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

"§ 52C-6-607. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) The issuing tribunal lacked personal jurisdiction over the contesting party;

(2) The order was obtained by fraud;

(3) The order has been vacated, suspended, or modified by a later order;

(4) The issuing tribunal has stayed the order pending appeal;

(5) There is a defense under the law of this ~~State~~ state to the remedy sought;

(6) Full or partial payment has been made; ~~or~~

(7) The statute of limitations under G.S. 52C-6-604 precludes enforcement of some or all of the ~~arrears.~~alleged arrearages; or

(8) The alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this section, a tribunal may stay enforcement of ~~the~~ a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this ~~State.~~state.

(c) If the contesting party does not establish a defense under subsection (a) of this section to the validity or enforcement of ~~the~~ a registered support order, the registering tribunal shall issue an order confirming the order.

"§ 52C-6-608. Confirmed order.

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

"Part. 3. Registration and Modification of Child Support ~~Order.~~Order of Another State.

"§ 52C-6-609. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this ~~State~~ state in the same manner provided in ~~Part 1 of this Article~~G.S. 52C-6-601 through G.S. 52C-6-608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

"§ 52C-6-610. Effect of registration for modification.

A tribunal of this ~~State~~ state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this ~~State.~~state, but the registered support order may be modified only if the requirements of G.S. 52C-6-611 or G.S. 52C-6-613 have been met.

"§ 52C-6-611. Modification of child support order of another state.

(a) ~~After~~ If G.S. 52C-6-613 does not apply, upon petition, a tribunal of this state may modify a child support order issued in another state ~~has been~~ which is registered in this ~~State. the responding tribunal of this State may modify that order only if G.S. 52C-6-613 does not apply and~~state if, after notice and ~~hearing it~~ hearing, the tribunal finds that:

(1) The following requirements are met:

a. ~~The~~ Neither the child, nor the ~~individual obligee.~~obligee who is an individual, ~~and the obligor do not reside~~nor the obligor resides in the issuing state;

b. A petitioner who is a nonresident of this ~~State~~ state seeks modification; and

c. The respondent is subject to the personal jurisdiction of the tribunal of this ~~State;~~state; or

(2) ~~The~~ This state is the residence of the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this ~~State~~ state and all of the parties who are individuals have filed ~~a written consent~~consents in a record in the issuing tribunal for a tribunal of this ~~State~~ state to modify the support order and assume continuing, exclusive ~~jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this act, the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child support order~~jurisdiction.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this ~~State,~~state, and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this ~~State~~state may not modify any aspect of a child support order that may not be modified under the law of the issuing ~~state.~~state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under G.S. 52C-2-207 establishes the aspects of the support order which are nonmodifiable.

(c1) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(d) On the issuance of an order by a tribunal of this state modifying a child support order issued in another state, ~~a~~ the tribunal of this ~~State~~ state becomes the tribunal of continuing, exclusive jurisdiction.

(d1) Notwithstanding subsections (a) through (d) of this section and G.S. 52C-2-201(b), a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

(1) One party resides in another state; and

(2) The other party resides outside the United States.

(e) Repealed by Session Laws 1997-443, s. 10.12.

"§ 52C-6-612. Recognition of order modified in another state.

~~A~~ If a child support order issued by a tribunal of this ~~State shall recognize a modification of its earlier child support order~~state is modified by a tribunal of another state which assumed jurisdiction pursuant to ~~a law substantially similar to this Chapter and, upon request, except as otherwise provided in this Chapter, shall:~~the Uniform Interstate Family Support Act, a tribunal of this state:

(1) ~~Enforce the~~ May enforce its order that was modified only as to ~~amounts~~ arrears and interest accruing before the modification;

~~(2) Enforce only nonmodifiable aspects of that order;~~

(3) ~~Provide~~ May provide other appropriate relief ~~only~~ for violations of ~~that~~ its order which occurred before the effective date of the modification; and

(4) ~~Recognize~~ Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

"§ 52C-6-613. Jurisdiction to modify child support order of another state when individual parties reside in this ~~State.~~state.

(a) If all of the parties who are individuals reside in this ~~State~~ state and the child does not reside in the issuing state, a tribunal of this ~~State~~ state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this ~~State~~ state exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2 of this Chapter, this Article, and the procedural and substantive law of this ~~State~~ state to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 of this Chapter do not apply.

...

"Part 4. Registration and Modification of Foreign Child Support Order.

"§ 52C-6-615. Jurisdiction to modify child support order of foreign country.

(a) Except as otherwise provided in G.S. 52C-7-711, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child support order otherwise required of the individual pursuant to G.S. 52C-6-611 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(b) An order issued by a tribunal of this state modifying a foreign child support order pursuant to this section is the controlling order.

"§ 52C-6-616. Procedure to register child support order of foreign country for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the Convention may register that order in this state under G.S. 52C-6-601 through G.S. 52C-6-608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification.

"Article 7.

"~~Determination of Parentage.~~Support Proceeding Under Convention.

"§ 52C-7-701. ~~Proceeding to determine parentage.~~Definitions.

~~(a) A tribunal of this State may serve as an initiating or responding tribunal in a proceeding brought under this Chapter or a law substantially similar to this Chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.~~

~~(b) In a proceeding to determine parentage, a responding tribunal of this State shall apply the procedural and substantive law of this State and the rules of this State on choice of law.~~

As used in this Article:

(1) "Application" means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

(2) "Central authority" means the entity designated by the United States or a foreign country described in G.S. 52C-1-101(3a)d. to perform the functions specified in the Convention.

(3) "Convention support order" means a support order of a tribunal of a foreign country described in G.S. 52C-1-101(3a)d.

(4) "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States.

(5) "Foreign central authority" means the entity designated by a foreign country described in G.S. 52C-1-101(3a)d. to perform the functions specified in the Convention.

(6) "Foreign support agreement" means an agreement for support in a record that:

a. Is enforceable as a support order in the country of origin;

b. Has been (i) formally drawn up or registered as an authentic instrument by a foreign tribunal or (ii) authenticated by or concluded, registered, or filed with a foreign tribunal; and

c. May be reviewed and modified by a foreign tribunal.

The term includes a maintenance arrangement or authentic instrument under the Convention.

(7) "United States central authority" means the Secretary of the United States Department of Health and Human Services.

"§ 52C-7-702. Applicability.

This Article applies only to a support proceeding under the Convention. In such a proceeding, if a provision of this Article is inconsistent with Articles 1 through 6 of this Chapter, this Article controls.

"§ 52C-7-703. Relationship of Department to United States central authority.

The Department is recognized as the agency designated by the United States central authority to perform specific functions under the Convention.

"§ 52C-7-704. Initiation by Department of support proceeding under Convention.

(a) In a support proceeding under this Article, the Department shall do the following:

(1) Transmit and receive applications.

(2) Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(b) The following support proceedings are available to an obligee under the Convention:

(1) Recognition or recognition and enforcement of a foreign support order.

(2) Enforcement of a support order issued or recognized in this state.

(3) Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child.

(4) Establishment of a support order if recognition of a foreign support order is refused under G.S. 52C-7-708(b)(2), (4), or (9).

(5) Modification of a support order of a tribunal of this state.

(6) Modification of a support order of a tribunal of another state or foreign country.

(c) The following support proceedings are available under the Convention to an obligor against which there is an existing support order:

(1) Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state.

(2) Modification of a support order of a tribunal of this state.

(3) Modification of a support order of a tribunal of another state or a foreign country.

(d) A tribunal of this state may not require security, bond, or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the Convention.

"**§ 52C-7-705. Direct request.**

(a) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(b) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, G.S. 52C-7-706 through G.S. 52C-7-713 apply.

(c) In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:

(1) A security, bond, or deposit is not required to guarantee the payment of costs and expenses; and

(2) An obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

(d) A petitioner filing a direct request is not entitled to assistance from the Department or the county child support agency.

(e) This Article does not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

"**§ 52C-7-706. Registration of Convention support order.**

(a) Except as otherwise provided in this Article, a party who is an individual or a support enforcement agency seeking recognition of a Convention support order shall register the order in this state as provided in Article 6 of this Chapter.

(b) Notwithstanding G.S. 52C-3-310 and G.S. 52C-6-602(a), a request for registration of a Convention support order must be accompanied by:

(1) A complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;

(2) A record stating that the support order is enforceable in the issuing country;

(3) If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an

opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) A record showing the amount of arrears, if any, and the date the amount was calculated;

(5) A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(c) A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of this state may vacate the registration of a Convention support order without the filing of a contest under G.S. 52C-7-707 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a Convention support order.

"**§ 52C-7-707. Contest of registered Convention support order.**

(a) Except as otherwise provided in this Article, G.S. 52C-6-605 through G.S. 52C-6-608 apply to a contest of a registered Convention support order.

(b) A party contesting a registered Convention support order shall file a contest not later than 30 days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than 60 days after notice of the registration.

(c) If the nonregistering party fails to contest the registered Convention support order by the time specified in subsection (b) of this section, the order is enforceable.

(d) A contest of a registered Convention support order may be based only on grounds set forth in G.S. 52C-7-708. The contesting party bears the burden of proof.

(e) In a contest of a registered Convention support order, a tribunal of this state:

(1) Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) May not review the merits of the order.

(f) A tribunal of this state deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

"**§ 52C-7-708. Recognition and enforcement of registered Convention support order.**

(a) Except as otherwise provided in subsection (b) of this section, a tribunal of this state shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered Convention support order:

(1) Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard.

(2) The issuing tribunal lacked personal jurisdiction consistent with G.S. 52C-2-201.

(3) The order is not enforceable in the issuing country.

(4) The order was obtained by fraud in connection with a matter of procedure.

(5) A record transmitted in accordance with G.S. 52C-7-706 lacks authenticity or integrity.

(6) A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed.

(7) The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this Chapter in this state.

(8) Payment, to the extent alleged arrears have been paid in whole or in part.

(9) In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

a. If the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

b. If the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal.

(10) The order was made in violation of G.S. 52C-7-711.

(c) If a tribunal of this state does not recognize a Convention support order under subdivision (b)(2), (4), or (9) of this section, then:

(1) The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and

(2) The Department and the county child support agency shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under G.S. 52C-7-704.

"**§ 52C-7-709. Partial enforcement.**

If a tribunal of this state does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a Convention support order.

"**§ 52C-7-710. Foreign support agreement.**

(a) Except as otherwise provided in subsections (c) and (d) of this section, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by each of the following:

(1) A complete text of the foreign support agreement.

(2) A record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(c) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(d) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds any of the following:

(1) Recognition and enforcement of the agreement is manifestly incompatible with public policy.

(2) The agreement was obtained by fraud or falsification.

(3) The agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this Chapter in this state.

(4) The record submitted under subsection (b) of this section lacks authenticity or integrity.

(c) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

"**§ 52C-7-711. Modification of Convention child support order.**

(a) A tribunal of this state may not modify a Convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of this state does not modify a Convention child support order because the order is not recognized in this state, G.S. 52C-7-708(c) applies.

"**§ 52C-7-712. Personal information; limit on use.**

Personal information gathered or transmitted under this Article may be used only for the purposes for which it was gathered or transmitted.

"**§ 52C-7-713. Record in original language; English translation.**

A record filed with a tribunal of this state under this Article must be in the original language and, if not in English, must be accompanied by an English translation.

"Article 8.

"Interstate Rendition.

"**§ 52C-8-801. Grounds for rendition.**

(a) For purposes of this Article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this Chapter.

(b) The Governor of this ~~State~~ state may:

(1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this ~~State~~ state with having failed to provide for the support of an obligee; or

(2) On the demand ~~by~~ of the governor of another state, surrender an individual found in this ~~State~~ state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this Chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

"**§ 52C-8-802. Conditions of rendition.**

(a) Before making demand that the governor of another state surrender an individual charged criminally in this ~~State~~ state with having failed to provide for the support of an obligee, the Governor of this ~~State~~ state may require a prosecutor of this ~~State~~ state to demonstrate that at least 60 days previously the obligee has initiated proceedings for support pursuant to this Chapter or that the proceeding would be of no avail.

(b) If, under this Chapter or a law substantially similar to this ~~Chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act,~~ Chapter, the governor of another state makes a demand that the Governor of this ~~State~~ state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

"Article 9.

"Miscellaneous Provisions.

"**§ 52C-9-901. Uniformity of application and construction.**

~~This Chapter shall be applied and construed to effectuate its general purpose to make uniform~~In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to ~~the~~ its subject ~~of this Chapter~~matter among states ~~enacting~~ that enact it.

"**§ 52C-9-901.1. Transitional provision.**

This Chapter applies to proceedings begun on or after the effective date of this Chapter to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered.

...."

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

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SENATE BILL 488:
Amend Uniform Interstate Family Support Act.- AB

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 1, 2015
Introduced by:	Sen. Pate	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S488-CSTJ-10		

SUMMARY: House Bill 298 would amend the Uniform Interstate Family Support Act (UIFSA), as requested by the Department of Health and Human Services (DHHS). The proposed committee substitute makes technical changes.

[As introduced, this bill was identical to H298, as introduced by Reps. Burr, Stevens, which received a favorable report in House Judiciary III on April 1, 2015.]

BACKGROUND: The 2008 UIFSA Amendments modify the current version of UIFSA's international provisions to comport with the obligations of the United States under the 2007 Hague Convention on Maintenance. Federal legislation enacted in 2014 requires all states to enact the 2008 UIFSA Amendments as a condition of continuing to receive federal funds for state child support programs. Failure to enact these amendments during the 2015 legislative session could result in a state's loss of federal funding. DHHS received $96.5 million in federal match dollars for the SFY 2012-13 for the Child Support Services Office. Further information for state legislators can be found at the Uniform Law Commission's website at: ***http://www.uniformlaws.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008)***.

BILL ANALYSIS: House Bill 298 would amend Chapter 52C of the General Statutes as described below. The bill makes numerous organizational and technical changes; makes changes throughout by adding reference to orders from foreign countries; and makes clarifying and substantive changes as specifically noted.

ARTICLE 1 – GENERAL PROVISIONS

G.S. 52C-1-101 – Definitions.

- Provides that the defined terms apply throughout all of G.S. Chapter 52C.
- Adds or changes various definitions, amends a number of terms, and makes clarifying and technical changes to the definitions.

G.S. 52C-1-102 – State tribunal and support enforcement agency.

- Clarifies that the General Court of Justice, District Court Division, is the tribunal of the state and provides that DHHS and the county child support agencies are the state's support enforcement agencies.

G.S. 52C-1-103 – Remedies cumulative.

- Provides that the remedies provided under the Chapter do not affect the recognition of a foreign support order on the basis of comity. Adds that the Chapter does not (1) provide the exclusive method of establishing or enforcing a support order under the law of this state or (2) grant a

tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under the Chapter.

G.S. 52C-1-104 - Application of Chapter to resident of foreign country and foreign support proceeding.

- Requires a tribunal of the state to apply Articles 1 through 6, and as applicable, Article 7 to support proceedings involving a foreign support order, a foreign tribunal, or an obligee, obligor, or child residing in a foreign country.

ARTICLE 2 – JURISDICTION.

G.S. 52C-2-201 – Bases for jurisdiction over nonresident.

- Changes current law to allow a tribunal of the state to exercise personal jurisdiction over a nonresident in a proceeding to establish or enforce *(but not modify)* a support order or to determine parentage if any of the *(now, seven)* listed conditions are met.
- Provides that the listed conditions no longer require the individual to have asserted paternity in an affidavit with the superior court.
- Adds that the bases of personal jurisdiction may not be used to acquire personal jurisdiction for a tribunal of the state to modify a child support order of another state unless specified requirements are met.

G.S. 52C-2-202 – Duration of personal jurisdiction.

- Rewrites the statute to provide that personal jurisdiction acquired by a tribunal of this state in a proceeding under this Chapter or other law of this State relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order.

G.S. 52C-2-203 – Initiating and responding tribunal of state.

G.S. 52C-2-204 – Simultaneous proceedings.

- Adds foreign countries as they relate to these sections.

G.S. 52C-2-205 – Continuing, exclusive jurisdiction to modify child support order.

- Specifies the circumstances under which a tribunal of this state that has issued a child support order *must*, and *may not* exercise continuing, exclusive jurisdiction to modify its child support order. G.S. 52C-2-205(a) and (b).
- Provides that if a tribunal of another state has issued a child support order under the Uniform Interstate Family Support Act or similar law that modifies a child support order of a tribunal of this state, this state's tribunals must recognize the continuing, exclusive jurisdiction of the other state's tribunal.
- Adds a provision that a tribunal of this state that does not have continuing, exclusive jurisdiction to modify an order may initiate a request of another state's tribunal to modify a support order issued in that state.

G.S. 52C-2-206 – Continuing jurisdiction to enforce child support order.

- Specifies the circumstances under which a tribunal of this state that has issued a child support order may serve as an initiating tribunal to request a tribunal of another state to enforce the order.

G.S. 52C-2-207 – Determination of controlling child support order.

- Sets out the requirements and procedures for determining which tribunal's child support order controls when two or more tribunals have issued child support orders, and specifies the information that must be included in the order that determines the controlling order.

G.S. 52C-2-208 – Child support orders for two or more obligees.

- Makes conforming changes.

G.S. 52C-2-209 - Credit for payments.

- Directs a tribunal of the state to credit amounts collected for a particular period under a child support order against the amounts owed for the same period under any other child support order for support of the same child.

G.S. 52C-2-210 – Application of this Chapter to nonresident subject to personal jurisdiction.

- Creates provision defining the powers of a tribunal of this state in exercising personal jurisdiction over a nonresident.

G.S. 52C-2-211 – Continuing, exclusive jurisdiction to modify spousal support order.

- Creates a new provision concerning the circumstances under which a tribunal of this state has jurisdiction to modify a spousal support order.

ARTICLE 3 – CIVIL PROVISIONS OF GENERAL APPLICATION

G.S. 52C-3-301 – Proceedings under this Chapter.

- Makes clarifying changes and adds *"foreign country."*

G.S. 52C-3-302 – Proceeding by minor parent.

- Changes section title.

G.S. 52C-3-303 – Application of law of this state.

- Makes technical changes.

G.S. 52C-3-304 – Duties of initiating tribunal.

- No longer requires an initiating tribunal to provide three copies of the petition. Describes the duties of an initiating tribunal.

G.S. 52C-3-305 – Duties and powers of responding tribunal.

- Allows the responding tribunal of this state to determine the controlling child support order and to order an obligor to keep the tribunal informed of the obligor's current email address. Requires a responding tribunal that is requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, to convert the amount to dollars.

G.S. 52C-3-306 – Inappropriate tribunal.

- Makes technical changes.

G.S. 52C-3-307 – Duties of support agency.

- Requires a support enforcement agency, upon request, to provide services to a petitioner who resides in this state or who requests services through a central authority of a foreign country, and permits a support enforcement agency to provide services to a petitioner who does not live in the state.
- Requires a support enforcement agency that requests registration of a child support order in this state for enforcement or for modification to make reasonable efforts to make specified determinations.
- Requires a support enforcement agency that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency to convert the amounts to dollars.
- Requires a support enforcement agency of this state to request a tribunal of this state to issue a child support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested by a support enforcement agency of another state.

G.S. 52C-3-308 – Duty of Department.

- Removes current provisions concerning the district attorney's duty.
- Allows the Department either to order the support enforcement agency to perform its duties or to provide those services directly when the Department determines that the agency is neglecting or refusing to provide services.

- Authorizes the Department to determine that a foreign country has established a reciprocal arrangement for child support with this state and to take appropriate action for notification of the determination.

G.S. 52C-3-308.1 – Private counsel.

- Authorizes an individual to hire private counsel for representation in proceedings under this Chapter.

G.S. 52C-3-309 Duties of state information agency.

- Clarifies the Department's duties as the state information agency under the Chapter.

G.S. 52C-3-310 –Pleadings and accompanying documents.

- Makes clarifying changes and references orders from another state or foreign country.

G.S. 52C-3-311 – Nondisclosure of information in exceptional circumstances.

- Modifies the procedure for protecting identifying information of a child or a party, and permits the tribunal to order disclosure of information, following a hearing and a consideration of the party's or child's health, safety, or liberty, if the tribunal determines disclosure to be in the best interest of justice.

G.S. 52C-3-312 – Costs and fees.

- Adds reference to foreign country.

G.S. 52C-3-313 – Limited immunity of petitioner.

- Makes clarifying changes.

G.S. 52C-3-314 – Nonparentage as defense.

- (No changes.)

G.S. 52C-3-315 – Special rules of evidence and procedure.

- *Requires* a tribunal of the state to permit a party or witness residing outside of the state to be deposed or testify by phone, audiovisual means, or other electronic means and provides that a voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage.

G.S. 52C-3-316 – Communications between tribunals.

- Authorizes communication between tribunals by email.

G.S. 52C-3-317 – Assistance with discovery.

- Makes technical changes.

G.S. 52C-3-318 – Receipt and disbursement of payments.

- Specifies duties of the support enforcement agency or tribunal of this state when neither the obligor, the obligee, nor the child reside in the state.
- Requires the support enforcement agency of this state receiving redirected payments from another state to give a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

ARTICLE 4 – ESTABLISHMENT OF SUPPORT ORDER or DETERMINATION OF PARENTAGE.

G.S. 52C-4-401 – Establishment of support order.

- Modifies the circumstances under which a tribunal may issue a temporary child support order.

G.S. 52C-4-402 – Proceeding to determine parentage.

- Provides that a tribunal of this state that is authorized to determine parentage of a child to serve as a responding tribunal in a proceeding to determine parentage of a child.

ARTICLE 5 – ENFORCEMENT of ORDER of ANOTHER STATE WITHOUT REGISTRATION.

G.S. 52C-5-501 – Employer's receipt of income-withholding order of another state.

- Permits an income withholding order issued in another state to be sent by or on behalf of the obligee, or by the support enforcement agency, to the obligor's employer or payor without first filing a petition or registering the order with a tribunal. Removes the provisions concerning obligors who are receiving unemployment benefits.

G.S. 52C-5-502 – Employer's receipt of income-withholding order of another state.

G.S. 52C-5-503 – Employer's compliance with two or more income-withholding orders.

G.S. 52C-5-504 – Immunity from civil liability.

G.S. 52C-5-505 – Penalties for noncompliance.

- Makes only technical and clarifying changes.

G.S. 52C-5-506 – Contest by obligor.

- Specifies the manner in which an obligor may contest the validity or enforcement of an income-withholding order issued in another state that is received directly by an employer in this state.

G.S. 52C-5-507 – Administrative enforcement of orders.

- Allows a support enforcement agency as well as a party seeking to enforce an order from another state or country to send the documents needed for registration of the order.

ARTICLE 6 – REGISTRATION, ENFORCEMENT, and MODIFICATION of SUPPORT ORDER.

G.S. 52C-6-601 – Registration of order for enforcement.

- Adds reference to foreign support order.

G.S. 52C-6-602 – Procedure to register order for enforcement.

- Prescribes actions that must be taken by a person requesting registration of an order of enforcement two or more orders are in effect.
- Allows a request for a determination of which order is controlling to be filed separately or with a request for registration and enforcement or for registration and modification.

G.S. 52C-6-603 – Effect of registration for enforcement.

- Adds reference to foreign support order.

G.S. 52C-6-604 – Choice of law.

- Specifies that the law of the issuing state or county governs the existence and satisfaction of other obligations under the support order.
- Requires a responding tribunal of this state to apply this state's procedures and remedies to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.
- Adds that after a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, a tribunal of this state must prospectively apply the law of the state or foreign country issuing the controlling order on current and future support and on consolidated arrears.

G.S. 52C-6-605 – Notice of registration of order.

- Sets out notice requirements for the registration of an order when the registering party asserts that two or more orders are in effect.

G.S. 52C-6-606 – Procedure to contest validity or enforcement of registered support order.

- Makes clarifying changes.

G.S. 52C-6-607 – Contest of registration or enforcement.

- Allows a party contesting the validity of enforcement of a support order to assert a defense that that the alleged controlling order is not the controlling order.

G.S. 52C-6-608 – Confirmed order.

G.S. 52C-6-609 – Procedure to register child support order of another state for modification.

G.S. 52C-6-610 –Effect of registration for modification.

- Makes clarifying changes.

G.S. 52C-6-611 – Modification of child support order of another state.

- Provides that in a proceeding to modify a child support order, the law of the state that issued the initial controlling order governs the duration of the obligation of support, and the obligor's fulfillment of the duty of support precludes imposition of a further obligation of a support by a tribunal of this state.
- Provides that a tribunal of this state retains jurisdiction to modify an order issued by this state if one party resides in another state and the other party resides outside the United States.

G.S. 52C-6-612 – Recognition of order modified in another state.

- Provides that if a child support order issued by a tribunal of this state is modified by another state which assumed jurisdiction under the Uniform Interstate Family Support Act, the tribunal may perform specified acts and must recognize the modifying order of the other state upon registration.

G.S. 52C-6-613 – Jurisdiction to modify child support order of another state when individual parties reside in this state.

- Makes technical changes.

❖ ADDS A NEW PART FOUR TO ARTICLE 6 – "Registration and Modification of Foreign child Support Order."

G.S. 52C-6-615 – Jurisdiction to modify child support order of foreign country.

- Enacts new statute relating to the jurisdiction to modify child support orders.

G.S. 52C-6-616 – Procedure to register child support order of foreign country for modification.

- Creates the procedure for registering a child support order of a foreign country in order to modify and enforce the order.

ARTICLE 7– SUPPORT PROCEEDING UNDER CONVENTION.

❖ Repeals current G.S. 52C-7-701 and replaces it with the following:

G.S. 52C-7-701 – Definitions.

- Defines terms used in the Article.

G.S. 52C-7-702 – Applicability.

- Specifies that the Article applies only to a support proceeding under the named Convention.

G.S. 52C-7-703 – Relationship of Department of United States central authority.

- Identifies DHHS as the agency designated to perform specific functions under the Convention.

G.S. 52C-7-704 – Initiation by Department of support proceeding under Convention.

- Sets out DHHS' duties with respect to initiating a support proceeding.
- Specifies the support proceedings available to an obligee and obligor under the Convention.
- Prohibits a tribunal of this state from requiring security, bond, or deposit to guarantee the payment of costs and expenses in proceedings under the Convention.

G.S. 52C-7-705 – Direct Request.

- Enacts provisions governing a petitioner's direct request seeking establishment or modification of a support order or determination of parentage, and specifies the applicable laws of this state.

G.S. 52C-7-706 – Registration of Convention support order.

- Requires a party seeking recognition of a Convention support order to register the order in this state and lists the necessary supporting documents.
- Specifies the findings a tribunal of this state must make in order to vacate the registration of a Convention support order, and the subsequent notification requirements.

G.S. 52C-7-707 – Contest of Convention support order.

- Establishes the procedure for contesting a registered Convention support order

G.S. 52C-7-708 –Recognition and enforcement of registered Convention support order.

- Requires a tribunal of this state to recognize and enforce a registered Convention support order, unless the listed grounds for refusal of recognition and enforcement exist.
- Sets out what must occur if a tribunal of this state does not recognize a Convention support order under specified circumstances.

G.S. 52C-7-709 – Partial enforcement.

- Provides that if a tribunal of this state does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order, and allows an application or direct request to seek recognition and partial enforcement of the order.

G.S. 52C-7-710 – Foreign support agreement.

- Sets out the circumstances under which a tribunal of this state must recognize and enforce a foreign support agreement registered in this state.
- Lists what must be included with an application or direct request for enforcement of such an agreement.
- Governs when a tribunal of this state may vacate the registration of a foreign support agreement.
- Lists the findings a tribunal of this state must make in order to refuse recognition and enforcement of the agreement.

G.S. 52C-7-711 – Modification of Convention child support order.

- Prohibits a tribunal of this state from modifying a Convention support order if the obligee remains a resident of the foreign country where the order was issued unless certain circumstances exist.

G.S. 52C-7-712 – Personal information; limit on use.

- Provides that the use of personal information is limited to the purpose for which it was gathered or transmitted.

G.S. 52C-7-713 – Record in original language; English translation.

- Provides that a record filed with a tribunal of this state must be in the original language and, if applicable, with an accompanying English translation.

ARTICLE 8– INTERSTATE RENDITION.

G.S. 52C-8-801 – Grounds for rendition.

G.S. 52C-8-802 – Conditions of rendition.

- Makes clarifying and conforming changes.

ARTICLE 9– MISCELLANEOUS PROVISIONS.

G.S. 52C-9-901 – Uniformity of application and construction.

- Provides that consideration must be given to the need to promote uniformity of the law among states enacting it in applying and construing this uniform act.

G.S. 52C-9-901.1 – Transitional provision.

- Enacts new statute to provide that the Chapter applies to proceedings begun on or after the effective date of this Chapter to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 489

Short Title:	DHHS Child Support Recommendations.-AB	(Public)
Sponsors:	Senators Pate (Primary Sponsor); Hise, Rabin, and Tarte.	
Referred to:	Rules and Operations of the Senate.	

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE ADMINISTRATION OF CHILD SUPPORT SERVICES THAT WILL RESULT IN MORE EFFECTIVE AND EFFICIENT COLLECTION AND PAYMENT OF CHILD SUPPORT TO FAMILIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-130.1(d) reads as rewritten:

"(d) Any fee imposed by the North Carolina Department of Revenue or the Secretary of the Treasury to cover their costs of withholding for non-Work First arrearages certified for the collection of past due support from State or federal income tax refunds or administrative offsets, as defined by 31 C.F.R. § 285.1(a), shall be borne by the client by deducting the fee from the amount collected.

Any income tax refund offset amounts or administrative offsets, as defined by 31 C.F.R. § 285.1(a), which are subsequently determined to have been incorrectly withheld and distributed to a client, and which must be refunded by the State to a responsible parent or the nondebtor spouse, shall constitute a debt to the State owed by the client."

SECTION 2. G.S. 110-136.4 reads as rewritten:

"**§ 110-136.4. Implementation of withholding in IV-D cases.**

(a) Withholding based on arrearages or obligor's request.

(1) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:

a. Whether the proposed withholding is based on the obligor's failure to make legally obligated child support, alimony or postseparation support payments on the obligor's request for withholding, on the obligee's request for withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);

b. The amount of overdue child support, overdue alimony or postseparation support payments, the total amount to be withheld, and when the withholding will occur;

c. The name of each child or person for whose benefit the child support, alimony or postseparation support payments are due and information

sufficient to identify the court order under which the obligor has a duty to support the child, spouse, or former spouse;

d. The amount and sources of disposable income;

e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;

f. An explanation of the obligor's rights and responsibilities pursuant to this section;

g. That withholding will be continued until terminated pursuant to G.S. 110-136.10.

(3) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligor's or obligee's request for withholding. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a hearing in the county where the support order was entered before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

(4) Uncontested withholding. If the obligor does not contest the withholding within the 10-day response period, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.

(5) Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.

(6) Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall either request the clerk of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other appropriate available measures to enforce the support obligation.

(b) Immediate income withholding. When a new or modified child support order is entered, the district court judge shall, after hearing evidence regarding the obligor's disposable income, place the obligor under an order for immediate income withholding. The IV-D agency shall serve the payor pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with a notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. If information is unavailable regarding an obligor's disposable income, or the obligor is unemployed, or an agreement is reached between both parties which provides for an alternative arrangement, immediate income withholding shall not apply. The obligor, however, is subject to income withholding pursuant to G.S. 110-136.4(a).

(c) Subsequent payors. If the obligor changes employment or source of disposable income, notice to subsequent payors of their obligation to withhold shall be served as required by G.S. 1A-1, Rule 5, Rules of Civil ~~Procedure.~~ Procedure, or by electronic transmission in compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(d) Multiple withholdings. The obligor must notify the obligee if the obligor is currently subject to another withholding for child support. In the case of two or more withholdings against one obligor, the obligee or obligees shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured party, upon request, shall be granted a hearing in accordance with the procedure specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be resolved in accordance with G.S. 110-136.7.

(e) Modification of withholding. When an order for withholding has been entered under this section, the obligee may modify the withholding based on changed circumstances. The obligee shall proceed as is provided in this section.

(f) Applicability of section. The provisions of this section apply to IV-D cases only."

SECTION 3. G.S. 110-139.2(b1) reads as rewritten:

"(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that an obligor who maintains an identified account with the financial institution has a child support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the amount of unpaid support owed. In order to be able to attach a lien on and levy an obligor's account, the amount of unpaid support owed shall be an amount not less than the amount of support owed for six months or one thousand dollars ($1,000), whichever is less.

Upon certification of the amount of unpaid support owed in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the obligor, and when the matched account is owned jointly, any other nonliable owner of the account, and the financial institution a notice as provided by this subsection. The notice shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied to satisfy the lien, the certified amount of unpaid support, information for the obligor or account owner on how to remove the lien or contest the lien in order to avoid the levy, and a ~~copy of~~ reference to the applicable law, G.S. 110-139.2. The notice shall be served on the obligor, and any nonliable account owner, in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The financial institution shall be served notice in accordance with Rule 5 of the North Carolina Rules of Civil Procedure. Upon service of the notice, the financial institution shall proceed in the following manner:

(1) Immediately attach a lien to the identified account.

(2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

In order for an obligor or account owner to contest the lien, within 10 days after the obligor or account owner is served with the notice, the obligor or account owner shall send written notice of the basis of the contest to the Child Support Agency and shall request a hearing before the district court in the county where the support order was entered. The obligor account holder may contest the lien only on the basis that the amount owed is an amount less than the amount of support owed for six months, or is less than one thousand dollars ($1,000), whichever is less, or the contesting party is not the person subject to the court order of support. The district court may assess court costs against the nonprevailing party. If no response is received from the obligor or account owner within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the obligor.

A financial institution shall not be liable to any person for complying in good faith with this subsection. The remedy set forth in this section shall be in addition to all other remedies available to the State for the reduction of the obligor's child support arrears. This remedy shall not prevent the State from taking any and all other concurrent measures available by law.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this State without involvement of the Department."

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

SENATE BILL 489:
DHHS Child Support Recommendations.-AB

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 1, 2015
Introduced by:	Sen. Pate	**Prepared by:**	Janice Paul
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 489 would make changes to the administration of the state's Child Support Services Program, in order to improve the efficiency and effectiveness of the collection and payment of child support to families, as requested by the Department of Health and Human Services.

[As introduced, this bill was identical to H297, as introduced by Reps. Burr, Stevens, which is currently in Senate Judiciary I.]

BILL ANALYSIS:

Section 1 of Senate Bill 489 would amend 110-130.1 to provide that any fee imposed by the Department of Revenue or the Secretary of the Treasury to cover the costs of withholding for non-Work First arrearages for administrative offsets, as defined in federal regulation, are to be borne by the client, and that any such administrative offsets later determined to have been incorrectly withheld and distributed to a client will constitute a debt to the State owed by the client. The definition of "administrative offset" can be found at: http://www.gpo.gov/fdsys/pkg/CFR-2013-title31-vol2/pdf/CFR-2013-title31-vol2-sec285-1.pdf.

Section 2. Under certain circumstances, Child Support Services may withhold income from paychecks of parents owing past due child support. The parent's employer must be sent a notice that a portion of their employee's income will be withheld. Section 2 of the bill would add provisions to G.S. 110-136.4, *"Implementation of withholding in IV-D cases,"* permitting required notices of obligation to withhold to be served by means of an electronic transmission that complies with specified federal procedures.

Section 3. Under current G.S. 110-139.2, a notice to the obligor of levy on an account with a financial institution must include a copy of the applicable law (G.S. 110-139.2). HB 297 would require that the notice include only a reference to the applicable law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 311

Short Title:	Register of Deeds/Filing False Marriage Docs.	(Public)
Sponsors:	Senators Bingham (Primary Sponsor); and J. Davis.	
Referred to:	Rules and Operations of the Senate.	

March 18, 2015

A BILL TO BE ENTITLED

AN ACT TO ENSURE THE INTEGRITY OF MARRIAGE RECORDS PRESENTED FOR REGISTRATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 161 of the General Statutes is amended by adding a new section to read:

"**§ 161-14.03. Registration of documents purporting to impact official marriage records.**

(a) Prior to recording a document or instrument that (i) purports to impact an official record of marriage meeting the requirements of G.S. 51-16 and (ii) is not a marriage license, a return, or an amendment or correction of a marriage license as described in Article 2 of Chapter 51 of the General Statutes, the register of deeds shall conspicuously mark the first page of the document or instrument with the following statement:

"THIS DOCUMENT IS NOT AN OFFICIAL MARRIAGE DOCUMENT."

(b) This section shall not apply to instruments or documents that are attached as exhibits to land records, orders or judgments issued by a court of this State or another state, or separation agreements presented for registration."

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

SENATE BILL 311:
Register of Deeds/Filing False Marriage Docs

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 1, 2015
Introduced by:	Sen. Bingham	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 311 would add a new provision to the law governing the duties of registers of deeds in connection with the registration of certain documents purporting to impact official marriage records. The new provision requires that the register of deeds mark the first page of the document with a statement that the document is not an official marriage document.***

BILL ANALYSIS:

Senate Bill 311 would a new section to Article 2 of G.S. Chapter 161 requiring the register of deeds must mark the first page of the document or instrument with the following statement:

"THIS DOCUMENT IS NOT AN OFFICIAL BIRTH RECORD."

prior to recording a document if it purports to impact an official marriage record but is not a marriage license, a return, or an amendment or correction of a marriage license as prescribed under Article 2 of Chapter 51 of the General Statutes.

This requirement would not apply to documents or instruments specified in the bill.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 332

Short Title:	Register of Deeds-POA Indexing Fees.	(Public)
Sponsors:	Senator Daniel (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO ENABLE REGISTERS OF DEEDS TO COLLECT ADDITIONAL FEES FOR INDEXING INSTRUMENTS THAT CONTAIN EXHIBITS WITH MULTIPLE ENTERABLE PARTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-10(a) reads as rewritten:

"**§ 161-10. Uniform fees of registers of deeds.**

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. – For registering or filing any instrument for which no other provision is made by this section, the fee shall be twenty-six dollars ($26.00) for the first 15 pages plus four dollars ($4.00) for each additional page or fraction thereof.

For any instrument that assigns more than one security instrument as defined in G.S. 45-36.4(18) by reference to previously recorded instrument recording data that are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional ten dollars ($10.00) for each additional reference.

For an instrument that contains excessive recording data, the fee shall be an additional two dollars ($2.00) for each entity listed in the instrument. An instrument contains excessive recording data when there are more than 10 distinct entities listed in the instrument, including any attachments and exhibits, that require indexing pursuant to G.S. 147-54.3 or this Chapter.

When a document is presented for registration that consists of multiple instruments, the fee shall be an additional ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

...."

SECTION 2. This act becomes effective July 1, 2015.

SENATE BILL 332:
Register of Deeds-POA Indexing Fees

2015-2016 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to Finance	**Date:**	April 1, 2015
Introduced by:	Sen. Daniel	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition S332-CSTG-5		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 332 would provide that the fee charged by registers of deeds to register or file instruments listing more than 20 distinct entities requiring indexing shall be an additional $2 for each entity listed in the instrument. The PCS increased from 10 to 20 the number of distinct entities a document must list to be subject to this additional fee.***

CURRENT LAW: Pursuant to G.S. 161-10(a)(1), the fees of registers of deeds are as follows:

- For registering or filing an instrument not otherwise provided for in this section, the fee is $26 for the first 15 pages and $4 for each additional page or fraction thereof
- For any instrument assigning more than one security instrument by reference to previously recorded instrument recording data required to be indexed, the fee is an additional $10 for each additional reference
- For documents containing two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone, the fee is an additional $10 for each additional instrument.

BILL ANALYSIS: The PCS for Senate Bill 332 would amend G.S. 161-10(a)(1) to provide that the fee for registering or filing an instrument listing more than 20 distinct entities requiring indexing, including those entities listed in any attachments and exhibits to the instrument, shall be an additional $2 for each entity listed in the instrument.

EFFECTIVE DATE: This act becomes effective July 1, 2015.

O. Walker Reagan
Director

S332-SMTG-21 CSTG-5 -V1

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

CORRECTED REPORT #1

Thursday, April 02, 2015

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

FAVORABLE

SB **311** Register of Deeds/Filing False Marriage Docs.

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 **154** Clarifying the Good Samaritan Law.

Draft Number:	S154-PCS15222-TG-4
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Senator Stan Bingham will handle SB 311
Senator Stan Bingham will handle SB 154



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Monday, April 06, 2015

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

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

SB **332** Register of Deeds-POA Indexing Fees.

Draft Number:	S332-PCS45343-TG-5
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

SB **488** Amend Uniform Interstate Family Support Act.-AB

Draft Number:	S488-PCS15221-TJ-10
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Warren Daniel will handle SB 332
Senator Louis Pate will handle SB 488



SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Tom Vitaglione	NC Child	
Susan Ball	Duke Energy	
Cory Brown	DRNC	
Annaliese Dolph	DL	
Gerry Cohen	Nelson Mullins	
Leon McKellar	Nelson Mullins	
Jan Kennedy	CSC · New Hanover Co	
Tessie Castillo	NCHRC	S154
Wendy Kelly	Forum Foundation	
Andy Brandon	DPS	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Dodie Renfer	CCR	
[illegible]	[illegible]	
Sam Skinner	NCACC	
[illegible]	NMRS	
Mandi Cartrette	PLNC	
Benjamin Kull	NCDOJ	
Judy McArn	DHHS/CSS	
Sandra Chestnut	DHHS/CSS	
Trent Womble	DHHS	
[illegible]	DHHS	
[illegible]	APOC/NC	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Peg Dorn	NC Conf of DAs	
Kara Weisharr	Smith Anderson	
Judy Martin	NCARD	
Davis H. Brinson	NCARD	
Wayne L. Ray	NCARD	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Barbara Moore	Coalition for CSC	
Cady Thomas	Focus Carolina	
David Collins	SEAIVC	
Tonya Horton	TSS	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.
Wayne Rash	NC Assoc. of Register of Deeds	SB 311 SJ11/5332

Senate Committee on Judiciary II
Tuesday, April 14, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:00 AM on April 14, 2015 in Room 1124/1224 of the Legislative Building. 13 members were present. Attending Seargants-at-Arm: Giles Jeffreys and Terry Barnhardt. Attending pages: Charles Crumpler of Dunn (Sen. Rabin); and, Gabriella Scala of Greensboro (Sen. Wade).

Senator Warren Daniel, Chair, presided.

SB 238 Stalking by GPS/Criminal Offense. (Senators Stein, Hartsell) Sen. Stein presented the bill. Sen. Bingham asked about private investigator exemptions. Research staff's Jan Paul handled a couple of questions about the legality of tracking your own vehicles. Sen. Lowe asked if bounty hunters were considered private investigators. Sen. Randleman moved to amend the bill to remove the private investigator exemption. The amendment passed. Other concerns regarding owners tracking their own vehicles will be addressed by the sponsors as the bill moves forward. Based on the motion of Sen. Jim Davis, the committee ordered the amendment to be engrossed and then reported the bill to the Senate Principal Clerk (SPC) as Unfavorable as to the Bill, but Favorable as to the Committee Substitute Bill, with no sequential or recommended referrals.

SB 386 Registers of Deeds/UCC Recording Fees. (Senator Curtis) The committee agreed to consider the PCS of this bill. Sen. Curtis presented the bill. He asked Wayne Rash of the NC Association of Register of Deeds to speak on why this bill is necessary. The committee had nothing else to add, so Sen. Bingham motioned that the bill get a favorable report. The motion carried and the committee reported the bill to the SPC as Favorable with a sequential referral to Senate Finance.

SB 462 Public Authorities/Nonprofit Corporations. (Senator Hartsell) Sen. Hartsell asked that his PCS of his bill be considered and the committee agreed. Sen. Hartsell presented the bill. Sen. Wells moved to amend the bill on page 1, lines 11-17 striking the words "section 501 (c)(3) of". The motion on the amendment passed. There was no further committee discussion or public comment. Sen. Cook moved to have the amendment engrossed and to give the bill a favorable report. The bill was reported to the SPC as Unfavorable as to bill, but Favorable as to Committee Substitute Bill.

The meeting adjourned at 10:31.

Senator Warren Daniel, Chair
Presiding

Andy Perrigo, Committee Clerk

Senate Committee on Judiciary II
Tuesday, April 14, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 238	Stalking by GPS/Criminal Offense.	Senator Stein Senator Hartsell
SB 386	Registers of Deeds/UCC Recording Fees.	Senator Curtis
SB 462	Public Authorities/Nonprofit Corporations.	Senator Hartsell

Presentations

Other Business

Adjournment

SENATE BILL 238*

Short Title:	Stalking by GPS/Criminal Offense.	(Public)
Sponsors:	Senators Stein, Hartsell (Primary Sponsors); Bingham, Lowe, Sanderson, and Waddell.	
Referred to:	Rules and Operations of the Senate.	

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON COMMITS THE OFFENSE OF CYBERSTALKING IF THE PERSON KNOWINGLY INSTALLS OR PLACES A TRACKING DEVICE WITHOUT CONSENT AND USES THE DEVICE TO TRACK THE LOCATION OF AN INDIVIDUAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-196.3 reads as rewritten:

"**§ 14-196.3. Cyberstalking.**

(a) The following definitions apply in this section:

(1) Electronic communication. – Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. – The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(3) Electronic tracking device. – An electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.

(4) Fleet vehicle. – Any of the following: (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale by motor vehicle dealers.

(b) It is unlawful for a person to:

(1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.

(3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

(4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(5) Knowingly install or place an electronic tracking device without consent, or to cause an electronic tracking device to be installed without consent, and use the device to track the location of any person. The provisions of this subdivision do not apply to the installation, placement, or use of an electronic tracking device by any of the following:

a. A law-enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, when any such person is engaged in the lawful performance of official duties and in accordance with State or federal law.

b. The parent or legal guardian of a minor when tracking (i) the minor or (ii) any person authorized by the parent or legal guardian as a caretaker of the minor at any time when the minor is under the person's sole care provided that the tracking device is not located on the physical person of the caretaker.

c. A legally authorized representative of a disabled adult, as defined in G.S. 108A-101(d).

d. The owner of fleet vehicles, when tracking such vehicles.

e. A private investigator as defined in G.S. 74C-3(a)(8), who is licensed in accordance with G.S. 74C-2 and is acting in the normal course of his or her business and with the consent of the owner of the property upon which the electronic tracking device is installed and placed. However, this exception does not apply if the private investigator is working on behalf of a client who is subject to a domestic violence protective order under Chapter 50B of the General Statutes, or if the private investigator knows or should reasonably know that the client seeks the private investigator's services to aid in the commission of a crime. For purposes of this sub-subdivision, the term "private investigator" includes "private detective" as defined in G.S. 74C-3(a)(8).

f. The installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court.

(c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(d) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest, or assembly."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 238*
PROPOSED COMMITTEE SUBSTITUTE S238-PCS35259-TJ-14

Short Title: Stalking by GPS/Criminal Offense. (Public)

Sponsors:

Referred to:

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON COMMITS THE OFFENSE OF CYBERSTALKING IF THE PERSON KNOWINGLY INSTALLS OR PLACES A TRACKING DEVICE WITHOUT CONSENT AND USES THE DEVICE TO TRACK THE LOCATION OF AN INDIVIDUAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-196.3 reads as rewritten:

"**§ 14-196.3. Cyberstalking.**

(a) The following definitions apply in this section:

(1) Electronic communication. – Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. – The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(3) Electronic tracking device. – An electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.

(4) Fleet vehicle. – Any of the following: (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale, or used as demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.

(b) It is unlawful for a person to:

(1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.

(3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

(4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(5) Knowingly install or place an electronic tracking device without consent, or to cause an electronic tracking device to be installed without consent, and use the device to track the location of any person. The provisions of this subdivision do not apply to the installation, placement, or use of an electronic tracking device by any of the following:

a. A law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, when any such person is engaged in the lawful performance of official duties and in accordance with State or federal law.

b. The parent or legal guardian of a minor on any vehicle owned or leased by that parent or legal guardian of the minor and operated by the minor. However, this exception does not apply if the parent or legal guardian is subject to a domestic violence protective order under Chapter 50B of the General Statutes unless the parent or legal guardian subject to the order has custody of the minor.

c. A legally authorized representative of a disabled adult, as defined in G.S. 108A-101(d).

d. The owner of fleet vehicles, when tracking such vehicles.

e. The creditor of a motor vehicle dealer or seller as defined in G.S. 20-286 and G.S. 25A-6, when tracking such motor vehicles, including the installation, placement, or use of an electronic tracking device to locate and remotely disable a motor vehicle in connection with the sale, loan, or lease of the motor vehicle with the express written consent of the purchaser, borrower, or lessee of the motor vehicle.

f. The installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court.

(c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(d) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest, or assembly."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SENATE BILL 238:
Stalking by GPS/Criminal Offense

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 13, 2015
Introduced by:	Sens. Stein, Hartsell	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S238-CSTJ-14		

SUMMARY: ***Senate Bill 238 would provide that a person commits the offense of cyberstalking if the person knowingly installs or places a tracking device without consent and uses the device to track an individual's location. The Proposed Committee Substitute (PCS) modifies the definition of fleet vehicle, the exception for private investigators, and the provision relating to parents or legal guardians of a minor, and makes technical changes.***

[As introduced, this bill was identical to H187, as introduced by Reps. Glazier, Horn, Faircloth, McGrady, which is currently in House Judiciary II.]

CURRENT LAW: A person guilty of cyberstalking:

- Uses in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, *or* for the purpose of extorting money or things of value from any person. G.S. 14-196.3(b)(1).
- Electronically mails or electronically communicates to another person repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person. G.S. 14-196.3(b)(2).
- Electronically mails or electronically communicates to another person and knowingly makes any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass. G.S. 14-196.3(b)(3).
- Knowingly permits an electronic communication device under the person's control to be used for any purpose prohibited by this section. G.S. 14-196.3(b)(4).

These provisions do not:

- Apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others
- Impair any constitutionally protected activity, including speech, protest, or assembly.

An offense under this section is considered to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by a person in this State.

Cyberstalking is punishable as a Class 2 misdemeanor.

BILL ANALYSIS:

The PCS for Senate Bill 238 would also make it cyberstalking to do the following: "Knowingly install or place an electronic tracking device without consent, or to cause an electronic tracking device to be installed without consent, and use the device to track the location of any person."

It would not constitute cyberstalking for any of the following persons to install, place, or use an electronic tracking device:

- A law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, who is lawfully performing official duties.
- The parent or legal guardian of a minor on any vehicle owned or leased by that parent or legal guardian and operated by the minor.
    - This exception does not apply if the parent or legal guardian is subject to a domestic violence protective order *unless* the parent or legal guardian subject to the order has custody of the minor.
- A legally authorized representative of a disabled adult.
- The owner of fleet vehicles, when tracking such vehicles.
- The creditor of a motor vehicle dealer or seller when tracking those motor vehicles under the specified circumstances.
- Any person installing, placing or using an electronic tracking device as authorized by an order of a State or federal court.

The PCS would also define "electronic tracking device" and "fleet vehicle."

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses occurring on or after that date.

Brad Krehely, counsel to House Judiciary II, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 386

Short Title:	Registers of Deeds/UCC Recording Fees.	(Public)
Sponsors:	Senator Curtis (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 25, 2015

A BILL TO BE ENTITLED

AN ACT TO SPECIFY FEES FOR RECORDING INSTRUMENTS GOVERNED BY THE UNIFORM COMMERCIAL CODE WITH REGISTERS OF DEEDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-10 reads as rewritten:

"**§ 161-10. Uniform fees of registers of deeds.**

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

...

(13) Uniform Commercial Code. – ~~Such fees as are provided for in Chapter 25, Article 9, Part 5, of the General Statutes.~~The following fees apply for services related to financing statements or other records under Part 5 of Article 9 of Chapter 25 of the General Statutes:

a. For filing and indexing financing statements or records with two or fewer pages, thirty-eight dollars ($38.00).

b. For filing and indexing financing statements or records with more than two pages, forty-five dollars ($45.00) for the first 10 pages, plus two dollars ($2.00) for each additional page.

c. For responding to an information request, including a communication with respect to requests for financing statement information for a particular debtor, thirty-eight dollars ($38.00).

This subdivision shall not apply to the recording or satisfaction of deeds of trust or mortgages that act as a fixture filing, or as a financing statement covering as-extracted collateral or timber to be cut as provided under G.S. 25-9-502(c).

...."

SECTION 2. G.S. 25-9-525 reads as rewritten:

"**§ 25-9-525. Fees.**

(a) ~~Initial~~ Filing of initial financing statement or other ~~record:~~ record with the office of the Secretary of State: general rule. – Except as otherwise provided in subsection (e) of this section, the Secretary of State shall collect the following fees~~fee~~ for filing and indexing a record under this ~~Part is:~~Part:

(1) Thirty-eight dollars ($38.00) if the record is communicated in writing and consists of one or two pages;

(2) Forty-five dollars ($45.00) if the record is communicated in writing and consists of more than two pages, plus two dollars ($2.00) for each page over 10 pages; and

(3) Thirty dollars ($30.00) if the record is communicated by another medium authorized by filing-office rule.

(b) Filing with the register of deeds. – The fees to be collected by the register of deeds for filing and indexing a record under this Part are provided under G.S. 161-10(a)(13).

(c) Number of names. – The number of names required to be indexed does not affect the amount of the fee in subsection (a) of this section.

(d) Response to information request. – The fee for responding to a request for information from the ~~filing office,~~ office of the Secretary of State, including for communicating whether there is on file any financing statement naming a particular debtor, is:

(1) Thirty-eight dollars ($38.00) if the request is communicated in writing; and

(2) Thirty dollars ($30.00) if the request is communicated by another medium authorized by filing-office rule.

Upon request the ~~filing~~ office of the Secretary of State shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of two dollars ($2.00) per page. This subsection does not require that a fee be charged for remote access searching of the filing office database.

(e) Record of mortgage. – This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under G.S. 25-9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply."

SECTION 3. This act becomes effective October 1, 2015, and applies to instruments registered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 386
PROPOSED COMMITTEE SUBSTITUTE S386-CSTJ-13 [v.2]
4/10/2015 1:37:40 PM

Short Title: Registers of Deeds/UCC Recording Fees. (Public)

Sponsors:

Referred to:

March 25, 2015

A BILL TO BE ENTITLED

AN ACT TO SPECIFY FEES FOR RECORDING INSTRUMENTS GOVERNED BY THE UNIFORM COMMERCIAL CODE WITH REGISTERS OF DEEDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-10 reads as rewritten:

"**§ 161-10. Uniform fees of registers of deeds.**

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

...

(13) Uniform Commercial Code. – ~~Such fees as are provided for in Chapter 25, Article 9, Part 5, of the General Statutes.~~The following fees apply for services related to financing statements or other records under Part 5 of Article 9 of Chapter 25 of the General Statutes:

a. For filing and indexing financing statements or records with two or fewer pages, thirty-eight dollars ($38.00).

b. For filing and indexing financing statements or records with more than two pages, forty-five dollars ($45.00) for the first 10 pages, plus two dollars ($2.00) for each additional page.

c. For responding to an information request, including a communication with respect to requests for financing statement information for a particular debtor, thirty-eight dollars ($38.00).

This subdivision shall not apply to the recording of a satisfaction of a deed of trust or mortgage, when such satisfied deed of trust or mortgage acted as a fixture filing or financing statement covering as-extracted collateral or timber to be cut as authorized under G.S. 25-9-502(c).

...."

SECTION 2. G.S. 25-9-525 reads as rewritten:

"**§ 25-9-525. Fees.**

(a) ~~Initial~~ Filing of initial financing statement or other ~~record:~~ record with the office of the Secretary of State: general rule. – Except as otherwise provided in subsection (e) of this section, the Secretary of State shall collect the following ~~fees~~fee for filing and indexing a record under this ~~Part is:~~Part:

(1) Thirty-eight dollars ($38.00) if the record is communicated in writing and consists of one or two pages;

(2) Forty-five dollars ($45.00) if the record is communicated in writing and consists of more than two pages, plus two dollars ($2.00) for each page over 10 pages; and

(3) Thirty dollars ($30.00) if the record is communicated by another medium authorized by filing-office rule.

(b) Filing with the register of deeds. – The fees to be collected by the register of deeds for filing and indexing a record under this Part are provided under G.S. 161-10(a)(13).

(c) Number of names. – The number of names required to be indexed does not affect the amount of the fee in subsection (a) of this section.

(d) Response to information request. – The fee for responding to a request for information from the ~~filing office.~~ office of the Secretary of State, including for communicating whether there is on file any financing statement naming a particular debtor, is:

(1) Thirty-eight dollars ($38.00) if the request is communicated in writing; and

(2) Thirty dollars ($30.00) if the request is communicated by another medium authorized by filing-office rule.

Upon request the ~~filing~~ office of the Secretary of State shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of two dollars ($2.00) per page. This subsection does not require that a fee be charged for remote access searching of the filing office database.

(e) Record of mortgage. – This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under G.S. 25-9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply."

SECTION 3. This act becomes effective October 1, 2015, and applies to instruments registered on or after that date.

SENATE BILL 386:
Registers of Deeds/UCC Recording Fees

2015-2016 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to Finance	**Date:**	April 10, 2015
Introduced by:	Sen. Curtis	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S386-CSTJ-13		

SUMMARY: ***Senate Bill 386 would specify fees for filing instruments governed by the Uniform Commercial Code with registers of deeds.***

BILL ANALYSIS:

Section 1 of the bill would amend the uniform fees for registers of deeds under G.S. 161-10 to provide for the following fees:

- $38 for filing and indexing financing statements or records with two or fewer pages.
- $45 for filing and indexing the first 10 pages of financing statements or records with three or more pages, plus $2 for each additional page.
- $38 for responding to an information request and certain other communications.

The fees would not apply to the recording of a satisfaction of a deed of trust or mortgage, when the deed of trust or mortgage acted as a fixture filing or financing statement covering as-extracted collateral or timber to be cut.

Section 2 of SB 386 would make clarifying and conforming changes.

EFFECTIVE DATE: This act becomes effective October 1, 2015, and applies to instruments registered on or after that date.

BACKGROUND: The Uniform Commercial Code, contained in Article 9 of Chapter 25 of the General Statutes, provides for the recording of security agreements in which a loan of money is secured by collateral, thereby giving the lender rights to the property, and provides a method of giving notice of a security interest in personal property to interested third parties. Fixture filings, relating to items that become a part of real estate, are filed at the local level in the Office of the Register of Deeds. All UCC non-fixture filings are filed with the North Carolina Department of the Secretary of State.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 462

Short Title:	Public Authorities/Nonprofit Corporations.	(Public)
Sponsors:	Senator Hartsell (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A PUBLIC AUTHORITY MAY ESTABLISH, OWN, AND OPERATE A NONPROFIT CORPORATION WITH TAX EXEMPT STATUS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 159 of the General Statutes is amended by adding a new Part to read as follows:

"PART 8.

"NONPROFIT CORPORATION ESTABLISHED BY PUBLIC AUTHORITY.

"**§ 159-42.1. Establishment of nonprofit corporation by public authority authorized.**

A public authority may establish, own, and operate a nonprofit corporation that is created under Chapter 55A of the General Statutes and is a tax exempt organization under section 501(c)(3) of the Internal Revenue Code."

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

SENATE BILL 462:
Public Authorities/Nonprofit Corporations

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 10, 2015
Introduced by:	Sen. Hartsell	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 462 would authorize a public authority to establish, own, and operate a nonprofit corporation with tax-exempt status.***

CURRENT LAW: The Local Government Budget and Fiscal Control Act (LGBFCA)[1] requires units of local government to conform to certain standards with respect to financial matters, with oversight being provided by the Local Government Commission. The standards cover all aspects of finance, from budget adoption to accounting practices to long-term debt issuance. By definition, the LGBFCA applies to municipalities, counties, and public authorities.[2]

The LGBFCA does not currently authorize a public authority to establish, own, or operate a nonprofit corporation with tax-exempt status.

BILL ANALYSIS: Senate Bill 462 would add new G.S. 159-42.1 authorizing a public authority to establish, own, and operate a nonprofit corporation that is created under Chapter 55A of the General Statutes and that is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

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

---

[1] Article 3 of Chapter 159 of the General Statutes.

[2] "Public authority" is defined as:

- a municipal corporation (other than a unit of local government) that is not subject to the State Budget Act (Chapter 143C of the General Statutes)
- a local governmental authority, board, commission, council, or agency that:
  (i) is not a municipal corporation:
  (ii) is not subject to the State Budget Act: and
  (iii) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

G.S. 159-7(10).

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/14/15

S. B. No. 462 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Wells

1 moves to amend the bill on page 1, line 11-12

2 ( ) WHICH CHANGES THE TITLE

3 by striking the words "section 501(c)(5)

4 of".

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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, April 14, 2015

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

FAVORABLE

SB **386** Registers of Deeds/UCC Recording Fees.

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

TOTAL REPORTED: 1

Senator David Curtis will handle SB 386



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, April 14, 2015

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

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

SB **462** Public Authorities/Nonprofit Corporations.

Draft Number:	S462-PCS35257-TG-8
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Report # 2 for Senate Judiciary 2

Senator Fletcher Hartsell will handle SB 462



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Wednesday, April 15, 2015

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

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

SB **238** Stalking by GPS/Criminal Offense.

Draft Number:	S238-PCS35259-TJ-14
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Joshua Stein will handle SB 238



SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Michael Mann	NCBH	S 238
TJ Bugbee	NP	
Matthew McConnell	Carolinas HealthCare Sys.	
Lao Rubert	CYPC	
Rivian Menard	WM	
Preston Howard	NCMA	
	NC	
David Follett	VB	
	DS	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Chip Kellam	[illegible]	
Wayne Rash	NCARD	S386
[illegible]	NCAOT	
[illegible]	NCSOS	386
Alex Miller	KCG	
Jim Kent	NC Beer & Wine	
[illegible]	TJ	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.

Senate Committee on Judiciary II
Thursday, April 16, 2015 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II commenced at10:04 AM on April 16, 2015 in Room 1124/1224 of the Legislative Building. 15 members were present.

Senator Tamara Barringer, Chair, presided.

SB 468 Trust Taxable Income Clarification (Senator Hartsell)
Senator Hartsell presented this bill. Senator Jim David made a motion, unfavorable to the original, favorable to the Proposed Committee Substitute. Senator Bingham seconded the motion.

S 75 Labor/Up Amusement Device Penalties (Senator B. Jackson)
Senator B. Jackson presented the bill. Senator Bingham made a motion, unfavorable to original, favorable to the Proposed Committee Substitute. Senator Bryant seconded the motion. The bill will be referred to the Agriculture Committee.

S 249 Zoning/ Recreational Land Req.- Morrisville (Senator Stein)
Senator Stein presented the bill. Senator Bryant made a favorable motion and Senator Smith-Ingram seconded the motion.

S 298 School Bus Cameras/Civil Penalties (Senator Alexander and Senator McInnis)
Senators Alexander and McInnis presented this bill. There were question by Senators Bingham, Bryant and Cook. On the motion of Senator Barringer, this bill was displaced until the next meeting of the Judiciary II Committee.

S 445 Burt's Law (Senator Krawiec)
Senator Krawiec presented the bill. Senator Bingham had a question then made a motion unfavorable to original, favorable to the Proposed Committee Substitute. Senator Smith-Ingram seconded the motion.

S 661 Private Labs Must Comply with CODIS (Senator Newton)
Senator Newton presented the bill. Senator Bryant made a favorable motion to accept the bill. Senator Cook seconded her motion.

The meeting adjourned at 11:01 am.

Minutes respectively submitted by:

Senator Tamara Barringer, Chair
Presiding

Gloria Whitehead, Committee Clerk

Senate Committee on Judiciary II
Thursday, April 16, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 298	School Bus Cameras/Civil Penalties.	Senator Alexander Senator McInnis
SB 445	Burt's Law.	Senator Krawiec Senator Newton Senator Wells
SB 468	Trust Taxable Income Clarification.	Senator Hartsell
SB 75	Labor/Up Amusement Device Penalties.	Senator B. Jackson Senator Brock Senator Wade
SB 198	Persons Under 18 in Confinement Facilities.	Senator Robinson Senator Tillman
SB 249	Zoning/Recreational Land Req.-Morrisville.	Senator Stein
SB 661	Private Labs Must Comply with CODIS.	Senator Newton

Presentations

Other Business

Adjournment

SENATE BILL 298
Education/Higher Education Committee Substitute Adopted 4/1/15

Short Title: School Bus Cameras/Civil Penalties. (Public)

Sponsors:

Referred to:

March 18, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF PHOTOGRAPHIC OR VIDEO EVIDENCE FOR THE CIVIL ENFORCEMENT OF VIOLATIONS FOR PASSING A STOPPED SCHOOL BUS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-246. Use of photographs or videos recorded by automated school bus safety cameras.**

(a) Definitions. – The following definitions apply in this section:

(1) Automated school bus safety camera. – As defined in G.S. 115C-242.1.

(2) Officials or agents. – This term includes a local board of education located within the county or a private vendor contracted with under G.S. 115C-242.1.

(3) School bus. – As used in G.S. 20-217.

(b) Civil Enforcement. – A county may adopt an ordinance for the civil enforcement of G.S. 20-217 by means of an automated school bus safety camera installed and operated on any school bus located within that county. Notwithstanding the provisions of G.S. 14-4, in the event that a county adopts an ordinance pursuant to this section, a violation of the ordinance shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The registered owner of a vehicle shall be responsible for a violation unless the registered owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The registered owner of the vehicle shall not be responsible for the violation if the registered owner of the vehicle, within 30 days after notification of the violation, furnishes the officials or agents of the county that issued the citation either of the following:

a. An affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.

(2) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for, the violation if notice of the violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.

(3) A violation of the ordinance shall be deemed a noncriminal violation for which a civil penalty of five hundred dollars ($500.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) and no insurance points authorized by G.S. 58-36-65 shall be assigned to the registered owner or driver of the vehicle.

(4) The registered owner of the vehicle shall be issued a citation, which shall clearly state the manner in which the violation may be challenged, and the registered owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the county and shall be forwarded by personal service or first class mail to the address given on the motor vehicle registration. If the registered owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the registered owner shall have waived the right to contest responsibility for the violation and shall be subject to a late penalty of one hundred dollars ($100.00) in addition to the civil penalty assessed under subdivision (3) of this subsection. In addition, the Division of Motor Vehicles shall refuse to register the motor vehicle for the owner pursuant to G.S. 20-54(11). The county may establish procedures for providing notice to the Division of Motor Vehicles and for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(5) The county shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.

(c) Notice. – An automated school bus safety camera installed on a school bus must be identified by appropriate warning signs conspicuously posted on the school bus. All warning signs shall be consistent with a statewide standard adopted by the State Board of Education in conjunction with local boards of education that install and operate automated school bus safety cameras on their school buses.

(d) Application. – Nothing in this section shall be construed to do any of the following:

(1) Require the installation and operation of automated school bus safety cameras on a school bus.

(2) Prohibit the use and admissibility of any photograph or video recorded by an automated school bus safety camera in any criminal proceeding alleging a violation of G.S. 20-217.

(3) Prohibit the imposition of penalties, including the assignment of points authorized by G.S. 20-16(c) and insurance points authorized by G.S. 58-36-65, on any registered owner or driver of the vehicle convicted of a misdemeanor or felony violation of G.S. 20-217."

SECTION 2. Article 17 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-242.1. Installation and operation of automated school bus safety camera.**

(a) Definition. – An "automated school bus safety camera" is a device that is affixed to a school bus, as that term is used in G.S. 20-217, that is synchronized to automatically record photographs or video of a vehicle at the time the vehicle is detected for a violation of (i) G.S. 20-217 or (ii) an ordinance adopted under G.S. 153A-246.

(b) Installation and Operation. – Automated school bus safety cameras may be installed and operated on any school bus operated by a local board of education within a county that has adopted an ordinance under G.S. 153A-246 as follows:

(1) A local board of education may install and operate automated school bus safety cameras without contracting with a private vendor.

(2) A local board of education may enter into a contract to install and operate automated school bus safety cameras with a private vendor. Contracts shall

be let in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. The maximum length of any contract entered into under this subdivision shall be three years.

(3) Upon request by one or more local boards of education, the State Board of Education shall enter into a contract for a statewide service or contracts for regional services to install and operate automated school bus safety cameras with a private vendor. These contracts shall be let in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. The maximum length of any contract entered into under this subdivision shall be three years.

(c) Interlocal Agreements. – Any local board of education and board of county commissioners may enter into an interlocal agreement necessary and proper to effectuate the purpose and intent of this section and G.S. 153A-246. Any agreement entered into pursuant to this subsection may include provisions on cost-sharing and reimbursement that the local board of education and board of county commissioners freely and voluntarily agree to for the purposes of effectuating this section and G.S. 153A-246.

(d) Evidence in Criminal Proceeding. – Any photographs or videos recorded by an automated school bus safety camera that capture a violation of G.S. 20-217 shall also be provided to the investigating law enforcement agency for use as evidence in any proceeding alleging a violation of G.S. 20-217."

SECTION 3. G.S. 20-54 reads as rewritten:

"**§ 20-54. Authority for refusing registration or certificate of title.**

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

...

(11) The Division has been notified (i) pursuant to G.S. 20-217(g2) that the owner of the vehicle has failed to pay any fine imposed pursuant to ~~G.S. 20-217.~~G.S. 20-217 or (ii) pursuant to G.S. 153A-246(b)(4) that the owner of the vehicle has failed to pay a civil penalty under G.S. 153A-246."

SECTION 4. G.S. 20-217 reads as rewritten:

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

...

(h) ~~Automated camera and video recording systems~~Automated school bus safety cameras, as defined in G.S. 115C-242.1, may be used to detect and prosecute violations of this section. Any photograph or video recorded by ~~a camera or video recording system~~an automated school bus safety camera shall, if consistent with the North Carolina Rules of Evidence, be admissible as evidence in any proceeding alleging a violation of subsection (a) of this section. Failure to produce a photograph or video recorded by an automated school bus safety camera shall not preclude prosecution under this section.

(i) In addition to the penalties imposed under this section, the owner or driver of a vehicle may be subject to a civil penalty pursuant to an ordinance adopted under G.S. 153A-246."

SECTION 5. The North Carolina Administrative Office of the Courts shall annually submit a report covering the most recent five years prior to the reporting date to the North Carolina Child Fatality Task Force and the North Carolina General Assembly by October 1 on the following information:

(1) Total number of offenses charged under G.S. 20-217, by county.

(2) Total number of convictions under G.S. 20-217, by county.

SECTION 6. A county that adopts an ordinance as provided in G.S. 153A-246, as enacted by this act, shall maintain records of all noncriminal violations of that ordinance for

which a civil penalty is assessed. Upon request, the county shall provide at least five years of those records to the North Carolina Child Fatality Task Force and the North Carolina General Assembly.

SECTION 6.5. Within 90 days of the enactment of this act, the State Board of Education shall develop a model contract for use by the local boards of education in letting and awarding contracts in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes for the installation and operation of automated school bus safety cameras as provided in G.S. 115C-242.1. The State Board of Education and the Department of Public Instruction shall provide technical assistance to a local board of education on this process upon a request by the local board.

SECTION 7. This act becomes effective July 1, 2015, and applies to offenses and violations committed on or after that date. The requirements in G.S. 115C-242.1(b)(2), as enacted by this act, shall not apply to a local board of education that entered into a contract prior to July 1, 2015, with a private vendor to install and operate automated school bus safety cameras.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 298

Education/Higher Education Committee Substitute Adopted 4/1/15
PROPOSED COMMITTEE SUBSTITUTE S298-CSTG-10 [v.3]
4/15/2015 7:43:33 PM

Short Title: School Bus Cameras/Civil Penalties. (Public)

Sponsors:

Referred to:

March 18, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF PHOTOGRAPHIC OR VIDEO EVIDENCE FOR THE CIVIL ENFORCEMENT OF VIOLATIONS FOR PASSING A STOPPED SCHOOL BUS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-246. Use of photographs or videos recorded by automated school bus safety cameras.**

(a) Definitions. – The following definitions apply in this section:

(1) Automated school bus safety camera. – As defined in G.S. 115C-242.1.

(2) Officials or agents. – This term includes a local board of education located within the county or a private vendor contracted with under G.S. 115C-242.1.

(3) School bus. – As used in G.S. 20-217.

(b) Civil Enforcement. – A county may adopt an ordinance for the civil enforcement of G.S. 20-217 by means of an automated school bus safety camera installed and operated on any school bus located within that county. Notwithstanding the provisions of G.S. 14-4, in the event that a county adopts an ordinance pursuant to this section, a violation of the ordinance shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The registered owner of a vehicle shall be responsible for a violation unless the registered owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The registered owner of the vehicle shall not be responsible for the violation if the registered owner of the vehicle, within 30 days after notification of the violation, furnishes the officials or agents of the county that issued the citation either of the following:

a. An affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.

(2) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for, the violation if notice of the

violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.

(3) A violation of the ordinance shall be deemed a noncriminal violation for which a civil penalty of five hundred dollars ($500.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) and no insurance points authorized by G.S. 58-36-65 shall be assigned to the registered owner or driver of the vehicle.

(4) The registered owner of the vehicle shall be issued a citation, which shall clearly state the manner in which the violation may be challenged, and the registered owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the county and shall be forwarded by personal service or first class mail to the address given on the motor vehicle registration. If the registered owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the registered owner shall have waived the right to contest responsibility for the violation and shall be subject to a late penalty of one hundred dollars ($100.00) in addition to the civil penalty assessed under subdivision (3) of this subsection. In addition, the Division of Motor Vehicles shall refuse to register the motor vehicle for the owner pursuant to G.S. 20-54(11). The county may establish procedures for providing notice to the Division of Motor Vehicles and for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(5) If a registered owner provides an affidavit, as provided in subsection (b)(1) of this section, that the vehicle was, at the time of the violation, in the care, custody, or control of another person or company, the identified person or company may be issued a citation which shall clearly state the manner in which the violation may be challenged and the identified person or company shall comply with the directions on the citation. The citation shall be processed by officials or agents of the county and shall be forwarded by personal service or first class mail to the address provided in the affidavit. If the identified person or company fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the identified person or company shall have waived the right to contest responsibility for the violation and shall be subject to a late penalty of one hundred dollars ($100.00) in addition to the civil penalty assessed under subdivision (3) of this section. The county may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(6) The county shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.

(7) A county shall not impose a civil penalty under this subsection against a person if that person is charged with violation of G.S. 20-217 in a criminal pleading arising out of the same facts.

(c) Notice. – An automated school bus safety camera installed on a school bus must be identified by appropriate warning signs conspicuously posted on the school bus. All warning signs shall be consistent with a statewide standard adopted by the State Board of Education in conjunction with local boards of education that install and operate automated school bus safety cameras on their school buses.

(d) Application. – Nothing in this section shall be construed to do any of the following:

(1) Require the installation and operation of automated school bus safety cameras on a school bus.

(2) Prohibit the use and admissibility of any photograph or video recorded by an automated school bus safety camera in any criminal proceeding alleging a violation of G.S. 20-217.

(3) Prohibit the imposition of penalties, including the assignment of points authorized by G.S. 20-16(c) and insurance points authorized by G.S. 58-36-65, on any registered owner or driver of the vehicle convicted of a misdemeanor or felony violation of G.S. 20-217."

SECTION 2. Article 17 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-242.1. Installation and operation of automated school bus safety camera.**

(a) Definition. – An "automated school bus safety camera" is a device that is affixed to a school bus, as that term is used in G.S. 20-217, that is synchronized to automatically record photographs or video of a vehicle at the time the vehicle is detected for a violation of (i) G.S. 20-217 or (ii) an ordinance adopted under G.S. 153A-246.

(b) Installation and Operation. – Automated school bus safety cameras may be installed and operated on any school bus operated by a local board of education within a county that has adopted an ordinance under G.S. 153A-246 as follows:

(1) A local board of education may install and operate automated school bus safety cameras without contracting with a private vendor.

(2) A local board of education may enter into a contract to install and operate automated school bus safety cameras with a private vendor. Contracts shall be let in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. The maximum length of any contract entered into under this subdivision shall be three years.

(3) Upon request by one or more local boards of education, the State Board of Education shall enter into a contract for a statewide service or contracts for regional services to install and operate automated school bus safety cameras with a private vendor. These contracts shall be let in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. The maximum length of any contract entered into under this subdivision shall be three years.

(c) Interlocal Agreements. – Any local board of education and board of county commissioners may enter into an interlocal agreement necessary and proper to effectuate the purpose and intent of this section and G.S. 153A-246. Any agreement entered into pursuant to this subsection may include provisions on cost-sharing and reimbursement that the local board of education and board of county commissioners freely and voluntarily agree to for the purposes of effectuating this section and G.S. 153A-246.

(d) Evidence in Criminal Proceeding. – Any photographs or videos recorded by an automated school bus safety camera that capture a violation of G.S. 20-217 shall also be provided to the investigating law enforcement agency for use as evidence in any proceeding alleging a violation of G.S. 20-217."

SECTION 3. G.S. 20-54 reads as rewritten:

"**§ 20-54. Authority for refusing registration or certificate of title.**

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

...

(11) The Division has been notified (i) pursuant to G.S. 20-217(g2) that the owner of the vehicle has failed to pay any fine imposed pursuant to ~~G.S. 20-217.~~G.S. 20-217 or (ii) pursuant to G.S. 153A-246(b)(4) that the owner of the vehicle has failed to pay a civil penalty under G.S. 153A-246."

SECTION 4. G.S. 20-217 reads as rewritten:

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

...

(h) ~~Automated camera and video recording systems~~Automated school bus safety cameras, as defined in G.S. 115C-242.1, may be used to detect and prosecute violations of this section. Any photograph or video recorded by ~~a camera or video recording system~~an automated school bus safety camera shall, if consistent with the North Carolina Rules of Evidence, be admissible as evidence in any proceeding alleging a violation of subsection (a) of this section. Failure to produce a photograph or video recorded by an automated school bus safety camera shall not preclude prosecution under this section."

SECTION 5. The North Carolina Administrative Office of the Courts shall annually submit a report covering the most recent five years prior to the reporting date to the North Carolina Child Fatality Task Force and the North Carolina General Assembly by October 1 on the following information:

(1) Total number of offenses charged under G.S. 20-217, by county.

(2) Total number of convictions under G.S. 20-217, by county.

SECTION 6. A county that adopts an ordinance as provided in G.S. 153A-246, as enacted by this act, shall maintain records of all noncriminal violations of that ordinance for which a civil penalty is assessed. Upon request, the county shall provide at least five years of those records to the North Carolina Child Fatality Task Force and the North Carolina General Assembly.

SECTION 6.5. Within 90 days of the enactment of this act, the State Board of Education shall develop a model contract for use by the local boards of education in letting and awarding contracts in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes for the installation and operation of automated school bus safety cameras as provided in G.S. 115C-242.1. The State Board of Education and the Department of Public Instruction shall provide technical assistance to a local board of education on this process upon a request by the local board.

SECTION 7. This act becomes effective July 1, 2015, and applies to offenses and violations committed on or after that date. The requirements in G.S. 115C-242.1(b)(2), as enacted by this act, shall not apply to a local board of education that entered into a contract prior to July 1, 2015, with a private vendor to install and operate automated school bus safety cameras.

SENATE BILL 298:
School Bus Cameras/Civil Penalties

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 15, 2015
Introduced by:	Sens. Alexander, McInnis	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Second Edition S298-CSTG-10		

SUMMARY: ***The PCS for Senate Bill 298 would allow counties to adopt ordinances for the civil enforcement of a violation of G.S. 20-217, which requires motor vehicles to stop for school buses in certain instances. It would also provide for statewide, regional, or local contracts for the installation and operation of automated school bus safety cameras in school buses.***

The PCS also: authorizes all local boards of education to enter into their own contracts with vendors for the installation and operation of automated school bus safety cameras; adds a provision authorizing local boards of education to enter into interlocal agreements with the board of county commissioners to implement the act; directs the Administrative Offices of the Courts to report to the Child Fatality Task Force and the General Assembly on charges and convictions under G.S. 20-217; and directs the State Board of Education to develop a model contract for use by the local boards of education.

The PCS changed the second edition of the bill to: provide a process in G.S. 153A-246(b)(5) for fining a person identified by the owner in an affidavit as having had custody or control of the vehicle at the time of the violation of G.S. 20-217; add G.S. 153A-246(b)(7) to prohibit assessing a civil penalty against a person who was subject to criminal prosecution for violation of G.S. 20-217 arising out of the same facts; and delete language in Section 4 of the bill that would have permitted imposition of a civil penalty in addition to criminal liability under G.S. 20-217.

[As introduced, this bill was identical to H536, as introduced by Reps. Hanes, Lambeth, Tine, which is currently in House Judiciary II, if favorable, Finance.]

CURRENT LAW: G.S. 20-217 requires motor vehicles to stop for school buses that are displaying their mechanical stop signals or flashing red lights and are stopped for the purposes of receiving or discharging passengers. Automated camera and video recording systems may be used to detect and prosecute violations of this law and photographs and videos from such systems can be admitted as evidence if consistent with the North Carolina Rules of Evidence.

BILL ANALYSIS:

County Ordinance

Section 1 of the Proposed Committee Substitute (PCS) for SB 298 would enact a new G.S. 153A-246, authorizing counties to adopt an ordinance for the civil enforcement of a violation of G.S. 20-217 utilizing automated school bus safety cameras.

Under new G.S.153A-246(b), violation of the ordinance is deemed a noncriminal violation for which a civil penalty of $500 can be assessed. The registered owner of a vehicle found to have passed a stopped school bus in violation of G.S. 20-217 would be responsible for the civil penalty unless the owner does not receive notice of the violation within 90 days of its occurrence. The owner can also avoid the civil penalty by providing an affidavit within 30 days of the notification of the violation stating: (i) the name and address of a person other than the owner who had the care, custody, and control of the vehicle; or

(ii) an affidavit stating that, at the time of the violation, the vehicle was stolen. If the affidavit provides that the vehicle had been stolen, there must also be evidence that supports this assertion such as a police or insurance report.

No points shall be assigned for driver's license or insurance purposes for a violation of the ordinance. , unless . Points may still be imposed if there is a conviction of a criminal misdemeanor or felony violation of G.S. 20-217.

The citation for the violation of the ordinance must state how the violation may be challenged and is to be processed by officials or agents of the county and forward by personal service or first class mail to the address given on the motor vehicle registration. Failure to pay the civil penalty or respond to the citation within the specified time period results in the owner's waiver of the right to contest responsibility for the violation and would result in a late penalty of $100.00 in addition to the $500.00 civil penalty.

If the owner by affidavit identifies another person in whose care, custody or control the vehicle was at the time of the violation, that person can be issued a citation and is subject to the civil penalty and late fee if not paid within the time stated in the citation.

An bus equipped with an automated school bus safety camera installed on a school bus would be required to be identified by appropriate warning signs posted on the school bus that comply with a statewide standard adopted by the State Board of Education (SBE) along with the local boards of education that install and operate automated school bus safety cameras on their school buses.

Installation and Operation of Automated School Bus Safety Cameras

Section 2 of the PCS would enact a new G.S. 115C-242.1 authorizing a local board of education to install and operate automated school bus safety cameras on any school bus operated by that local board within a county that has adopted an ordinance for the civil enforcement of a violation of G.S. 20-217 as provided in Section 1 of the PCS.

The procedure for the installation and operation of automated school bus safety cameras would be as follows:

- A local board may install and operate automated school bus safety cameras without contracting with a private vendor.
- A local board may enter into a contract to install and operate automated school bus safety cameras with a private vendor. Such contracts must be let in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes with the maximum length of the contract being 3 years.
- Upon request by one or more local boards, the State Board of Education (SBE) must enter into a contract for a statewide service or contracts for regional services to install and operate automated school bus safety cameras with a private vendor. Such contracts must be let in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes with the maximum length of the contract being 3 years.

The PCS would authorize a local board and a board of county commissioners to enter into an interlocal agreement furthering the purpose of the ordinance and the installation and operation of the automated school bus safety cameras, including provisions for cost-sharing and reimbursements.

Photographs and videos recorded by an automated school bus safety camera that capture a violation of G.S. 20-217 must be provided to investigating law enforcement agencies for use as evidence in proceedings concerning a violation of G.S. 20-217.

Sections 3 amends G.S. 20-54 to direct the Division of Motor Vehicle to refuse vehicle registration if the owner of the vehicle has failed to pay the civil penalty under the county ordinance.

Section 4 amends G.S. 20-217 to provide that failure to produce a photograph or video recorded by an automated school bus safety camera does not preclude criminal prosecution under G.S. 20-217 and to make conforming changes.

Section 5 requires the NC Administrative Office of the Courts to annually submit a report covering the most recent 5 years to the NC Child Fatality Task Force and the NC General Assembly on the total number of offenses charged and convictions under G.S. 20-217 by county.

Section 6 requires a county that adopts the civil ordinance to maintain records of all noncriminal violations of the ordinance for which a civil penalty is assessed and provide at least 5 years of those records upon request to the NC Child Fatality Task Force and the NC General Assembly.

Section 6.5 requires the SBE to develop a model contract for use by the local boards in letting and awarding contracts for the installation and operation of the automated school bus safety cameras. The SBE and the Department of Public Instruction must provide technical assistance to a local board if requested to do so.

EFFECTIVE DATE: This act becomes effective July 1, 2015, and applies to offenses and violations committed on or after that date. The requirements for local boards entering into their own contracts with private vendors do not apply to a local board that entered into such a contract before July 1, 2015.

Drupti Chauhan and Kara McCraw, counsel to Senate Committee on Education/Higher Education, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SENATE BILL 445

Short Title:	Burt's Law.	(Public)
Sponsors:	Senators Krawiec, Newton, Wells (Primary Sponsors); Daniel, B. Jackson, Lee, McInnis, and Sanderson.	
Referred to:	Rules and Operations of the Senate.	

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ENHANCE PROTECTIONS FOR CLIENTS OF FACILITIES WHOSE PRIMARY PURPOSE IS TO PROVIDE SERVICES FOR THE CARE, TREATMENT, HABILITATION, OR REHABILITATION OF INDIVIDUALS WITH MENTAL ILLNESS, DEVELOPMENTAL DISABILITIES, OR SUBSTANCE ABUSE DISORDERS BY INCREASING PUNISHMENTS FOR CLIENT ABUSE, EXPLOITATION, OR NEGLECT; BY IMPOSING A REPORTING REQUIREMENT ON EMPLOYEES AND VOLUNTEERS WHO WITNESS A SEXUAL OFFENSE OR OFFENSE AGAINST MORALITY PERPETRATED AGAINST A CLIENT; AND BY MAKING FAILURE TO REPORT THESE VIOLATIONS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-66 reads as rewritten:

"**§ 122C-66. Protection from abuse and exploitation; reporting.**

(a) An employee of or a volunteer at a facility who, other than as a part of generally accepted medical or therapeutic procedure, knowingly causes pain or injury to a client ~~or borrows or takes personal property from a client~~ is guilty of a ~~Class 1~~Class A1 misdemeanor. Any employee or volunteer who uses reasonable force to carry out the provisions of G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(a1) An employee of or a volunteer at a facility who borrows or takes personal property from a client is guilty of a Class 1 misdemeanor. Any employee or volunteer who uses reasonable force to carry out the provisions of G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(b) An employee of or a volunteer at a facility who witnesses or has knowledge of a violation of ~~subsection (a)~~subsection (a), subsection (a1), or of an accidental injury to a client shall report the violation or accidental injury to authorized personnel designated by the facility. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report. Violation of this subsection is a ~~Class 3 misdemeanor punishable only by a fine, not to exceed five hundred dollars ($500.00).~~Class 1 misdemeanor.

(b1) The employee of or a volunteer at a facility who witnesses a client become a victim of a violation of Article 7A or Article 26 of Chapter 14 of the General Statutes shall report the allegations within 24 hours after witnessing the violation to (i) the department of social services in the county where the facility serves the client and (ii) the district attorney in the district where the facility serves the client. A violation of this section is a Class A1 misdemeanor. No

employee making a report may be threatened or harassed by any other employee or volunteer on account of the report.

(c) The identity of an individual who makes a report under this section or who cooperates in an ensuing investigation may not be disclosed without ~~his~~ the reporting individual's consent, except to persons authorized by the facility or by State or federal law to investigate or prosecute these incidents, or in a grievance or personnel hearing or civil or criminal action in which ~~a~~ the reporting individual is testifying, or when disclosure is legally compelled or authorized by judicial discovery. This subsection shall not be interpreted to require the disclosure of the identity of an individual where it is otherwise prohibited by law.

(d) An employee who makes a report in good faith under this section is immune from any civil liability that might otherwise occur for the report. In any case involving liability, making of a report under this section is prima facie evidence that the maker acted in good faith.

(e) The duty imposed by this section is in addition to any duty imposed by G.S. 7B-301 or G.S. 108A-102.

(f) ~~The~~ Except for reports made pursuant to subsection (b1) of this section, the facility shall investigate or provide for the investigation of all reports made under the provisions of this section.

(g) The county department of social services and the district attorney to whom a report is made under subsection (b1) of this section shall investigate or provide for the investigation of each such report."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 445
PROPOSED COMMITTEE SUBSTITUTE S445-CSTG-12 [v.1]
4/15/2015 2:21:11 PM

Short Title: Burt's Law. (Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ENHANCE PROTECTIONS FOR CLIENTS OF FACILITIES WHOSE PRIMARY PURPOSE IS TO PROVIDE SERVICES FOR THE CARE, TREATMENT, HABILITATION, OR REHABILITATION OF INDIVIDUALS WITH MENTAL ILLNESS, DEVELOPMENTAL DISABILITIES, OR SUBSTANCE ABUSE DISORDERS BY INCREASING PUNISHMENTS FOR CLIENT ABUSE, EXPLOITATION, OR NEGLECT; BY IMPOSING A REPORTING REQUIREMENT ON EMPLOYEES AND VOLUNTEERS WHO WITNESS A SEXUAL OFFENSE OR OFFENSE AGAINST MORALITY PERPETRATED AGAINST A CLIENT; AND BY MAKING FAILURE TO REPORT THESE VIOLATIONS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-26(5) is amended by adding a new subsubdivision to read:

"(5) Adopt rules applicable to facilities licensed under this ~~Article:~~Article that do the following:

a. Establishing personnel requirements of staff employed in ~~facilities;~~facilities.

b. Establishing qualifications of facility administrators or ~~directors;~~directors.

c. Establishing requirements for death reporting including confidentiality provisions related to death ~~reporting;~~reporting.

d. Establishing requirements for patient ~~advocates; and~~advocates.

e. Requiring facility personnel who refer clients to provider agencies to disclose any pecuniary interest the referring person has in the provider agency, or other interest that may give rise to the appearance of impropriety.

f. Establishing standardized procedures for facilities in training and recordkeeping of the measures taken to inform employees and volunteers of the duties imposed by G.S. 122C-66."

SECTION 2. G.S. 122C-66 reads as rewritten:

"**§ 122C-66. Protection from abuse and exploitation; reporting.**

(a) An employee of or a volunteer at a facility who, other than as a part of generally accepted medical or therapeutic procedure, knowingly causes pain or injury to a client ~~or borrows or takes personal property from a client~~ is guilty of a ~~Class 1~~Class A1 misdemeanor. Any employee or volunteer who uses reasonable force to carry out the provisions of

G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(a1) An employee of or a volunteer at a facility who borrows or takes personal property from a client is guilty of a Class 1 misdemeanor. Any employee or volunteer who uses reasonable force to carry out the provisions of G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(b) An employee of or a volunteer at a facility who witnesses or has knowledge of a violation of ~~subsection (a)~~subsection (a), subsection (a1), or of an accidental injury to a client shall report the violation or accidental injury to authorized personnel designated by the facility. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report. Violation of this subsection is a ~~Class 3 misdemeanor punishable only by a fine, not to exceed five hundred dollars ($500.00).~~Class 1 misdemeanor.

(b1) The employee of or a volunteer at a facility who witnesses a client become a victim of a violation of Article 7A or Article 26 of Chapter 14 of the General Statutes shall report the allegations within 24 hours after witnessing the violation to (i) the department of social services in the county where the facility serves the client and (ii) the district attorney in the district where the facility serves the client. A violation of this section is a Class A1 misdemeanor. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report.

(c) The identity of an individual who makes a report under this section or who cooperates in an ensuing investigation may not be disclosed without ~~his~~ the reporting individual's consent, except to persons authorized by the facility or by State or federal law to investigate or prosecute these incidents, or in a grievance or personnel hearing or civil or criminal action in which ~~a~~ the reporting individual is testifying, or when disclosure is legally compelled or authorized by judicial discovery. This subsection shall not be interpreted to require the disclosure of the identity of an individual where it is otherwise prohibited by law.

(d) An employee who makes a report in good faith under this section is immune from any civil liability that might otherwise occur for the report. In any case involving liability, making of a report under this section is prima facie evidence that the maker acted in good faith.

(e) The duty imposed by this section is in addition to any duty imposed by G.S. 7B-301 or G.S. 108A-102.

(f) ~~The~~ Except for reports made pursuant to subsection (b1) of this section, the facility shall investigate or provide for the investigation of all reports made under the provisions of this section.

(g) The county department of social services and the district attorney to whom a report is made under subsection (b1) of this section shall investigate or provide for the investigation of each such report."

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SENATE BILL 445:
Burt's Law

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 15, 2015
Introduced by:	Sens. Krawiec, Newton, Wells	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition S445-CSTG-12		

SUMMARY: ***The PCS for Senate Bill 445 would enhance protections for clients of facilities whose primary purpose is to provide services for the care, treatment, habilitation, and rehabilitation of individuals with mental illness, developmental disabilities, or substance abuse disorders.***

The PCS would also: increase punishments for client abuse, exploitation, or neglect; impose a reporting requirement on employees and volunteers who witness a sexual offense or offense against morality perpetrated against a client; and make the failure to report these violations a Class A1 or Class 1 misdemeanor.

The PCS adds new Section 1 to the original bill requiring the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to establish standardized procedures to train and keep records of the measures used to comply with the employee and volunteer reporting requirements in G.S. 122C-66.

CURRENT LAW: G.S. 122C-26 authorizes the Commission for Mental Health, Developmental disabilities, and Substance Abuse Services ("the Commission") to issue declaratory rulings, to make rules to meet the provisions and purposes of the Article and to govern licensure and accreditation of residential treatment facilities.

G.S. 122C-66 provides protection from abuse and exploitation, and imposes reporting requirements upon employees and volunteers at facilities that provide care, treatment, habilitation, or rehabilitation of mentally ill, developmentally disabled, or substance abuse clients.

BILL ANALYSIS:

Section 1 of the PCS would amend G.S. 122C-26(5) to require the Commission to establish standardized procedures for facilities in training and record keeping regarding the measures taken to inform employees and volunteers of their duties to report to the appropriate person or agency any abuse of a client they witness or of which they have knowledge.

Section 2 of the PCS would amend G.S. 122C-66 to:

- Increase the penalty from a Class 1 misdemeanor to a Class A1 misdemeanor for any employee or volunteer who knowingly causes pain or injury to a client.
- Increase the penalty from a Class 3 misdemeanor to a Class 1 misdemeanor for any employee or volunteer who witnesses and does not report another employee or volunteer who knowingly causes pain or injury to a client or takes personal property from a client.
- Add a provision that requires an employee or volunteer who witnesses a sex crime or offense against morality perpetrated against a client to report the alleged crime within 24 hours to the department of social services in the county where the facility serves the client and to the

district attorney in the district where the facility serves the client. Failure to report the alleged crime would be a Class A1 misdemeanor.

- Add a provision requiring the county department of social services and district attorney receiving a report of an alleged sex crime or offense against morality to investigate or provide for the investigation of each such report.

EFFECTIVE DATE: This act would become effective December 1, 2015 and would apply to offenses committed on or after that date.

Tawanda Foster, counsel to House Health, substantially contributed to this summary.

SENATE BILL 468

Short Title:	Trust Taxable Income Clarification.	(Public)
Sponsors:	Senator Hartsell (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY ALLOCATION OF TRUST INCOME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-160.2 reads as rewritten:

"**§ 105-160.2. Imposition of tax.**

(a) The tax imposed by this Part applies to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Part. The taxable income of an estate or trust is the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6, except that the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6 are apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year.

(b) The tax is computed on the amount of the taxable income of ~~the~~ an estate or trust ~~that is for the benefit of a resident of this State, or for the benefit of a~~as follows:

(1) On a nonresident estate or nonresident trust, but only to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State;

(2) On a resident estate;

(3) On a resident trust that is for the benefit of a resident current beneficiary; and

(4) On a resident trust for the benefit of a nonresident current beneficiary, but only to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State.

For purposes of ~~the preceding sentence,~~this subsection, taxable income and gross income is computed subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6.

(c) The tax on the amount computed above is at the rates levied in G.S. 105-153.7. The fiduciary responsible for administering the estate or trust shall pay the tax computed under the provisions of this Part.

(d) The taxable income of resident estates and resident trusts described in subsection (b) of this section shall be apportioned between resident and nonresident current beneficiaries on a rational basis. The Secretary may use a rebuttable presumption that the taxable income of a resident estate or resident trusts shall be equally apportioned among all current beneficiaries;

however, the fiduciary may rebut the presumption by attaching to its tax return a rational basis for an alternative apportionment based upon governing law, the terms of the governing instruments, the history of distributions to current beneficiaries of the resident estate or resident trust, the age and the means of current beneficiaries of the resident estate or resident trust, and other relevant facts and circumstances.

(e) The following definitions apply in this section:

(1) Current beneficiary. – A living beneficiary to whom, on the date the beneficiary's qualification is determined, is a distribute or permissible distribute of income or principal of the estate or trust.

(2) Nonresident estate. – An estate other than a resident estate.

(3) Nonresident trust. – A trust other than a resident trust.

(4) Resident estate. – The estate of a decedent who died a resident of North Carolina.

(5) Resident trust. – A trust which has its principal place of administration in North Carolina, as defined in G.S. 36-1-103(13a)."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 468
PROPOSED COMMITTEE SUBSTITUTE S468-CSTGxf-7 [v.1]
4/13/2015 3:36:39 PM

Short Title: Trust Taxable Income Clarification. (Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY ALLOCATION OF TRUST INCOME.

The General Assembly of North Carolina enacts:

SECTION 2.(a) G.S. 105-160.2 reads as rewritten:

"**§ 105-160.2. Imposition of tax.**

(a) The tax imposed by this Part applies to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Part. The taxable income of an estate or trust is the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6, except that the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6 are apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year.

(b) The tax is computed on the amount of the taxable income of ~~the~~an estate or trust ~~that is for the benefit of a resident of this State, or for the benefit of a~~ as follows:

(1) On a nonresident estate or nonresident trust, but only to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State.

(2) On a resident estate that is for the benefit of a resident current beneficiary.

(3) On a resident trust that is for the benefit of a resident current beneficiary.

(4) On a resident trust or a resident estate for the benefit of a nonresident current beneficiary, but only to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State.

For purposes of ~~the preceding sentence,~~ this subsection, taxable income and gross income is computed subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6.

(c) The tax on the amount computed above is at the rates levied in G.S. 105-153.7. The fiduciary responsible for administering the estate or trust shall pay the tax computed under the provisions of this Part.

(d) The taxable income of resident estates and resident trusts described in subsection (b) of this section shall be apportioned between resident and nonresident current beneficiaries on a rational basis. The taxable income of a resident estate or resident trust shall be equally apportioned among all current beneficiaries unless the fiduciary apportions and reports the taxable income of such resident estate or resident trust using an alternative approach and

attaches to its tax return items reflecting a rational basis for such alternative approach based upon governing law, the terms of the governing instrument, the resident estate's or resident trust's history of distributions to current beneficiaries, the age and means of current beneficiaries of the resident estate or resident trust, and other relevant facts and circumstances.

(e) The following definitions apply in this section:

(1) Current beneficiary. – A beneficiary who, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of income or principal of the estate or trust.

(2) Nonresident estate. – An estate other than a resident estate.

(3) Nonresident trust. – A trust other than a resident trust.

(4) Resident estate. – The estate of a decedent who died a resident of North Carolina.

(5) Resident trust. – A trust which has its principal place of administration in North Carolina, as defined in G.S. 36-1-103(13a)."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2015.

SENATE BILL 468:
Trust Taxable Income Clarification

2015-2016 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to Finance	**Date:**	April 13, 2015
Introduced by:	Sen. Hartsell	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition S468-CSTGxf-7		

SUMMARY: The PCS for Senate Bill 468 would clarify the manner in which trust and estate income is allocated for State income tax purposes.

CURRENT LAW: G.S. 105-160.2 imposes a tax on the income of estates and trusts that is also taxable under the Internal Revenue Code.

BILL ANALYSIS:

The PCS provides that the tax be computed as follows:

- On a nonresident estate or nonresident trust, but only to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or personal property in the State or (ii) is derived from a business, trade, or occupation in this State.
- On a resident estate or resident estate that is for the benefit of a resident current beneficiary.
- On a resident trust or a resident estate for the benefit of a nonresident current beneficiary, but only to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or personal property in this State or (ii) is derived from a business, trade, or occupation carried on in this State.

This section also provides that taxable income of resident estates and resident trusts must be apportioned between resident and nonresident current beneficiaries on a rational basis. The taxable income of a resident estate or resident trust must be equally apportioned among all current beneficiaries unless the fiduciary apportions and reports the taxable income using an alternative approach and attaches to its tax return items reflecting a rational basis for the alternative approach, the terms of the governing instrument, and other relevant facts and circumstances.

EFFECTIVE DATE: The act is effective for taxable years beginning on or after January 1, 2015.

Brad Krehely, counsel to Senate Judiciary I, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 75*

Short Title:	Labor/Up Amusement Device Penalties.	(Public)
Sponsors:	Senators B. Jackson, Brock, Wade (Primary Sponsors); and Sanderson.	
Referred to:	Rules and Operations of the Senate.	

February 12, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES FOR THE ILLEGAL OPERATION OF AMUSEMENT DEVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-111.13 reads as rewritten:

"**§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.**

(a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) ~~shall be~~ or G.S. 95-111.8 (Location notice) is subject to a civil penalty not to exceed ~~two hundred fifty dollars ($250.00)~~ two thousand five hundred dollars ($2,500) for each rule, regulation, or section of this Article violated and for each day each device is so operated or used.

(b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) ~~shall be~~ is subject to a civil penalty not to exceed ~~five hundred dollars ($500.00)~~ five thousand dollars ($5,000) for each day each device is so operated or used.

~~(c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day any device is operated or used without the location notice having been provided.~~

(d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a) (Operator requirements) ~~shall be~~ is subject to a civil penalty not to exceed ~~five hundred dollars ($500.00).~~five thousand dollars ($5,000) for each day each device is so operated or used.

(e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) ~~shall be~~ is subject to a civil penalty not to exceed ~~one thousand dollars ($1,000).~~ten thousand dollars ($10,000) for each day each device is so operated or used.

(f) 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~~ annual gross volume of the business ~~of the person~~ being charged, the gravity of the violation, the good faith of the ~~person~~ person, and the record of previous violations.

(g) The determination of the amount of the penalty by the Commissioner ~~shall be~~ is 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 and in a

judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(h) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.

(i) Any person who willfully violates any provision of this ~~Article, and the violation causes the death of any person, shall be~~Article is guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ($10,000); except that if the conviction is for a violation committed after a first conviction of ~~such~~ the person, the person shall be guilty of a Class 1 misdemeanor, which may include a fine of not more than twenty thousand dollars ($20,000). ~~This subsection shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such person on a prosecution charging any degree of willful or culpable homicide.~~

(j) If a person willfully violates any provision of this Article, and that violation causes the serious injury or death of any person, then the person is guilty of a Class E felony punishable by a fine of not more than fifty thousand dollars ($50,000).

(k) Nothing in this section prevents any prosecuting officer of the State of North Carolina from proceeding against a person who violates this Article on a prosecution charging any degree of willful or culpable homicide."

SECTION 2. This act becomes effective December 1, 2015, and applies to violations occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 75*
PROPOSED COMMITTEE SUBSTITUTE S75-CSTJ-6 [v.2]
4/15/2015 5:22:00 PM

Short Title: Labor/Up Amusement Device Penalties. (Public)

Sponsors:

Referred to:

February 12, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES FOR THE ILLEGAL OPERATION OF AMUSEMENT DEVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-111.13 reads as rewritten:

"**§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.**

(a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) ~~shall be~~ or G.S. 95-111.8 (Location notice) is subject to a civil penalty not to exceed ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) for each rule, regulation, or section of this Article violated and for each day each device is so operated or used.

(b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) ~~shall be~~ is subject to a civil penalty not to exceed ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) for each day each device is so operated or used.

~~(c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day any device is operated or used without the location notice having been provided.~~

(d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a) (Operator requirements) ~~shall be~~ is subject to a civil penalty not to exceed ~~five hundred dollars ($500.00).~~one thousand dollars ($1,000) for each day each device is so operated or used.

(e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) ~~shall be~~ is subject to a civil penalty not to exceed ~~one thousand dollars ($1,000).~~two thousand dollars ($2,000) for each day each device is so operated or used.

(f) 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~~ annual gross volume of the business ~~of the person~~ being charged, the gravity of the violation, the good faith of the ~~person~~ person, and the record of previous violations.

(g) The determination of the amount of the penalty by the Commissioner ~~shall be~~ is 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 and in a

judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(h) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.

(i) Any person who willfully violates any provision of this ~~Article, and the violation causes the death of any person, shall be~~Article is guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ($10,000); except that if the conviction is for a violation committed after a first conviction of ~~such~~ the person, the person shall be guilty of a Class 1 misdemeanor, which may include a fine of not more than twenty thousand dollars ($20,000). ~~This subsection shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such person on a prosecution charging any degree of willful or culpable homicide.~~

(j) If a person willfully violates any provision of this Article, and that violation causes the serious injury or death of any person, then the person is guilty of a Class E ~~felony punishable by~~felony, which may include a fine of not more than fifty thousand dollars ($50,000).

(k) Nothing in this section prevents any prosecuting officer of the State of North Carolina from proceeding against a person who violates this Article on a prosecution charging any degree of willful or culpable homicide."

SECTION 2. This act becomes effective December 1, 2015, and applies to violations occurring on or after that date.

SENATE BILL 75:
Labor/Up Amusement Device Penalties

2015-2016 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to Agriculture/Environment/Natural Resources	**Date:**	March 11, 2015
Introduced by:	Sens. B. Jackson, Brock, Wade	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S75-CSTJ-6		

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 75 would increase the civil and criminal penalties for the illegal operation of amusement devices. The PCS makes a clarifying change to new G.S. 95-111.13(j).***

[As introduced, this bill was identical to H39, as introduced by Reps. Davis, Howard, which is currently in Senate Rules.]

CURRENT LAW: The Amusement Device Safety Act of North Carolina is contained in Article 14B of Chapter 95 of the General Statutes. The purpose of the Article is to prevent injuries, and governs the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration, relocation and investigation of accidents involving amusement devices.

BILL ANALYSIS: The PCS to SB75 would amend the Amusement Device Safety Act to increase the penalties for the illegal operation of amusement devices. Specifically, the bill would amend G.S. 95-111.13 as follows:

- Increase the penalty for each day each device is operated or used in violation of the article as follows:
  - For operation without a certificate or not in accordance with the Article or rules or regulations -- to an amount up to $500 *(was $250)* for each rule, regulation, or Article section violated.
  - For operation after refusal to issue or after revocation of certificate, or for violating the liability insurance or reporting requirements of G.S. 95-111.10(c) -- to an amount up to $1,000 *(was, $500)*.
  - For violation of the location notice provisions – to an amount up to $1,000 *(was, $500)*.
  - For violation of reporting requirements of G.S. 96-111.10(d) or in violation of statutory operator requirements — to an amount not to exceed $1,000 *(was, $500)*.
  - For operation of an unsafe device or operation of a device while impaired – to up to $2,000 *(was, $1,000)*.
- Authorize the Commissioner of Labor to determine whether the amount of the fine is appropriate given the annual gross volume of the business, the seriousness of the violation, the presence or absence of good faith, and whether there have been any previous violations.
- Increase the punishment for willful violation of any provision of the Article *(was, willful violation of any provision resulting in death)* from a Class 2 misdemeanor and the possibility of a fine of up to $10,000; subsequent conviction punishable as Class 1 misdemeanor and possibility of a fine of up to $20,000.
- Add a new subsection (j) providing that willful violation of any provision of the Article that results in serious injury or death constitutes a Class E felony and the possibility of a fine of up to $50,000.
- Add a new subjection (k) to provide that any State prosecutor may proceed against a violator on a charge of willful or culpable homicide.

EFFECTIVE DATE: This act is effective December 1, 2015, and applies to violations occurring on or after that date.

O. Walker Reagan
Director

S75-SMTJ-9 CSTJ-6 -V5

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Fiscal Note

BILL NUMBER: House Bill 39 (First Edition)

SHORT TITLE: Labor/Up Amusement Device Penalties.

SPONSOR(S): Representatives Davis and Howard

FISCAL IMPACT
($ in millions)

☐ Yes ☑ No ☐ No Estimate Available

State Impact	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
General Fund Revenues:	No fiscal impact anticipated.				
General Fund Expenditures:					
Special Fund Revenues:	No fiscal impact anticipated.				
Special Fund Expenditures:					
NET STATE IMPACT	**No fiscal impact anticipated.**				

* This fiscal note does not address the criminal penalty changes included in sections (i) and (j) of the bill. The fiscal impact of those changes will be addressed in a separate incarceration note.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Labor

EFFECTIVE DATE: December 1, 2015

TECHNICAL CONSIDERATIONS:
None

BILL SUMMARY:
The bill increases the civil penalties associated with a violation of the Amusement Device Safety Act (Act) contained in Article 14B of G.S. 95. Specifically, the bill increases civil penalties for violations of the following statutory provisions:

Statutory Provision	Current Maximum Penalty	Proposed Maximum Penalty
G.S. 95-111.7(a)	$250	$2,500
G.S. 95-111.7(b)	$250	$2,500
G.S. 95-111.8	$500	$2,500
G.S. 95-111.7(c)	$500	$5,000
G.S. 95-111.10(c)	$500	$5,000
G.S. 95-111.12	$500	$5,000
G.S. 95-111.10(d)	$500	$5,000
G.S. 95-111.11(a)	$500	$5,000
G.S. 95-111.9	$1,000	$10,000
G.S. 95-111.11(b)	$1,000	$10,000

Finally, the bill clarifies that nothing in the Act prevents any prosecutor in the State of North Carolina from prosecuting a person who violates the Act on a charge of willful or culpable homicide.

ASSUMPTIONS AND METHODOLOGY:
The Department of Labor's Elevator and Amusement Device Division administers the Amusement Device Safety Act and performs elevator and amusement device inspections required by law. The Division is fully receipt-supported from inspection fees and has an annual budget of approximately $4.2 million.

The Department may assess civil penalties as provided in G.S. 95-111.13 if violations of the Amusement Device Safety Act are discovered. The clear proceeds of any civil penalties assessed are remitted to the Civil Penalty Forfeiture Fund (CPFF) established in Article 31A of G.S. 115C. Funds remitted to the CPFF are appropriated by the General Assembly for public education purposes as detailed in G.S. 115C-457.3. The Department is allowed to retain a certain percentage of the penalties to cover the actual cost of collection under G.S. 115C-457.2. The Department currently retains 9.92% of civil penalties and fines collected to cover collection costs.

In the five most recent fiscal years, FY 2009-10 to FY 2013-14, the Department assessed penalties under the Act in only one of the five years. In FY 2013-14, the Department assessed a total of nine penalties under the Act totaling $2,300. Of the $2,300 assessed, $1,950 was collected. Considering recent penalty experience and the increased civil and criminal penalties associated with the legislation, this analysis assumes that penalties assessed in the future will be uncommon.

Since the bill places no additional administrative requirements on the Department and does not impact current or projected penalty revenues, this analysis assumes that the bill will not have a significant fiscal impact.

SOURCES OF DATA: Department of Labor

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Timothy Dale

APPROVED BY:
Mark Trogdon, Director
Fiscal Research Division

DATE: March 13, 2015



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SENATE BILL 198

Short Title:	Persons Under 18 in Confinement Facilities.	(Public)
Sponsors:	Senators Robinson, Tillman (Primary Sponsors); Bryant and Rabin.	
Referred to:	Rules and Operations of the Senate.	

March 9, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PERSONS UNDER THE AGE OF EIGHTEEN SHOULD NOT BE HOUSED IN A LOCAL CONFINEMENT FACILITY OCCUPIED BY PERSONS AGE EIGHTEEN AND OLDER UNLESS A SIGHT AND SOUND BARRIER EXISTS BETWEEN THE PERSONS UNDER THE AGE OF EIGHTEEN AND THE OLDER PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-218 reads as rewritten:

"**§ 153A-218. County confinement facilities.**

(a) A county may establish, acquire, erect, repair, maintain, and operate local confinement facilities and may for these purposes appropriate funds not otherwise limited as to use by law. A juvenile detention facility may be located in the same facility as a county jail provided that the juvenile detention facility meets the requirements of this Article and ~~G.S. 147-33.40.~~G.S. 143B-817.

(b) Notwithstanding the provisions of subsection (a) of this section, whenever possible, persons under the age of 18 should not be housed in the same local confinement facility as persons age 18 and older. If persons under the age of 18 are housed in the same local confinement facility as persons age 18 and older, then a complete sight and sound barrier shall be erected and maintained between the persons under the age of 18 and the persons age 18 and older. The provisions of this subsection apply regardless of whether the persons under the age of 18 are confined pursuant to Chapter 7B of the General Statutes or Chapter 15A of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 198
PROPOSED COMMITTEE SUBSTITUTE S198-CSTJ-17 [v.1]

4/15/2015 7:26:38 PM

Short Title: Persons Under 18 in Confinement Facilities. (Public)

Sponsors:

Referred to:

March 9, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PERSONS UNDER THE AGE OF EIGHTEEN SHOULD NOT BE HOUSED IN A LOCAL CONFINEMENT FACILITY OCCUPIED BY PERSONS AGE EIGHTEEN AND OLDER UNLESS A SIGHT AND SOUND BARRIER EXISTS BETWEEN THE PERSONS UNDER THE AGE OF EIGHTEEN AND THE OLDER PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-218 reads as rewritten:

"**§ 153A-218. County confinement facilities.**

(a) A county may establish, acquire, erect, repair, maintain, and operate local confinement facilities and may for these purposes appropriate funds not otherwise limited as to use by law. A juvenile detention facility may be located in the same facility as a county jail provided that the juvenile detention facility meets the requirements of this Article and ~~G.S. 147-33.40.~~G.S. 143B-817.

(b) Notwithstanding the provisions of subsection (a) of this section, whenever possible, persons under the age of 18 should not be housed in the same local confinement facility as persons age 18 and older. If persons under the age of 18 are housed in the same local confinement facility as persons age 18 and older, then a complete sight and sound barrier shall be erected and maintained between the persons under the age of 18 and the persons age 18 and older. The provisions of this subsection apply regardless of whether the persons under the age of 18 are confined pursuant to Chapter 7B of the General Statutes or Chapter 15A of the General Statutes."

SECTION 2. This act is effective when it becomes law and applies to Requests for Proposals for letting of public contracts issued on or after that date.

SENATE BILL 198:
Persons Under 18 in Confinement Facilities

2015-2016 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to Appropriations/Base Budget	**Date:**	April 15, 2015
Introduced by:	Sens. Robinson, Tillman	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S198-CSTJ-17		

SUMMARY: ***The Proposed Committee Substitute (PCS) to Senate Bill 198 would provide that persons under the age of 18 should not be housed in a local confinement facility occupied by persons 18 and older unless a sight and sound barrier exists between the persons under the age of 18 and those who are 18 and older. The PCS changes the effective date of the act.***

BILL ANALYSIS: The PCS to Senate Bill 198 would add that, whenever possible, a person who has not attained the age of 18 should not be housed in the same local confinement facility as those 18 years of age and older, but if those under 18 are housed in the same local confinement facility as those 18 and older, a complete sight and sound barrier must exist between those of the differing age groups.

EFFECTIVE DATE: This act is effective when it becomes law and applies to Requests for Proposals for letting of public contracts issued on or after that date.

O. Walker Reagan
Director

S198-SMTJ-37 CSTJ-17 -V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 249

Short Title:	Zoning/Recreational Land Req.-Morrisville.	(Local)
Sponsors:	Senator Stein (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 12, 2015

A BILL TO BE ENTITLED

AN ACT GRANTING AUTHORITY TO THE TOWN OF MORRISVILLE TO REQUIRE DEVELOPERS OF MULTIFAMILY UNITS TO PROVIDE FUNDS FOR RECREATIONAL LAND TO SERVE MULTIFAMILY DEVELOPMENTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Section 1 of S.L. 2007-321 reads as rewritten:

"**SECTION 1.** The ~~town~~ Towns of Cary and Morrisville may, by ordinance, provide that a developer of multifamily units that are not subject to the subdivision ordinance shall provide funds to the town whereby the town may acquire recreational land or areas to serve the multifamily development, including the purchase of land that may be used to serve more than one multifamily development or residential subdivision within the immediate area. All funds received by the town pursuant to this section may be combined with funds received from residential subdivisions under G.S. 160A-372, and shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this section shall be based on a flat fee per unit. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the town council determines that this combination is in the best interests of the citizens of the area to be served."

SECTION 1.(b) Section 2 of S.L. 2007-321 reads as rewritten:

"**SECTION 2.** This act applies to the ~~town~~ Towns of Cary and Morrisville only."

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

SENATE BILL 249:
Zoning/Recreational Land Req.-Morrisville

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 15, 2015
Introduced by:	Sen. Stein	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 249 authorizes the Town of Morrisville to require developers of multifamily units to provide funds for the acquisition of recreational areas to serve the units, including the purchase of land that may be used to serve more than one multifamily development or residential subdivision within the immediate area.***

[As introduced, this bill was identical to H322, as introduced by Reps. Avila, Adcock, D. Hall, which is currently in House Local Government.]

CURRENT LAW:

G.S. 160A-372 provides that a subdivision ordinance may provide for the provision of funds by a developer to be used by a municipality to acquire recreational areas to serve the residents of the subdivision or development, or more than one subdivision or development, within the immediate area. Funds received by a municipality may be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds to be provided by a developer shall be based upon the value of the development for property tax purposes. A combination of funds and partial dedication of land may be allowed when the municipality determines that this combination is in the best interests of the area residents.

BILL ANALYSIS: Senate Bill 249 would provide the Town of Morrisville with the same authority to require developers of multifamily units to provide funding for recreational areas to serve residents of the multifamily units and other residents in the immediate area, as is provided in G.S. 160A-372 for subdivision development.

Funds received from developers of multifamily units may be combined with funds received from residential subdivision developers under G.S. 160A-372. The use of the funds is limited to the acquisition or development of recreation, park, or open space sites. Any formula used to determine the amount of funds due shall be based upon a flat fee per unit. The ordinance may allow for a combination of funds and dedication of land, if the town council determines that this is in the best interests of the residents to be served.

EFFECTIVE DATE: The act is effective when it becomes law. It applies to the Town of Morrisville only.

BACKGROUND: The General Assembly gave this authority to the Town of Cary in 2007 (S.L. 2007-321).

Barbara Riley, former Staff Attorney with the Research Division, and Brad Krehely, counsel to Senate State and Local Government, contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SENATE BILL 661

Short Title:	Private Labs Must Comply with CODIS.	(Public)
Sponsors:	Senator Newton (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT WHEN LOCAL LAW ENFORCEMENT AGENCIES OBTAIN DNA ANALYSES FROM ENTITIES OTHER THAN THE STATE CRIME LABORATORY THAT THOSE ENTITIES MEET THE STANDARDS APPLICABLE TO VENDOR LABORATORIES AS SET FORTH IN FEDERAL BUREAU OF INVESTIGATION STANDARDS RELATED TO THE COMBINED DNA INDEX SYSTEM (CODIS); TO REQUIRE THE STATE CRIME LABORATORY TO MAKE AVAILABLE A LIST OF ENTITIES THAT SATISFY THAT REQUIREMENT; AND TO PROHIBIT LOCAL LAW ENFORCEMENT AGENCIES FROM USING CERTAIN DNA DATABASES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-270.2. Obtaining DNA analyses from entities other than the State Crime Laboratory; use of local DNA databases prohibited.**

(a) Private Laboratories Shall Comply with CODIS Requirements. – A local law enforcement agency shall not obtain DNA analysis from an entity other than the Crime Laboratory unless that entity meets the standards applicable to vendor laboratories as set forth in the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing and Databasing Laboratories. The Crime Laboratory shall maintain a list of laboratories that meet those standards and shall make the list available on its Web site.

(b) Private DNA Databases Prohibited. – A local law enforcement agency shall not access or create any DNA Database other than those that participate in the CODIS system."

SECTION 2. This act becomes effective October 1, 2015.

SENATE BILL 661:
Private Labs Must Comply with CODIS

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 15, 2015
Introduced by:	Sen. Newton	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 661 would provide that when local law enforcement agencies obtain DNA analyses from entities other than the State Crime Laboratory, those entities must meet the standards that apply to vendor laboratories as set forth in Federal Bureau of Investigation Standards related to the Combined DNA Index System (CODIS).***

BILL ANALYSIS: Senate Bill 661 would amend the Criminal Procedure Act to require private laboratories to comply with CODIS requirements and to require the State Crime Laboratory to maintain a list of laboratories meeting those standards and make the list available on its Web site. The bill would also provide that a local law enforcement agency must not access nor create any DNA database other than those that participate in CODIS.

BILL ANALYSIS: Information on CODIS and its Quality Assurance Standards can be found on the FBI's Web site at: http://www.fbi.gov/about-us/lab/biometric-analysis/codis.

EFFECTIVE DATE: This act becomes effective October 1, 2015.

O. Walker Reagan
Director

S661-SMTJ-39 E1 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, April 16, 2015

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

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

SB **75** Labor/Up Amusement Device Penalties.

Draft Number:	S75-PCS45347-TJ-6
Sequential Referral:	Agriculture/Environment/Natural Resources
Recommended Referral:	None
Long Title Amended:	No

SB **445** Burts Law.

Draft Number:	S445-PCS45346-TG-12
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

SB **468** Trust Taxable Income Clarification.

Draft Number:	S468-PCS25229-TGxf-7
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Senator W. Jackson will handle SB 75
Senator Joyce Krawiec will handle SB 445
Senator Fletcher Hartsell will handle SB 468

CMR179-V-1

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, April 16, 2015

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

FAVORABLE

SB **249** Zoning/Recreational Land Req.-Morrisville.

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

SB **661** Private Labs Must Comply with CODIS.

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

TOTAL REPORTED: 2

Senator Joshua Stein will handle SB 249
Senator E.S. Newton will handle SB 661



4/16/15

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Fred Baggett	Police Chief	
Fred Schmidt	DMV	SB 298
TJ Cawley	Town of Morrisville	SB249
Steve Rao	Town of Morrisville	SB299
Tony Caldwell	Alpha Phi Alpha	SB445
Walt Caison	DMH/DD/SAS	SB445
Trent Womble	DHHS	S445
Pam Stilwell	NCSBE	S298
Susan Harrison	NCSSWA	S 298
Derek Graham	NC DPI	
Mildred Spearman	NCAOC	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.

4/16/2015

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.
Linda Johnson	NCBA	SB468
Liz Arias	"	SB468
Tim Gauss	TOWN OF MORRISVILLE	SB249
Cady Thomas		

4/16/15

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Allison Stewart	Cardinal Innovations	
Roston Jones	NCDOT	
Doug Miskiw	PSG	
Gene Ainsworth	A & A	
	Town Carolina	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.
Bruce Muldowney	NCSBA	
Bob Mack	NCDOI	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Sarah Preston	ACLU-NC	
Peg Dorn	Coal of DAs	
Jeb Byrd	NC State Crime Labs	
Carla Kunze	NCDOL	
June Gilchrist	NCDOL	
Jennifer Haigwood	NCDOL	
Tom Vitaglione	NC CAILD	
Annaliese Dolph	DL	
Chantel McCabe	Public	
Cady Thomas	Focus Carolina	

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 4-16 TIME: 10 AM

PLEASE PRINT <u>LEGIBILY</u>!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Charlie Crumpler	Dunn	Rabin
2.		
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 JUDICIARY II

April 16, 2015

SENATE SERGEANT-AT-ARMS

TERRY BARNHARDT

HAL ROACH

Senate Committee on Judiciary II
Tuesday, April 21, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:05 AM on April 21, 2015 in Room 1124/1224 of the Legislative Building. 14 members were present.

Senator Shirley B. Randleman, Chair, presided.

Pages: AJ Swaim of Wendell, Langden Ramseur of Gastonia
Sgt. At Arms: Terry Barnhardt, Hal Roach

SB 198 Persons Under 18 in Confinement Facilities. (Senators Robinson, Tillman)
Sen. Cook moved to have the PCS: PCS S198-CSTJ-17 brought up for consideration rather than discussing the original bill. The motion carried.
Sen. Robinson presented the bill to the committee. At least three different members of the committee brought up questions.
There was a member of the public who spoke to respond to questions about the bill:
Ryan Combs of the Department of Public Safety.
After discussion, Sen. Bryant motioned for finding the original bill unfavorable, but favorable as to the PCS with a serial referral to the Senate Committee on Appropriations/Base Budget. The motion was seconded by Sen. Alexander. The motion carried. The bill was reported out by the clerk "Unfavorable as to bill, but Favorable as to Committee Substitute bill" with a notation for a Sequential referral to Senate Appropriations/Base Budget.

SB 298 School Bus Cameras/Civil Penalties. (Senators Alexander, McInnis)
This was the fourth bill heard. There was no objection to bringing the PCS: PCS S298-CSTG-10 before the committee to be heard rather than the original bill.
Senator McInnis presented the bill to the committee with the help of Senator Alexander.
At least four different members of the committee brought up questions.
There were a few members of the public who spoke to respond to questions about the bill and speak to the bill:
Derrick Graham for WCPSS Transportation, Bruce Mildworth for the NC School Board Association.
After discussion, Sen. Cook motioned for finding the original bill unfavorable, but favorable as to the PCS. The motion was seconded by Sen. Krawiec. The motion carried. The bill was reported out by the clerk "Unfavorable as to Committee Substitute bill NO. 1, but Favorable as to Committee Substitute bill NO. 2."

SB 345 Limit Storage Duration for Damaged Vehicle. (Senator Meredith)
This was the second bill heard. Sen. Meredith presented the bill to the committee.
Sen. J. Davis moved to amend the bill on page 1, line 9-16.
At least two different members had questions regarding the amendment number1.
There was a member of the public who spoke to respond to questions about the amendment:

Lt. Billy Clayton for the State Highway Patrol.
After discussion, the committee voted on the adoption of the amendment. The motion carried. The bill as amended was back before the committee. Sen. Alexander motioned for finding the bill favorable as amended, rolled into a new PCS. The motion carried. The bill was reported out by the clerk "Unfavorable as to bill, but Favorable as to Committee Substitute bill."

SB 466 Self-Settled Trusts. (Senator Hartsell)
This bill was the final one heard and was displaced until a later meeting date.

SB 570 Expunction/Boat Violation. (Senators Bryant, McKissick, Daniel)
This was the third bill heard. There was no objection to bringing the PCS: PCS S570-CSTJ-19 before the committee to be heard rather than the original bill.
Sen. Bryant presented the bill to the committee. Sen. J. Davis motioned for finding the bill unfavorable as to the original bill but favorable as to the PCS. The motion carried. The bill was reported out by the clerk "Unfavorable as to bill, but Favorable as to Committee Substitute bill."

The meeting adjourned at 10:50 am.

Senator Shirley B. Randleman, Chair
Presiding

Patrick Limer, Committee Clerk

Senate Committee on Judiciary II
Tuesday, April 21, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 198	Persons Under 18 in Confinement Facilities.	Senator Robinson Senator Tillman
SB 298	School Bus Cameras/Civil Penalties.	Senator Alexander Senator McInnis
SB 345	Limit Storage Fees on Damaged Vehicle.	Senator Meredith
SB 466	Self-Settled Trusts.	Senator Hartsell
SB 570	Expunction/Boat Violation.	Senator Bryant Senator McKissick Senator Daniel

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 198

Short Title:	Persons Under 18 in Confinement Facilities.	(Public)
Sponsors:	Senators Robinson, Tillman (Primary Sponsors); Bryant and Rabin.	
Referred to:	Rules and Operations of the Senate.	

March 9, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PERSONS UNDER THE AGE OF EIGHTEEN SHOULD NOT BE HOUSED IN A LOCAL CONFINEMENT FACILITY OCCUPIED BY PERSONS AGE EIGHTEEN AND OLDER UNLESS A SIGHT AND SOUND BARRIER EXISTS BETWEEN THE PERSONS UNDER THE AGE OF EIGHTEEN AND THE OLDER PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-218 reads as rewritten:

"**§ 153A-218. County confinement facilities.**

(a) A county may establish, acquire, erect, repair, maintain, and operate local confinement facilities and may for these purposes appropriate funds not otherwise limited as to use by law. A juvenile detention facility may be located in the same facility as a county jail provided that the juvenile detention facility meets the requirements of this Article and ~~G.S. 147-33.40.~~G.S. 143B-817.

(b) Notwithstanding the provisions of subsection (a) of this section, whenever possible, persons under the age of 18 should not be housed in the same local confinement facility as persons age 18 and older. If persons under the age of 18 are housed in the same local confinement facility as persons age 18 and older, then a complete sight and sound barrier shall be erected and maintained between the persons under the age of 18 and the persons age 18 and older. The provisions of this subsection apply regardless of whether the persons under the age of 18 are confined pursuant to Chapter 7B of the General Statutes or Chapter 15A of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 198
PROPOSED COMMITTEE SUBSTITUTE S198-CSTJ-17 [v.1]
4/15/2015 7:26:38 PM

Short Title: Persons Under 18 in Confinement Facilities. (Public)

Sponsors:

Referred to:

March 9, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PERSONS UNDER THE AGE OF EIGHTEEN SHOULD NOT BE HOUSED IN A LOCAL CONFINEMENT FACILITY OCCUPIED BY PERSONS AGE EIGHTEEN AND OLDER UNLESS A SIGHT AND SOUND BARRIER EXISTS BETWEEN THE PERSONS UNDER THE AGE OF EIGHTEEN AND THE OLDER PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-218 reads as rewritten:

"**§ 153A-218. County confinement facilities.**

(a) A county may establish, acquire, erect, repair, maintain, and operate local confinement facilities and may for these purposes appropriate funds not otherwise limited as to use by law. A juvenile detention facility may be located in the same facility as a county jail provided that the juvenile detention facility meets the requirements of this Article and ~~G.S. 147-33.40.~~G.S. 143B-817.

(b) Notwithstanding the provisions of subsection (a) of this section, whenever possible, persons under the age of 18 should not be housed in the same local confinement facility as persons age 18 and older. If persons under the age of 18 are housed in the same local confinement facility as persons age 18 and older, then a complete sight and sound barrier shall be erected and maintained between the persons under the age of 18 and the persons age 18 and older. The provisions of this subsection apply regardless of whether the persons under the age of 18 are confined pursuant to Chapter 7B of the General Statutes or Chapter 15A of the General Statutes."

SECTION 2. This act is effective when it becomes law and applies to Requests for Proposals for letting of public contracts issued on or after that date.

SENATE BILL 198:
Persons Under 18 in Confinement Facilities

2015-2016 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to Appropriations/Base Budget	**Date:**	April 15, 2015
Introduced by:	Sens. Robinson, Tillman	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S198-CSTJ-17		

SUMMARY: ***The Proposed Committee Substitute (PCS) to Senate Bill 198 would provide that persons under the age of 18 should not be housed in a local confinement facility occupied by persons 18 and older unless a sight and sound barrier exists between the persons under the age of 18 and those who are 18 and older. The PCS changes the effective date of the act.***

BILL ANALYSIS: The PCS to Senate Bill 198 would add that, whenever possible, a person who has not attained the age of 18 should not be housed in the same local confinement facility as those 18 years of age and older, but if those under 18 are housed in the same local confinement facility as those 18 and older, a complete sight and sound barrier must exist between those of the differing age groups.

EFFECTIVE DATE: This act is effective when it becomes law and applies to Requests for Proposals for letting of public contracts issued on or after that date.

O. Walker Reagan
Director

S198-SMTJ-37 CSTJ-17 -V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 2

SENATE BILL 298
Education/Higher Education Committee Substitute Adopted 4/1/15

Short Title: School Bus Cameras/Civil Penalties. (Public)

Sponsors:

Referred to:

March 18, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF PHOTOGRAPHIC OR VIDEO EVIDENCE FOR THE CIVIL ENFORCEMENT OF VIOLATIONS FOR PASSING A STOPPED SCHOOL BUS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-246. Use of photographs or videos recorded by automated school bus safety cameras.**

(a) Definitions. – The following definitions apply in this section:

(1) Automated school bus safety camera. – As defined in G.S. 115C-242.1.

(2) Officials or agents. – This term includes a local board of education located within the county or a private vendor contracted with under G.S. 115C-242.1.

(3) School bus. – As used in G.S. 20-217.

(b) Civil Enforcement. – A county may adopt an ordinance for the civil enforcement of G.S. 20-217 by means of an automated school bus safety camera installed and operated on any school bus located within that county. Notwithstanding the provisions of G.S. 14-4, in the event that a county adopts an ordinance pursuant to this section, a violation of the ordinance shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The registered owner of a vehicle shall be responsible for a violation unless the registered owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The registered owner of the vehicle shall not be responsible for the violation if the registered owner of the vehicle, within 30 days after notification of the violation, furnishes the officials or agents of the county that issued the citation either of the following:

a. An affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.

(2) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for, the violation if notice of the violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.

(3) A violation of the ordinance shall be deemed a noncriminal violation for which a civil penalty of five hundred dollars ($500.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) and no insurance points authorized by G.S. 58-36-65 shall be assigned to the registered owner or driver of the vehicle.

(4) The registered owner of the vehicle shall be issued a citation, which shall clearly state the manner in which the violation may be challenged, and the registered owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the county and shall be forwarded by personal service or first class mail to the address given on the motor vehicle registration. If the registered owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the registered owner shall have waived the right to contest responsibility for the violation and shall be subject to a late penalty of one hundred dollars ($100.00) in addition to the civil penalty assessed under subdivision (3) of this subsection. In addition, the Division of Motor Vehicles shall refuse to register the motor vehicle for the owner pursuant to G.S. 20-54(11). The county may establish procedures for providing notice to the Division of Motor Vehicles and for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(5) The county shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.

(c) Notice. – An automated school bus safety camera installed on a school bus must be identified by appropriate warning signs conspicuously posted on the school bus. All warning signs shall be consistent with a statewide standard adopted by the State Board of Education in conjunction with local boards of education that install and operate automated school bus safety cameras on their school buses.

(d) Application. – Nothing in this section shall be construed to do any of the following:

(1) Require the installation and operation of automated school bus safety cameras on a school bus.

(2) Prohibit the use and admissibility of any photograph or video recorded by an automated school bus safety camera in any criminal proceeding alleging a violation of G.S. 20-217.

(3) Prohibit the imposition of penalties, including the assignment of points authorized by G.S. 20-16(c) and insurance points authorized by G.S. 58-36-65, on any registered owner or driver of the vehicle convicted of a misdemeanor or felony violation of G.S. 20-217."

SECTION 2. Article 17 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-242.1. Installation and operation of automated school bus safety camera.**

(a) Definition. – An "automated school bus safety camera" is a device that is affixed to a school bus, as that term is used in G.S. 20-217, that is synchronized to automatically record photographs or video of a vehicle at the time the vehicle is detected for a violation of (i) G.S. 20-217 or (ii) an ordinance adopted under G.S. 153A-246.

(b) Installation and Operation. – Automated school bus safety cameras may be installed and operated on any school bus operated by a local board of education within a county that has adopted an ordinance under G.S. 153A-246 as follows:

(1) A local board of education may install and operate automated school bus safety cameras without contracting with a private vendor.

(2) A local board of education may enter into a contract to install and operate automated school bus safety cameras with a private vendor. Contracts shall

be let in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. The maximum length of any contract entered into under this subdivision shall be three years.

(3) Upon request by one or more local boards of education, the State Board of Education shall enter into a contract for a statewide service or contracts for regional services to install and operate automated school bus safety cameras with a private vendor. These contracts shall be let in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. The maximum length of any contract entered into under this subdivision shall be three years.

(c) Interlocal Agreements. – Any local board of education and board of county commissioners may enter into an interlocal agreement necessary and proper to effectuate the purpose and intent of this section and G.S. 153A-246. Any agreement entered into pursuant to this subsection may include provisions on cost-sharing and reimbursement that the local board of education and board of county commissioners freely and voluntarily agree to for the purposes of effectuating this section and G.S. 153A-246.

(d) Evidence in Criminal Proceeding. – Any photographs or videos recorded by an automated school bus safety camera that capture a violation of G.S. 20-217 shall also be provided to the investigating law enforcement agency for use as evidence in any proceeding alleging a violation of G.S. 20-217."

SECTION 3. G.S. 20-54 reads as rewritten:

"**§ 20-54. Authority for refusing registration or certificate of title.**

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

...

(11) The Division has been notified (i) pursuant to G.S. 20-217(g2) that the owner of the vehicle has failed to pay any fine imposed pursuant to ~~G.S. 20-217.~~G.S. 20-217 or (ii) pursuant to G.S. 153A-246(b)(4) that the owner of the vehicle has failed to pay a civil penalty under G.S. 153A-246."

SECTION 4. G.S. 20-217 reads as rewritten:

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

...

(h) ~~Automated camera and video recording systems~~Automated school bus safety cameras, as defined in G.S. 115C-242.1, may be used to detect and prosecute violations of this section. Any photograph or video recorded by ~~a camera or video recording system~~an automated school bus safety camera shall, if consistent with the North Carolina Rules of Evidence, be admissible as evidence in any proceeding alleging a violation of subsection (a) of this section. Failure to produce a photograph or video recorded by an automated school bus safety camera shall not preclude prosecution under this section.

(i) In addition to the penalties imposed under this section, the owner or driver of a vehicle may be subject to a civil penalty pursuant to an ordinance adopted under G.S. 153A-246."

SECTION 5. The North Carolina Administrative Office of the Courts shall annually submit a report covering the most recent five years prior to the reporting date to the North Carolina Child Fatality Task Force and the North Carolina General Assembly by October 1 on the following information:

(1) Total number of offenses charged under G.S. 20-217, by county.

(2) Total number of convictions under G.S. 20-217, by county.

SECTION 6. A county that adopts an ordinance as provided in G.S. 153A-246, as enacted by this act, shall maintain records of all noncriminal violations of that ordinance for

which a civil penalty is assessed. Upon request, the county shall provide at least five years of those records to the North Carolina Child Fatality Task Force and the North Carolina General Assembly.

SECTION 6.5. Within 90 days of the enactment of this act, the State Board of Education shall develop a model contract for use by the local boards of education in letting and awarding contracts in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes for the installation and operation of automated school bus safety cameras as provided in G.S. 115C-242.1. The State Board of Education and the Department of Public Instruction shall provide technical assistance to a local board of education on this process upon a request by the local board.

SECTION 7. This act becomes effective July 1, 2015, and applies to offenses and violations committed on or after that date. The requirements in G.S. 115C-242.1(b)(2), as enacted by this act, shall not apply to a local board of education that entered into a contract prior to July 1, 2015, with a private vendor to install and operate automated school bus safety cameras.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 298
Education/Higher Education Committee Substitute Adopted 4/1/15
PROPOSED COMMITTEE SUBSTITUTE S298-CSTG-10 [v.3]

4/15/2015 7:43:33 PM

Short Title: School Bus Cameras/Civil Penalties. (Public)

Sponsors:

Referred to:

March 18, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF PHOTOGRAPHIC OR VIDEO EVIDENCE FOR THE CIVIL ENFORCEMENT OF VIOLATIONS FOR PASSING A STOPPED SCHOOL BUS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-246. Use of photographs or videos recorded by automated school bus safety cameras.**

(a) Definitions. – The following definitions apply in this section:

(1) Automated school bus safety camera. – As defined in G.S. 115C-242.1.

(2) Officials or agents. – This term includes a local board of education located within the county or a private vendor contracted with under G.S. 115C-242.1.

(3) School bus. – As used in G.S. 20-217.

(b) Civil Enforcement. – A county may adopt an ordinance for the civil enforcement of G.S. 20-217 by means of an automated school bus safety camera installed and operated on any school bus located within that county. Notwithstanding the provisions of G.S. 14-4, in the event that a county adopts an ordinance pursuant to this section, a violation of the ordinance shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The registered owner of a vehicle shall be responsible for a violation unless the registered owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The registered owner of the vehicle shall not be responsible for the violation if the registered owner of the vehicle, within 30 days after notification of the violation, furnishes the officials or agents of the county that issued the citation either of the following:

a. An affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.

(2) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for, the violation if notice of the

violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.

(3) A violation of the ordinance shall be deemed a noncriminal violation for which a civil penalty of five hundred dollars ($500.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) and no insurance points authorized by G.S. 58-36-65 shall be assigned to the registered owner or driver of the vehicle.

(4) The registered owner of the vehicle shall be issued a citation, which shall clearly state the manner in which the violation may be challenged, and the registered owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the county and shall be forwarded by personal service or first class mail to the address given on the motor vehicle registration. If the registered owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the registered owner shall have waived the right to contest responsibility for the violation and shall be subject to a late penalty of one hundred dollars ($100.00) in addition to the civil penalty assessed under subdivision (3) of this subsection. In addition, the Division of Motor Vehicles shall refuse to register the motor vehicle for the owner pursuant to G.S. 20-54(11). The county may establish procedures for providing notice to the Division of Motor Vehicles and for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(5) If a registered owner provides an affidavit, as provided in subsection (b)(1) of this section, that the vehicle was, at the time of the violation, in the care, custody, or control of another person or company, the identified person or company may be issued a citation which shall clearly state the manner in which the violation may be challenged and the identified person or company shall comply with the directions on the citation. The citation shall be processed by officials or agents of the county and shall be forwarded by personal service or first class mail to the address provided in the affidavit. If the identified person or company fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the identified person or company shall have waived the right to contest responsibility for the violation and shall be subject to a late penalty of one hundred dollars ($100.00) in addition to the civil penalty assessed under subdivision (3) of this section. The county may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(6) The county shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.

(7) A county shall not impose a civil penalty under this subsection against a person if that person is charged with violation of G.S. 20-217 in a criminal pleading arising out of the same facts.

(c) Notice. – An automated school bus safety camera installed on a school bus must be identified by appropriate warning signs conspicuously posted on the school bus. All warning signs shall be consistent with a statewide standard adopted by the State Board of Education in conjunction with local boards of education that install and operate automated school bus safety cameras on their school buses.

(d) Application. – Nothing in this section shall be construed to do any of the following:

(1) Require the installation and operation of automated school bus safety cameras on a school bus.

(2) Prohibit the use and admissibility of any photograph or video recorded by an automated school bus safety camera in any criminal proceeding alleging a violation of G.S. 20-217.

(3) Prohibit the imposition of penalties, including the assignment of points authorized by G.S. 20-16(c) and insurance points authorized by G.S. 58-36-65, on any registered owner or driver of the vehicle convicted of a misdemeanor or felony violation of G.S. 20-217."

SECTION 2. Article 17 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-242.1. Installation and operation of automated school bus safety camera.**

(a) Definition. – An "automated school bus safety camera" is a device that is affixed to a school bus, as that term is used in G.S. 20-217, that is synchronized to automatically record photographs or video of a vehicle at the time the vehicle is detected for a violation of (i) G.S. 20-217 or (ii) an ordinance adopted under G.S. 153A-246.

(b) Installation and Operation. – Automated school bus safety cameras may be installed and operated on any school bus operated by a local board of education within a county that has adopted an ordinance under G.S. 153A-246 as follows:

(1) A local board of education may install and operate automated school bus safety cameras without contracting with a private vendor.

(2) A local board of education may enter into a contract to install and operate automated school bus safety cameras with a private vendor. Contracts shall be let in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. The maximum length of any contract entered into under this subdivision shall be three years.

(3) Upon request by one or more local boards of education, the State Board of Education shall enter into a contract for a statewide service or contracts for regional services to install and operate automated school bus safety cameras with a private vendor. These contracts shall be let in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. The maximum length of any contract entered into under this subdivision shall be three years.

(c) Interlocal Agreements. – Any local board of education and board of county commissioners may enter into an interlocal agreement necessary and proper to effectuate the purpose and intent of this section and G.S. 153A-246. Any agreement entered into pursuant to this subsection may include provisions on cost-sharing and reimbursement that the local board of education and board of county commissioners freely and voluntarily agree to for the purposes of effectuating this section and G.S. 153A-246.

(d) Evidence in Criminal Proceeding. – Any photographs or videos recorded by an automated school bus safety camera that capture a violation of G.S. 20-217 shall also be provided to the investigating law enforcement agency for use as evidence in any proceeding alleging a violation of G.S. 20-217."

SECTION 3. G.S. 20-54 reads as rewritten:

"**§ 20-54. Authority for refusing registration or certificate of title.**

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

...

(11) The Division has been notified (i) pursuant to G.S. 20-217(g2) that the owner of the vehicle has failed to pay any fine imposed pursuant to ~~G.S. 20-217.~~G.S. 20-217 or (ii) pursuant to G.S. 153A-246(b)(4) that the owner of the vehicle has failed to pay a civil penalty under G.S. 153A-246."

SECTION 4. G.S. 20-217 reads as rewritten:

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

...

(h) ~~Automated camera and video recording systems~~Automated school bus safety cameras, as defined in G.S. 115C-242.1, may be used to detect and prosecute violations of this section. Any photograph or video recorded by ~~a camera or video recording system~~an automated school bus safety camera shall, if consistent with the North Carolina Rules of Evidence, be admissible as evidence in any proceeding alleging a violation of subsection (a) of this section. Failure to produce a photograph or video recorded by an automated school bus safety camera shall not preclude prosecution under this section."

SECTION 5. The North Carolina Administrative Office of the Courts shall annually submit a report covering the most recent five years prior to the reporting date to the North Carolina Child Fatality Task Force and the North Carolina General Assembly by October 1 on the following information:

(1) Total number of offenses charged under G.S. 20-217, by county.

(2) Total number of convictions under G.S. 20-217, by county.

SECTION 6. A county that adopts an ordinance as provided in G.S. 153A-246, as enacted by this act, shall maintain records of all noncriminal violations of that ordinance for which a civil penalty is assessed. Upon request, the county shall provide at least five years of those records to the North Carolina Child Fatality Task Force and the North Carolina General Assembly.

SECTION 6.5. Within 90 days of the enactment of this act, the State Board of Education shall develop a model contract for use by the local boards of education in letting and awarding contracts in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes for the installation and operation of automated school bus safety cameras as provided in G.S. 115C-242.1. The State Board of Education and the Department of Public Instruction shall provide technical assistance to a local board of education on this process upon a request by the local board.

SECTION 7. This act becomes effective July 1, 2015, and applies to offenses and violations committed on or after that date. The requirements in G.S. 115C-242.1(b)(2), as enacted by this act, shall not apply to a local board of education that entered into a contract prior to July 1, 2015, with a private vendor to install and operate automated school bus safety cameras.

SENATE BILL 298:
School Bus Cameras/Civil Penalties

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 15, 2015
Introduced by:	Sens. Alexander, McInnis	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Second Edition S298-CSTG-10		

SUMMARY: ***The PCS for Senate Bill 298 would allow counties to adopt ordinances for the civil enforcement of a violation of G.S. 20-217, which requires motor vehicles to stop for school buses in certain instances. It would also provide for statewide, regional, or local contracts for the installation and operation of automated school bus safety cameras in school buses.***

The PCS also: authorizes all local boards of education to enter into their own contracts with vendors for the installation and operation of automated school bus safety cameras; adds a provision authorizing local boards of education to enter into interlocal agreements with the board of county commissioners to implement the act; directs the Administrative Offices of the Courts to report to the Child Fatality Task Force and the General Assembly on charges and convictions under G.S. 20-217; and directs the State Board of Education to develop a model contract for use by the local boards of education.

The PCS changed the second edition of the bill to: provide a process in G.S. 153A-246(b)(5) for fining a person identified by the owner in an affidavit as having had custody or control of the vehicle at the time of the violation of G.S. 20-217; add G.S. 153A-246(b)(7) to prohibit assessing a civil penalty against a person who was subject to criminal prosecution for violation of G.S. 20-217 arising out of the same facts; and delete language in Section 4 of the bill that would have permitted imposition of a civil penalty in addition to criminal liability under G.S. 20-217.

[As introduced, this bill was identical to H536, as introduced by Reps. Hanes, Lambeth, Tine, which is currently in House Judiciary II, if favorable, Finance.]

CURRENT LAW: G.S. 20-217 requires motor vehicles to stop for school buses that are displaying their mechanical stop signals or flashing red lights and are stopped for the purposes of receiving or discharging passengers. Automated camera and video recording systems may be used to detect and prosecute violations of this law and photographs and videos from such systems can be admitted as evidence if consistent with the North Carolina Rules of Evidence.

BILL ANALYSIS:

County Ordinance

Section 1 of the Proposed Committee Substitute (PCS) for SB 298 would enact a new G.S. 153A-246, authorizing counties to adopt an ordinance for the civil enforcement of a violation of G.S. 20-217 utilizing automated school bus safety cameras.

Under new G.S.153A-246(b), violation of the ordinance is deemed a noncriminal violation for which a civil penalty of $500 can be assessed. The registered owner of a vehicle found to have passed a stopped school bus in violation of G.S. 20-217 would be responsible for the civil penalty unless the owner does not receive notice of the violation within 90 days of its occurrence. The owner can also avoid the civil penalty by providing an affidavit within 30 days of the notification of the violation stating: (i) the name and address of a person other than the owner who had the care, custody, and control of the vehicle; or

(ii) an affidavit stating that, at the time of the violation, the vehicle was stolen. If the affidavit provides that the vehicle had been stolen, there must also be evidence that supports this assertion such as a police or insurance report.

No points shall be assigned for driver's license or insurance purposes for a violation of the ordinance. , unless . Points may still be imposed if there is a conviction of a criminal misdemeanor or felony violation of G.S. 20-217.

The citation for the violation of the ordinance must state how the violation may be challenged and is to be processed by officials or agents of the county and forward by personal service or first class mail to the address given on the motor vehicle registration. Failure to pay the civil penalty or respond to the citation within the specified time period results in the owner's waiver of the right to contest responsibility for the violation and would result in a late penalty of $100.00 in addition to the $500.00 civil penalty.

If the owner by affidavit identifies another person in whose care, custody or control the vehicle was at the time of the violation, that person can be issued a citation and is subject to the civil penalty and late fee if not paid within the time stated in the citation.

An bus equipped with an automated school bus safety camera installed on a school bus would be required to be identified by appropriate warning signs posted on the school bus that comply with a statewide standard adopted by the State Board of Education (SBE) along with the local boards of education that install and operate automated school bus safety cameras on their school buses.

Installation and Operation of Automated School Bus Safety Cameras

Section 2 of the PCS would enact a new G.S. 115C-242.1 authorizing a local board of education to install and operate automated school bus safety cameras on any school bus operated by that local board within a county that has adopted an ordinance for the civil enforcement of a violation of G.S. 20-217 as provided in Section 1 of the PCS.

The procedure for the installation and operation of automated school bus safety cameras would be as follows:

- A local board may install and operate automated school bus safety cameras without contracting with a private vendor.
- A local board may enter into a contract to install and operate automated school bus safety cameras with a private vendor. Such contracts must be let in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes with the maximum length of the contract being 3 years.
- Upon request by one or more local boards, the State Board of Education (SBE) must enter into a contract for a statewide service or contracts for regional services to install and operate automated school bus safety cameras with a private vendor. Such contracts must be let in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes with the maximum length of the contract being 3 years.

The PCS would authorize a local board and a board of county commissioners to enter into an interlocal agreement furthering the purpose of the ordinance and the installation and operation of the automated school bus safety cameras, including provisions for cost-sharing and reimbursements.

Photographs and videos recorded by an automated school bus safety camera that capture a violation of G.S. 20-217 must be provided to investigating law enforcement agencies for use as evidence in proceedings concerning a violation of G.S. 20-217.

Sections 3 amends G.S. 20-54 to direct the Division of Motor Vehicle to refuse vehicle registration if the owner of the vehicle has failed to pay the civil penalty under the county ordinance.

Section 4 amends G.S. 20-217 to provide that failure to produce a photograph or video recorded by an automated school bus safety camera does not preclude criminal prosecution under G.S. 20-217 and to make conforming changes.

Section 5 requires the NC Administrative Office of the Courts to annually submit a report covering the most recent 5 years to the NC Child Fatality Task Force and the NC General Assembly on the total number of offenses charged and convictions under G.S. 20-217 by county.

Section 6 requires a county that adopts the civil ordinance to maintain records of all noncriminal violations of the ordinance for which a civil penalty is assessed and provide at least 5 years of those records upon request to the NC Child Fatality Task Force and the NC General Assembly.

Section 6.5 requires the SBE to develop a model contract for use by the local boards in letting and awarding contracts for the installation and operation of the automated school bus safety cameras. The SBE and the Department of Public Instruction must provide technical assistance to a local board if requested to do so.

EFFECTIVE DATE: This act becomes effective July 1, 2015, and applies to offenses and violations committed on or after that date. The requirements for local boards entering into their own contracts with private vendors do not apply to a local board that entered into such a contract before July 1, 2015.

Drupti Chauhan and Kara McCraw, counsel to Senate Committee on Education/Higher Education, substantially contributed to this summary.

SENATE BILL 345

Short Title:	Limit Storage Fees on Damaged Vehicle.	(Public)
Sponsors:	Senators Meredith (Primary Sponsor); and Rabin.	
Referred to:	Rules and Operations of the Senate.	

March 23, 2015

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE AMOUNT OF STORAGE FEES THAT CERTAIN PARTIES ARE RESPONSIBLE FOR WHEN A MOTOR VEHICLE IS IMPOUNDED AFTER A CRASH.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-166.3. Limit storage fees for vehicle damaged as a result of a crash.**

(a) Limited Fees. – A law enforcement agency that impounds a motor vehicle that was damaged as a result of a crash shall limit the amount of time that it stores the motor vehicle. Notwithstanding any other provision of law, a motor vehicle owner, the insurer of the motor vehicle, and any other person with an ownership interest in the motor vehicle, shall not be liable for storage charges in excess of the sum of five hundred dollars ($500.00). A law enforcement agency may move a motor vehicle subject to this subsection from a commercial storage facility to a public storage facility if the law enforcement agency determines that storage fees may exceed the amount set forth in this subsection.

(b) Application. – This section shall not apply to a motor vehicle (i) seized as a result of a violation of law or (ii) abandoned by the owner."

SECTION 2. This act becomes effective July 1, 2015, and applies to motor vehicles impounded on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 345

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

S345-ATJ-8 [v.1]

Amends Title [NO]
First Edition

Date April 21 ,2015

Senator J. Davis

moves to amend the bill on page 1, line 9 – 16 to read:
The General Assembly of North Carolina enacts:
"(a) Limited Duration of Storage. A motor vehicle that is towed and stored by a law enforcement agency following a collision may be held for evidence for not more than 20 ~~30~~ days without a court order. Absent a court order, the vehicle must be released to the vehicle owner, insurer or lien holder upon payment of the towing and storage fees. Notwithstanding any other provision of law, a motor vehicle owner, the insurer of the motor vehicle, and any other person with an ownership interest in the motor vehicle, shall not be liable for storage charges in excess of the sum of five hundred dollars ($500.00).
(b) Application. – This section shall not apply to a motor vehicle (i) seized as a result of a violation of law or (ii) abandoned by the owner.".
SECTION 2. This act becomes effective July 1, 2015, and applies to motor vehicles impounded on or after that date.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

S345-ATJ-8-V-1

SENATE BILL 345:
Limit Storage Fees on Damaged Vehicle

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 17, 2015
Introduced by:	Sen. Meredith	**Prepared by:**	Janice Paul
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 345 limits to $500 the fee that can be charged for storage of a vehicle impounded by a law enforcement agency as a result of a crash.***

CURRENT LAW: Current law does not limit the fee that can be charged by a storage facility for storage of a vehicle impounded by a law enforcement agency as a result of a crash

BILL ANALYSIS: Senate Bill 345 provides:

- If a law enforcement agency impounds a vehicle as a result of a crash, the owner may not be charged more than $500 in storage fees.
- A law enforcement agency may move from a commercial storage facility to a public storage facility a motor vehicle impounded by it as a result of a crash if the law enforcement agency determines that storage fees may exceed $500.
- The bill does not apply to a motor vehicle seized as a result of a violation of law or abandoned by the owner.

EFFECTIVE DATE: Senate Bill 345 becomes effective July 1, 2015, and applies to motor vehicles impounded on or after that date.

Giles Perry, counsel to Senate Transportation, substantially contributed to this summary.

O. Walker Reagan
Director

S345-SMTJ-40 E1 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

SENATE BILL 466

Short Title:	Self-Settled Trusts.	(Public)
Sponsors:	Senator Hartsell (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CREATION OF QUALIFIED SELF-SETTLED TRUSTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 36 of the General Statutes is amended by adding a new Article to read:

"Article 5A.

"Creditors' Claims; Qualified Self-Settled Trusts.

"**§ 36C-5A-1. General rule – Rights of creditor with respect to a transfer to a qualified self-settled trust.**

(a) A settlor may transfer assets to a qualified self-settled trust, as defined in G.S. 36C-5A-2, and retain in that trust a qualified interest, defined in G.S. 36C-5A-3, and notwithstanding any law to the contrary, a creditor or assignee of the creditor has only those rights with respect to a transfer to a qualified self-settled trust retaining a qualified interest as are provided in this Article.

(b) Except as otherwise provided in this Article and notwithstanding any other provision of law, including G.S. 36C-5-505(a)(2):

(1) A creditor or assignee of a settlor may not reach a qualified interest or distribution by the trustee before it is received by the settlor.

(2) A creditor or assignee of a settlor may not compel a distribution from a trust in which the settlor has a qualified interest even if the trustee has abused the trustee's discretion, but this does not limit the right of the settlor to maintain a judicial proceeding against a trustee for abuse of discretion or failure to comply with a standard of distribution.

"**§ 36C-5A-2. Definition of qualified self-settled trust.**

(a) "Qualified self-settled trust" means a trust for which all of the following apply:

(1) The trust is irrevocable.

(2) The trust is created during the settlor's lifetime.

(3) The settlor has a qualified interest, as defined in G.S. 36C-5A-3.

(4) There is at all times during the existence of the settlor's qualified interest at least one beneficiary other than the settlor to whom income or principal may be distributed.

(5) The trust has at all times at least one qualified trustee, as defined in G.S. 36C-5A-4.

(6) The trust instrument expressly incorporates the law of this State to govern the meaning and effect of the trust.

(b) A trust instrument shall not be deemed revocable on account of the inclusion of any one or more of the following rights, powers, and interests:

(1) The settlor's power to consent to a distribution from the trust.

(2) The settlor's power to consent to a trustee's investment decisions.

(3) A power of appointment exercisable by the settlor by will or other written instrument effective only upon the settlor's death, other than a power to appoint to the settlor's estate or the creditors of the settlor's estate.

(4) The settlor's qualified interest in the trust.

(5) The settlor's right to receive income or principal pursuant to an ascertainable standard.

(6) The settlor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust (each within the meaning of section 664(d) of the Internal Revenue Code) and the settlor's power at any time, and from time to time, to release, in writing delivered to the qualified trustee, all or any part of the settlor's retained interest in that trust.

(7) The settlor's receipt each year of a percentage, not to exceed five percent (5%), specified in the trust instrument of the initial value of the trust assets or their value determined from time to time pursuant to the trust instrument.

(8) The settlor's power to remove a trustee.

(9) The settlor's power to appoint a trustee.

(10) The settlor's power to appoint a power holder.

(11) The settlor's potential or actual use of real property held under a personal residence trust, within the meaning of section 2702(c) of the Internal Revenue Code.

(12) The settlor's potential or actual receipt or use of a qualified annuity interest, within the meaning of section 2702 of the Internal Revenue Code.

(13) The ability of a qualified trustee, whether pursuant to discretion or direction, to pay, after the settlor's death, all or any part of the settlor's debts outstanding at the time of the settlor's death, the expenses of administering the settlor's estate, or any estate inheritance tax imposed on or with respect to the settlor's estate.

(14) A settlor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on trust income, or the direct payment of those taxes to the applicable tax authorities, pursuant to a provision in the trust instrument that expressly provides for the direct payment of those taxes or the reimbursement of the settlor for those tax payments.

(c) The movement to this State of the administration of an existing trust which, after that movement to this State, meets for the first time all of the requirements of a qualified self-settled trust, shall be treated, for purposes of this section, as a transfer to this trust by the settlor on the date of that movement to this State of all of the assets previously transferred to the trust by the settlor.

"**§ 36C-5A-3. Definition of qualified interest.**

"Qualified interest" means a settlor's interest in a qualified self-settled trust that is a discretionary trust interest described in G.S. 36C-5-504(a)(2), to the extent that the interest entitles the settlor to receive distributions of income, principal, or both, in the discretion of a qualified trustee, as defined in G.S. 36C-5A-4. A settlor may have a qualified interest in a qualified self-settled trust and also have an interest in the same trust that is not a qualified interest, and the rules of G.S. 36C-5-505(a)(2) shall apply to each interest of the settlor in the same trust other than the settlor's qualified interest.

"**§ 36C-5A-4. Definition of qualified trustee.**

"Qualified trustee" means any person for whom all of the following apply:

(1) The person is a natural person residing within this State, or is a State or federal chartered bank or trust company authorized to engage in trust business within this State and having a place of business within this State.

(2) The person maintains or arranges for custody within this State of some or all of the property that has been transferred to the trust by the settlor, maintains records within this State for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation within this State of fiduciary income tax returns for the trust, or otherwise materially participates within this State in the administration of the trust.

(3) The person is not a "related or subordinate party," as defined in section 672(c) of the Internal Revenue Code, in relation to the settlor.

(4) The person is neither the settlor nor the settlor's spouse.

"**§ 36C-5A-5. Successor qualified trustee.**

(a) A vacancy in the position of qualified trustee shall be filled by a person who is eligible to be a qualified trustee if the trust has no remaining qualified trustee or the trust instrument requires the position to be filled even though there is a remaining qualified trustee. For purposes of this subsection, a qualified trustee shall be deemed to have resigned and a vacancy occurred if the qualified trustee ceases to meet the requirements of G.S. 36C-5A-5.

(b) A vacancy in the position of qualified trustee required to be filled under subsection (a) of this section shall be filled in the following order of priority:

(1) By a person who is eligible to be a qualified trustee and who is designated pursuant to the terms of the trust or appointed under the terms of the trust to act as successor trustee.

(2) By a person who is eligible to be a qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries.

(3) By a person who is eligible to be a qualified trustee and who is appointed by the court.

"**§ 36C-5A-6. Appointment of power holders.**

(a) The settlor may appoint one or more power holders described in G.S. 36C-8A-1, who, subject to the provisions of subsection (b) of this section, may have any one or more of the powers described in G.S. 36C-8A-2.

(b) A power holder may exercise the power to direct discretionary distributions from the trust, as more fully described in G.S. 36C-8A-2(a)(2), only if that power holder would meet the requirements to be a qualified trustee were that power holder a trustee of the trust.

(c) Notwithstanding the provisions of subsection (b) of this section, the settlor or the settlor's spouse may serve as a power holder, but his or her powers shall be limited to the following:

(1) The power to consent to a trustee's investment decisions.

(2) The power to consent to distributions from the trust.

(3) The power to appoint a successor trustee.

"**§ 36C-5A-7. Action to reach a qualified interest by avoidance of transfer to a qualified self-settled trust.**

(a) Notwithstanding any other provision of law, no action may be brought by a creditor or assignee of the settlor to reach a qualified interest by attachment of present or future distributions to or for the settlor or other means, or against the trust property by attachment or other means, unless that action is brought for avoidance of a transfer to a qualified self-settled trust pursuant to North Carolina Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes; except that:

(1) No action shall be brought by a creditor whose claim arose after a transfer to a qualified self-settled trust was made, unless that transfer was made with actual intent to hinder, delay, or defraud that creditor.

(2) The one-year limitations period provided for in G.S. 39-23.9(1) of the North Carolina Uniform Fraudulent Transfer Act permitting an action to be brought within one year after the transfer or obligation was or could have reasonably been discovered by the claimant shall not apply to a creditor whose claim arose after the transfer to a qualified self-settled trust was made.

(b) A transfer to a qualified self-settled trust shall not be deemed to have been made with intent to delay, hinder, or defraud creditors merely because that transfer is made without receiving reasonably equivalent value in exchange.

"**§ 36C-5A-8. Effect of avoidance of transfer to qualified self-settled trust.**

(a) A transfer to a qualified self-settled trust with a retained qualified interest shall be avoided only to the extent necessary to satisfy the settlor's debt to the creditor at whose instance the transfer had been avoided, together with any costs, including attorneys' fees, that the court may allow.

(b) In the event any such transfer is avoided as provided in subsection (a) of this section, then:

(1) If the court is satisfied that the trustee has not acted in bad faith in accepting or administering the property that is the subject of the transfer:

a. That trustee shall have a first and paramount lien against the qualified interest in an amount equal to the entire cost, including attorneys' fees, properly incurred by the trustee in the defense of the action or proceedings to avoid the transfer.

b. That transfer shall be avoided subject to the proper fees, costs, preexisting rights, claims, and interest of the trustee (and of any predecessor trustee that has not acted in bad faith).

c. For purposes of this subdivision, it shall be presumed that the trustee did not act in bad faith merely by accepting the property.

(2) If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the transfer shall be subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power of discretion vested in the trustee of the trust or power holder, which power of discretion was exercised prior to the creditor's commencement of an action to avoid the transfer. For purposes of this subdivision, it shall be presumed that the beneficiary, including the settlor, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

(c) A creditor shall have the burden of proving that a trustee or beneficiary acted in bad faith as required under subsection (b) of this section by clear and convincing evidence except that, in the case of a beneficiary who is also the settlor, the creditor shall have the burden of proving that the settlor acted in bad faith by a preponderance of the evidence.

"**§ 36C-5A-9. More than one transfer to the same qualified self-settled trust.**

If a settlor makes more than one transfer to the same qualified self-settled trust, the following rules shall apply:

(1) The settlor's making of a subsequent transfer shall be disregarded in determining whether a creditor's claim with respect to a prior transfer is valid under this section.

(2) With respect to each subsequent transfer by the settlor, the four-year limitations period provided for in G.S. 39-23.9 with respect to actions

brought under the North Carolina Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes, with respect to the subsequent transfer, commences on the date of that subsequent transfer.

(3) Any distribution to a beneficiary is rebuttably deemed to have been made from the latest such transfer.

"**§ 36C-5A-10. Rights of settlor with respect to qualified interest.**

(a) A transfer to a qualified self-settled trust retaining a qualified interest shall be subject to the provisions of G.S. 36C-5A-7 notwithstanding the settlor's retention of any and all of the powers described in G.S. 36C-5A-2(b) and the settlor's or settlor's spouse's service as a power holder pursuant to G.S. 36C-5A-6(c).

(b) The settlor shall have only such rights and powers as are conferred by the trust instrument and permitted under this Article. Except as permitted by G.S. 36C-5A-2(b) and G.S. 36C-5A-6(c), a settlor shall have no rights or authority with respect to trust property or income from that trust property, and any agreement or understanding purporting to grant or permit the retention of greater rights or authority shall be void.

(c) A settlor may not transfer a qualified interest.

"**§ 36C-5A-11. No claim of creditor against trustee and others.**

Notwithstanding any provision of law to the contrary:

(1) The trustee or power holder described in G.S. 36C-8A-1 shall have no liability to any creditor of the settlor for any distributions made to or for the benefit of the settlor to the extent that the settlor's interest is protected or restricted by a qualified interest.

(2) No creditor or assignee of a settlor may have any claim or cause of action against any person involved in the counseling, drafting, administration, preparation, execution, or funding of (i) the qualified self-settled trust or (ii) a limited liability company, limited partnership, or corporation, or similar entity or interest in that entity that is subsequently transferred to the qualified self-settled trust.

"**§ 36C-5A-12. Matters not defeated by this Article.**

(a) Notwithstanding the foregoing provisions of this Article, this Article shall not apply to defeat the following claims:

(1) A claim brought by a person to whom the settlor is or becomes indebted or obligated on account of an agreement, judgment, or court order for the payment of any of the following:

a. Child support.

b. Alimony, post-separation support, or other spousal support or maintenance.

c. A division or distribution of any property or debts incident to marriage, divorce, or separation.

d. Damages awarded to any person who suffers death, bodily injury, or property damage, if the death, bodily injury, or property damage is at any time determined to have been caused, in whole or in part, by the tortious act or omission on or before the date of the transfer to the qualified self-settled trust of either the settlor or another person for whom the settlor is or was vicariously liable.

(2) A claim of a personal representative to recover assets for which the trustee is liable to the surviving spouse of the settlor under the elective share provisions of Article 1A of Chapter 30 of the General Statutes.

(b) A claim referred to in subdivisions (1) and (2) of subsection (a) of this section shall be defeated only to the extent necessary to satisfy the claim, together with any costs allowed by law, including attorneys' fees, and incurred in connection with the claim."

SECTION 2. This act becomes effective January 1, 2016, and applies to transfers to trusts made on or after that date.

SENATE BILL 466: Self-Settled Trusts

2015-2016 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to Finance	**Date:**	April 20, 2015
Introduced by:	Sen. Hartsell	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 466 would establish requirements under which the discretionary interest held by a settlor as the beneficiary of an irrevocable trust would be protected from claims of the settlor's creditors.***

CURRENT LAW: Under Article 5 of Chapter 36C of the General Statutes, a settlor's creditors cannot reach the discretionary interest in a trust held by a beneficiary who is not the settlor, even though the settlor may benefit indirectly from the distribution (as, for example, when the beneficiary is the settlor's spouse). However, if the trust is a "self-settled trust" (one in which the settlor is a beneficiary of the trust), creditors can reach the entire amount that can be distributed to or for the benefit of the settlor as beneficiary, even though such distributions may be in the discretion of the trustee.

BILL ANALYSIS: **Section 1** of the bill would enact new Article 5A in Chapter 36 of the General Statutes, which would protect a settlor's discretionary interest as beneficiary of an irrevocable trust from claims of the settlor's creditors, provided that trust meets specified requirements.

To be a "qualified self-settled trust" subject to new Article 5A, the following requirements must be met:

- The trust must be irrevocable and must be created during the settlor's lifetime
- The trustee must be a "qualified trustee"[1]
- The settlor's interest in the trust must be a "qualified interest"[2]
- There must be at least one beneficiary other than the settlor to whom the income and principle may be distributed
- The trust must expressly incorporate State law to govern the trust's meaning and effect[3]

Under the provisions of new Article 5A, the only claim that could be brought by a creditor seeking to reach a qualified interest would be an action for avoidance of a transfer under the North Carolina Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes,[4] and the avoidance of a transfer to a qualified self-settled trust would be limited to the amount necessary to satisfy the settlor's debt to the creditor seeking avoidance, together with any costs, including attorney's fees, that the court may award.[5]

[1] Under new G.S. 36C-5A-4, to be a "qualified trustee," a person: 1) must be a natural person resident in this State or a State or federal chartered bank or trust company authorized to do business in the State and having a place of business within this state; 2) must meet specified custodial and record-keeping requirements; 3) must not be a "related or subordinate party" in relation to the settlor, as defined in the Internal Revenue Code; and 4) must be neither the settlor nor the settlor's spouse.
[2] Under new G.S. 36C-5A-3, a "qualified interest" is a settlor's interest in a qualified self-settled trust to the extent that the interest entitles the settlor to receive distributions of income, principal, or both, in the discretion of a qualified trustee.
[3] New G.S. 36C-5A-2(a).
[4] New G.S. 36C-5A-7.
[5] New G.S. 36C-5A-8.

O. Walker Reagan
Director

* S 4 6 6 - S M T G - 4 6 E 1 - V 1 *

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

The bill would also:

- specify the rights, powers and interests the inclusion of which in a trust instrument would not cause the trust to be deemed a revocable trust[6]
- establish procedures for filling a vacancy in the position of qualified trustee[7]
- provide for the settlor's appointment of power holders subject to Article 8A of the North Carolina Uniform Trust Code[8]
- prescribe rules applicable to multiple transfers by a settlor to the same self-settled trust[9]
- specify the settlor's rights with respect to a qualified interest[10]
- limit the liability of a trustee or other persons involved in the preparation of the self-settled trust.[11]

New Article 5A would not apply to:

- claims by persons to whom the settlor is indebted on account of an agreement, judgment, or court order for payment of:
  - child support
  - alimony, post-separation support, or other spousal support or maintenance
  - division or distribution of any property or debts incident to marriage, divorce, or separation
  - damages awarded for death, bodily injury or property damage caused in whole or in part by a tortious act or omission on or before the date of the transfer
- claims by a personal representative to recover assets owed by the trustee to the settlor's surviving spouse for the spouse's elective share[12]

EFFECTIVE DATE: This act becomes effective January 1, 2016, and applies to transfers to trusts made on or after that date.

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[6] G.S. 36C-5A-2(b).
[7] New G.S. 36C-5A-5.
[8] New G.S. 36C-5A-6.
[9] New G.S. 36C-5A-9.
[10] New G.S. 36C-5A-10.
[11] New G.S. 36C-5A-11.
[12] New G.S. 36C-5A-12.

SENATE BILL 570

Short Title:	Expunction/Boat Violation.	(Public)
Sponsors:	Senators Bryant, McKissick, and Daniel (Primary Sponsors).	
Referred to:	Rules and Operations of the Senate.	

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SHALL NOT BE DENIED AN EXPUNCTION SOLELY BECAUSE THE PERSON HAS A CONVICTION FOR A BOATING VIOLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145.5(c) reads as rewritten:

"(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 or boating 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 or boating 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 Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety 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 Public Safety 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 or boating 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 2. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic or boating violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic or boating violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic or boating violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic or boating violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

...."

SECTION 3. G.S. 15A-145.1 reads as rewritten:

"**§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.**

(a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, 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 behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in

question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic or boating 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) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic or boating violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information, and that the record be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

SECTION 4. G.S. 15A-145.2 reads as rewritten:

"§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the petitioner that he or she has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that the petitioner's character and reputation are good;

(3) Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...

(c) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes

by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic or boating violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

SECTION 5. G.S. 15A-145.3 reads as rewritten:

"**§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.**

(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the 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 his or her character and reputation are good;

(3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against the person dismissed and that he or she was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-15.

...

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged

pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic or boating violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

SECTION 6. G.S. 15A-145.4 reads as rewritten:

"**§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

...

(c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than four 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 person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

(1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic or boating 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 (i) a State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Public Safety for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety 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.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

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. 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.

...

(e) The court may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic or boating violation, for four years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

(7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

...."

SECTION 7. G.S. 15A-145.6(f) reads as rewritten:

"(f) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The criteria set out in subsection (b) of this section are satisfied.

(2) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic or boating violation, since the date of conviction of the prostitution offense in question.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction, other than an expunction for a prostitution offense.

...."

SECTION 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 570
PROPOSED COMMITTEE SUBSTITUTE S570-CSTJ-19 [v.2]

4/20/2015 6:23:35 PM

Short Title: Expunction/Boat Violation. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SHALL NOT BE DENIED AN EXPUNCTION SOLELY BECAUSE THE PERSON HAS A CONVICTION FOR A MISDEMEANOR BOATING VIOLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145.5(c) reads as rewritten:

"(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.~~ violation or a misdemeanor boating 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,~~ violation or a misdemeanor boating 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 Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety 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 Public Safety 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;~~ violation or a misdemeanor boating 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 2. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic ~~violation,~~ violation or a misdemeanor boating violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic ~~violation,~~ violation or a misdemeanor boating violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic ~~violation,~~ violation or a misdemeanor boating violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic ~~violation,~~ violation or a misdemeanor boating violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

...."

SECTION 3. G.S. 15A-145.1 reads as rewritten:

"**§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.**

(a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, 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 behavior (i) during the period of probation since the decision to defer further

proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating 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) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information, and that the record be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of

the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

SECTION 4. G.S. 15A-145.2 reads as rewritten:

"**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.**

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the petitioner that he or she has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that the petitioner's character and reputation are good;

(3) Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...

(c) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the

conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

SECTION 5. G.S. 15A-145.3 reads as rewritten:

"**§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.**

(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the 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 his or her character and reputation are good;

(3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against the person dismissed and that he or she was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-15.

...

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States

or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

SECTION 6. G.S. 15A-145.4 reads as rewritten:

"**§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

...

(c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a

nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than four 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 person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

(1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic violation or a misdemeanor boating 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 (i) a State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Public Safety for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety 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.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

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. 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.

...

(e) The court may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic or boating violation, for four years from the date of conviction of the nonviolent felony

in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

(7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

...."

SECTION 7. G.S. 15A-145.6(f) reads as rewritten:

"(f) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The criteria set out in subsection (b) of this section are satisfied.

(2) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation or a misdemeanor boating violation, since the date of conviction of the prostitution offense in question.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction, other than an expunction for a prostitution offense.

...."

SECTION 8. G.S. 14-50.30 reads as rewritten:

"§ 14-50.30. Expunction of records.

Any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state, may, if the offense was committed before the person attained the age of 18 years, be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1."

SECTION 9. This act is effective when it becomes law.

SENATE BILL 570:
Expunction/Boat Violation

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 20, 2015
Introduced by:	Sens. Bryant, McKissick, Daniel	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S570-CSTJ-19		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 570 would provide that a person shall not be denied an expunction solely because the person has a conviction for a misdemeanor boating violation.

[As introduced, this bill was identical to H856, as introduced by Reps. Fisher, Hardister, Harrison, B. Turner, which is currently in House Judiciary I.]

BACKGROUND: In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and a person is restored to the status the person occupied before the arrest or indictment. The terms "expunction" and "expungement" are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction, and a person may generally be granted only one expunction in his or her lifetime.

CURRENT LAW: Several provisions of the General Statutes contain provisions authorizing a person to request an expunction if the person has no specified criminal convictions, other than a traffic violation.

BILL ANALYSIS: The PCS to Senate Bill 570 would amend the following statutes to provide that a person must not be denied an expunction under the following statutes solely because the person has a conviction for a misdemeanor boating violation:

- G.S. 15A-145.5(c) - *"Expunction of certain misdemeanors and felonies; no age limit."*
- G.S. G.S. 15A-145 - *"Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors."*
- G.S. 15A-145.1 – *"Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses."*
- G.S. 15A-145.2 – *"Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses."*
- G.S. 15A-145.3 - *"Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses."*
- G.S. 15AS-145.4 - *"Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony."*
- G.S. 15A-145.6(f) - *"Expunction for certain defendants convicted of prostitution."*
- G.S. 14-50.30 – *"Expunction of records."*

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

Brenda Carter George, former staff attorney, and Susan Sitze, staff attorney, contributed to this summary.

O. Walker Reagan
Director

S570-SMTJ-43 CSTJ-19 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, April 21, 2015

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

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

SB **198** Persons Under 18 in Confinement Facilities.

Draft Number:	S198-PCS15230-TJ-17
Sequential Referral:	Appropriations/Base Budget
Recommended Referral:	None
Long Title Amended:	No

SB **345** Limit Storage Fees on Damaged Vehicle.

Draft Number:	S345-PCS25235-TJ-20
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

SB **570** Expunction/Boat Violation.

Draft Number:	S570-PCS25238-TJ-19
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

SB **298** **(CS#1)** School Bus Cameras/Civil Penalties.

Draft Number:	S298-PCS15228-TG-10
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 4



Senator Gladys Robinson will handle SB 198
Senator Wesley Meredith will handle SB 345
Senator Angela Bryant will handle SB 570
Senator Thomas McInnis will handle SB 298

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Will Parry-Hall	NCHFA	
Derek Graham	NCDPI	282
[illegible]	JRC II	398
Jack Czoka T	NSS	
Robert Croom	WSS	
Reston Jones	NCDOT	
Johanna Reese	NCACC	
Colleen Kochanek	KLG	
Billy Clayton	NCDPS / SHP	
FREDDY JOHNSON, Jr.	NCDPS / SHP	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Ryan Combs	NCDPS	
Evan Tuck	[illegible]	[illegible]
Judy Brandon	DPS	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Jackie Ruffin	NC DOT/IT	
Lao Rubicent	CSPL	
Andrew Tripp	Staff	
Sarah Preston	ACLU-NC	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Linda Johnson	NCBA	466
Danielle Albert	Sen. Alexander	
Libby Spain	Sen. McInnis	
Philip Isley	BB&T	
[illegible]	attorney	
Laura Douglas	Sen Bingham	
TOM VITALLIME	NC CHILD	
Annaliese Dolph	DL	
Wendy Keeg	Forum ranking	
Carla Thorpe	NCDOT / IT	

Senate Committee on Judiciary II
Thursday, April 23, 2015 at 10:00 AM
Room 415 of the Legislative Office Building

MINUTES

The Senate Committee on Judiciary II met at 10:00 AM on April 23, 2015 in Room 415 of the Legislative Office Building. 17 members were present. Attending Sergeants-at-Arm: Donna Blake and Hal Roach. Attending pages: Nick Mills of Raleigh (Sen. Stein); Ashley King of Rocky Mount (Sen. Bryant); and A.J. Swain of Wendell (Sen. Barefoot).

Senator Warren Daniel, Chair, presided.

SB 83 Criminal Law/Filing False Document. (Senator Bingham) The committee agreed to allow Sen. Bingham to bring forth a Proposed Committee Substitute for S83. Sen. Bingham explained the bill. Sen. Randleman moved to amend the bill on page 1, line 31and page 2, line 18 and page 2, line 19. Brian Shipwash, Clerk of Court in Davidson County, was invited to speak to the importance of the bill. There were a couple of questions from the committee regarding trusts and LLC's. After the committee discussion, Sen. Curtis motioned that the Randleman amendment be engrossed and the new PCS be reported to the Senate Principal Clerk (SPC). The motioned carried and the bill was reported to the SPC as Unfavorable as to the bill, but Favorable as to the Committee Substitute Bill.

SB 182 Automatic License Plate Readers. (Senators McKissick, Barefoot, Daniel) Sen. McKissick presented the bill. Sen. Randleman presented an amendment to clarify how the Turnpike Authority will use the data from LPR's. That amendment was adopted. The committee had a question regarding local law enforcement using NCDOT owned right-of-way for the LPR's; and, also if private toll companies would be exempt from the Randleman amendment. Fred Baggett, representative for the NC Assoc. of Police Chiefs spoke in favor of part of the bill and expressed concerns about other parts. The committee discussed the bill a bit longer and then Sen. Bingham motioned that the bill as amended get a favorable report. The committee ordered the amendment engrossed and then reported the bill to the SPC as Unfavorable as to the bill, but Favorable as to the Committee Substitute Bill, with no sequential or recommended referrals.

SB 288 Amend Laws Regarding Mental Commitment Bars. (Senator Cook) Sen. Cook presented the PCS. There was a small amount of committee discussion. Brian Shipwash from Davidson County was invited again to speak to the bill. Sen. McInnis motioned to give the bill a favorable report. The motion carried and the bill was reported to the SPC as Unfavorable as to the bill, but Favorable as to the Committee Substitute bill, with no referrals.

SB 378 Increase Punishment/Misd. Death by Vehicle. (Senator Bingham) Sen. Bingham explained the bill. The bill was displaced from this meeting's agenda. The committee did not report any action for this bill at this time.

SB 419 Limit Revolving Door Employment. (Senator Hise) Sen. Hise presented this bill. Sen. J. Davis immediately motioned for a favorable report. No committee discussion or public comment was offered. The bill was reported to the SPC as Favorable, with no referrals.

SB 578 Transition Certain Abuse Investigations/DCDEE. (Senators Barringer, Hise, Tucker) Sen. Barringer presented the bill. No committee discussion or public comment. Sen. J. Davis motioned for a favorable report. The bill was reported to the SPC as Favorable, with no referrals.

The meeting adjourned at 11:00.

Senator Warren Daniel, Chair
Presiding

Andy Perrigo, Committee Clerk

Senate Committee on Judiciary II
Thursday, April 23, 2015, 10:00 AM
415 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 83	Criminal Law/Filing False Document.	Senator Bingham
SB 182	Automatic License Plate Readers.	Senator McKissick Senator Barefoot Senator Daniel
SB 288	Amend Laws Regarding Mental Commitment Bars.	Senator Cook
SB 378	Increase Punishment/Misd. Death by Vehicle.	Senator Bingham
SB 419	Limit Revolving Door Employment.	Senator Hise
SB 578	Transition Certain Abuse Investigations/DCDEE.	Senator Barringer Senator Hise Senator Tucker

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 2

SENATE BILL 83
Corrected Copy 2/19/15

Short Title:	Criminal Law/Filing False Document.	(Public)
Sponsors:	Senator Bingham (Primary Sponsor).	
Referred to:	Judiciary II.	

February 16, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CLASS I FELONY TO KNOWINGLY PRESENT FOR FILING A DOCUMENT THAT CONTAINS MATERIALLY INACCURATE INFORMATION FOR AN IMPROPER PURPOSE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.26. Filing false documents.**

It shall be unlawful for any person to present a document for filing with the register of deeds or clerk of superior court that the person knows is false or contains materially inaccurate or misleading information with the intent that the recorded document be used to alter an identity, defraud another person or entity, or circumvent legal name change procedures. A violation of this section shall be a Class I felony."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 83
Corrected Copy 2/19/15
PROPOSED COMMITTEE SUBSTITUTE S83-PCS15235-TJ-22

Short Title: Criminal Law/Filing False Document. (Public)

Sponsors:

Referred to:

February 16, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIMINAL LAW CONCERNING THE FILING OR RECORDING OF FALSE LIENS OR ENCUMBRANCES KNOWING OR HAVING REASON TO KNOW THAT THE LIEN OR ENCUMBRANCE IS FALSE OR CONTAINS A MATERIALLY FALSE, FICTITIOUS, OR FRAUDULENT STATEMENT OR REPRESENTATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-118.6 reads as rewritten:

"**§ 14-118.6. Filing false lien or encumbrance.**

(a) It shall be unlawful for any person to present for filing or recording in a public record or a private record generally available to the public a false lien or encumbrance against the real or personal property of a public officer, a public employee, or an immediate family member of the public officer or public employee on account of the performance of the public officer or public employee's official duties, knowing or having reason to know that the lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation. For purposes of this subsection, the term "immediate family member" means a spouse or a child. Any person who violates this subsection shall be guilty of a Class I felony.

(b) ~~In the case of a lien or encumbrance presented to the register of deeds for filing,~~When presented to the register of deeds for recording, if ~~the~~ a register of deeds has a reasonable suspicion that the lien or encumbrance is ~~false,~~false, as described in subsection (a) of this section, the register of deeds may refuse to ~~file~~ record the lien or encumbrance. Neither the register of deeds nor any other entity shall be liable for ~~filing or refusing to file~~ recording or the refusal to record a lien or encumbrance ~~under this section.~~as described in subsection (a) of this section. If the ~~filing~~ recording of the lien or encumbrance is denied, the register of deeds shall allow the ~~filing~~ recording of a Notice of Denied Lien or Encumbrance Filing on a form adopted by the Secretary of State, for which no filing fee shall be collected. The Notice of Denied Lien or Encumbrance Filing shall not itself constitute a lien or encumbrance. ~~If the filing of the lien or encumbrance~~ When recording is denied, any interested person may ~~file~~ initiate a special proceeding in the county where the ~~filing~~ recording was denied within ten (10) business days of the filing of the Notice of Denied Lien or Encumbrance Filing asking the ~~court~~ superior court of the respective county to find that the proposed ~~filing~~ recording has a statutory or contractual basis and to order that the document be ~~filed.~~recorded. If, after hearing, upon a minimum of five (5) days' notice as provided in Rule 5 of the Rules of Civil Procedure and opportunity to be heard to all interested persons and all persons claiming an ownership interest in the property, the court finds that there is a statutory or contractual basis for the proposed

~~filing,~~recording, the court shall order the document ~~filed.~~recorded. A lien or encumbrance ~~filed~~ recorded upon order of the court under this subsection shall have a priority interest as of the time of the filing of the Notice of Denied Lien or Encumbrance Filing. If the court finds that there is no statutory or contractual basis for the proposed ~~filing,~~recording, the court shall enter an order finding that the proposed ~~filing~~ recording is null and void and that it shall not be filed, indexed, or recorded and a certified copy of that order shall be ~~filed~~ recorded by the register of deeds that originally denied the ~~filing.~~recording. The review by the judge under this subsection shall not be deemed a finding as to any underlying claim of the parties involved. If a special proceeding is not ~~filed~~ initiated under this subsection within ten (10) business days of the filing of the Notice of Denied Lien or Encumbrance Filing, the lien or encumbrance is deemed null and ~~void.~~void as a matter of law.

(b1) When a lien or encumbrance is presented to a clerk of superior court for filing and the clerk of court has a reasonable suspicion that the lien or encumbrance is false as described in subsection (a) of this section, the clerk of court may refuse to file the lien or encumbrance. Neither the clerk of court nor the clerk's staff shall be liable for filing or the refusal to file a lien or encumbrance under this subsection. The clerk of superior court shall file stamp the document, but shall not index or docket the document against the property of a public officer or public employee until that document is approved for filing by the clerk of superior court by any judge of the judicial district having subject matter jurisdiction in the same manner as the denial of the recording of a false lien or encumbrance by a register of deeds as provided in subsection (c) of this section. If the judge determines that the filing is not false, the clerk shall index the claim of lien and the filing date shall be the date and time it was initially file stamped by the clerk's office. A lien or encumbrance filed upon order of the court under this subsection shall have a priority interest as of the time of the original file stamp of the clerk of superior court when first presented for filing. If the court finds that there is no statutory or contractual basis for the proposed filing, the court shall enter an order that the proposed filing is null and void as a matter of law, and that it shall not be filed or indexed. The original denied filing shall be returned to the person or entity that presented it, and should the filing not be retrieved by that individual or entity within 30 days of the entry of the court's order of upholding the clerk's denial to file, the clerk may destroy the filing.

(c) Upon being presented with an order duly issued by a court of competent jurisdiction of this State declaring that a ~~filed~~ lien or encumbrance already recorded or filed is false, as described in subsection (a) of this section, and therefore null and ~~void,~~void as a matter of law, the register of deeds or clerk of court that received the recording or filing, in addition to recording or filing the ~~order,~~court's order finding the lien or encumbrance to be false, shall conspicuously mark on the first page of the original record previously filed the following statement: "THE CLAIM ASSERTED IN THIS DOCUMENT IS FALSE AND IS NOT PROVIDED FOR BY THE GENERAL LAWS OF THIS STATE."

(d) In addition to any criminal penalties provided for in this section, a violation of this section shall constitute a violation of G.S. 75-1.1.

(e) Subsections ~~(b)~~(b), (b1), and (c) of this section shall not apply to filings under Article 9 of Chapter 25 of the General Statutes or under Chapter 44A of the General Statutes."

SECTION 2. This act is effective when it becomes law and applies to all filings on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/23/15

S. B. No. 83 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Randleman
Sen.)

moves to amend the bill on page 2, line 19

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"any judge of the judicial district ~~in the same manner~~ as the having subject matter jurisdiction in the same manner as the denial of the recording of a", and

and on ~~page~~ 2, line 18, by deleting the word "a" at the end of the line; and

~~and~~ on page 1, line 31, by rewriting the line to read:

"the superior court ~~any judge~~ of ~~the county~~ respective county ~~the judicial district having subject matter jurisdiction,~~ to find that the proposed recording has a".

SIGNED Shirley Randleman

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 83:
Criminal Law/Filing False Document

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 25, 2015
Introduced by:	Sen. Bingham	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to Second Edition S83-CSTJ-8		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 83 would amend the law to specify the procedures to be followed by registers of deeds and clerks of court when they suspect that a document presented for filing or recording is false.

CURRENT LAW: Under G.S.14-118.6, any person who attempts to file a false lien or encumbrance against the real or personal property of a public officer or public employee or an immediate family member of a public officer or public employee on account of the performance of the public official or public employee's official duties, knowing or having reason to know that it is false or contains a materially false statement, is guilty of a Class I felony.

BILL ANALYSIS: The PCS to Senate Bill 83 would amend G.S. 14-118.6 to provide the same authority to clerks of superior court that registers of deeds have when presented with a document they suspect to be false. The PCS would authorize clerks of superior court to deny filing or recording of a lien or encumbrance against the property of public officials or their family members if the clerk has a reasonable suspicion that the lien or encumbrance is false; would allow them to bring questioned documents, whether filed against a public official or any other citizen, before the appropriate judge to determine the validity of the document; and would set out the procedures to be followed when a register of deeds or clerk of court suspects a fraudulent document.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

FILED SENATE
Mar 4, 2015
S.B. 182
PRINCIPAL CLERK

S

D

SENATE DRS25045-ML-51A (01/29)

Short Title:	Automatic License Plate Readers.	(Public)
Sponsors:	Senators McKissick, Barefoot, and Daniel (Primary Sponsors).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE USE OF AUTOMATIC LICENSE PLATE READER SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 3D.

"Automatic License Plate Reader Systems.

"**§ 20-183.22. Definitions.**

The following definitions apply in this Article:

(1) Automatic license plate reader system. – A system of one or more mobile or fixed automated high-speed cameras used in combination with computer algorithms to convert images of license plates into computer-readable data. This term shall not include a traffic control photographic system, as that term is defined in G.S. 160A-300.1(a).

(2) Law enforcement agency. – Any agency or officer of the State of North Carolina or any political subdivision thereof who is empowered by the laws of this State to conduct investigations or to make arrests, and any attorney, including the Attorney General of North Carolina, authorized by the laws of this State to prosecute or participate in the prosecution of those persons arrested or persons who may be subject to civil actions related to or concerning an arrest.

"**§ 20-183.23. Regulation of use.**

Any State or local law enforcement agency using an automatic license plate reader system must adopt a written policy governing its use before the automatic license plate reader system is operational. The policy shall address all of the following:

(1) Databases used to compare data obtained by the automatic license plate reader system.

(2) Data retention.

(3) Sharing of data with other law enforcement agencies.

(4) Training of automatic license plate reader system operators.

(5) Supervisory oversight of automatic license plate reader system use.

(6) Internal data security and access.

(7) Annual or more frequent auditing and reporting of automatic license plate reader system use and effectiveness to the head of the agency responsible for operating the system.

(8) Any other subjects related to automatic license plate reader system use by the agency.

"**§ 20-183.24. Preservation and disclosure of records.**

(a) Data obtained by an automatic license plate reader system shall not be preserved for more than 90 days unless there is a written, articulable, and recorded basis that the data has intelligence or investigatory value or is or may become evidence in a specific criminal action. In that event, the specific case and parties involved shall be identified.

(b) Data obtained by an automatic license plate reader system is confidential and not a public record as that term is defined in G.S. 132-1. Data shall not be disclosed except to a federal, State, or local law enforcement agency for a legitimate law enforcement or public safety purpose pursuant to a written request from the requesting agency. Written requests may be in electronic format."

SECTION 2. This act becomes effective December 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 182
PROPOSED COMMITTEE SUBSTITUTE S182-CSTG-15 [v.2]

4/22/2015 5:48:57 PM

Short Title: Automatic License Plate Readers. (Public)

Sponsors:

Referred to:

March 5, 2015

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE USE OF AUTOMATIC LICENSE PLATE READER SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 3D.

"Automatic License Plate Reader Systems.

"**§ 20-183.22. Definitions.**

The following definitions apply in this Article:

(1) Automatic license plate reader system. – A system of one or more mobile or fixed automated high-speed cameras used in combination with computer algorithms to convert images of license plates into computer-readable data. This term shall not include a traffic control photographic system, as that term is defined in G.S. 160A-300.1(a).

(2) Law enforcement agency. – Any agency or officer of the State of North Carolina or any political subdivision thereof who is empowered by the laws of this State to conduct investigations or to make arrests, and any attorney, including the Attorney General of North Carolina, authorized by the laws of this State to prosecute or participate in the prosecution of those persons arrested or persons who may be subject to civil actions related to or concerning an arrest.

"**§ 20-183.23. Regulation of use.**

Any State or local law enforcement agency using an automatic license plate reader system must adopt a written policy governing its use before the automatic license plate reader system is operational. The policy shall address all of the following:

(1) Databases used to compare data obtained by the automatic license plate reader system.

(2) Data retention.

(3) Sharing of data with other law enforcement agencies.

(4) Training of automatic license plate reader system operators.

(5) Supervisory oversight of automatic license plate reader system use.

(6) Internal data security and access.

(7) Annual or more frequent auditing and reporting of automatic license plate reader system use and effectiveness to the head of the agency responsible for operating the system.

(8) Any other subjects related to automatic license plate reader system use by the agency.

"**§ 20-183.24. Preservation and disclosure of records.**

(a) Data obtained by an automatic license plate reader system shall not be preserved for more than 90 days unless there is a written, articulable, and recorded basis that the data has intelligence or investigatory value, is or may become evidence in a specific criminal action, or is needed to prove a violation of a motor carrier safety regulation. In that event, the specific case and parties involved shall be identified.

(b) Data obtained by an automatic license plate reader system is confidential and not a public record as that term is defined in G.S. 132-1. Data shall not be disclosed except to a federal, State, or local law enforcement agency for a legitimate law enforcement or public safety purpose pursuant to a written request from the requesting agency. Written requests may be in electronic format."

SECTION 2. This act becomes effective December 1, 2015.

SENATE BILL 182:
Automatic License Plate Readers

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 22, 2015
Introduced by:	Sens. McKissick, Barefoot, Daniel	**Prepared by:**	Bill Patterson
Analysis of:	PCS to First Edition S182-CSTG-15		Committee Counsel

SUMMARY: ***The PCS for Senate Bill 182 would regulate the use by law enforcement agencies of automatic license plate reader systems. The PCS would permit data obtained by such a system to be preserved for more than 90 days if it is needed to prove a violation of a motor carrier safety regulation.***

CURRENT LAW: The use of automatic license plate reader systems by State or local law enforcement agencies is not currently regulated.

BILL ANALYSIS: **Section 1** of the PCS would add a new Article 3D to Chapter 20 of the General Statutes governing a law enforcement agency's use of an automatic license plate reader system, defined as "[a] system of one or more mobile or fixed automated high speed cameras used in combination with computer algorithms to convert images of license plates into computer readable data," but excluding traffic control photographic systems as defined by statute.[1]

Under new Article 3D, a State or local law enforcement agency would be required to adopt a written policy governing the use of such a system before it is operational, addressing the following subjects:

- Databases used to compare data obtained by the system
- Data retention and sharing of data with other law enforcement agencies
- System operator training
- Supervision of system use
- Data security and access
- Annual or more frequent audits and reports of system use and effectiveness to the head of the agency operating the system
- Any other subjects related to the agency's use of the system

The agency would not be permitted to preserve data obtained by an automatic license plate reader system for more than 90 days unless the data has intelligence or investigatory value, is or may become evidence in a criminal action, or is needed to prove a violation of a motor carrier safety regulation. In that event the agency would be required document the permitted basis upon which the data was preserved for more than 90 days, identifying the specific case and parties involved.

Data obtained by the system would be confidential and not a public record, and could not be disclosed except in response to a written request from a federal, State or local law enforcement agency for a legitimate law enforcement or public safety purpose.

EFFECTIVE DATE: This act becomes effective December 1, 2015.

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[1] A traffic control photographic system is defined in G.S. 160-300.1(a) as "an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance."

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

FILED SENATE
Mar 12, 2015
S.B. 288
PRINCIPAL CLERK

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SENATE DRS35099-MG-23A (01/26)

Short Title:	Amend Laws Regarding Mental Commitment Bars.	(Public)
Sponsors:	Senator Cook (Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT NARROWING THE TYPES OF INCOMPETENCY FINDINGS THAT MUST BE REPORTED TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM AND AMENDING THE PROCESS FOR INDIVIDUALS TO REMOVE FIREARMS DISABILITIES AFTER RESTORATION TO COMPETENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-54(d1)(6) reads as rewritten:

"(6) A finding that an individual lacks the capacity to manage the individual's own affairs due to marked subnormal ~~intelligence or~~intelligence, mental illness, ~~incompetency, condition, or disease.~~or incompetency."

SECTION 2. G.S. 122C-54.1 reads as rewritten:

"**§ 122C-54.1. Restoration process to remove ~~mental commitment bar.~~firearms disabilities.**

(a) Any individual over the age of 18 may petition for the removal of the disabilities pursuant to 18 U.S.C. § 922(d)(4) and (g)(4), G.S. 14-415.3, and G.S. 14-415.12 arising out of a determination or finding required to be transmitted to the National Instant Criminal Background Check System by subdivisions (1) through (6) of subsection (d1) of G.S. 122C-54. ~~The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment.~~

(b) For relief from a determination or finding described in subdivisions (1) through (5) of G.S. 122C-54(d1), the individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment. The following process applies to all petitions involving a determination or finding described in subdivisions (1) through (5) of G.S. 122C-54(d1):

(1) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination or finding or in the district court of the county of the petitioner's residence. The clerk of court upon receipt of the petition shall schedule a hearing using the regularly scheduled commitment court time and provide notice of the hearing to the petitioner and the attorney who represented the State in the underlying case, or that attorney's successor. Copies of the petition must be served on the director of the relevant inpatient or outpatient treatment facility and the district attorney in the petitioner's current county of residence.

~~(c)~~(2) The burden is on the petitioner to establish by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to

public safety and that the granting of the relief would not be contrary to the public interest. The district attorney shall present any and all relevant information to the contrary. For these purposes, the district attorney may access and use any and all mental health records, juvenile records, and criminal history of the petitioner wherever maintained. The applicant must sign a release for the district attorney to receive any mental health records of the applicant. This hearing shall be closed to the public, unless the court finds that the public interest would be better served by conducting the hearing in public. If the court determines the hearing should be open to the public, upon motion by the petitioner, the court may allow for the in camera inspection of any mental health records. The court may allow the use of the record but shall restrict it from public disclosure, unless it finds that the public interest would be better served by making the record public. The district court shall enter an order that the petitioner is or is not likely to act in a manner dangerous to public safety and that the granting of the relief would or would not be contrary to the public interest. The court shall include in its order the specific findings of fact on which it bases its decision. In making its determination, the court shall consider the circumstances regarding the firearm disabilities from which relief is sought, the petitioner's mental health and criminal history records, the petitioner's reputation, developed at a minimum through character witness statements, testimony, or other character evidence, and any changes in the petitioner's condition or circumstances since the original determination or finding relevant to the relief sought. The decision of the district court may be appealed to the superior court for a hearing de novo. After a denial by the superior court, the applicant must wait a minimum of one year before reapplying. Attorneys designated by the Attorney General shall be available to represent the State, or assist in the representation of the State, in a restoration proceeding when requested to do so by a district attorney and approved by the Attorney General. An attorney so designated shall have all the powers of the district attorney under this section.

~~(d)~~(c) Upon a judicial determination to grant a petition under subsection (b) of this section, the clerk of superior court in the county where the petition was granted shall forward the order to the National Instant Criminal Background Check System (NICS) for updating of the respondent's record.

(d) For relief from an adjudication of incompetence described in subdivision (6) of G.S. 122C-54(d1), the individual shall file a petition for restoration to competency as provided in G.S. 35A-1130. If restored to competency, the individual may submit a written request to the clerk who exercised jurisdiction in the incompetency proceeding to update the individual's record in NICS. Upon verification by the clerk that the individual has been restored to competency, the clerk shall update the individual's record in NICS."

SECTION 3. This act becomes effective October 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 288
PROPOSED COMMITTEE SUBSTITUTE S288-CSTJ-21 [v.4]
4/22/2015 7:15:48 PM

Short Title: Amend Laws Regarding Mental Commitment Bars. (Public)

Sponsors:

Referred to:

March 16, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING THE PROCESS FOR INDIVIDUALS TO REMOVE FIREARM DISABILITIES AFTER RESTORATION TO COMPETENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-54.1 reads as rewritten:

"**§ 122C-54.1. Restoration process to remove ~~mental commitment bar.~~firearm disabilities.**

(a) Any individual over the age of 18 may petition for the removal of the disabilities pursuant to 18 U.S.C. § 922(d)(4) and (g)(4), G.S. 14-415.3, and G.S. 14-415.12 arising out of a determination or finding required to be transmitted to the National Instant Criminal Background Check System by subdivisions (1) through (6) of subsection (d1) of G.S. 122C-54. ~~The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment.~~

(b) For relief from a determination or finding described in subdivisions (1) through (5) of subsection (d1) of G.S. 122C-54, the individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment. The following process applies to all petitions involving a determination or finding described in subdivisions (1) through (5) of G.S. 122C-54(d1):

(1) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination or finding or in the district court of the county of the petitioner's residence. The clerk of court upon receipt of the petition shall schedule a hearing using the regularly scheduled commitment court time and provide notice of the hearing to the petitioner and the attorney who represented the State in the underlying case, or that attorney's successor. Copies of the petition must be served on the director of the relevant inpatient or outpatient treatment facility and the district attorney in the petitioner's current county of residence.

~~(c)~~(2) The burden is on the petitioner to establish by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. The district attorney shall present any and all relevant information to the contrary. For these purposes, the district attorney may access and use any and all mental health records, juvenile records, and criminal history of the petitioner wherever maintained. The applicant must sign a release for the district attorney to receive any mental health records of the applicant. This hearing shall be closed to the public, unless the court

finds that the public interest would be better served by conducting the hearing in public. If the court determines the hearing should be open to the public, upon motion by the petitioner, the court may allow for the in camera inspection of any mental health records. The court may allow the use of the record but shall restrict it from public disclosure, unless it finds that the public interest would be better served by making the record public. The district court shall enter an order that the petitioner is or is not likely to act in a manner dangerous to public safety and that the granting of the relief would or would not be contrary to the public interest.

(3) The court shall include in its order the specific findings of fact on which it bases its decision. In making its determination, the court shall consider the circumstances regarding the firearm disabilities from which relief is sought, the petitioner's mental health and criminal history records, the petitioner's reputation, developed at a minimum through character witness statements, testimony, or other character evidence, and any changes in the petitioner's condition or circumstances since the original determination or finding relevant to the relief sought. The decision of the district court may be appealed to the superior court for a hearing de novo. After a denial by the superior court, the applicant must wait a minimum of one year before reapplying. Attorneys designated by the Attorney General shall be available to represent the State, or assist in the representation of the State, in a restoration proceeding when requested to do so by a district attorney and approved by the Attorney General. An attorney so designated shall have all the powers of the district attorney under this section.

~~(d)~~(c) Upon a judicial determination to grant a petition under subsection (b) of this section, the clerk of superior court in the county where the petition was granted shall forward the order to the National Instant Criminal Background Check System (NICS) for updating of the respondent's record.

(d) For relief from an adjudication of incompetence described in subdivision (6) of G.S. 122C-54(d1), the individual shall file a petition for restoration to competency as provided in G.S. 35A-1130. Following the entry of an order restoring competency, the individual may submit a written request to the clerk who exercised jurisdiction in the incompetency proceeding to update the individual's record in NICS. Upon verification by the clerk that the individual has been restored to competency, the clerk shall update the individual's record in NICS."

SECTION 2. This act becomes effective October 1, 2015.

SENATE BILL 288: Amend Laws Regarding Mental Commitment Bars

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 22, 2015
Introduced by:	Sen. Cook	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S288-CSTJ-21		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 288 would amend the process for individuals to remove firearm disabilities after restoration to competency.

BILL ANALYSIS: The PCS for Senate Bill 288 would amend G.S. 122C-54.1 concerning the restoration process for the removal of firearm disabilities by adding a provision that would allow an individual, following the entry of an order restoring the individual's competency, to submit a written request to the clerk of superior court to update the individual's record in the National Instant Criminal Background Check System (NICS).

EFFECTIVE DATE: This act becomes effective October 1, 2015.

BACKGROUND: The federal Gun Control Act of 1968 prohibits certain categories of persons, including "persons who have been adjudicated to be mentally defective, or who have been committed to a mental institution," from possessing, shipping, transporting, and receiving firearms and ammunition. Federal regulation (27 C.F.R. 478.11) defines "Adjudicated as a mental defective" as:

> (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
>
> (1) Is a danger to himself or to others; or
>
> (2) Lacks the mental capacity to contract or manage his own affairs.
>
> (b) The term shall include—
>
> (1) A finding of insanity by a court in a criminal case; and
>
> (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

The National Instant Criminal Background Check System (NICS) is a computerized system maintained by the Federal Bureau of Investigation to facilitate background checks on individuals seeking to acquire firearms from federally licensed firearms dealers in order to determine if the those individuals are disqualified from receiving firearms.

O. Walker Reagan
Director

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Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

SENATE BILL 378

Short Title:	Increase Punishment/Misd. Death by Vehicle.	(Public)
Sponsors:	Senators Bingham (Primary Sponsor); and Rabin.	
Referred to:	Rules and Operations of the Senate.	

March 25, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR CERTAIN OFFENSES OF MISDEMEANOR DEATH BY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

...

(a4) Aggravated Misdemeanor Death by Vehicle. – A person commits the offense of aggravated misdemeanor death by vehicle if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death, and

(4) The person has three or more previous convictions for a violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1 or G.S. 20-138.2, within seven years of the date of the offense.

~~(a4)~~(a5) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if:

...

~~(a5)~~(a6) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if:

...

~~(a6)~~(a7) Repeat Felony Death by Vehicle Offender. – A person commits the offense of repeat felony death by vehicle if:

(1) The person commits an offense under subsection (a1) or subsection ~~(a5)~~(a6) of this section; and

(2) The person has a previous conviction under:

a. Subsection (a1) of this section;

b. Subsection ~~(a5)~~(a6) of this section; or

c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was the unintentional death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2.

The pleading and proof of previous convictions shall be in accordance with the provisions of G.S. 15A-928.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

...

(5) Misdemeanor death by vehicle is a Class A1 misdemeanor.

(6) Aggravated misdemeanor death by vehicle is a Class A1 misdemeanor, provided that, notwithstanding G.S. 15A-1340.23, a person convicted of aggravated misdemeanor death by vehicle may be sentenced to an active sentence of not more than one year. Nothing in this subdivision shall be construed as prohibiting a greater sentence if the conduct is prohibited by another provision of law providing for greater punishment.

...."

SECTION 2. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which the person has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which the person's license is being revoked, (ii) G.S. 20-17(a)(2) and the person was sentenced pursuant to G.S. 20-179(f3) for the offense resulting in the revocation, or (iii) G.S. 20-17(a)(9) due to a violation of ~~G.S. 20-141.4(a4),~~G.S. 20-141.4(a5), the revocation is permanent."

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SENATE BILL 378:
Increase Punishment/Misd. Death by Vehicle

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 23, 2015
Introduced by:	Sen. Bingham	**Prepared by:**	Kelly Tornow
Analysis of:	First Edition		Staff Attorney

SUMMARY: ***Senate Bill 378 would create a new offense of Aggravated Misdemeanor Death by Vehicle.***

CURRENT LAW: G.S. 20-141.4 sets out the elements and penalties for the following crimes:

- Felony Death by Vehicle (Class D felony, and intermediate punishment is authorized for a defendant who is a Prior Record Level I offender)
- Misdemeanor Death by Vehicle (Class A1 misdemeanor)
- Felony Serious Injury by Vehicle (Class F felony)
- Aggravated Felony Serious Injury by Vehicle (Class E felony)
- Aggravated Felony Death by Vehicle (Class D felony, and the court must sentence the defendant in the aggravated range of the appropriate Prior Record Level)
- Repeat Felony Death by Vehicle (Class B2 felony)

G.S. 20-141.4(c) provides that no one who has been placed in jeopardy upon a charge of death by vehicle can be prosecuted for the offense of manslaughter arising out of the same death, and no one who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death.

BILL ANALYSIS: Senate Bill 378 creates a new offense of Aggravated Misdemeanor Death by Vehicle. A person commits the offense of aggravated misdemeanor death by vehicle if all of the following apply: (1) the person unintentionally causes the death of another person; (2) the person was engaged in the violation of any State law or local ordinance other than impaired driving/impaired driving in a commercial vehicle; (3) the commission of such offense is the proximate cause of the death; and (4) within seven years of the date of the offense, the person has had three or more previous convictions for a violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving/impaired driving in a commercial vehicle.

Aggravated misdemeanor death by vehicle is punishable as a Class A1 misdemeanor, provided that a person convicted of this offense can be sentenced to an active punishment of not more than one year.

Senate Bill 378 also makes conforming changes.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

S378-SMTH-51-E1-V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 419

Short Title:	Limit Revolving Door Employment.	(Public)
Sponsors:	Senator Hise (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 25, 2015

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE STATE FROM CONTRACTING WITH CONTRACTORS WHO UTILIZE FORMER STATE EMPLOYEES IN THE ADMINISTRATION OF STATE CONTRACTS WITHIN A SIX-MONTH WAITING PERIOD AFTER A STATE EMPLOYEE HAS TERMINATED EMPLOYMENT WITH THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-59.5. Contracts with vendors that hire former State employees.**

(a) Ineligible Vendors. – The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with a vendor that employs or contracts with a person who is a former State employee and uses that person in the administration of a contract with the State.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that the vendor will not use a former State employee in the administration of a contract with the State in violation of the provisions of subsection (a) of this section. Any person who submits a certification required by this subsection knowing the certification to be false shall be guilty of a Class I felony.

(c) A violation of the provisions of this section shall void the contract.

(d) Definitions. – As used in this section, the following terms mean:

(1) Administration of a contract. – Oversight of the performance of a contract, authority to make decisions regarding a contract, interpretation of a contract, or participation in the development of specifications or terms of a contract or in the preparation or award of a contract.

(2) Former State employee. – A person who, for any period within the preceding six months, was employed as an employee or contract employee of the State by the State agency for which the contract applies, who in the six months immediately preceding termination of State employment, participated personally in either the award or management of a State contract with the vendor, or made regulatory or licensing decisions that directly applied to the vendor."

SECTION 2. This act becomes effective October 1, 2015, and applies to contracts entered into on or after that date.

SENATE BILL 419:
Limit Revolving Door Employment

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 22, 2015
Introduced by:	Sen. Hise	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 419 would prohibit the State from contracting with vendors who utilize certain former State employees in the administration of State contracts within six months after the employee has terminated employment with the State.***

CURRENT LAW: It is a Class 1 misdemeanor under two separate statutes for any State employee involved in administering a contract to accept a gift or favor from the contractor:

- G.S. 14-234 – Public officers or employees benefiting from public contracts; exceptions. (specifically includes the 'promise of future employment' as a gift or favor)
- G.S. 133-32 – Gifts and favors regulated.

With limited exceptions, the State Government Ethics Act also prohibits State employees who are also public servants, and members of non-advisory boards and commissions, from accepting a gift from any person who:

- Is doing or is seeking to do business of any kind with the public servant's State agency.
- Is engaged in activities that are regulated or controlled by the public servant's State agency.
- Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.
- Is a lobbyist principal
- Is a lobbyist[1]

The State Government Ethics Act State prohibits employees who are also public servants, and non-advisory board and commission members, from taking any official action, which specifically includes any decision made or contemplated in any contract, if it will result in financial benefit for themselves, their extended family, or a business with which the public servant is associated.[2]

BILL ANALYSIS: Senate Bill 419 would prohibit the Secretary of Administration and other entities of the State from contracting for goods or services with a vendor that employs or contracts with a person who is a "former State employee" and uses that person in the administration of a contract with the State.

A "former State employee" would be defined as:

> "A person, who for any period within the preceding 6 months, was employed as an employee or contract employee of the State by the State agency for which the contract applies, who in the 6 months immediately preceding termination of State employment, participated personally in either the award or management of a State contract with the vendor, or made regulatory or licensing decisions that directly applied to the vendor."

[1] G.S. 138A-32.
[2] G.S. 138A-31(a); G.S. 138A-3(25).

"Administration of a contract" would be defined to include interpreting a contract, overseeing its performance, helping to develop its specifications or terms, helping with its preparation or award, or having authority to make decisions regarding it.

Under the bill the Secretary of Administration would have to require each vendor submitting a bid or a contract to certify that it will not use a former State employee in the administration of a contract. Any person who submits a certification knowing the certification to be false would be guilty of a Class I felony. A violation of this statute would also void any contract between the State and the violating vendor.

EFFECTIVE DATE: This act becomes effective October 1, 2015 and applies to contracts entered into on or after that date.

Erika Churchill and Brad Krehely, counsel to Senate State and Local Government, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

FILED SENATE
Mar 26, 2015
S.B. 578
PRINCIPAL CLERK

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SENATE DRS25179-LU-66 (03/02)

Short Title:	Transition Certain Abuse Investigations/DCDEE.	(Public)
Sponsors:	Senators Barringer, Hise, and Tucker (Primary Sponsors).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO TRANSITION ABUSE AND NEGLECT INVESTIGATIONS IN CHILD CARE FACILITIES TO THE DIVISION OF CHILD DEVELOPMENT AND EARLY EDUCATION WITHIN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101(3) reads as rewritten:

"**§ 7B-101. Definitions.**

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

...

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

...."

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

"**§ 7B-300. Protective services.**

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

Protective services shall include the screening of reports, the performance of an assessment using either a family assessment response or an investigative assessment response, casework, or other counseling services to parents, guardians, or other caretakers as provided by the director to help the parents, guardians, or other caretakers and the court to prevent abuse or neglect, to

improve the quality of child care, to be more adequate parents, guardians, or caretakers, and to preserve and stabilize family life.

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

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

"(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.~~"

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

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

SECTION 5. G.S. 7B-307 reads as rewritten:

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

(a) If the director finds evidence that a juvenile may have been abused as defined by G.S. 7B-101, the director shall make an immediate oral and subsequent written report of the

findings to the district attorney or the district attorney's designee and the appropriate local law enforcement agency within 48 hours after receipt of the report. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate and coordinate a criminal investigation with the protective services assessment being conducted by the county department of social services. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate and may request the director or the director's designee to appear before a magistrate.

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

If the report received pursuant to G.S. 7B-301 involves abuse or neglect of a juvenile or child maltreatment, as defined in G.S. 110-105.3, in child care, the director shall notify the Department of Health and Human Services within 24 hours or on the next working day of receipt of the report.

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

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

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

SECTION 6. G.S. 110-105 reads as rewritten:

"**§ 110-105. Authority to inspect facilities.**

(a) The Department shall have authority to inspect facilities without notice, when it determines there is cause to believe that an emergency situation exists or there is a complaint alleging a violation of licensure law. When the Department is notified by the county director of social services that the director has received a report of child maltreatment in a child care facility, or when the Department is notified by any other person that alleged child maltreatment has occurred in a facility, the Commission's rules shall provide for an inspection conducted without notice to the child care facility to determine whether the alleged child maltreatment has occurred. The inspection shall be conducted within seven calendar days of receipt of the report. Additional visits shall be conducted, as warranted.

(a1) The Commission shall adopt standards and rules under this subsection which provide for the following types of inspections:

(1) An initial licensing inspection, which shall not occur until the administrator of the facility receives prior notice of the initial inspection visit;

(2) A plan for visits to all facilities, including announced and unannounced visits, which shall be confidential unless a court orders its disclosure;

(3) An inspection that may be conducted without notice, if there is ~~probable~~ cause to believe that an emergency situation exists or there is a complaint alleging a violation of licensure law. ~~When the Department is notified by the~~

~~county director of social services that the director has received a report of child abuse or neglect in a child care facility, or when the Department is notified by any other person that alleged abuse or neglect has occurred in a facility, the Commission's rules shall provide for an inspection conducted without notice to the child care facility to determine whether the alleged abuse or neglect has occurred. This inspection shall be conducted within seven calendar days of receipt of the report, and when circumstances warrant, additional visits shall be conducted.~~

The ~~Secretary or the Secretary's designee,~~Department, upon presenting appropriate credentials to the operator of the child care facility, may perform inspections in accordance with the standards and rules promulgated under this subsection. The ~~Secretary or the Secretary's designee~~Department may inspect any area of a building in which there is reasonable evidence that children are in ~~care.~~care or in which the Department has cause to believe that conditions in that area of a building pose a potential risk to the health, safety, or well-being of children in care.

(b) If an operator refuses to allow the Secretary or the Secretary's designee to inspect the child care facility, the Secretary shall seek an administrative warrant in accordance with G.S. 15-27.2."

SECTION 7. G.S. 110-105.2 is repealed.

SECTION 8. Article 7 of Chapter 110 of the General Statutes is amended by adding the following new sections to read:

"**§ 110-105.3. Child maltreatment.**

(a) The purpose of this section is to assign the authority to investigate instances of child maltreatment in child care facilities to the Department of Health and Human Services, Division of Child Development and Early Education. The General Assembly recognizes that the ability to properly investigate child maltreatment in licensed child care facilities is dependent upon the cooperation of State and local law enforcement agencies, as well as county departments of social services.

(b) The following definitions shall apply in this Article:

(1) Child maltreatment. – Any act or series of acts of commission or omission by a caregiver that results in harm, potential for harm, or threat of harm to a child. Acts of commission include, but are not limited to, physical, sexual, and psychological abuse. Acts of omission include, but are not limited to, failure to provide for the physical, emotional, or medical well-being of a child, and failure to properly supervise children, which results in exposure to potentially harmful environments.

(2) Caregiver. – The operator of a licensed child care facility or religious-sponsored child care facility, a child care provider, as defined in G.S. 110-90.2(a)(2), a volunteer, or any person who has the approval of the provider to assume responsibility for children under the care of the provider.

(3) Child care facilities. – Any of the following:

a. All facilities required to be licensed under this Article.

b. All religious-sponsored facilities operating pursuant to G.S. 110-106 of this Article.

c. All locations where children are being cared for by someone other than their parent or legal guardian that require a license under this Article, but have not been issued a license by the Department.

(c) The Department, local departments of social services, and local law enforcement personnel shall cooperate with the medical community to ensure that reports of child maltreatment in child care facilities are properly investigated.

(d) When a report of child maltreatment is received, the Department shall make a prompt and thorough assessment to ascertain the facts of the case, the extent of the maltreatment, and the risk of harm to children enrolled at the child care facility. When the report alleges maltreatment meeting the definition of abuse or neglect as defined in G.S. 14-318.2 and G.S. 14-318.4, the Department shall contact local law enforcement officials to investigate the report.

(e) During the pendency of an investigation, the Department may issue a protection plan restricting an individual alleged to have maltreated a child from being on the premises of the facility while children are in care. The Department may also suspend activities at a facility under investigation including, but not limited to, transportation, aquatic activities, and field trips.

(f) At any time during the pendency of a child maltreatment investigation, the Department may order immediate corrective action as required to protect the health, safety, or welfare of children in care. If the corrective action does not occur within the period specified in the corrective action order, the Department may take administrative action to protect the health, safety, or welfare of the children at the child care facility.

(g) The Department may, in accordance with G.S. 150B-3(c), summarily suspend the license of a child care facility if the Department determines that emergency action is required to protect the health, safety, or welfare of the children in a child care facility regulated by the Department.

(h) Until an investigation by the Department confirms that child maltreatment did occur in a child care facility, all matters regarding the investigation, including, but not limited to, any complaint, allegation, or inspection or the identity of the reporter, shall be held in strictest confidence by the Department, except under the following circumstances:

(1) The Department shall disclose confidential information to any federal, State, or local government entity or its agent in order to protect a juvenile from child maltreatment, abuse, or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent pursuant to this subdivision shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.

(2) A district court, superior court, or administrative law judge of this State presiding over a civil matter in which the Department is not a party may order the Department to release confidential information. The court may order the release of confidential information after providing the Department with reasonable notice and an opportunity to be heard and then determining that the information is relevant, necessary to the trial of the matter before the court, and unavailable from any other source.

(i) When a report of child maltreatment alleges facts which indicate that a report is required under G.S. 7B-301, the Department shall contact the local department of social services in the county where the juvenile resides or is found, and make the necessary report.

(j) In performing any duties related to the assessment of a report of child maltreatment, the Department may consult with any public or private agencies or individuals, including the available State or local law enforcement officers, probation and parole officers, and the director of any county department of social services who shall assist in the assessment and evaluation of the seriousness of any report of child maltreatment when requested by the Department. The Department or the Department's representatives may make a written demand for any information or reports, whether or not confidential, that may in the Department's opinion be relevant to the assessment of the report. Upon the Department or the Department's representative's request and unless protected by attorney-client privilege, any public or private

agency or individual shall provide access to and copies of this confidential information and the records required by this subsection, to the extent permitted by federal law and regulations.

(k) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. Rules promulgated subject to this section shall be exempt from the provisions of G.S. 150B-19.1(e) and (f).

"**§ 110-105.4. Duty to report child maltreatment.**

(a) Any person who has cause to suspect that a child in a child care facility has been maltreated, as defined by G.S. 110-105.3, or has died as the result of maltreatment occurring in a child care facility, shall report the case of that child to the Department. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making the report, including (i) the name and address of the child care facility where the child was allegedly maltreated, (ii) the name and address of the child's parent, guardian, or caretaker, (iii) the age of the child, (iv) the present whereabouts of the child if not at the home address, (v) the nature and extent of any injury or condition resulting from maltreatment, and (vi) any other information the person making the report believes might assist in the investigation of the report. 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 maltreatment.

(b) Upon receipt of any report of maltreatment involving sexual abuse of the child in a child care facility, the Department 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 Department 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.

"**§ 110-105.5. Child maltreatment registry.**

(a) The Department shall establish and maintain a registry containing the names of all caregivers who have been confirmed by the Department of having maltreated a child pursuant to G.S. 110-105.3.

(b) The Child Maltreatment Registry shall indicate when a finding is contested and may include a brief statement made by the individual against whom the finding was made.

(c) Individuals who wish to contest findings under subsection (a) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act under Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written notice of the Department's intent to place its findings about the person in the Child Maltreatment Registry.

(d) Prior to employment, an operator of a child care facility shall request the Department check the status of a potential employee in the Child Maltreatment Registry, and the Department shall notify the employer of the individual's Registry status.

(e) Individuals whose names are listed on the Registry shall not own, operate, or be employed at any licensed child care facility or religious-sponsored child care facility.

(f) No person shall be liable for providing any information for the Child Maltreatment Registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the Child Maltreatment Registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee. The immunity established by this subsection does not extend to malicious conduct or intentional wrongdoing.

(g) Upon request, a child care facility, as defined in G.S. 110-105.3, is permitted to provide confidential or other identifying information to the Department, including social

security numbers, taxpayer identification numbers, parent's legal surname prior to marriage, and dates of birth, for the purpose of verifying the identity of accused caregiver.

(h) With the exception of the names of individuals listed on the Child Maltreatment Registry, appeal status, and a statement made pursuant to subsection (b) of this section, all other information received by or pertaining to the Child Maltreatment Registry shall be confidential and is not a public record under Chapter 132 of the General Statutes.

(i) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section.

"**§ 110-105.6. Penalties for child maltreatment.**

(a) For purposes of this Article, child maltreatment occurring in child care facilities is a violation of this Article, licensure standards, and licensure laws.

(b) Pursuant to G.S. 110-105.3, when an investigation confirms that child maltreatment did occur in a child care facility, the Department may issue an administrative action up to and including summary suspension and revocation of the facility's child care license.

(c) If the facility is permitted to remain open after an administrative action has been issued, the administrative action shall specify any corrective action to be taken by the operator.

(d) The Department shall make unannounced visits to determine whether the corrective action has occurred. If the corrective action has not occurred, then the Department may take further action against the facility as necessary to protect the health, safety, or welfare of the children at the child care facility.

(e) Administrative actions issued shall include a statement of the reasons for the action, and shall specify corrective action that shall be taken by the operator.

(f) Under the terms of the administrative action, the Department may limit enrollment of new children until satisfied the situation giving rise to the confirmation of child maltreatment no longer exists.

(g) Specific corrective action required by an administrative action authorized by this Article may include the removal of the individual responsible for child maltreatment from child care pending a final determination or appeal of the individual's placement on the Child Maltreatment Registry.

(h) Nothing in this section shall restrict the Department from using any other statutory or administrative remedies available."

SECTION 9. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 2

SENATE BILL 578
Health Care Committee Substitute Adopted 4/22/15

Short Title: Transition Certain Abuse Investigations/DCDEE. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO TRANSITION ABUSE AND NEGLECT INVESTIGATIONS IN CHILD CARE FACILITIES TO THE DIVISION OF CHILD DEVELOPMENT AND EARLY EDUCATION WITHIN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101(3) reads as rewritten:

"**§ 7B-101. Definitions.**

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

...

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

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

"**§ 7B-300. Protective services.**

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

Protective services shall include the screening of reports, the performance of an assessment using either a family assessment response or an investigative assessment response, casework, or other counseling services to parents, guardians, or other caretakers as provided by the director to help the parents, guardians, or other caretakers and the court to prevent abuse or neglect, to

improve the quality of child care, to be more adequate parents, guardians, or caretakers, and to preserve and stabilize family life.

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

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

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

(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 4. G.S. 7B-302(a) reads as rewritten:

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

director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child."

SECTION 5. G.S. 7B-307 reads as rewritten:

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

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

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

If the report received pursuant to G.S. 7B-301 involves abuse or neglect of a juvenile or child maltreatment, as defined in G.S. 110-105.3, in child care, the director shall notify the Department of Health and Human Services within 24 hours or on the next working day of receipt of the report.

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

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

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

SECTION 6. G.S. 110-105 reads as rewritten:

"**§ 110-105. Authority to inspect facilities.**

(a) The Department shall have authority to inspect facilities without notice when it determines there is cause to believe that an emergency situation exists or there is a complaint alleging a violation of licensure law. When the Department is notified by the county director of social services that the director has received a report of child maltreatment in a child care facility, or when the Department is notified by any other person that alleged child maltreatment has occurred in a facility, the Commission's rules shall provide for an inspection conducted without notice to the child care facility to determine whether the alleged child maltreatment has occurred. The inspection shall be conducted within seven calendar days of receipt of the report. Additional visits shall be conducted, as warranted.

(a1) The Commission shall adopt standards and rules under this subsection which provide for the following types of inspections:

(1) An initial licensing inspection, which shall not occur until the administrator of the facility receives prior notice of the initial inspection visit;

(2) A plan for visits to all facilities, including announced and unannounced visits, which shall be confidential unless a court orders its disclosure;

(3) An inspection that may be conducted without notice, if there is ~~probable~~ cause to believe that an emergency situation exists or there is a complaint alleging a violation of licensure law. ~~When the Department is notified by the county director of social services that the director has received a report of child abuse or neglect in a child care facility, or when the Department is notified by any other person that alleged abuse or neglect has occurred in a facility, the Commission's rules shall provide for an inspection conducted without notice to the child care facility to determine whether the alleged abuse or neglect has occurred. This inspection shall be conducted within seven calendar days of receipt of the report, and when circumstances warrant, additional visits shall be conducted.~~

The ~~Secretary or the Secretary's designee,~~Department, upon presenting appropriate credentials to the operator of the child care facility, may perform inspections in accordance with the standards and rules promulgated under this subsection. The ~~Secretary or the Secretary's designee~~Department may inspect any area of a building in which there is reasonable evidence that children are in ~~care.~~care or in which the Department has cause to believe that conditions in that area of a building pose a potential risk to the health, safety, or well-being of children in care.

(b) If an operator refuses to allow the Secretary or the Secretary's designee to inspect the child care facility, the Secretary shall seek an administrative warrant in accordance with G.S. 15-27.2."

SECTION 7. G.S. 110-105.2 is repealed.

SECTION 8. Article 7 of Chapter 110 of the General Statutes is amended by adding the following new sections to read:

"**§ 110-105.3. Child maltreatment.**

(a) The purpose of this section is to assign the authority to investigate instances of child maltreatment in child care facilities to the Department of Health and Human Services, Division of Child Development and Early Education. The General Assembly recognizes that the ability to properly investigate child maltreatment in licensed child care facilities is dependent upon the cooperation of State and local law enforcement agencies, as well as county departments of social services.

(b) The following definitions shall apply in this Article:

(1) Caregiver. – The operator of a licensed child care facility or religious-sponsored child care facility, a child care provider, as defined in G.S. 110-90.2(a)(2), a volunteer, or any person who has the approval of the provider to assume responsibility for children under the care of the provider.

(2) Child care facilities. – Any of the following:

a. All facilities required to be licensed under this Article.

b. All religious-sponsored facilities operating pursuant to G.S. 110-106.

c. All locations where children are being cared for by someone other than their parent or legal guardian that require a license under this Article but have not been issued a license by the Department.

(3) Child maltreatment. – Any act or series of acts of commission or omission by a caregiver that results in harm, potential for harm, or threat of harm to a child. Acts of commission include, but are not limited to, physical, sexual,

and psychological abuse. Acts of omission include, but are not limited to, failure to provide for the physical, emotional, or medical well-being of a child, and failure to properly supervise children, which results in exposure to potentially harmful environments.

(c) The Department, local departments of social services, and local law enforcement personnel shall cooperate with the medical community to ensure that reports of child maltreatment in child care facilities are properly investigated.

(d) When a report of child maltreatment is received, the Department shall make a prompt and thorough assessment to ascertain the facts of the case, the extent of the maltreatment, and the risk of harm to children enrolled at the child care facility. When the report alleges maltreatment meeting the definition of abuse or neglect as defined in G.S. 14-318.2 and G.S. 14-318.4, the Department shall contact local law enforcement officials to investigate the report.

(e) During the pendency of an investigation, the Department may issue a protection plan restricting an individual alleged to have maltreated a child from being on the premises of the facility while children are in care. The Department may also suspend activities at a facility under investigation, including, but not limited to, transportation, aquatic activities, and field trips.

(f) At any time during the pendency of a child maltreatment investigation, the Department may order immediate corrective action as required to protect the health, safety, or welfare of children in care. If the corrective action does not occur within the period specified in the corrective action order, the Department may take administrative action to protect the health, safety, or welfare of the children at the child care facility.

(g) The Department may, in accordance with G.S. 150B-3(c), summarily suspend the license of a child care facility if the Department determines that emergency action is required to protect the health, safety, or welfare of the children in a child care facility regulated by the Department.

(h) In the event the Department determines child maltreatment did not occur in a child care facility, nothing in this section shall prevent the Department from citing a violation or issuing an administrative action based upon violations of child care licensure law or rules based upon its investigation. Citations of violations or administrative actions issued pursuant to this subsection shall not be confidential.

(i) During the pendency of an investigation, all matters regarding the investigation, including, but not limited to, any complaint, allegation, or documentation regarding inspections or the identity of the reporter, shall be held in strictest confidence as provided by subjection (j) of this section. Following a determination that maltreatment has occurred, the investigation findings shall be made public, as well as the date of any visits made pursuant to the investigation, and any corrective action taken, if applicable. DCDEE shall not post on its Internet Web site that a maltreatment investigation occurred if the allegation of maltreatment was unsubstantiated.

(j) Regardless of the Department's final determination regarding child maltreatment, all information received by the Department during the course of its investigation shall be held in the strictest confidence by the Department, except for the following:

(1) The Department shall disclose confidential information, other than the identity of the reporter, to any federal, State, or local government entity or its agent in order to protect a juvenile from child maltreatment, abuse, or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent pursuant to this subdivision shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.

(2) The Department shall only disclose information identifying the reporter pursuant to a court order, except that the Department may disclose information identifying the reporter without a court order only to a federal, State, or local government entity that demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.

(3) A district court, superior court, or administrative law judge of this State presiding over a civil matter in which the Department is not a party may order the Department to release confidential information. The court may order the release of confidential information after providing the Department with reasonable notice and an opportunity to be heard and then determining that the information is relevant, necessary to the trial of the matter before the court, and unavailable from any other source.

(k) When a report of child maltreatment alleges facts that indicate that a report is required under G.S. 7B-301, the Department shall contact the local department of social services in the county where the juvenile resides or is found and make the necessary report.

(l) In performing any duties related to the assessment of a report of child maltreatment, the Department may consult with any public or private agencies or individuals, including the available State or local law enforcement officers, probation and parole officers, and the director of any county department of social services who shall assist in the assessment and evaluation of the seriousness of any report of child maltreatment when requested by the Department. The Department or the Department's representatives may make a written demand for any information or reports, whether or not confidential, that may in the Department's opinion be relevant to the assessment of the report. Upon the Department or the Department's representative's request and unless protected by attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and the records required by this subsection, to the extent permitted by federal law and regulations.

(m) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. Rules promulgated subject to this section shall be exempt from the provisions of G.S. 150B-19.1(e) and (f).

"**§ 110-105.4. Duty to report child maltreatment.**

(a) Any person who has cause to suspect that a child in a child care facility has been maltreated, as defined by G.S. 110-105.3, or has died as the result of maltreatment occurring in a child care facility, shall report the case of that child to the Department. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making the report, including (i) the name and address of the child care facility where the child was allegedly maltreated, (ii) the name and address of the child's parent, guardian, or caretaker, (iii) the age of the child, (iv) the present whereabouts of the child if not at the home address, (v) the nature and extent of any injury or condition resulting from maltreatment, and (vi) any other information the person making the report believes might assist in the investigation of the report. 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 maltreatment.

(b) Upon receipt of any report of maltreatment involving sexual abuse of the child in a child care facility, the Department 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 Department 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.

"**§ 110-105.5. Child maltreatment registry.**

(a) The Department shall establish and maintain a registry containing the names of all caregivers who have been confirmed by the Department of having maltreated a child pursuant to G.S. 110-105.3.

(b) Individuals who wish to contest findings under subsection (a) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act under Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written notice of the Department's intent to place its findings about the person in the Child Maltreatment Registry.

(c) Individuals whose names are listed on the Registry shall not be a caregiver as defined in G.S. 110-105.3(b)(2) at any licensed child care facility or religious-sponsored child care facility.

(d) No person shall be liable for providing any information for the Child Maltreatment Registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the Child Maltreatment Registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee. The immunity established by this subsection does not extend to malicious conduct or intentional wrongdoing.

(e) Upon request, a child care facility, as defined in G.S. 110-105.3, is permitted to provide confidential or other identifying information to the Department, including social security numbers, taxpayer identification numbers, parent's legal surname prior to marriage, and dates of birth, for the purpose of verifying the identity of the accused caregiver.

(f) With the exception of the names of individuals listed on the Child Maltreatment Registry, all other information received by or pertaining to the Child Maltreatment Registry shall be confidential and is not a public record under Chapter 132 of the General Statutes.

(g) In order to determine an individual's fitness to care for or adopt a child, information from the Child Maltreatment Registry may be used by any of the Department's divisions responsible for licensing homes or facilities that care for children, and 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.

(h) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section.

"**§ 110-105.6. Penalties for child maltreatment.**

(a) For purposes of this Article, child maltreatment occurring in child care facilities is a violation of this Article, licensure standards, and licensure laws.

(b) Pursuant to G.S. 110-105.3, when an investigation confirms that child maltreatment did occur in a child care facility, the Department may issue an administrative action up to and including summary suspension and revocation of the facility's child care license.

(c) If the facility is permitted to remain open after an administrative action has been issued, the administrative action shall specify any corrective action to be taken by the operator.

(d) The Department shall make unannounced visits to determine whether the corrective action has occurred. If the corrective action has not occurred, then the Department may take further action against the facility as necessary to protect the health, safety, or welfare of the children at the child care facility.

(e) Administrative actions issued shall include a statement of the reasons for the action and shall specify corrective action that shall be taken by the operator.

(f) Under the terms of the administrative action, the Department may limit enrollment of new children until satisfied the situation giving rise to the confirmation of child maltreatment no longer exists.

(g) Specific corrective action required by an administrative action authorized by this Article may include the removal of the individual responsible for child maltreatment from child

care pending a final determination or appeal of the individual's placement on the Child Maltreatment Registry.

(h) Nothing in this section shall restrict the Department from using any other statutory or administrative remedies available."

SECTION 9. This act becomes effective January 1, 2016.

SENATE BILL 578:
Transition Certain Abuse Investigations/DCDEE

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 22, 2015
Introduced by:	Sens. Barringer, Hise, Tucker	**Prepared by:**	Bill Patterson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 578 would transition abuse and neglect investigations in child care facilities to the Division of Child Development and Early Education within the Department of Health and Human Services (Department).

CURRENT LAW: Directors of county departments of social services ("county directors") are authorized to investigate allegations of abuse and neglect involving juveniles in child care facilities under Chapter 7B of the General Statutes. The Department of Health and Human Services (DHHS) is also charged with ensuring the health and safety of children in child care facilities under Article 7 of Chapter 110.

BILL ANALYSIS:

House Bill 578 would amend provisions in Chapter 7B authorizing county directors to investigate abuse and neglect of juveniles to delete references to child care facilities, and would amend Article 7 of Chapter 110 to define child maltreatment and to assign authority for investigating child maltreatment in child care facilities to DHHS's Division of Child Development and Early Education.

Section 1 of the bill would amend the definition of caretaker under G.S. 7B-101 to remove references to child care facilities.

Section 2 would amend the protective service requirements in G.S. 7B-300 to remove reference to child care facilities.

Section 3 would remove the requirement that the director of a county department of social services notify the State Bureau of Investigation (SBI) within 24 hours of sexual abuse allegations in child care facilities in G.S. 7B-301(a).

Section 4 would amend G.S. 7B-302(a), which requires a county director investigating a report of abuse or neglect to visit the place where the juvenile resides, to remove references to child care facilities.

Section 5 would amend G.S. 7B-307 governing a county director's duty to report evidence of abuse or neglect, to remove references to child care facilities and to require the county director to notify DHHS within 24 hours after receiving a report of child mistreatment as defined in new G.S. 110-105.3 (added by Section 8 of the bill).

Section 6 would amend G.S. 110-105, governing DHHS authority to inspect child care facilities, to permit inspection of such facilities without notice when there is cause to believe an emergency exists, when there is a complaint alleging a violation of licensure law, or when DHHS is notified that child mistreatment has occurred in such facilities.

Section 7 would repeal G.S. 110-105.2, governing abuse and neglect violations, which would be superseded by the new statutory provisions added in Section 8 of the bill.

Section 8 would add new sections in Article 7 of Chapter 110 that would:

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- define child maltreatment and child care facilities
- establish procedures for investigating allegations of child maltreatment in child care facilities
- require persons to report to DHHS any suspected child maltreatment in a child care facility
- establish a registry containing the names of all caregivers DHHS has confirmed to have maltreated a child
- establish administrative penalties for child maltreatment

EFFECTIVE DATE: This act becomes effective January 1, 2016.

Tawanda Foster, counsel to Senate Health Care, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, April 23, 2015

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

FAVORABLE

SB **419** Limit Revolving Door Employment.

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

SB **578** **(CS#1)** Transition Certain Abuse Investigations/DCDEE.

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 **182** Automatic License Plate Readers.

Draft Number:	S182-PCS25247-TG-15
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Senator Ralph Hise will handle SB 419
Senator Tamara Barringer will handle SB 578
Senator Stan Bingham will handle SB 182



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, April 23, 2015

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

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

SB **83** Criminal Law/Filing False Document.

Draft Number:	S83-PCS15235-TJ-22
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

SB **288** Amend Laws Regarding Mental Commitment Bars.

Draft Number:	S288-PCS25249-TJ-21
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Senator Stan Bingham will handle SB 83
Senator Bill Cook will handle SB 288



SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

4.23.15

NAME	ORGANIZATION	BILL NO.
Alexandra Gruber	DOJ	578
Adam Sholar	DHHS	576
Reston Jones	NCDOT	182
Meghan Cook	OITS	
Chris Agnew	DOJ	

SENATE JUDICIARY II VISITOR SIGN-IN

4.23.15

NAME	ORGANIZATION	BILL NO.
Annaliese Dolph	DL	
Ryan Combs	DPS	
Tom Murry	AOC	
Maggie P. Thomas	NCDOT IT	
Charlotte Mineyard	NCDNR	
[illegible]	School of Gov	
Brian Shipwash	Clerk of Court	83
Barbara Moore	Coord of Clerks of Ct	
[illegible]	Assistant Clerk of Ct.	
Rob Kindsvater	DHHS-DCDEE	

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Senate Committee on Judiciary II
Tuesday, April 28, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:00 AM on April 28, 2015 in Room 1124/1224 of the Legislative Building. 14 members were present. Attending Sergeants-at-Arm Giles Jeffreys; Anderson Meadows; and Larry Hancock. Attending pages: Amanda Cone of Spring Hope (Sen. Newton); Courtney Thomas of Clayton (Sen. Van Duyn); Jamie Guillergan of Sanford (Sen. Rabin); Caroline Gorman of New Bern (Sen. Sanderson); Hailey Hughes of Trent Woods (Sen. Sanderson); and, Lily Zukerman of Wilmington (Sen. Lee).

Senator Warren Daniel, Chair, presided.

SB 343 Student Assault on Teacher/Felony Offense. (Senator Tillman) This bill was presented as a committee substitute bill of the version that came out of Higher Education committee. Sen. Tillman presented the bill and Research Staff's Janice Paul explained the legalese of each part of the bill. The committee had a brief discussion prior allowing public comment. Jane Wettach of Duke University Law School spoke against the bill with the view that the bill overcriminalizes youth. It seems that most of the committee discussion that was against the bill believed the bill to be too harsh. Sen. Tillman said a Fiscal Note was requested. After quite a bit of discussion, Sen. Bingham moved to give the bill a favorable report. The committee reported the bill to the Senate Principal Clerk (SPC) as Unfavorable as to the Committee Substitute Bill No. 1, but Favorable as to the Committee Substitute Bill No. 2. The long title did change. Nor referrals were requested.

SB 503 Sex Offense With Student/Charter Schools. (Senators J. Jackson, Tillman, Soucek) Sen. J. Jackson presented this bill. No committee discussion or public comment. Sen. J. Davis motioned that the bill be given a favorable report. The committee reported the bill to the SPC as Favorable, with no referrals.

SB 678 Amend Debt Collection Statutes. (Senators Gunn, B. Jackson, D. Davis) Sen. Gunn presented this bill to the committee as a proposed committee substitute bill. Sen. Gunn presented the bill. There was no committee discussion or public comment. Sen. Bingham moved for a favorable report. The committee reported the bill to the SPC as Unfavorable as to the bill, but Favorable as to the Committee Substitute Bill. No referrals were recommended.

SB 378 Increase Punishment/Misd. Death by Vehicle. (Senator Bingham) Sen. Bingham presented this bill as proposed committee substitute bill. There was no discussion and Sen. McInnis moved for a favorable report. That motion carried and the bill was reported to the SPC as Unfavorable as to Bill, but Favorable as to Committee Substitute Bill. No referrals

SB 519 Amend Child Custody Laws. (Senator B. Jackson) Sen. B. Jackson presented this bill as a proposed committee substitute bill. Sen. Bryant moved to amend the bill with S519-CSTJ-18, which amended the bill on page 1, lines 15-19. The amendment was adopted. Duane Holm of the NC Bar Assoc. spoke against the bill. Alex Miller of the Coalition Against Domestic Violence and Social Workers also spoke against the bill. Sen. Randleman moved that the bill get a favorable report. The motion carried and the bill- with the amendment engrossed- was reported to the SPC as Unfavorable as to bill, but Favorable as to Committee Substitute Bill. No referrals. The long title was amended.

SB 570 Expunction/Boat Violation. (Senators Bryant, McKissick, Daniel) Sen. Bryant presented the proposed committee substitute for this bill. Research staff's Janice Paul explained each part of the bill. There was very little committee discussion and Sen. McInnis moved for a favorable report. The motion carried and the bill was reported to the SPC as Unfavorable as to the bill, but Favorable as to the committee substitute bill. No referrals.

The meeting adjourned at 11:00.

Senator Warren Daniel, Chair
Presiding

Andy Perrigo, Committee Clerk

Senate Committee on Judiciary II
Tuesday, April 28, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 343	Student Assault on Teacher/Felony Offense.	Senator Tillman
SB 503	Sex Offense With Student/Charter Schools.	Senator J. Jackson Senator Tillman Senator Soucek
SB 678	Amend Debt Collection Statutes.	Senator Gunn Senator B. Jackson Senator D. Davis
SB 378	Increase Punishment/Misd. Death by Vehicle.	Senator Bingham
SB 519	Presumed Shared Parenting.	Senator B. Jackson
SB 570	Expunction/Boat Violation.	Senator Bryant Senator McKissick Senator Daniel

Presentations

Other Business

Adjournment

FILED SENATE
Mar 19, 2015
S.B. 343
PRINCIPAL CLERK
D

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

SENATE DRS25117-LH-128 (03/12)

Short Title:	Student Assault On Teacher/Felony Offense.	(Public)
Sponsors:	Senator Tillman (Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A FELONY OFFENSE FOR A STUDENT WHO IS SIXTEEN YEARS OF AGE OR OLDER TO ASSAULT A SCHOOL EMPLOYEE ON SCHOOL PROPERTY WHEN THE EMPLOYEE IS DISCHARGING OFFICIAL DUTIES OR THE ASSAULT IS COMMITTED AS A RESULT OF THE DISCHARGE OR ATTEMPT TO DISCHARGE THE INDIVIDUAL'S DUTIES AS A SCHOOL EMPLOYEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-33.3. Student assault on a school employee.**

(a) Definitions. – The following definitions apply in this section:

(1) Duties. – All activities on school property.

(2) Employee. – Has the same meaning as G.S. 14-33(c)(6)b.1. and 2.

(3) School property. – Any school building, 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 primary or secondary school.

(4) Student. – A person enrolled in a public school, a charter school authorized under G.S. 115C-218.5, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes.

(b) Offense. – Unless the conduct is covered under some other provision of law providing greater punishment, a student who assaults a school employee is guilty of a felony offense under this section if all of the following criteria are satisfied:

(1) The student is 16 years of age or older.

(2) The student assaults the school employee when the employee is discharging or attempting to discharge his or her duties as an employee, or the student assaults the school employee as a result of the discharge or attempt to discharge that individual's duties as a school employee.

(3) The assault occurs on school property.

(c) Penalty. – A student convicted of a first offense under this section is guilty of a Class I felony. A student convicted of a second or subsequent offense under this section is guilty of a Class G felony."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 343
Education/Higher Education Committee Substitute Adopted 4/15/15
PROPOSED COMMITTEE SUBSTITUTE S343-CSTJ-26 [v.4]
4/27/2015 5:57:58 PM

Short Title: Student Assault on Teacher/Felony Offense. (Public)

Sponsors:

Referred to:

March 23, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE FOR A STUDENT WHO IS SIXTEEN YEARS OF AGE OR OLDER WHO DOES NOT HAVE AN INDIVIDUALIZED EDUCATION PROGRAM OR SECTION 504 PLAN TO ASSAULT A SCHOOL EMPLOYEE ON SCHOOL PROPERTY WHEN THE EMPLOYEE IS DISCHARGING OFFICIAL DUTIES OR THE ASSAULT IS COMMITTED AS A RESULT OF THE DISCHARGE OR ATTEMPT TO DISCHARGE THE INDIVIDUAL'S DUTIES AS A SCHOOL EMPLOYEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-33.3. Student assault on a school employee.**

(a) Definitions. – The following definitions apply in this section:

(1) Duties. – All activities on school property.

(2) Employee. – Has the same meaning as G.S. 14-33(c)(6)b.1. and 2.

(3) School property. – Any school building, 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 primary or secondary school.

(4) Student. – A person enrolled in a public school, a charter school authorized under G.S. 115C-218.5, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes.

(b) Offense. – Unless the conduct is covered under some other provision of law providing greater punishment, a student who assaults a school employee is guilty of an offense under this section if all of the following criteria are satisfied:

(1) The student is 16 years of age or older and does not have (i) an Individualized Education Program as defined in G.S. 115C-106.3 or (ii) a Section 504 Plan under 29 U.S.C. § 794 et. seq.

(2) The student assaults the school employee when the employee is discharging or attempting to discharge his or her duties as an employee, or the student assaults the school employee as a result of the discharge or attempt to discharge that individual's duties as a school employee.

(3) The assault occurs on school property.

(c) Penalty. – A student convicted of a first offense under this section is guilty of a Class A1 misdemeanor. A student convicted of a second offense under this section is guilty of a Class H felony. A student convicted of a third or subsequent offense under this section is guilty of a Class G felony."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SENATE BILL 343:
Student Assault on Teacher/Felony Offense

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 27, 2015
Introduced by:	Sen. Tillman	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to Second Edition S343-CSTJ-26		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 343 would make it a criminal offense for a student who is 16 years of age or older and who does not have an Individualized Education Program or Section 504 Plan to assault a school employee under certain circumstances. The first offense would be a Class A1 misdemeanor, a second offense would be a Class H felony, and a third or subsequent offense would be a Class G felony.***

CURRENT LAW: G.S. 14-33(c)(6) provides that a person is guilty of a Class A1 misdemeanor if the person:

- Commits an assault on a school employee or school volunteer when the employee or volunteer is discharging or attempting to discharge his or her duties as an employee or volunteer; or
- Commits an assault on a school employee or school volunteer as a result of the discharge or attempt to discharge that individual's duties as a school employee or school volunteer.

"Duties" include all activities on school property; all activities during a school authorized event wherever they occur or the accompanying of students to or from that authorized event; and all activities relating to the operation of school transportation.

"Employee" and "volunteer" include:

- Employees of local boards of education, charter schools, and nonpublic schools.
- Independent contractors or employees of an independent contractor of a local board of education, charter school, and nonpublic schools if the independent contractor carries out duties customarily performed by employees of the school.
- Adults who volunteer their services or presence at any school activity and are under the supervision of employees or independent contractors.

BILL ANALYSIS: The PCS for Senate Bill 343 would create a new offense when a student who is age 16 or older who does not have an Individualized Education Program or Section 504 Plan assaults a school employee on school property:

- While the employee is discharging or attempting to discharge his duties as school employee; or
- As a result of the discharge or attempt to discharge that individual's duties as a school employee.

A first offense under this statute would be a Class A1 misdemeanor, a second offense would be a Class H felony, and a third or subsequent offense would be a Class G felony.

O. Walker Reagan
Director

S343-SMTJ-52 CSTJ-26 -V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Definitions under the new statute would be as follows:

- "Duties" -- All activities on school property.
- "Employee" – (i) Employees of local boards of education, charter schools, and nonpublic schools and (ii) independent contractors or employees of an independent contractor of a local board of education, charter school, and nonpublic schools if the independent contractor carries out duties customarily performed by employees of the school.
- "School Property" – Any school building, 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 primary or secondary school.
- "Student" – A person enrolled in a traditional public school, charter school, or nonpublic school.

EFFECTIVE DATE: The bill would become effective December 1, 2015 and would apply to offenses committed on or after that date.

Drupti Chauhan, counsel to Senate Education/Higher Education, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SENATE BILL 503

Short Title:	Sex Offense With Student/Charter Schools.	(Public)
Sponsors:	Senators J. Jackson, Tillman, Soucek (Primary Sponsors); Brock, Bryant, Daniel, J. Davis, Hise, Pate, Rabin, and Sanderson.	
Referred to:	Rules and Operations of the Senate.	

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT FOR PURPOSES OF THE CRIMES OF "TAKING INDECENT LIBERTIES WITH A STUDENT" AND "INTERCOURSE AND SEXUAL OFFENSES WITH A STUDENT," THE DEFINITION OF "SCHOOL PERSONNEL" INCLUDES EMPLOYEES OF CHARTER SCHOOLS AND NONPUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.4(d) reads as rewritten:

"(d) For purposes of this section, the following definitions apply:

(1) "Indecent liberties" means:

a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or

b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. 14-27.1.

(1a) "Same school" means a school at which (i) the student is enrolled or is present for a school-sponsored or school-related activity and (ii) the school personnel is employed, volunteers, or is present for a school-sponsored or school-related activity.

(2) "School" means any public school, charter school, or nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes.

(3) "School personnel" means any ~~person included in the definition contained in G.S. 115C-332(a)(2), and any person who volunteers at a school or a school-sponsored activity.~~of the following:

a. Any person included in the definition contained in G.S. 115C-332(a)(2).

b. Any person employed by a charter school or any independent contractor or employee of an independent contractor of a charter school, if the independent contractor carries out duties customarily performed by school personnel, who has significant access to students. "School personnel" as described by this sub-subdivision also includes substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians.

c. Any person employed by a nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes or any independent contractor or employee of an independent contractor of a nonpublic school, if the independent contractor carries out duties customarily performed by school personnel, who has significant access to students. "School personnel" as described by this sub-subdivision also includes substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians.

d. Any person who volunteers at a school or a school sponsored activity.

(3a) "School safety officer" means any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools and includes a school resource officer.

(4) "Student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SENATE BILL 503:
Sex Offense With Student/Charter Schools

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 27, 2015
Introduced by:	Sens. J. Jackson, Tillman, Soucek	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 503 would clarify that for purposes of specified sex crimes, the definition of "school personnel" includes employees of charter schools and nonpublic schools.

CURRENT LAW: Currently "school personnel" is defined under G.S. 14-202.4, "Taking indecent liberties with a student," as "any person included in the definition contained in G.S. 115C-332(a)(2), and any person who volunteers at a school or a school sponsored activity." G.S. 14.27.7, "Intercourse and sexual offenses with certain victims; consent no defense," defines "school personnel" as is defined in G.S. 14-202.4(d).

BILL ANALYSIS: Senate Bill 503 would amend G.S. 14-202.4(d) to clarify that, for the purposes of specified offenses, the definition of "school personnel" includes employees of charter schools and nonpublic schools as well as any person who volunteers at a school or school sponsored activity.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

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Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

FILED SENATE
Mar 26, 2015
S.B. 678
PRINCIPAL CLERK
D

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

SENATE DRS35205-MD-72 (03/12)

Short Title:	Amend Debt Collection Statutes.	(Public)
Sponsors:	Senators Gunn, B. Jackson, and D. Davis (Primary Sponsors).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEBT COLLECTOR STATUTES TO MORE NEARLY CONFORM TO THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-50 is amended by adding a new subdivision to read:

"**§ 75-50. Definitions.**

The following words and terms as used in this Article shall be construed as follows:

...

(4) "Location information" means information about a consumer's place of abode, any telephone numbers used by the consumer, and information about the consumer's place of employment."

SECTION 2. G.S. 75-53(1) reads as rewritten:

"**§ 75-53. Unreasonable publication.**

No debt collector shall unreasonably publicize information regarding a consumer's debt. Such unreasonable publication includes, but is not limited to, the following:

(1) Any communication with any person other than the debtor or his attorney, except:

a. ~~With the written permission of the debtor or his attorney given after default;~~To third parties with the written permission of the debtor or his attorney.

b. To persons employed by the debt collector, to a credit reporting agency, to a person or business employed to collect the debt on behalf of the creditor, or to a person who makes a legitimate request for the ~~information;~~information.

c. To the spouse (or one who stands in place of the spouse) of the debtor, or to the parent or guardian of the debtor if the debtor is a minor and lives in the same household with such ~~parent;~~parent. If the debt collector has a good faith belief that the exception set forth in this sub-subdivision applies to a particular communication, that communication shall not be a violation of this sub-subdivision.

d. For the sole purpose of ~~locating~~ obtaining location information about the debtor, if no indication of indebtedness is ~~made;~~made. A debt collector making a communication under this sub-subdivision shall:

1. Identify himself or herself, state that he or she is attempting to confirm or correct location information about the debtor, and,

only if expressly requested to do so, identify his or her employer.

2. Not state that the debtor owes a debt.

3. Not communicate with any particular person more than once per week or a total of three times during any 30-day period unless requested to do so by the person."

e. Through legal process."

SECTION 3. G.S. 75-54 reads as rewritten:

"**§ 75-54. Deceptive representation.**

No debt collector shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:

...

(2) Failing to disclose in all communications attempting to collect a debt that the purpose of such communication is to collect a ~~debt.~~ debt, unless the communication is solely for the purpose of obtaining location information about the debtor.

...."

SECTION 4. G.S. 75-55 reads as rewritten:

"**§ 75-55. Unconscionable means.**

No debt collector shall collect or attempt to collect any debt by use of any unconscionable means. Such means include, but are not limited to, the following:

(1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver.

(2) Collecting or attempting to collect from the consumer all or any part of the debt collector's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge. Nothing in this section shall be construed to prohibit the collection of filing fees, service fees, or other court costs actually incurred. The collection of such fees is not a violation of this Article or of Article 15 of Chapter 53 of the General Statutes and is expressly authorized by this section, regardless of whether or not the action is completed and reduced to a judgment awarding court costs. If a consumer decides to make arrangements with a debt collector to cure any existing default and resume payments on a debt, the debt collector is entitled to add the court costs to the balance of the loan and to collect them as part of the loan balance.

(3) Communicating with a consumer (other than a statement of account used in the normal course of business) whenever the debt collector has been notified by the consumer's attorney that he represents said consumer.

(4) Bringing suit against the debtor in a county other than that in which the debt was incurred or in which the debtor resides if the distances and amounts involved would make it impractical for the debtor to defend the claim."

SECTION 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 678
PROPOSED COMMITTEE SUBSTITUTE S678-CSTG-18 [v.1]
4/27/2015 10:41:06 AM

Short Title: Amend Debt Collection Statutes. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEBT COLLECTOR STATUTES TO MORE NEARLY CONFORM TO THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-50 is amended by adding a new subdivision to read:

"**§ 75-50. Definitions.**

The following words and terms as used in this Article shall be construed as follows:

...

(4) "Location information" means information about a consumer's place of abode, any telephone numbers used by the consumer, and information about the consumer's place of employment."

SECTION 2. G.S. 75-53(1) reads as rewritten:

"**§ 75-53. Unreasonable publication.**

No debt collector shall unreasonably publicize information regarding a consumer's debt. Such unreasonable publication includes, but is not limited to, the following:

(1) Any communication with any person other than the debtor or his attorney, except:

a. ~~With the written permission of the debtor or his attorney given after default;~~To third parties with the written permission of the debtor or his attorney.

b. To persons employed by the debt collector, to a credit reporting agency, to a person or business employed to collect the debt on behalf of the creditor, or to a person who makes a legitimate request for the ~~information;~~information.

c. To the spouse (or one who stands in place of the spouse) of the debtor, or to the parent or guardian of the debtor if the debtor is a minor and lives in the same household with such ~~parent;~~parent. If the debt collector has a good faith belief that the exception set forth in this sub-subdivision applies to a particular communication, that communication shall not be a violation of this sub-subdivision.

d. For the sole purpose of ~~locating~~ obtaining location information about the debtor, if no indication of indebtedness is ~~made;~~made. A debt collector making a communication under this sub-subdivision shall:

1. Identify himself or herself, state that he or she is attempting to confirm or correct location information about the debtor, and,

only if expressly requested to do so, identify his or her employer.

2. Not state that the debtor owes a debt.

3. Not communicate with any particular person more than once per week or a total of three times during any 30-day period unless requested to do so by the person."

e. Through legal process."

SECTION 3. G.S. 75-54 reads as rewritten:

"**§ 75-54. Deceptive representation.**

No debt collector shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:

...

(2) Failing to disclose in all communications attempting to collect a debt that the purpose of such communication is to collect a ~~debt.~~ debt, unless the communication is made to a third-party pursuant to G.S. 75-53 for the purpose of obtaining location information about the debtor.

...."

SECTION 4. G.S. 75-55 reads as rewritten:

"**§ 75-55. Unconscionable means.**

No debt collector shall collect or attempt to collect any debt by use of any unconscionable means. Such means include, but are not limited to, the following:

(1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver.

(2) Collecting or attempting to collect from the consumer all or any part of the debt collector's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge. Nothing in this section shall be construed to prohibit the collection of filing fees, service of process fees, or other court costs actually incurred. The collection of such fees is not a violation of this Article or of Article 15 of Chapter 53 of the General Statutes.

(3) Communicating with a consumer (other than a statement of account used in the normal course of business) whenever the debt collector has been notified by the consumer's attorney that he represents said consumer.

(4) Bringing suit against the debtor in a county other than that in which the debt was incurred or in which the debtor resides if the distances and amounts involved would make it impractical for the debtor to defend the claim."

SECTION 5. This act is effective when it becomes law.

SENATE BILL 678:
Amend Debt Collection Statutes

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 27, 2015
Introduced by:	Sens. Gunn, B. Jackson, D. Davis	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition S678-CSTG-18		

SUMMARY: The PCS for Senate Bill 678 would modify the requirements of Article 2 of Chapter 75 of the General Statutes applicable to debt collectors who are not collection agencies. The PCS modifies the bill's amendments to G.S. 75-54(2) and G.S. 75-55(2).

CURRENT LAW: Article 2 of Chapter 75 of the General Statutes regulates the activities of persons who are engaged in the collection of a debt owed by a natural person for personal, family, household or agricultural purposes, other than collection agencies regulated under Chapter 58 of the General Statutes.[1]

G.S. 75-53 prohibits debt collectors from communicating with any person other than the debtor or his attorney, subject to certain exceptions, including those permitting communications:

- made with the written permission of the debtor or his attorney after default (G.S. 75-53(1)a.)
- made to the debtor's spouse (or one who stands in the place of the spouse) or to the debtor's parent or guardian if the debtor is a minor who lives in the same household with such parent (G.S. 75-53(1)c.)
- made for the sole purpose of locating the debtor, if no indication of indebtedness is made (G.S. 75-53(1)d.)

G.S. 75-54(2) requires debt collectors to disclose, in all communications attempting to collect a debt, that the purpose of such communication is to collect a debt.

G.S. 75-55(2) prohibits collecting or attempting to collect from the consumer the debt collector's fee or charge for services rendered, or any interest or other charge, fee or expense incidental to the principal debt, unless legally entitled to such fee or charge.

Article 15 of Chapter 53 of the General Statutes, the North Carolina Consumer Finance Act, regulates fees that may be charged to a borrower by a person licensed to conduct a consumer finance business.[2]

BILL ANALYSIS: **Section 1** of the bill would amend G.S. 75-50 to define the term "location information" for purposes of Article 2 to mean "information about a consumer's place of abode, any telephone numbers used by the consumer, and information about the consumer's place of employment."

Section 2 would:

- amend G.S. 75-53(1)a. to permit communications by debt collectors made both before and after default to third parties with the written permission of the debtor or his attorney

[1] Collection agencies are subject to State regulation under Article 70 of Chapter 58 of the General Statutes. Collection agencies are also subject to federal regulation under the Fair Debt Collection Practices Act, which applies to persons using any instrumentality of interstate commerce or the mails in a business having as its primary purpose the collection of debts owed by a natural person as a result of a transaction entered into for personal, family, or household purposes. 15 U.S.C. § 1692 *et seq.*

[2] G.S. 53-177.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- amend G.S. 75-53(1)c. to permit a communication made by a debt collector in the good faith belief that the communication was to the spouse or one who stands in the place of the spouse of the debtor or to the parent or guardian of a minor debtor who lives with such parent
- amend G.S. 75-53(1)d. to permit communications for the sole purpose of obtaining location information about the debtor, and to require a bill collector making such a communication to:
    - identify himself or herself, state that he or she is attempting to confirm or correct location information about the debtor, and, only if expressly requested, identify his or her employer
    - not state that the debtor owes a debt
    - not communicate with any particular person more than once a week or three times in total during any 30 day period unless requested to do so by that person

Section 3 would make a conforming change to G.S. 75-54(2) to provide that a debt collector making a communication to a third-party pursuant to G.S. 75-53 for the purpose of obtaining location information about the debtor is not required to notify the third-party that the purpose of the communication is to collect a debt.

Section 4 would amend G.S. 75-55(2) to authorize a debt collector to collect filing fees, service of process fees, or other court costs actually incurred, regardless of whether the action is completed and has resulted in a judgment awarding court costs, and to provide that collection of such fees is not a violation of the North Carolina Consumer Finance Act.

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

SENATE BILL 378

Short Title:	Increase Punishment/Misd. Death by Vehicle.	(Public)
Sponsors:	Senators Bingham (Primary Sponsor); and Rabin.	
Referred to:	Rules and Operations of the Senate.	

March 25, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR CERTAIN OFFENSES OF MISDEMEANOR DEATH BY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

...

(a4) Aggravated Misdemeanor Death by Vehicle. – A person commits the offense of aggravated misdemeanor death by vehicle if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death, and

(4) The person has three or more previous convictions for a violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1 or G.S. 20-138.2, within seven years of the date of the offense.

~~(a4)~~(a5) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if:

...

~~(a5)~~(a6) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if:

...

~~(a6)~~(a7) Repeat Felony Death by Vehicle Offender. – A person commits the offense of repeat felony death by vehicle if:

(1) The person commits an offense under subsection (a1) or subsection ~~(a5)~~(a6) of this section; and

(2) The person has a previous conviction under:

a. Subsection (a1) of this section;

b. Subsection ~~(a5)~~(a6) of this section; or

c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was the unintentional death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2.

The pleading and proof of previous convictions shall be in accordance with the provisions of G.S. 15A-928.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

...

(5) Misdemeanor death by vehicle is a Class A1 misdemeanor.

(6) Aggravated misdemeanor death by vehicle is a Class A1 misdemeanor, provided that, notwithstanding G.S. 15A-1340.23, a person convicted of aggravated misdemeanor death by vehicle may be sentenced to an active sentence of not more than one year. Nothing in this subdivision shall be construed as prohibiting a greater sentence if the conduct is prohibited by another provision of law providing for greater punishment.

...."

SECTION 2. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which the person has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which the person's license is being revoked, (ii) G.S. 20-17(a)(2) and the person was sentenced pursuant to G.S. 20-179(f3) for the offense resulting in the revocation, or (iii) G.S. 20-17(a)(9) due to a violation of ~~G.S. 20-141.4(a4),~~G.S. 20-141.4(a5), the revocation is permanent."

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 378
PROPOSED COMMITTEE SUBSTITUTE S378-CSTJ-25 [v.1]
4/27/2015 4:39:39 PM

Short Title: Increase Punishment/Misd. Death by Vehicle. (Public)

Sponsors:

Referred to:

March 25, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR CERTAIN OFFENSES OF MISDEMEANOR DEATH BY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

...

(a4) Aggravated Misdemeanor Death by Vehicle. – A person commits the offense of aggravated misdemeanor death by vehicle if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the violation of any State law applying to the operation or use of a vehicle or to the regulation of traffic, other than the following:

a. Impaired driving under G.S. 20-138.1 or G.S. 20-138.2;

b. Improper equipment under G.S. 20-141(o)(1);

c. A financial responsibility requirement under G.S.20-311;

d. A registration requirement under G.S. 20-111; or

e. No operator's license under G.S. 20-7.

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death, and

(4) Within seven years of the date of the offense, the person has three or more previous convictions for a violation of any State law or local applying to the operation or use of a vehicle or to the regulation of traffic, other than the following:

a. Impaired driving under G.S. 20-138.1 or G.S. 20-138.2;

b. Improper equipment under G.S. 20-141(o)(1);

c. A financial responsibility requirement under G.S.20-311;

d. A registration requirement under G.S. 20-111; or

e. No operator's license under G.S. 20-7.

~~(a4)~~(a5) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if:

...

~~(a5)~~(a6) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if:

...

~~(a6)~~(a7) Repeat Felony Death by Vehicle Offender. – A person commits the offense of repeat felony death by vehicle if:

(1) The person commits an offense under subsection (a1) or subsection ~~(a5)~~(a6) of this section; and

(2) The person has a previous conviction under:

a. Subsection (a1) of this section;

b. Subsection ~~(a5)~~(a6) of this section; or

c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was the unintentional death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2.

The pleading and proof of previous convictions shall be in accordance with the provisions of G.S. 15A-928.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

...

(5) Misdemeanor death by vehicle is a Class A1 misdemeanor.

(6) Aggravated misdemeanor death by vehicle is a Class A1 misdemeanor, provided that, notwithstanding G.S. 15A-1340.23(c), provided that, notwithstanding G.S. 15A-1340.23(c), the court may impose an active or suspended sentence of up to 365 days, regardless of the defendant's prior conviction level. Nothing in this subdivision shall be construed as prohibiting a greater sentence if the conduct is prohibited by another provision of law providing for greater punishment.

...."

SECTION 2. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which the person has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which the person's license is being revoked, (ii) G.S. 20-17(a)(2) and the person was sentenced pursuant to G.S. 20-179(f3) for the offense resulting in the revocation, or (iii) G.S. 20-17(a)(9) due to a violation of ~~G.S. 20-141.4(a4),~~G.S. 20-141.4(a5), the revocation is permanent."

SECTION 3. G.S. 20-141.4(a2)(2) reads as rewritten:

"(2) The person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under ~~G.S. 20-138.1,~~ G.S. 20-138.1 or G.S. 20-138.2, and

SECTION 4. G.S. 20-16.2(a1) reads as rewritten:

"(a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an offense involving impaired driving, a violation of G.S. 20-141.4(a2), a violation of G.S. 20-141.4(a4), or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued."

SECTION 5. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SENATE BILL 378:
Increase Punishment/Misd. Death by Vehicle

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 27, 2015
Introduced by:	Sen. Bingham	**Prepared by:**	Janice Paul
Analysis of:	PCS to First Edition S378-CSTJ-25		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 378 would create a new offense of Aggravated Misdemeanor Death by Vehicle. The PCS deletes reference to "local ordinance," specifies traffic violations that are excluded as a basis for the offense, and makes technical changes.***

CURRENT LAW: G.S. 20-141.4 sets out the elements and penalties for the following crimes:

- Felony Death by Vehicle (Class D felony, and intermediate punishment is authorized for a defendant who is a Prior Record Level I offender)
- Misdemeanor Death by Vehicle (Class A1 misdemeanor)
- Felony Serious Injury by Vehicle (Class F felony)
- Aggravated Felony Serious Injury by Vehicle (Class E felony)
- Aggravated Felony Death by Vehicle (Class D felony, and the court must sentence the defendant in the aggravated range of the appropriate Prior Record Level)
- Repeat Felony Death by Vehicle (Class B2 felony)

G.S. 20-141.4(c) provides that no one who has been placed in jeopardy upon a charge of death by vehicle can be prosecuted for the offense of manslaughter arising out of the same death, and no one who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death.

BILL ANALYSIS: The PCS for Senate Bill 378 creates a new offense of Aggravated Misdemeanor Death by Vehicle. A person commits the offense of aggravated misdemeanor death by vehicle if all of the following apply: (1) the person unintentionally causes the death of another person; (2) the person was engaged in the violation of any State law other than those specified; (3) the commission of such offense is the proximate cause of the death; and (4) within seven years of the date of the offense, the person has had three or more previous convictions for certain violations applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving/impaired driving in a commercial vehicle.

Aggravated misdemeanor death by vehicle is punishable as a Class A1 misdemeanor, provided that a person convicted of this offense can be sentenced to an active punishment of not more than one year.

The PCS for Senate Bill 378 also makes conforming changes.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

Kelly Tornow, Staff Attorney, substantially contributed to this summary.

O. Walker Reagan
Director

S378-SMTJ-54 CSTJ-25 -V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

SENATE BILL 519

Short Title:	Presumed Shared Parenting.	(Public)
Sponsors:	Senators B. Jackson (Primary Sponsor); and Bryant.	
Referred to:	Rules and Operations of the Senate.	

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS PERTAINING TO CHILD CUSTODY TO INCORPORATE A PRESUMED SHARED PARENTING STANDARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.2 reads as rewritten:

"**§ 50-13.2. Who entitled to custody; presumed shared responsibility; terms of custody; visitation rights of grandparents; taking child out of State; visitation by electronic communication; consideration of parent's military service.**

(a) ~~An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party and shall make findings accordingly. An order for custody must include findings of fact which support the determination of what is in the best interest of the child. Between the mother and father, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. Joint custody to the parents shall be considered upon the request of either parent.~~ It shall be the policy of this State to:

(1) Encourage focused, good faith, best interest, and child-centered joint parenting agreement development while reducing needless litigation over child custody matters.

(2) Allow and encourage parents to take responsibility for their child by setting the expectation that parenthood will be a significant and ongoing responsibility requiring the creation of a joint parenting agreement.

(3) Establish laws, programs, and court practices that encourage and support the maximum participation of a child in the parents' lives regardless of the parents' present marital status, subject to laws regarding abuse, neglect, and dependency.

(4) Encourage both parents to share equitably in the rights and responsibilities of raising their child, even after dissolution of marriage or unwed relationship.

(5) Ensure that a child will have maximum contact with both parents through a presumption of shared responsibility unless it has been established based on a preponderance of the evidence that one of the parents is unfit or obstructs a healthy relationship with the other parent.

…."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 519
PROPOSED COMMITTEE SUBSTITUTE S519-CSTJ-18 [v.6]
4/27/2015 5:28:35 PM

Short Title: Amend Child Custody Laws. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE BEST INTERESTS OF CHILDREN BY AMENDING THE LAWS PERTAINING TO CHILD CUSTODY TO ENCOURAGE MAXIMIZED PARENTING TIME WITH CHILDREN BY BOTH PARENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 50 of the General Statutes is amended by adding a new section to read:

"**§50-13.01. Purposes.**

It is the policy of the State of North Carolina to:

(1) Encourage focused, good faith, best interest, and child-centered joint parenting agreement development to reduce needless litigation over child custody matters and to promote the best interest of the child.

(2) Encourage parents to take responsibility for their child by setting the expectation that parenthood will be a significant and ongoing responsibility.

(3) Encourage the establishment of laws, programs, and court practices that encourage and support maximum participation of both parents in the child's life and contact with both parents when such is in the child's best interest, regardless of the parents' present marital status, subject to laws regarding abuse, neglect, and dependency.

(4) Encourage both parents to share equitably in the rights and responsibilities of raising their child, even after dissolution of marriage or unwed relationship.

(5) Encourage each parent to establish and maintain a healthy relationship with the other parent to promote the best interest and welfare of the child.

SECTION 2. G.S. 50-13.2 reads as rewritten:

"**§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of grandparents; taking child out of State; consideration of parent's military service.**

(a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant ~~factors~~ factors, including all of the following:

(1) ~~acts~~ Acts of domestic violence between the ~~parties,~~ parties.

(2) ~~the~~ The safety of the ~~child,~~ child.

(3) ~~and the~~ The safety of either party from domestic violence by the other ~~party and shall make findings accordingly.~~ party.

An order for custody must include findings of fact ~~which~~ that reflect the consideration of each of these factors and that support the determination of what is in the best interest of the child.

(a2) Between the mother and father, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. ~~Joint custody to the parents shall be considered upon the request of either parent.~~

(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child.

(b1) If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2), and (3).

(b2) If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation.

(b3) Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child.

...."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 519

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

S519-ATG-19 [v.4]

Amends Title [NO]
S519-CSTJ-18

Date April 28 ,2015

Senator Bryant

moves to amend the bill on page 1, lines 15-19, by rewriting the lines to read:

"(3) Encourage programs and court practices that maximize participation of both parents in the child's life and contact with both parents when such is in the child's best interest, regardless of the parents' present marital status, subject to laws regarding abuse, neglect, and dependency.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 519:
Amend Child Custody Laws.

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 27, 2015
Introduced by:	Sen. B. Jackson	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S519-CSTJ		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 519 would create in statute a legislative policy concerning child custody determinations.

[As introduced, this bill was identical to H764, as introduced by Reps. Horn, Jeter, which is currently in House Judiciary III.]

BILL ANALYSIS: The PCS for Senate Bill 519 would enact a new G.S. 50-13.01 declaring the legislative policy relating to child custody, and would require the court in a child custody proceeding to consider certain factors and make specific findings of fact relating to those factors.

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

Jennifer Bedford, counsel to Senate Judiciary Committee II, contributed to this summary.

O. Walker Reagan
Director

S519-SMTJ-53 CSTJ-18 -V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 570

Short Title:	Expunction/Boat Violation.	(Public)
Sponsors:	Senators Bryant, McKissick, and Daniel (Primary Sponsors).	
Referred to:	Rules and Operations of the Senate.	

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SHALL NOT BE DENIED AN EXPUNCTION SOLELY BECAUSE THE PERSON HAS A CONVICTION FOR A BOATING VIOLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145.5(c) reads as rewritten:

"(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 or boating 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 or boating 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 Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety 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 Public Safety 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 or boating 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 2. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic or boating violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic or boating violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic or boating violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic or boating violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

...."

SECTION 3. G.S. 15A-145.1 reads as rewritten:

"**§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.**

(a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, 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 behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in

question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic or boating 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) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic or boating violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information, and that the record be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

SECTION 4. G.S. 15A-145.2 reads as rewritten:

"**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.**

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the petitioner that he or she has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that the petitioner's character and reputation are good;

(3) Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...

(c) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes

by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic or boating violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

SECTION 5. G.S. 15A-145.3 reads as rewritten:

"**§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.**

(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the 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 his or her character and reputation are good;

(3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against the person dismissed and that he or she was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-15.

...

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged

pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic or boating violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

SECTION 6. G.S. 15A-145.4 reads as rewritten:

"**§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

...

(c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than four 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 person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

(1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic or boating 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 (i) a State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Public Safety for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety 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.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

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. 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.

...

(e) The court may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic or boating violation, for four years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

(7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

...."

SECTION 7. G.S. 15A-145.6(f) reads as rewritten:

"(f) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The criteria set out in subsection (b) of this section are satisfied.

(2) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic or boating violation, since the date of conviction of the prostitution offense in question.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction, other than an expunction for a prostitution offense.

...."

SECTION 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 570
PROPOSED COMMITTEE SUBSTITUTE S570-CSTJ-23 [v.6]

Short Title: Expunction/Boat Violation. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SHALL NOT BE DENIED AN EXPUNCTION SOLELY BECAUSE THE PERSON HAS A CONVICTION FOR A MISDEMEANOR BOATING VIOLATION AND TO PROVIDE THAT CERTAIN CONVICTIONS FOR DRIVING WHILE IMPAIRED AND BOATING WHILE IMPAIRED ARE NOT ELIGIBLE FOR EXPUNCTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145.5(c) 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), 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.
(10) An offense under G.S. 20-138.1, G.S. 20-138.2, or 20-138.5, for driving while impaired, or under G.S. 75(A)-10(b1) for boating while impaired.

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor

convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be expunged from the person's record in accordance with this section.

(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.~~ violation or a misdemeanor boating 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,~~ violation or a misdemeanor boating 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 Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety 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 Public Safety 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;~~violation or a misdemeanor boating 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 2. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic ~~violation,~~ violation or a misdemeanor boating violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic ~~violation,~~ violation or a misdemeanor boating violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic ~~violation,~~ violation or a misdemeanor boating violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic ~~violation,~~ violation or a misdemeanor boating violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

...."

SECTION 3. G.S. 15A-145.1 reads as rewritten:

"**§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.**

(a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, 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 behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating 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) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information, and that the record be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

SECTION 4. G.S. 15A-145.2 reads as rewritten:

"**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.**

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the petitioner that he or she has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating

violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that the petitioner's character and reputation are good;

(3) Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...

(c) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition

of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

SECTION 5. G.S. 15A-145.3 reads as rewritten:

"**§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.**

(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating

violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the 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 his or her character and reputation are good;

(3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against the person dismissed and that he or she was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-15.

...

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151,

all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

SECTION 6. G.S. 15A-145.4 reads as rewritten:

"**§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

...

(c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than four 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 person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

(1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic violation or a misdemeanor boating 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 (i) a State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Public Safety for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Public Safety 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.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

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. 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.

...

(e) The court may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic <u>or boating</u> violation, for four years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation <u>or a misdemeanor boating violation</u> under the laws of the United States or the laws of this State or any other state.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

(7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

...."

SECTION 7. G.S. 15A-145.6(f) reads as rewritten:

"(f) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The criteria set out in subsection (b) of this section are satisfied.

(2) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation or a misdemeanor boating violation, since the date of conviction of the prostitution offense in question.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction, other than an expunction for a prostitution offense.

...."

SECTION 8. G.S. 14-50.30 reads as rewritten:

"**§ 14-50.30. Expunction of records.**

Any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state, may, if the offense was committed before the person attained the age of 18 years, be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1."

SECTION 9. This act is effective when it becomes law.

SENATE BILL 570: Expunction/Boat Violation

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 27, 2015
Introduced by:	Sens. Bryant, McKissick, Daniel	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to Second Edition S570-CSTJ-23		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 570 would provide that a person shall not be denied an expunction solely because the person has a conviction for a misdemeanor boating violation. It would also provide that certain convictions for driving while impaired and boating while impaired are not eligible for expunction.***

[As introduced, this bill was identical to H856, as introduced by Reps. Fisher, Hardister, Harrison, B. Turner, which is currently in House Judiciary I.]

BACKGROUND: In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and a person is restored to the status the person occupied before the arrest or indictment. The terms "expunction" and "expungement" are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction, and a person may generally be granted only one expunction in his or her lifetime.

CURRENT LAW: Several provisions of the General Statutes contain provisions authorizing a person to request an expunction if the person has no specified criminal convictions other than a traffic violation.

BILL ANALYSIS: The PCS to Senate Bill 570 would amend the specified statutes to provide that a person must not be denied an expunction under the following statutes solely because the person has a conviction for a misdemeanor boating violation. It would also amend G.S. 15A-145.5(c), "Expunction of certain misdemeanors and felonies; no age limitation," to provide that certain offenses for driving while impaired or boating while impaired are not eligible for expunction.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, April 28, 2015

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

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

SB **378** Increase Punishment/Misd. Death by Vehicle.

Draft Number:	S378-PCS15237-TJ-25
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

SB **519** Presumed Shared Parenting.

Draft Number:	S519-PCS35276-TJ-18
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

SB **570 (CS#1)** Expunction/Boat Violation.

Draft Number:	S570-PCS15238-TJ-23
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Senator Stan Bingham will handle SB 378
Senator W. Jackson will handle SB 519
Senator Angela Bryant will handle SB 570



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, April 28, 2015

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

SB **343** **(CS#1)** Student Assault on Teacher/Felony Offense.

Draft Number:	S343-PCS45362-TJ-26
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Jerry Tillman will handle SB 343



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, April 28, 2015

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

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

SB **678** Amend Debt Collection Statutes.

Draft Number:	S678-PCS45360-TG-18
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Richard Gunn will handle SB 678



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, April 28, 2015

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

FAVORABLE

SB **503** Sex Offense With Student/Charter Schools.

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

TOTAL REPORTED: 1

Senator Jeff Jackson will handle SB 503



DATE 04/28/15

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Bain Jones	NCBBE	
Annaliese Dolph	DL	
Ha Nguyen	NCCOS	
Katie Boshen	NCCOS	
Ray Gracie	NCCOS	
Joel Malley	NCDPI	
Rivan Merwald	WSM	
Lorie Dunn	DRNC	
Amanda Honaker	TSS	
ERIN FLECK	Senate Staff	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Bill Rowe	NC Justice Ctr	
Matt Ellinwood	NC Justice center	
Kristen Laster	SSGNC	
SCOTT LASTER	SSGNC	
Lauren Whaley	LCLL	
Laurie Gredio	LOLLC	
LC Penyon	CSS	
Julia Thomas Sokowicz	AOC/SENC/NARC/NCH2F	
Jennifer Mahan	ASNC	
Mitch Zoby	BMG	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Jane Wettach	Duke Law School	343
Mary Miller	KLG	All
Fred Box	Box Tisso.	none
Dick Carlton	Law Office of Rhe	none
Rebecca Murdock	Sentencing Commission	343, 503, 378
Douglas Holbrook	NCSBA	S 343
Susan Harrison	NCSSCWA	S 343
Bruce Mildwurf	NCSBA	
Courtney Coyle	NASW-NC	
Kay Castillo	NASW-NC	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
David Holm	NC BA	SB 59
Ken Cook	NCBA	559
Mike Smallwood	UNC SOG	
Sarah Preston	ACLU-NC	
Mildred Spearman	NCAUC	
Tim Crowley	NCAE	
Dixie Zell	[illegible]	
Meghan Cook	OITS	
Leon M Killens	Nelson Mullins	
Dirk Jay [illegible]	ACA	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Alex Knapp	PENC	
Jackson Cox	LOA	
Charlotte Massengill	DMV	
Debbie Jones	DMV	
Stephanie Gibbs - NCBA Families Justice		
Adam Priddy	NCAST	
Cady Thomas	Fiscal Consulting	
Lou Rubert	CYPC	
Tom Mann	AOC	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.
Brian Shipwash	Clerk of Superior Court	83

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Fred Bogert	Police Chiefs Assn	
Mary Stephenson	Dept of Public Safety	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.

Senate Committee on Judiciary II
Wednesday, April 29, 2015 at 8:30 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 8:30 AM on April 29, 2015 in Room 1124/1224 of the Legislative Building. 11 members were present.

Senator Shirley B. Randleman, Chair, presided.

Pages: Sharolyn Stephens of Raleigh, Saxena Sutton of Clayton, Christian Clark of Clayton, Amanda Cone of Spring hope, Jamie Guillerzeun of Sanford.
Sgt. at Arms: Dale Huff, Giles Jeffreys.

SB 699 Protect LEO Home Address/Other Information. (Senator McKissick)
Senator Bryant moved to have the PCS: PCS S699-CSMM-10 brought up for consideration rather than discussing the original bill. The motion carried.
Senator McKissick presented the bill to the committee. There was minimal discussion on the bill. After discussion, Senator J. Davis moved for finding the original bill as unfavorable but favorable as to the PCS. The motion carried. The bill was reported out by the clerk "Unfavorable as to bill, but favorable as to committee substitute bill."

The meeting adjourned at 8:37 am.

Shirley B. Randleman
Senator Shirley B. Randleman, Chair
Presiding

Patrick Limer, Committee Clerk

Senate Committee on Judiciary II
Wednesday, April 29, 2015, 8:30 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 699	Protect LEO Home Address/Other Information.	Senator McKissick

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 699

Short Title:	Protect LEO Home Address/Other Information.	(Public)
Sponsors:	Senators McKissick (Primary Sponsor); and Cook.	
Referred to:	Rules and Operations of the Senate.	

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO PROTECT CERTAIN PERSONAL INFORMATION OF LAW ENFORCEMENT OFFICERS FROM DISCLOSURE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the North Carolina General Statutes is amended by adding a new section to read:

"**§ 132-12. Nondisclosure of personal information of sworn law enforcement officers.**

A sworn law enforcement officer may request that the officer's employer exempt from examination and inspection the officer's name, home address, social security number, medical, disability, and emergency contact information. The request must be in writing and must be renewed annually."

SECTION 2. This act becomes effective October 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 699
PROPOSED COMMITTEE SUBSTITUTE S699-CSMM-10 [v.3]
4/28/2015 6:45:52 PM

Short Title: Protect LEO Home Address/Other Information. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO PROTECT CERTAIN PERSONAL INFORMATION OF LAW ENFORCEMENT OFFICERS FROM DISCLOSURE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the North Carolina General Statutes is amended by adding a new section to read:

"**§ 132-12. Nondisclosure of personal information of locally employed sworn law enforcement officers.**

(a) A sworn law enforcement officer employed by a unit of local government may request that the officer's employer exempt from examination and inspection the officer's name, home address, social security number, medical, disability, and emergency contact information. The request must be in writing and must be renewed annually.

(b) For purposes of this section, the office of the sheriff is the employer of a sworn law enforcement officer employed by a county and the office of the chief of police is the employer for a sworn law enforcement officer employed by a municipality.

(c) Nothing in this section increases, decreases, or otherwise in any manner changes the application of G.S. 132-1.10 with regard to information contained on documents recorded or filed in the official records of the register of deeds, the Department of the Secretary of State, or of the courts."

SECTION 2. This act becomes effective October 1, 2015.

SENATE BILL 699:
Protect LEO Home Address/Other Information

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 28, 2015
Introduced by:	Sen. McKissick	**Prepared by:**	Janice Paul
Analysis of:	PCS to First Edition S699-CSMM-10		Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 669 would protect certain personal information of law enforcement officers from disclosure.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 669 would enact a new statute allowing a sworn law enforcement officer to request in writing that the officer's employer exempt from examination and inspection the officer's name, home address, Social Security number, medical, disability, and emergency contact information, and must be reviewed annually. The PCS makes the following changes to the First Edition:

1. Limits the scope of the bill to law enforcement officers employed by units of local government.
2. Makes the office of the sheriff the "employer" of a law enforcement officer employed by the county and the office of the chief of police the "employer" if the law enforcement officer is employed by a municipality.
3. Clarifies that this new law does not alter in any way the existing public record statute that deals with Social Security numbers and other personally identifying information that is contained in certain documents registered with the register of deeds or filed with a court or the Secretary of State's office.

EFFECTIVE DATE: This act becomes effective October 1, 2015.

Kory Goldsmith, Staff Attorney, substantially contributed to this summary.

O. Walker Reagan
Director

S699-SMTJ-57 CSMM-10 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Wednesday, April 29, 2015

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

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

SB **699** Protect LEO Home Address/Other Information.

Draft Number:	S699-PCS45364-MM-10
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Floyd McKissick will handle SB 699



DATE_____

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Tom Vitalione	NC Child	
Sarah Preston	ACLU-NC	
Fred Baggett	Police Chiefs	

DATE_____

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Peg Dorn	Corp of DAs	

Senate Committee on Judiciary II
Tuesday, May 5, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:05 AM on May 5, 2015 in Room 1124/1224 of the Legislative Building. 13 members were present.

Senator Tamara Barringer, Chair, presided.

SB 466 Self-Settled Trusts. (Senator Hartsell)
Senator Hartsell presented the bill to the committee, for discussion only.
Two members of the public assisted in explaining the bill: Knox Proctor and Rebecca Smitherman. Phillip Isley spoke against the bill. Chris Nickles spoke against the bill. There were questions from Senators Cook, Barringer, Lowe. The bill was held over to a later meeting date.

The meeting adjourned at 10:54 AM.

Senator Tamara Barringer, Chair
Presiding

Gloria Whitehead, Committee Clerk

Senate Committee on Judiciary II
Tuesday, May 5, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 466	Self-Settled Trusts.	Senator Hartsell

Presentations

Other Business

Adjournment

SENATE BILL 466

Short Title:	Self-Settled Trusts.	(Public)
Sponsors:	Senator Hartsell (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CREATION OF QUALIFIED SELF-SETTLED TRUSTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 36 of the General Statutes is amended by adding a new Article to read:

"Article 5A.

"Creditors' Claims; Qualified Self-Settled Trusts.

"**§ 36C-5A-1. General rule – Rights of creditor with respect to a transfer to a qualified self-settled trust.**

(a) A settlor may transfer assets to a qualified self-settled trust, as defined in G.S. 36C-5A-2, and retain in that trust a qualified interest, defined in G.S. 36C-5A-3, and notwithstanding any law to the contrary, a creditor or assignee of the creditor has only those rights with respect to a transfer to a qualified self-settled trust retaining a qualified interest as are provided in this Article.

(b) Except as otherwise provided in this Article and notwithstanding any other provision of law, including G.S. 36C-5-505(a)(2):

(1) A creditor or assignee of a settlor may not reach a qualified interest or distribution by the trustee before it is received by the settlor.

(2) A creditor or assignee of a settlor may not compel a distribution from a trust in which the settlor has a qualified interest even if the trustee has abused the trustee's discretion, but this does not limit the right of the settlor to maintain a judicial proceeding against a trustee for abuse of discretion or failure to comply with a standard of distribution.

"**§ 36C-5A-2. Definition of qualified self-settled trust.**

(a) "Qualified self-settled trust" means a trust for which all of the following apply:

(1) The trust is irrevocable.

(2) The trust is created during the settlor's lifetime.

(3) The settlor has a qualified interest, as defined in G.S. 36C-5A-3.

(4) There is at all times during the existence of the settlor's qualified interest at least one beneficiary other than the settlor to whom income or principal may be distributed.

(5) The trust has at all times at least one qualified trustee, as defined in G.S. 36C-5A-4.

(6) The trust instrument expressly incorporates the law of this State to govern the meaning and effect of the trust.

(b) A trust instrument shall not be deemed revocable on account of the inclusion of any one or more of the following rights, powers, and interests:

(1) The settlor's power to consent to a distribution from the trust.

(2) The settlor's power to consent to a trustee's investment decisions.

(3) A power of appointment exercisable by the settlor by will or other written instrument effective only upon the settlor's death, other than a power to appoint to the settlor's estate or the creditors of the settlor's estate.

(4) The settlor's qualified interest in the trust.

(5) The settlor's right to receive income or principal pursuant to an ascertainable standard.

(6) The settlor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust (each within the meaning of section 664(d) of the Internal Revenue Code) and the settlor's power at any time, and from time to time, to release, in writing delivered to the qualified trustee, all or any part of the settlor's retained interest in that trust.

(7) The settlor's receipt each year of a percentage, not to exceed five percent (5%), specified in the trust instrument of the initial value of the trust assets or their value determined from time to time pursuant to the trust instrument.

(8) The settlor's power to remove a trustee.

(9) The settlor's power to appoint a trustee.

(10) The settlor's power to appoint a power holder.

(11) The settlor's potential or actual use of real property held under a personal residence trust, within the meaning of section 2702(c) of the Internal Revenue Code.

(12) The settlor's potential or actual receipt or use of a qualified annuity interest, within the meaning of section 2702 of the Internal Revenue Code.

(13) The ability of a qualified trustee, whether pursuant to discretion or direction, to pay, after the settlor's death, all or any part of the settlor's debts outstanding at the time of the settlor's death, the expenses of administering the settlor's estate, or any estate inheritance tax imposed on or with respect to the settlor's estate.

(14) A settlor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on trust income, or the direct payment of those taxes to the applicable tax authorities, pursuant to a provision in the trust instrument that expressly provides for the direct payment of those taxes or the reimbursement of the settlor for those tax payments.

(c) The movement to this State of the administration of an existing trust which, after that movement to this State, meets for the first time all of the requirements of a qualified self-settled trust, shall be treated, for purposes of this section, as a transfer to this trust by the settlor on the date of that movement to this State of all of the assets previously transferred to the trust by the settlor.

"**§ 36C-5A-3. Definition of qualified interest.**

"Qualified interest" means a settlor's interest in a qualified self-settled trust that is a discretionary trust interest described in G.S. 36C-5-504(a)(2), to the extent that the interest entitles the settlor to receive distributions of income, principal, or both, in the discretion of a qualified trustee, as defined in G.S. 36C-5A-4. A settlor may have a qualified interest in a qualified self-settled trust and also have an interest in the same trust that is not a qualified interest, and the rules of G.S. 36C-5-505(a)(2) shall apply to each interest of the settlor in the same trust other than the settlor's qualified interest.

"**§ 36C-5A-4. Definition of qualified trustee.**

"Qualified trustee" means any person for whom all of the following apply:

(1) The person is a natural person residing within this State, or is a State or federal chartered bank or trust company authorized to engage in trust business within this State and having a place of business within this State.

(2) The person maintains or arranges for custody within this State of some or all of the property that has been transferred to the trust by the settlor, maintains records within this State for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation within this State of fiduciary income tax returns for the trust, or otherwise materially participates within this State in the administration of the trust.

(3) The person is not a "related or subordinate party," as defined in section 672(c) of the Internal Revenue Code, in relation to the settlor.

(4) The person is neither the settlor nor the settlor's spouse.

"**§ 36C-5A-5. Successor qualified trustee.**

(a) A vacancy in the position of qualified trustee shall be filled by a person who is eligible to be a qualified trustee if the trust has no remaining qualified trustee or the trust instrument requires the position to be filled even though there is a remaining qualified trustee. For purposes of this subsection, a qualified trustee shall be deemed to have resigned and a vacancy occurred if the qualified trustee ceases to meet the requirements of G.S. 36C-5A-5.

(b) A vacancy in the position of qualified trustee required to be filled under subsection (a) of this section shall be filled in the following order of priority:

(1) By a person who is eligible to be a qualified trustee and who is designated pursuant to the terms of the trust or appointed under the terms of the trust to act as successor trustee.

(2) By a person who is eligible to be a qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries.

(3) By a person who is eligible to be a qualified trustee and who is appointed by the court.

"**§ 36C-5A-6. Appointment of power holders.**

(a) The settlor may appoint one or more power holders described in G.S. 36C-8A-1, who, subject to the provisions of subsection (b) of this section, may have any one or more of the powers described in G.S. 36C-8A-2.

(b) A power holder may exercise the power to direct discretionary distributions from the trust, as more fully described in G.S. 36C-8A-2(a)(2), only if that power holder would meet the requirements to be a qualified trustee were that power holder a trustee of the trust.

(c) Notwithstanding the provisions of subsection (b) of this section, the settlor or the settlor's spouse may serve as a power holder, but his or her powers shall be limited to the following:

(1) The power to consent to a trustee's investment decisions.

(2) The power to consent to distributions from the trust.

(3) The power to appoint a successor trustee.

"**§ 36C-5A-7. Action to reach a qualified interest by avoidance of transfer to a qualified self-settled trust.**

(a) Notwithstanding any other provision of law, no action may be brought by a creditor or assignee of the settlor to reach a qualified interest by attachment of present or future distributions to or for the settlor or other means, or against the trust property by attachment or other means, unless that action is brought for avoidance of a transfer to a qualified self-settled trust pursuant to North Carolina Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes; except that:

(1) No action shall be brought by a creditor whose claim arose after a transfer to a qualified self-settled trust was made, unless that transfer was made with actual intent to hinder, delay, or defraud that creditor.

(2) The one-year limitations period provided for in G.S. 39-23.9(1) of the North Carolina Uniform Fraudulent Transfer Act permitting an action to be brought within one year after the transfer or obligation was or could have reasonably been discovered by the claimant shall not apply to a creditor whose claim arose after the transfer to a qualified self-settled trust was made.

(b) A transfer to a qualified self-settled trust shall not be deemed to have been made with intent to delay, hinder, or defraud creditors merely because that transfer is made without receiving reasonably equivalent value in exchange.

"**§ 36C-5A-8. Effect of avoidance of transfer to qualified self-settled trust.**

(a) A transfer to a qualified self-settled trust with a retained qualified interest shall be avoided only to the extent necessary to satisfy the settlor's debt to the creditor at whose instance the transfer had been avoided, together with any costs, including attorneys' fees, that the court may allow.

(b) In the event any such transfer is avoided as provided in subsection (a) of this section, then:

(1) If the court is satisfied that the trustee has not acted in bad faith in accepting or administering the property that is the subject of the transfer:

a. That trustee shall have a first and paramount lien against the qualified interest in an amount equal to the entire cost, including attorneys' fees, properly incurred by the trustee in the defense of the action or proceedings to avoid the transfer.

b. That transfer shall be avoided subject to the proper fees, costs, preexisting rights, claims, and interest of the trustee (and of any predecessor trustee that has not acted in bad faith).

c. For purposes of this subdivision, it shall be presumed that the trustee did not act in bad faith merely by accepting the property.

(2) If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the transfer shall be subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power of discretion vested in the trustee of the trust or power holder, which power of discretion was exercised prior to the creditor's commencement of an action to avoid the transfer. For purposes of this subdivision, it shall be presumed that the beneficiary, including the settlor, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

(c) A creditor shall have the burden of proving that a trustee or beneficiary acted in bad faith as required under subsection (b) of this section by clear and convincing evidence except that, in the case of a beneficiary who is also the settlor, the creditor shall have the burden of proving that the settlor acted in bad faith by a preponderance of the evidence.

"**§ 36C-5A-9. More than one transfer to the same qualified self-settled trust.**

If a settlor makes more than one transfer to the same qualified self-settled trust, the following rules shall apply:

(1) The settlor's making of a subsequent transfer shall be disregarded in determining whether a creditor's claim with respect to a prior transfer is valid under this section.

(2) With respect to each subsequent transfer by the settlor, the four-year limitations period provided for in G.S. 39-23.9 with respect to actions

brought under the North Carolina Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes, with respect to the subsequent transfer, commences on the date of that subsequent transfer.

(3) Any distribution to a beneficiary is rebuttably deemed to have been made from the latest such transfer.

"**§ 36C-5A-10. Rights of settlor with respect to qualified interest.**

(a) A transfer to a qualified self-settled trust retaining a qualified interest shall be subject to the provisions of G.S. 36C-5A-7 notwithstanding the settlor's retention of any and all of the powers described in G.S. 36C-5A-2(b) and the settlor's or settlor's spouse's service as a power holder pursuant to G.S. 36C-5A-6(c).

(b) The settlor shall have only such rights and powers as are conferred by the trust instrument and permitted under this Article. Except as permitted by G.S. 36C-5A-2(b) and G.S. 36C-5A-6(c), a settlor shall have no rights or authority with respect to trust property or income from that trust property, and any agreement or understanding purporting to grant or permit the retention of greater rights or authority shall be void.

(c) A settlor may not transfer a qualified interest.

"**§ 36C-5A-11. No claim of creditor against trustee and others.**

Notwithstanding any provision of law to the contrary:

(1) The trustee or power holder described in G.S. 36C-8A-1 shall have no liability to any creditor of the settlor for any distributions made to or for the benefit of the settlor to the extent that the settlor's interest is protected or restricted by a qualified interest.

(2) No creditor or assignee of a settlor may have any claim or cause of action against any person involved in the counseling, drafting, administration, preparation, execution, or funding of (i) the qualified self-settled trust or (ii) a limited liability company, limited partnership, or corporation, or similar entity or interest in that entity that is subsequently transferred to the qualified self-settled trust.

"**§ 36C-5A-12. Matters not defeated by this Article.**

(a) Notwithstanding the foregoing provisions of this Article, this Article shall not apply to defeat the following claims:

(1) A claim brought by a person to whom the settlor is or becomes indebted or obligated on account of an agreement, judgment, or court order for the payment of any of the following:

a. Child support.

b. Alimony, post-separation support, or other spousal support or maintenance.

c. A division or distribution of any property or debts incident to marriage, divorce, or separation.

d. Damages awarded to any person who suffers death, bodily injury, or property damage, if the death, bodily injury, or property damage is at any time determined to have been caused, in whole or in part, by the tortious act or omission on or before the date of the transfer to the qualified self-settled trust of either the settlor or another person for whom the settlor is or was vicariously liable.

(2) A claim of a personal representative to recover assets for which the trustee is liable to the surviving spouse of the settlor under the elective share provisions of Article 1A of Chapter 30 of the General Statutes.

(b) A claim referred to in subdivisions (1) and (2) of subsection (a) of this section shall be defeated only to the extent necessary to satisfy the claim, together with any costs allowed by law, including attorneys' fees, and incurred in connection with the claim."

SECTION 2. This act becomes effective January 1, 2016, and applies to transfers to trusts made on or after that date.

SENATE BILL 466: Self-Settled Trusts

2015-2016 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to Finance	**Date:**	April 20, 2015
Introduced by:	Sen. Hartsell	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 466 would shield the discretionary interest in an irrevocable trust held by a settlor as the beneficiary of the trust from claims of the settlor's creditors, under certain conditions.

CURRENT LAW: Under Article 5 of Chapter 36C of the General Statutes, a settlor's creditors cannot reach the discretionary interest in an irrevocable trust held by a beneficiary who is not the settlor, even though the settlor may benefit indirectly from the distribution (as, for example, when the beneficiary is the settlor's spouse). However, if the trust is a "self-settled trust" (one in which the settlor is a beneficiary of the trust), creditors can reach the entire amount that can be distributed to or for the benefit of the settlor as beneficiary, even though such distributions may be in the discretion of the trustee.

BILL ANALYSIS: Section 1 of the bill would enact new Article 5A in Chapter 36 of the General Statutes, which would shield from claims of the settlor's creditors the discretionary interest held by the settlor as beneficiary of a "qualified self-settled trust" meeting the following requirements:

- the trust must be irrevocable and must be created during the settlor's lifetime
- the trustee must be a "qualified trustee"[1]
- the settlor's interest in the trust must be a "qualified interest"[2]
- there must be at least one beneficiary other than the settlor to whom the income and principle may be distributed
- the trust must expressly incorporate State law to govern the trust's meaning and effect[3]

Under new Article 5A, a creditor seeking to reach a qualified interest would have to bring an action for avoidance of a transfer under the North Carolina Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes.[4] In that action, the avoidance would be limited to the amount necessary to satisfy the settlor's debt to the creditor, together with any costs, including attorney's fees, awarded by the court.[5]

New Article 5A would also:

- provide that inclusion in the trust instrument of certain rights, powers and interests would not cause the trust to be deemed a revocable trust[6]

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[1] Under new G.S. 36C-5A-4, to be a "qualified trustee," a person: 1) must be a natural person resident in this State or a State or federal chartered bank or trust company authorized to do business in the State and having a place of business within this state; 2) must meet specified custodial and record-keeping requirements; 3) must not be a "related or subordinate party" in relation to the settlor, as defined in the Internal Revenue Code; and 4) must be neither the settlor nor the settlor's spouse.
[2] Under new G.S. 36C-5A-3, a "qualified interest" is a settlor's interest in a qualified self-settled trust to the extent that the interest entitles the settlor to receive distributions of income, principal, or both, in the discretion of a qualified trustee.
[3] New G.S. 36C-5A-2(a).
[4] New G.S. 36C-5A-7.
[5] New G.S. 36C-5A-8.
[6] G.S. 36C-5A-2(b).

O. Walker Reagan
Director

S466-SMTG-46 E1 -V3

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- establish procedures for filling a vacancy in the position of qualified trustee[7]
- provide for the settlor's appointment of power holders subject to Article 8A of the North Carolina Uniform Trust Code[8]
- prescribe rules applicable to multiple transfers by a settlor to the same self-settled trust[9]
- specify the settlor's rights with respect to a qualified interest[10]
- limit the liability of a trustee or other persons involved in the preparation of the self-settled trust.[11]

New Article 5A would not apply to:

- claims by creditors whose claims against the settlor arose on account of an agreement, judgment, or court order for payment of:
  - child support
  - alimony, post-separation support, or other spousal support or maintenance
  - division or distribution of any property or debts incident to marriage, divorce, or separation
  - damages awarded for death, bodily injury or property damage caused in whole or in part by a tortious act or omission on or before the date of the transfer
- claims by a personal representative to recover assets owed by the trustee to the settlor's surviving spouse for the spouse's elective share[12]

EFFECTIVE DATE: This act becomes effective January 1, 2016, and applies to transfers to trusts made on or after that date.

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[7] New G.S. 36C-5A-5.
[8] New G.S. 36C-5A-6.
[9] New G.S. 36C-5A-9.
[10] New G.S. 36C-5A-10.
[11] New G.S. 36C-5A-11.
[12] New G.S. 36C-5A-12.

S466: SUMMARY OF PROPOSED ARTICLE 5A OF UNIFORM TRUST CODE

1. Who would Benefit:

- North Carolina residents in high-risk businesses or occupations seeking asset protection alternatives within North Carolina;
- North Carolina financial institutions which can offer or advise about asset protection and now are at a competitive disadvantage.

Note: Many states, including Virginia and Tennessee, offer various alternatives similar to what is proposed. These are available to North Carolinians if they go to institutions in other states and move the trust accounts to those states. Some states offer more aggressive protection than this bill proposes. But these reasonable protections would be suitable to most North Carolinians in high-risk businesses, e.g., day-care centers, shooting ranges, construction, or small farming operations targeted by environmental groups.

2. Current law: A person who creates a trust (the "settlor") may transfer assets to that trust to benefit other people free of the claims of creditors, **provided** the settlor is not defrauding known creditors. **BUT** creditors can reach any interest the settlor has in the trust.

3. What Article 5A would Do: Article 5A would allow the settlor to have an interest in the trust that would be protected from creditors, again **provided** the settlor is not defrauding known creditors, if the trust:

- Has at least one other beneficiary to whom the income and principal may be distributed;
- Has at least one "qualified" trustee, meaning a bank or trust company or an individual who is ***independent*** of the settlor; and
- Is an irrevocable trust in which the settlor has an interest in the ***discretion*** of the independent trustee.

Note: People will not put all their assets in trusts over which they have no control.

4. You Can't Defraud Your Creditors. North Carolina has a robust statute protecting against transfers in fraud of creditors. That statute applies to self-settled trusts with certain limitations for claims that arose after the transfer to the trust.

Note: When a court does rule assets in the trust are recoverable by a creditor, the independent trustee will turn them over more readily than the defendant against which the judge ruled.

5. Certain Creditors Still Protected: Article 5A will not bar claims against the settlor's interest in the trust for:

- Child support;
- Alimony or other spousal support;
- Property division incident to marriage, divorce or separation;
- Spouse's elective share claims; or
- Damages resulting from death, bodily injury or property damage from torts occurring on or before the transfer of assets to the trust.

VISITOR REGISTRATION SHEET

Senate Judiciary II
(Committee Name)

5/5/15
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Andy Walsh	SA
Nathan Batts	NCBA
Jamison Dell	NCBA
Isabel Villa-Garcia	NCAR
Amanda Tornabene	TSS
Brian Merwald	WM
Erin Fleck	Senate Staff
[illegible]	[illegible]
[illegible]	[illegible]
Will Parry-Hill	NCHFA
Lauren Coffey	Gov office
Mike Carpenter	NCAJA
Steven Webb	NCABA

VISITOR REGISTRATION SHEET

Senate Judiciary II
(Committee Name)

May 5, 2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Rebecca Smitherman	Craige Brawley
Knox Proctor	Ward and Smith, PA
Austin Pruitt	Perkinson Law
David Holm	Cheshire Parker
Katherine Fisher	Battle, Winslow
Chris Nichols	Nichols Law Firm
Todd Barlow	NC Advocates for Justice

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II **ROOM:** 1124

DATE: 5-5-15 **TIME:** 10 AM

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Page Name	Hometown	Sponsoring Senator
1. Roshawn Livingston	Raleigh	Van Duyn
2. Donovan Whitehead	Rocky Mount	Bryant
3. William Jones	Salisbury	McInnis
4. Matthew Jones	Salisbury	McInnis
5. Marika Samuelsson	Selma	Newton
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 Name	MEMBER	ROOM No.	PHONE No.
SENATE JUDICIARY II	Co-Chair Tamara Barringer	620	733-5653
SENATE JUDICIARY II	Co-Chair Warren Daniel	623	715-7823
SENATE JUDICIARY II	Co-Chair Shirley B. Randleman	628	733-5743
SENATE JUDICIARY II	Sen. John M. Alexander, Jr	2115	733-5850
SENATE JUDICIARY II	Sen. Chad Barefoot	308	715-3036
SENATE JUDICIARY II	Sen. Stan Bingham	625	733-5665
SENATE JUDICIARY II	Sen. Angela R. Bryant	516	733-5878
SENATE JUDICIARY II	Sen. Bill Cook	525	715-8293
SENATE JUDICIARY II	Sen. David L. Curtis	410	715-3038
SENATE JUDICIARY II	Sen. Jim Davis	408	733-5875
SENATE JUDICIARY II	Sen. Jeff Jackson	1104	715-8331
SENATE JUDICIARY II	Sen. Joyce Krawiec	2117	733-7850
SENATE JUDICIARY II	Sen. Paul A. Lowe, Jr	1121	733-5620
SENATE JUDICIARY II	Sen. Tom McInnis	2106	733-5953
SENATE JUDICIARY II	Sen. Erica Smith-Ingram	1118	715-3040
SENATE JUDICIARY II	Sen. Terry Van Duyn	1025	715-3001
SENATE JUDICIARY II	Sen. Andy Wells	2113	733-5876
SENATE JUDICIARY II	Sen. Mike Woodard	518	733-4809
SENATE JUDICIARY II	Research Bill Patterson	545	733-2578
SENATE JUDICIARY II	Research Janice Paul	545	733-2578
SENATE JUDICIARY II	Committee Clerk Andy Perrigo	623	715-7823
SENATE JUDICIARY II	Committee Clerk Gloria Whitehead	620	733-5653
SENATE JUDICIARY II	Committee Clerk Patrick Limer	628	733-5743

North Carolina General Assembly
Through Senate Committee on
Judiciary II

2015-2016 Biennium
Leg. Day: H-135/S-137

Date: 10/29/2015
Time: 5:16:30 PM

Bill	Introducer	Short Title		Latest Action	Date In	Date Out
H 7	Speciale	Amend Firearm Restoration Law.	*S	Re-ref Com On Judiciary II	04/06/2015	
H 39	Davis	Labor/Up Amusement Device Penalties.	*R	Ch. SL 2015-152	06/01/2015	06/30/2015
H 79	Glazier	Contempt for 50C/Scope of Stay for Appeals.	*R	Ch. SL 2015-25	05/05/2015	05/12/2015
H 82	Stevens	Execution/Nonsecure Custody Order/Child Abuse.	*R	Ch. SL 2015-43	05/05/2015	05/12/2015
H 100	Cleveland	Record of Excusals from Jury Duty.	*S	Re-ref Com On Redistricting	05/12/2015	06/04/2015
H 134	Glazier	Soliciting Prostitution/Immunity for Minors.	*R	Ch. SL 2015-183	07/20/2015	07/23/2015
H 173	Stam	Omnibus Criminal Law Bill.	*R	Ch. SL 2015-247	07/13/2015	07/23/2015
H 174	Bradford	Landlord/Tenant-Foreclosure & Evict. Changes.	*R	Ch. SL 2015-178	07/13/2015	07/23/2015
H 273	Jackson	Clarify Cond. Discharge Law/No DWI Expunge.	*R	Ch. SL 2015-150	05/22/2015	06/29/2015
H 293	Stevens	Adoption Law Changes.	*R	Ch. SL 2015-54	03/31/2015	05/12/2015
H 297	Burr	End Marketing/Sale Unborn Children Body Parts.	*R	Ch. SL 2015-265	04/06/2015	09/22/2015
H 303	Horn	Dispute Resolution Amendments.	*S	Re-ref Com On Appropriations/Base Budget	05/14/2015	05/19/2015
H 308	Zachary	Clarify Reasonable Health Insur/LTC Ombudsman.	*R	Ch. SL 2015-220	05/07/2015	05/21/2015
H 315	Stevens	Sheriff & Landlord/Tenant-Writs of Poss. Chg.	*R	Ch. SL 2015-55	05/12/2015	05/21/2015
H 341	Jackson	Controlled Substances/NBOMe & Other Drugs.	R	Ch. SL 2015-162	06/24/2015	07/14/2015

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North Carolina General Assembly
Through Senate Committee on
Judiciary II

H 352	Torbett	Standard of Proof/Public Safety Dispatchers.	*R	Ch. SL 2015-71	05/12/2015	06/02/2015
H 355	Reives	Evidence Passed Vehicle is a School Bus.	*S	Re-ref Com On Rules and Operations of the Senate	05/07/2015	05/21/2015
H 357	Stam	Toxicology Reports/District Court.	*S	Ref To Com On Judiciary II	04/16/2015	
H 376	Jordan	Civ Pro/Modernize Expert Discovery.	*R	Ch. SL 2015-153	06/04/2015	06/30/2015
H 383	Glazier	Clarify Statutory Scheme/Sex Offenses.	*R	Ch. SL 2015-181	06/24/2015	07/16/2015
H 397	Glazier	Clarify Protections/Exploitation of Elders.	*R	Ch. SL 2015-182	06/24/2015	07/21/2015
H 446	Jordan	Amend Statutes Governing Bail Bondsmen.	*R	Ch. SL 2015-180	07/16/2015	07/23/2015
H 465	Schaffer	Women and Children's Protection Act of 2015.	*R	Ch. SL 2015-62	04/27/2015	05/27/2015
H 477	Malone	LEO Privacy Protection.	*S	Re-ref Com On Judiciary II	07/13/2015	
H 479	Pittman	Auto Salvage Dealer Protection Act.	S	Re-ref to Judiciary II. If fav, re-ref to Commerce	05/22/2015	
H 513	Bryan	Real Property/Technical Corrections.	*R	Ch. SL 2015-56	05/11/2015	05/19/2015
H 529	Baskerville	NC Drivers License Restoration Act.	*R	Ch. SL 2015-186	05/22/2015	07/21/2015
H 532	McGrady	WC/Truck Driver Status.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	07/22/2015	07/23/2015
H 561	Blackwell	School System Auth. Re: Legal Proceedings.	*H	Conferees Changed	06/04/2015	06/25/2015
H 562	Schaffer	Amend Firearm Laws.	*R	Ch. SL 2015-195	07/22/2015	07/23/2015
H 584	Glazier	Use of Position/Letters of Reference.	*R	Ch. SL 2015-208	07/13/2015	07/23/2015
H 595	Whitmire	Military Experience/LEO Cert. Requirements.	*R	Ch. SL 2015-49	05/05/2015	05/14/2015
H 597	Bishop	Mediated Settlement Agreements.	*R	Ch. SL 2015-57	05/05/2015	05/07/2015
H 607	Meyer	Allow Protected Consumer Security Freezes.	*R	Ch. SL 2015-193	07/13/2015	07/23/2015

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North Carolina General Assembly
Through Senate Committee on
Judiciary II

H 615	McNeill	Probation Violation Court Costs.	*S	Ref to Judiciary II. If fav, re-ref to Finance	06/10/2015	
H 659	Horn	Controlled Substances/Update Precursor List.	*R	Ch. SL 2015-32	05/11/2015	05/14/2015
H 669	Stevens	Juvenile Law Changes/Abuse/Neglect/Dependency.	*R	Ch. SL 2015-136	06/04/2015	06/29/2015
H 691	Whitmire	Assault on National Guard Member.	*R	Ch. SL 2015-74	04/30/2015	05/21/2015
H 721	Bryan	Subdivision Ordinance/Land Develop. Changes.	*R	Ch. SL 2015-187	05/22/2015	07/16/2015
H 774	Daughtry	Restoring Proper Justice Act.	*R	Ch. SL 2015-198	04/30/2015	07/23/2015
H 814	Riddell	The William C. Lindley, Jr. SUDEP Law.	*R	Ch. SL 2015-211	06/30/2015	07/16/2015
H 847	Jordan	Parental Rights and Med. Treatment of Minors.	*S	Re-ref Com On Judiciary II	07/16/2015	
H 870	Jordan	Cert. of Title/Manuf. Home Changes.	*S	Re-ref Com On Judiciary II	06/01/2015	
H 879	Jordan	Juvenile Code Reform.	*R	Ch. SL 2015-58	05/05/2015	05/07/2015
S 2	Berger	Magistrates Recusal for Civil Ceremonies.	*R	Ch. SL 2015-75	02/18/2015	02/24/2015
S 29	Curtis	DOB Redaction Requests For Public Documents.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	02/09/2015	03/23/2015
S 53	Krawiec	Cities/Overgrown Vegetation Notice.	H	Ref to the Com on Local Government, if favorable, Regulatory Reform	02/11/2015	03/10/2015
S 60	Bingham	No-Contact Order/No Expiration.	*R	Ch. SL 2015-91	02/11/2015	03/09/2015
S 71	Lee	Stagger RRC Member Terms.	H	Ref To Com On Rules, Calendar, and Operations of the House	02/16/2015	03/24/2015
S 75	Jackson	Labor/Up Amusement Device Penalties.	*S	Re-ref Com On Agriculture/Environment/Natural Resources	02/16/2015	04/16/2015
S 82	Bingham	Vital Records Integrity Act.	*R	Ch. SL 2015-197	02/16/2015	03/09/2015
S 83	Bingham	Criminal Law/Filing False Document.	*R	Ch. SL 2015-87	02/16/2015	04/23/2015
S 123	Hartsell	Uniform Fraudulent Transfer Act.	*R	Ch. SL 2015-23	03/02/2015	03/17/2015

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North Carolina General Assembly
Through Senate Committee on
Judiciary II

S 124	Hartsell	Modernize Assumed Business Name Statutes.	*H	Ref to the Com on Judiciary II, if favorable, Rules, Calendar, and Operations of the House	03/09/2015	03/17/2015
S 154	Bingham	Clarifying the Good Samaritan Law.	*R	Ch. SL 2015-94	03/09/2015	04/02/2015
S 182	McKissick	Automatic License Plate Readers.	*R	Ch. SL 2015-190	04/15/2015	04/23/2015
S 198	Robinson	Persons Under 18 in Confinement Facilities.	*S	Re-ref Com On Appropriations/Base Budget	03/18/2015	04/21/2015
S 199	Randleman	Funds Deposited with Clerk of Court.	*R	Ch. SL 2015-216	03/18/2015	03/24/2015
S 205	Jackson	WC/Truck Drivers' Status.	S	Re-ref Com On Judiciary II	03/16/2015	
S 238	Stein	Stalking by GPS/Criminal Offense.	*R	Ch. SL 2015-282	03/23/2015	04/15/2015
S 288	Cook	Amend Laws Regarding Mental Commitment Bars.	*H	Ref to the Com on Rules, Calendar, and Operations of the House, if favorable, Judiciary I	03/23/2015	04/23/2015
S 298	Alexander	School Bus Cameras/Civil Penalties.	*H	Re-ref Com On Appropriations	04/01/2015	04/21/2015
S 310	Daniel	Domestic Violence/Bail & Aggravating Factor.	S	Re-ref Com On Judiciary I	03/23/2015	03/24/2015
S 311	Bingham	Register of Deeds/Filing False Marriage Docs.	R	Ch. SL 2015-53	03/24/2015	04/02/2015
S 331	Daniel	Juvenile Code Reform.	S	Re-ref Com On Judiciary II	04/15/2015	
S 332	Daniel	Register of Deeds-POA Indexing Fees.	*R	Ch. SL 2015-227	03/26/2015	04/06/2015
S 343	Tillman	Student Assault on Teacher/Felony Offense.	*H	Re-ref to the Com on Children, Youth, and Families, if favorable, Judiciary III	04/15/2015	04/28/2015
S 345	Meredith	Limit Storage Duration for Damaged Vehicle.	*R	Ch. SL 2015-188	04/15/2015	04/21/2015
S 351	Stein	Collect DNA All Violent Felony Arrests.	S	Re-ref Com On Appropriations/Base Budget	03/23/2015	05/07/2015
S 356	Rabin	Electronic Ads/Property Seized by Police.	S	Re-ref Com On Judiciary II	03/25/2015	
S 362	Hartsell	Amend Certain Expunction Laws.	S	Re-ref Com On Judiciary II	03/26/2015	

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S 610	Smith-Ingram	Healthy Pregnancies/Prisoners and Detainees.	S	Re-ref Com On Health Care	04/22/2015	04/28/2015
$ S 611	**Smith-Ingram**	**The I WILL Act.**	**S**	**Re-ref to Judiciary II. If fav, re-ref to Appropriations/Base Budget**	**04/22/2015**	
S 614	McKissick	Expand Grandparent Visitation Rights.	S	Re-ref to Judiciary II. If fav, re-ref to Health Care	04/15/2015	
S 661	Newton	Private Labs Must Comply with CODIS.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	04/09/2015	04/16/2015
S 671	Apodaca	DL Restoration/DWI Treatment Court.	*H	Re-ref Com On Finance	04/09/2015	07/21/2015
S 678	Gunn	Amend Debt Collection Statutes.	*R	Ch. SL 2015-177	04/09/2015	04/28/2015
$ S 685	**Lee**	**IDS Efficiency Act.**	**S**	**Re-ref to Judiciary II. If fav, re-ref to Appropriations/Base Budget**	**04/20/2015**	
S 699	McKissick	Protect LEO Home Address/Other Information.	*R	Ch. SL 2015-225	04/23/2015	04/29/2015
S 709	Hartsell	Dispute Resolution Amendments.	S	Re-ref to Judiciary II. If fav, re-ref to Appropriations/Base Budget	04/15/2015	

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North Carolina General Assembly
Through Senate Committee on
Judiciary II

S 378	Bingham	Increase Punishment/Misd. Death by Vehicle.	*H	Conf Com Appointed	03/26/2015	04/28/2015
S 386	Curtis	Registers of Deeds/UCC Recording Fees.	*R	Ch. SL 2015-206	03/26/2015	04/14/2015
S 386	Curtis	Registers of Deeds/UCC Recording Fees.	*R	Ch. SL 2015-206	04/15/2015	04/15/2015
S 418	Jackson	Amend Statutory Rape/15 Yrs. Old or Younger.	S	Re-ref Com On Judiciary II	03/30/2015	
S 419	Hise	Limit Revolving Door Employment.	H	Ref to the Com on State Personnel, if favorable, Judiciary I	04/16/2015	04/23/2015
S 445	Krawiec	Burt's Law.	*R	Ch. SL 2015-36	04/06/2015	04/16/2015
S 462	Hartsell	Public Authorities/Nonprofit Corporations.	*R	Ch. SL 2015-122	03/30/2015	04/14/2015
S 466	Hartsell	Self-Settled Trusts.	S	Re-ref to Judiciary II. If fav, re-ref to Finance	03/30/2015	
S 467	Hartsell	WC/Nonprofit Corp. Volunteers & Officers.	S	Re-ref Com On Judiciary II	03/30/2015	
S 468	Hartsell	Trust Taxable Income Clarification.	*S	Re-ref Com On Finance	03/30/2015	04/16/2015
S 471	Hartsell	Modernize Collection Agency Laws.	S	Re-ref to Judiciary II. If fav, re-ref to Insurance	03/30/2015	
S 488	Pate	Amend Uniform Interstate Family Support Act.-AB	*R	Ch. SL 2015-117	03/30/2015	04/06/2015
S 489	Pate	DHHS Child Support Recommendations.-AB	S	Re-ref Com On Judiciary II	03/30/2015	
S 503	Jackson	Sex Offense With Student/Charter Schools.	H	Re-ref Com On Judiciary III	04/09/2015	04/28/2015
S 516	Tucker	LEO Privacy Protection.	S	Re-ref Com On Judiciary II	03/30/2015	
S 519	Jackson	Amend Child Custody Laws.	*R	Ch. SL 2015-278	03/30/2015	04/28/2015
S 570	Bryant	Expunction/Boat Violation.	*H	Re-ref Com On Finance	04/06/2015	04/21/2015
S 570	Bryant	Expunction/Boat Violation.	*H	Re-ref Com On Finance	04/23/2015	04/28/2015
S 578	Barringer	Transition Certain Abuse Investigations/DCDEE.	*R	Ch. SL 2015-123	04/22/2015	04/23/2015

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Senate Committee on Judiciary II
Thursday, May 7, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:00 AM on May 7, 2015 in Room 1124/1224 of the Legislative Building. 15 members were present. Attending Sergeants-at-Arms: Ed Kesler; Jim Hamilton; and, Steve Wilson. Attending pages, Matthew Jones of Salisbury (Sen. McInnis); Shion Whitaker of Cary (Sen. Stein); marika Samuelsson of Selma (Newton); and Rashawn Livingston of Raleigh (Sen. Van Duyn).

Senator Warren Daniel, Chair, presided the majority of the meeting with Sen. Randleman taking over the chair.

HB 879 Juvenile Code Reform. (Representatives Jordan, Glazier, McGrady, Avila) Sen. J. Jackson presented the bill. There was no committee discussion or public discussion. Sen. Bryant motioned for a favorable report. The motion carried and the bill was reported to the Senate Principal Clerk (SPC) as Favorable. No referrals. Sen. Daniel agreed to handle the bill on the Senate floor.

SB 351 Collect DNA All Violent Felony Arrests. (Senators Stein, Barringer, Bingham) Sen. Stein presented the bill. He then asked John Byrd of the State Crime Lab and Eddie Caldwell of the NC Sheriff's Association to talk about the bill- both support the bill. After a brief committee discussion, Sen. Bingham motioned for a favorable report. The motion carried and the bill was reported to the SPC as Favorable, with a Recommended Referral to Appropriations Base Budget.

HB 595 Military Experience/LEO Cert. Requirements. (Representatives Whitmire, McNeill, Cleveland, G. Martin) Was pulled from the agenda

HB 597 Mediated Settlement Agreements. (Representatives Bishop, Stam, Glazier, L. Hall) Rep. Stam presented this bill. He announced that the State Bar is in agreement with the bill. Sen. Cook motioned to give the bill the bill a favorable report. The motioned carried and the bill was reported to the SPC

The meeting adjourned at 10:23.

Senator Warren Daniel, Chair

Andy Perrigo, Committee Clerk

Senate Committee on Judiciary II
Thursday, May 7, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 879	Juvenile Code Reform.	Representative Jordan Representative Glazier Representative McGrady Representative Avila
SB 351	Collect DNA All Violent Felony Arrests.	Senator Stein Senator Barringer Senator Bingham
HB 595	Military Experience/LEO Cert. Requirements.	Representative Whitmire Representative McNeill Representative Cleveland Representative G. Martin
HB 597	Mediated Settlement Agreements.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

HOUSE BILL 879
Committee Substitute Favorable 4/22/15

Short Title: Juvenile Code Reform. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE JUVENILE CODE IN REGARD TO DUE PROCESS PROTECTIONS, REENTRY OF JUVENILES IN THE DELINQUENCY SYSTEM, AND CONFINEMENT OF JUVENILES.

The General Assembly of North Carolina enacts:

PART I. DUE PROCESS CHANGES

SECTION 1.1. G.S. 7B-2101(b) reads as rewritten:

"(b) When the juvenile is less than ~~14~~ 16 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile."

SECTION 1.2. G.S. 7B-2202(f) reads as rewritten:

"(f) If the court does not find probable cause for a felony offense, the court shall:

(1) Dismiss the proceeding, or

(2) If the court finds probable cause to believe that the juvenile committed a lesser included offense that would constitute a misdemeanor if committed by an adult, either proceed to an adjudicatory hearing or set a date for that hearing. The adjudicatory hearing shall be a separate hearing. The court may continue the adjudicatory hearing for good cause."

SECTION 1.3. G.S. 7B-2203(d) reads as rewritten:

"(d) If the court does not transfer the case to superior court, the court shall either proceed to an adjudicatory hearing or set a date for that hearing. The adjudicatory hearing shall be a separate hearing. The court may continue the adjudicatory hearing for good cause."

SECTION 1.4. Article 24 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-2408.5. Motion to suppress evidence in adjudicatory hearings; procedure; appeal.**

(a) A motion to suppress evidence in court made before the adjudicatory hearing must be in writing and a copy of the motion must be served upon the State. The motion must state the grounds upon which it is made. The motion must be accompanied by an affidavit containing facts supporting the motion. The affidavit may be based upon personal knowledge, or upon information and belief, if the source of the information and the basis for the belief are stated. The State may file an answer denying or admitting any of the allegations. A copy of the answer

must be served on the juvenile's counsel or the juvenile's parent, guardian, or custodian, if the juvenile has no counsel.

(b) The judge must summarily grant the motion to suppress evidence if:

(1) The motion complies with the requirements of subsection (a) of this section, it states grounds which require exclusion of the evidence, and the State concedes the truth of allegations of fact which support the motion; or

(2) The State stipulates that the evidence sought to be suppressed will not be offered in evidence in any juvenile proceeding.

(c) The judge may summarily deny the motion to suppress evidence if:

(1) The motion does not allege a legal basis for the motion; or

(2) The affidavit does not as a matter of law support the ground alleged.

(d) If the motion is not determined summarily, the judge must make the determination after a hearing and finding of facts. Testimony at the hearing must be under oath.

(e) A motion to suppress made during the adjudicatory hearing may be made in writing or orally and may be determined in the same manner as when made before the adjudicatory hearing.

(f) The judge must set forth in the record his or her findings of facts and conclusions of law.

(g) An order finally denying a motion to suppress evidence may be reviewed upon an appeal of a final order of the court in a juvenile matter.

(h) The provisions of G.S. 15A-974 shall apply to this section."

PART II. REDUCE FURTHER ENTRY OF JUVENILES

SECTION 2.1. G.S. 7B-1701 reads as rewritten:

"**§ 7B-1701. Preliminary inquiry.**

When a complaint is received, the juvenile court counselor shall make a preliminary determination as to whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. If the juvenile court counselor finds that the facts contained in the complaint do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged are frivolous, the juvenile court counselor, without further inquiry, shall refuse authorization to file the complaint as a petition.

If a complaint against the juvenile has not been previously received, as determined by the juvenile court counselor, the juvenile court counselor shall make reasonable efforts to meet with the juvenile and the juvenile's parent, guardian, or custodian if the offense is divertable.

When requested by the juvenile court counselor, the prosecutor shall assist in determining the sufficiency of evidence as it affects the quantum of proof and the elements of offenses.

The juvenile court counselor, without further inquiry, shall authorize the complaint to be filed as a petition if the juvenile court counselor finds reasonable grounds to believe that the juvenile has committed one of the following nondivertible offenses:

(1) Murder;

(2) First-degree rape or second degree rape;

(3) First-degree sexual offense or second degree sexual offense;

(4) Arson;

(5) Any violation of Article 5, Chapter 90 of the General Statutes that would constitute a felony if committed by an adult;

(6) First degree burglary;

(7) Crime against nature; or

(8) Any felony which involves the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon."

SECTION 2.2. G.S. 7B-2404 reads as rewritten:

"**§ 7B-2404. Participation of the ~~prosecutor.~~prosecutor; voluntary dismissal.**

(a) A prosecutor shall represent the State in contested delinquency hearings including first appearance, detention, probable cause, transfer, adjudicatory, dispositional, probation revocation, post-release supervision, and extended jurisdiction hearings.

(b) A prosecutor may dismiss any allegations stated in a juvenile petition with or without leave by entering an oral dismissal in open court at any time or by filing a written dismissal with the clerk. The juvenile, the juvenile's parent, guardian, or custodian, and the juvenile's counsel shall be notified of the dismissal by the prosecutor either in open court or by being served with the written dismissal. In addition, the written dismissal shall be served on (i) the chief court counselor or his or her designee and (ii) if the juvenile is being held in a detention center, the director of the detention center. If the prosecutor dismisses the petition with leave because of the failure of the juvenile to appear in court, the prosecutor may refile the petition if the juvenile is apprehended or apprehension is imminent."

SECTION 2.3. G.S. 7B-2507(a) reads as rewritten:

"(a) Generally. – The delinquency history level for a delinquent juvenile is determined by calculating the sum of the points assigned to each of the juvenile's prior adjudications and to the juvenile's probation status, if any, that the court finds to have been proved in accordance with this section. For the purposes of this section, a prior adjudication is an adjudication of an offense that occurs before the adjudication of the offense before the court."

SECTION 2.4. G.S. 7B-2510 reads as rewritten:

"**§ 7B-2510. Conditions of probation; violation of probation.**

...

(c) An order of probation shall remain in force for a period not to exceed one year from the date entered. Prior to expiration of an order of probation, the court may extend it for an additional period of one year after notice and a hearing, if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the juvenile. At the discretion of the court, the hearing to determine to extend probation may occur after the expiration of an order of probation at the next regularly scheduled court date or if the juvenile fails to appear in court.

(d) On motion of the juvenile court counselor or the juvenile, or on the court's own motion, the court may review the progress of any juvenile on probation at any time during the period of probation or at the end of probation. The conditions or duration of probation may be modified only as provided in this Subchapter and only after notice and a hearing.

(e) If the court, after notice and a hearing, finds by the greater weight of the evidence that the juvenile has violated the conditions of probation set by the court, the court may continue the original conditions of probation, modify the conditions of probation, or, except as provided in subsection (f) of this section, order a new ~~disposition at the next higher level on the disposition chart in G.S. 7B-2508.~~ disposition. In the court's discretion, ~~part of the new disposition may include an~~ the court may order a new disposition at the next higher level on the disposition chart or order a term of confinement in a secure juvenile detention facility for up to twice the term authorized by ~~G.S. 7B-2508.~~G.S. 7B-2508, in addition to any other Level 2 dispositional option.

(f) A court shall not order a Level 3 disposition for violation of the conditions of probation by a juvenile adjudicated delinquent for an offense classified as minor under G.S. 7B-2508."

SECTION 2.5. G.S. 7B-2512 reads as rewritten:

"**§ 7B-2512. Dispositional order.**

(a) The dispositional order shall be in writing 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.

(b) The court shall include information at the time of issuing the dispositional order, either orally in court or in writing, on the expunction of juvenile records as provided for in G.S. 7B-3200 that are applicable to the dispositional order."

SECTION 2.6. G.S. 7B-3200 reads as rewritten:

"**§ 7B-3200. Expunction of records of juveniles alleged or adjudicated delinquent and undisciplined.**

(a) Any person who has attained the age of 18 years may file a petition in the court where the person was adjudicated undisciplined for expunction of all records of that adjudication.

(b) Any person who has attained the age of 18 years may file a petition in the court where the person was adjudicated delinquent for expunction of all records of that adjudication provided:

(1) ~~The~~ Unless otherwise expunged pursuant to subsection (e1) of this section, the offense for which the person was adjudicated would have been a crime other than a Class A, B1, B2, C, D, or E felony if committed by an adult.

(2) At least 18 months have elapsed since the person was released from juvenile court jurisdiction, and the person has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

Records relating to an adjudication for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult shall not be expunged.

...

(e1) Any person who was adjudicated delinquent for a minor offense as defined in G.S. 7B-2508 and has attained the age of 16 years may file a petition in the court in which the person was adjudicated to be delinquent for expunction of all juvenile records related to the minor offense for which the juvenile was adjudicated delinquent. Prior to the filing of a petition under this subsection, at least 18 months must have elapsed since the person was released from juvenile court jurisdiction and the person must not have subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state. The petition shall also satisfy the conditions set forth in subdivisions (1) through (3) of subsection (c) of this section. The petition shall be served on the chief court counselor in the district where the juvenile petition was filed. The chief court counselor shall have 10 days thereafter in which to file a written objection in the court. If no objection is filed, the court may grant the petition without a hearing. If an objection is filed or the court so directs, a hearing shall be scheduled and the chief court counselor shall be notified as to the date of the hearing. If the court finds that the petitioner satisfies the conditions specified herein, the court shall order the clerk and the appropriate law enforcement agencies to expunge their records related to the minor offense for which the juvenile was adjudicated delinquent, including all references to arrests, complaints, referrals, juvenile petitions, and orders. The clerk shall forward a certified copy of the order of expunction to the sheriff, chief of police, or other appropriate law enforcement agency.

...."

PART III. JUVENILE CONFINEMENT

SECTION 3.1. G.S. 7B-1903 reads as rewritten:

"**§ 7B-1903. Criteria for secure or nonsecure custody.**

(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, guardian, custodian, or other responsible adult. An order

for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and that:

(1) The juvenile is a runaway and consents to nonsecure custody; or

(2) The juvenile meets one or more of the criteria for secure custody, but the court finds it in the best interests of the juvenile that the juvenile be placed in a nonsecure placement.

(b) When a request is made for secure custody, the court may order secure custody only where the court finds there is a reasonable factual basis to believe that the juvenile committed the offense as alleged in the petition, and that one of the following circumstances exists:

(1) The juvenile is charged with a felony and has demonstrated that the juvenile is a danger to property or persons.

(2) The juvenile has demonstrated that the juvenile is a danger to persons and is charged with either (i) a misdemeanor at least one element of which is assault on a person or (ii) a misdemeanor in which the juvenile used, threatened to use, or displayed a firearm or other deadly weapon.

(2a) The juvenile has demonstrated that the juvenile is a danger to persons and is charged with a violation of G.S. 20-138.1 or G.S. 20-138.3.

(3) The juvenile has willfully failed to appear on a pending delinquency charge or on charges of violation of probation or post-release supervision, providing the juvenile was properly notified.

(4) A delinquency charge is pending against the juvenile, and there is reasonable cause to believe the juvenile will not appear in court.

(5) The juvenile is an absconder from (i) any residential facility operated by the Division or any detention facility in this State or (ii) any comparable facility in another state.

(6) There is reasonable cause to believe the juvenile should be detained for the juvenile's own protection because the juvenile has recently suffered or attempted self-inflicted physical injury. In such case, the juvenile must have been refused admission by one appropriate hospital, and the period of secure custody is limited to 24 hours to determine the need for inpatient hospitalization. If the juvenile is placed in secure custody, the juvenile shall receive continuous supervision and a physician shall be notified immediately.

(7) The juvenile is alleged to be undisciplined by virtue of the juvenile's being a runaway and is inappropriate for nonsecure custody placement or refuses nonsecure custody, and the court finds that the juvenile needs secure custody for up to 24 hours, excluding Saturdays, Sundays, and State holidays, to evaluate the juvenile's need for medical or psychiatric treatment or to facilitate reunion with the juvenile's parents, guardian, or custodian.

(8) The juvenile is alleged to be undisciplined and has willfully failed to appear in court after proper notice; the juvenile shall be brought to court as soon as possible and in no event should be held more than 24 hours, excluding Saturdays, Sundays, and State holidays.

(c) When a juvenile has been adjudicated delinquent, the court may order secure custody pending the dispositional hearing or pending placement of the juvenile pursuant to G.S. 7B-2506. As long as the juvenile remains in secure custody, further hearings to determine the need for continued secure custody shall be held at intervals of no more than 10 calendar days but may be waived for no more than 30 calendar days only with the consent of the juvenile, through counsel for the juvenile, either orally in open court or in writing. The order for continued secure custody shall be in writing with appropriate findings of fact.

(d) The court may order secure custody for a juvenile who is alleged to have violated the conditions of the juvenile's probation or post-release supervision, but only if the juvenile is alleged to have committed acts that damage property or injure persons.

(e) If the criteria for secure custody as set out in subsection (b), (c), or (d) of this section are met, the court may enter an order directing an officer or other authorized person to assume custody of the juvenile and to take the juvenile to the place designated in the order.

(f) If the court finds that there is a need for an evaluation of a juvenile for medical or psychiatric treatment pursuant to subsection (b) of this section and that juvenile is under 10 years of age and does not have a pending delinquency charge, the law enforcement officer or other authorized person assuming custody of the juvenile shall not use physical restraints during the transport of the juvenile to the place designated in the order, unless in the discretion of the officer or other authorized person, the restraints are reasonably necessary for the safety of the officer, authorized person, or the juvenile."

SECTION 3.2. G.S. 7B-2506 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:

...

(12) Impose confinement on an intermittent basis in an approved detention facility. Confinement shall be limited to not more than five 24-hour periods, the timing and imposition of which is determined by the court in its discretion.

...

(20) Order that the juvenile be confined in an approved juvenile detention facility for a term of up to 14 24-hour periods, which confinement shall not be imposed consecutively with intermittent confinement pursuant to subdivision (12) of this section at the same dispositional hearing. The timing and imposition of this confinement shall be determined by the court in its discretion.

...."

PART IV. EFFECTIVE DATE

SECTION 4. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

HOUSE BILL 879: Juvenile Code Reform

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 5, 2015
Introduced by:	Reps. Jordan, Glazier, McGrady, Avila	**Prepared by:**	Bill Patterson* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 879 would make various changes to the juvenile code in regard to due process protections, reentry of juveniles in the delinquency system, and confinement of juveniles.

BILL ANALYSIS:

Part I. Due Process

Section 1.1 would increase the age requirement for a juvenile's parent to be present during interrogation from 14 to 16 years old.

Sections 1.2 & 1.3 would clarify that an adjudicatory hearing is a separate hearing from a probable cause or transfer hearing and may be continued for good cause.

Section 1.4 would codify the process for a motion to suppress evidence.

Part II. Reentry

Section 2.1 would require juvenile court counselors to make reasonable efforts to meet with a juvenile who has not had a previous complaint and who has had a complaint filed for a divertible offense.

Section 2.2 would clarify that the district attorney may dismiss any allegations stated in a juvenile petition, with or without leave, either orally in open court, or in writing with notice.

Section 2.3 would clarify what prior adjudications count in determining delinquency history level.

Section 2.4 would clarify extension of probation must have notice and a hearing and would allow extension after the period of probation has ended if the juvenile fails to appear in court. This section would also clarify that in modifying a disposition for violation of probation, the court may order disposition at the next higher level, but is not required to do so.

Section 2.5 would require the court to provide notice of the ability to expunge juvenile offenses, if applicable.

Section 2.6 would allow a juvenile to expunge adjudications for Class 1, 2, or 3 misdemeanors at age 16 or 18 months after release from juvenile court jurisdiction, whichever is later, rather than having to wait until age 18 as required for all other offenses.

Part III. Juvenile confinement

Section 3.1 would clarify that secure custody review hearings must be conducted every 10 days so long as the juvenile remains in secure custody pending disposition or placement pursuant to a disposition order, but may be waived for up to 30 days only with the consent of the juvenile, through counsel for the juvenile, either orally in open court or in writing. Any order for secure custody would be required to be in writing with appropriate findings of fact.

O. Walker Reagan
Director

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Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

This section would also require that a juvenile under the age of 10 being transported for medical or psychiatric treatment while in secure custody, not be transported in physical restraints if they have no delinquency charge, unless it is reasonably necessary for the safety of the officer or authorized person or the juvenile.

Section 3.2 would clarify that only the court may order intermittent periods of confinement for a delinquent juvenile.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

**Susan Sitze, counsel to House Judiciary II, substantially contributed to this summary.*

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2015-2016 General Assembly

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This section would also require that a juvenile under the age of 10 being transported for medical or psychiatric treatment while in secure custody, not be transported in physical restraints if they have no delinquency charge, unless it is reasonably necessary for the safety of the officer or authorized person or the juvenile.

Section 3.2 would clarify that only the court may order intermittent periods of confinement for a delinquent juvenile.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

**Susan Sitze, counsel to House Judiciary II, substantially contributed to this summary.*

SENATE BILL 351

Short Title:	Collect DNA All Violent Felony Arrests.	(Public)
Sponsors:	Senators Stein, Barringer, Bingham (Primary Sponsors); Bryant, Lee, Pate, Robinson, and Woodard.	
Referred to:	Judiciary II.	

March 23, 2015

A BILL TO BE ENTITLED

AN ACT TO ADD ALL VIOLENT FELONIES TO THE REQUIREMENT THAT A DNA SAMPLE AND TESTING BE OBTAINED UPON ARREST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.3A(f) reads as rewritten:

"(f) This section shall apply to a person arrested for violating any one of the following offenses in Chapter 14 of the General Statutes:

(1) G.S. 14-16.6(b), Assault with a deadly weapon on executive, legislative, or court officer; and G.S. 14-16.6(c), Assault inflicting serious bodily injury on executive, legislative, or court officer.

(1a) G.S. 14-17, First and Second Degree Murder.

(2) G.S. 14-18, Manslaughter.

(2a) Any felony offense in Article 6A, Unborn Victims.

(3) Any offense in Article 7A, Rape and Other Sex Offenses.

(4) G.S. 14-28, Malicious castration; G.S. 14-29, Castration or other maiming without malice aforethought; G.S. 14-30, Malicious maiming; G.S. 14-30.1, Malicious throwing of corrosive acid or alkali; G.S. 14-31, Maliciously assaulting in a secret manner; G.S. 14-32, Felonious assault with deadly weapon with intent to kill or inflicting serious injury; ~~G.S. 14-32.4(a),~~G.S. 14-32.1(e), Aggravated assault or assault and battery on handicapped person; G.S. 14-32.2(a) when punishable pursuant to G.S. 14-32.2(b)(1), Patient abuse and neglect, intentional conduct proximately causes death; G.S. 14-32.3(a), Domestic abuse of disabled or elder adults resulting in injury; G.S. 14-32.4, Assault inflicting serious bodily ~~injury;~~injury or injury by strangulation; G.S. 14-33.2, Habitual misdemeanor assault; G.S. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property; G.S. 14-34.2, Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers; G.S. 14-34.4, Adulterated or misbranded food, drugs, etc.; intent to cause serious injury or death; intent to extort; G.S. 14-34.5, Assault with a firearm on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician; ~~and~~ G.S. 14-34.7, Assault inflicting

serious injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention ~~facility.~~facility; G.S. 14-34.9, Discharging a firearm from within an enclosure; and G.S. 14-34.10, Discharge firearm within enclosure to incite fear.

(5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A, Human Trafficking.

(5a) Any offense in Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material.

(6) G.S. 14-51, First and second degree burglary; G.S. 14-53, Breaking out of dwelling house burglary; G.S. 14-54(a1), Breaking or entering buildings with intent to terrorize or injure; G.S. 14-54.1, Breaking or entering a place of religious worship; and G.S. 14-57, Burglary with explosives.

(7) Any offense in Article 15, Arson.

(8) G.S. 14-87, Armed ~~robbery.~~robbery; Common law robbery punishable pursuant to G.S. 14-87.1; and G.S. 14-88, Train robbery.

(8a) G.S. 14-163.1(a1), Assaulting a law enforcement agency animal, an assistance animal, or a search and rescue animal willfully killing the animal.

(9) Any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the General Statutes, Sex Offender and Public Protection Registration Programs.

(10) G.S. 14-196.3, Cyberstalking.

(10a) G.S. 14-202, Secretly peeping into room occupied by another person.

(10b) G.S. 14-258.2, Possession of dangerous weapon in prison resulting in bodily injury or escape; G.S. 14-258.3, Taking of hostage, etc., by prisoner; and G.S. 14-258.4, Malicious conduct by prisoner.

(11) G.S. 14-277.3A, Stalking.

(12) G.S. 14-288.9, Assault on emergency personnel with a dangerous weapon or substance.

(13) G.S. 14-288.21, Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction; exceptions; and G.S. 14-288.22, Unlawful use of a nuclear, biological, or chemical weapon of mass destruction.

(14) G.S. 14-318.4(a), Child abuse inflicting serious injury; and G.S. 14-318.4(a3), Child abuse inflicting serious bodily injury.

(15) G.S. 14-360(a1), Cruelty to animals; maliciously kill by intentional deprivation of necessary sustenance; and G.S. 14-360(b), Cruelty to animals; maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill.

(16) G.S. 14-401.22(e), Attempt to conceal evidence of non-natural death by dismembering or destroying remains."

SECTION 2. This act becomes effective December 1, 2015, and applies to arrests occurring on or after that date.

SENATE BILL 351:
Collect DNA All Violent Felony Arrests

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 6, 2015
Introduced by:	Sens. Stein, Barringer, Bingham	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 351 would expand the list of criminal offenses for which a DNA sample must be obtained for testing and analysis upon arrest to include additional violent felonies.

CURRENT LAW: DNA samples for DNA analysis and testing must be collected from persons arrested for attempting, soliciting, conspiring, or aiding and abetting another to commit any of the following offenses: murder; manslaughter; rape or sex offenses; felony assaults with a deadly weapon or causing serious bodily injury; kidnapping or human trafficking; burglary offenses; arson; armed robbery; stalking; cyberstalking; and any offense which would require the person to register as a sex offender.

BILL ANALYSIS: Senate Bill 351 would require DNA samples to be collected upon arrest for the following additional offenses:

- Assault with a deadly weapon on executive, legislative, or court officer
- Assault inflicting serious bodily injury on executive, legislative, or court officer
- Any felony offense in Article 6A, Unborn Victims
- Malicious castration
- Castration or other maiming without malice aforethought
- Malicious maiming
- Malicious throwing of corrosive acid or alkali
- Maliciously assaulting in a secret manner
- Aggravated assault or assault and battery on handicapped person
- Patient abuse and neglect, when intentional conduct proximately causes death
- Domestic abuse of disabled or elder adults resulting in injury
- Assault inflicting serious bodily injury by strangulation
- Discharging certain barreled weapons or a firearm into occupied property
- Adulterating/misbranding food, drugs or cosmetics intending to cause serious injury or death
- Discharging a firearm from within an enclosure
- Discharging firearm within enclosure to incite fear
- Malicious injury or damage by use of explosive or incendiary device or material
- Breaking or entering buildings with intent to terrorize or injure
- Common law robbery other than robbery with a firearm or other dangerous weapon
- Train robbery
- Willfully killing a law enforcement agency animal, an assistance animal, or a search and rescue animal
- Secretly peeping into room occupied by another person
- Possession of dangerous weapon in prison resulting in bodily injury or escape
- Taking of hostage by prisoner

O. Walker Reagan
Director

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Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- Malicious conduct by prisoner
- Assault on emergency personnel with a dangerous weapon or substance
- Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction
- Unlawful use of a nuclear, biological, or chemical weapon of mass destruction
- Child abuse inflicting serious physical injury[1]
- Child abuse inflicting serious bodily injury[2]
- Cruelty to animals; maliciously kill by intentional deprivation of necessary sustenance
- Cruelty to animals; maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill
- Attempt to conceal evidence of non-natural death by dismembering or destroying remains

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to arrests occurring on or after that date.

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[1] For the purpose of this offense, "serious physical injury" is physical or mental injury that causes great pain and suffering. G.S. 14-318.4(d)(2).

[2] For the purpose of this offense, "serious bodily injury" is "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." G.S. 14-318.4(d)(1).

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Fiscal Note

BILL NUMBER: Senate Bill 351 (First Edition)

SHORT TITLE: Collect DNA All Violent Felony Arrests.

SPONSOR(S): Senators Stein, Barringer, and Bingham

FISCAL IMPACT

☑ Yes ☐ No ☐ No Estimate Available

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
General Fund Revenues:					
General Fund Expenditures:	$186,575	$383,320	$394,353	$405,250	$415,130
State Positions:	4.5	4.5	4.5	4.5	4.5
NET STATE IMPACT	**($186,575)**	**($383,320)**	**($394,353)**	**($405,250)**	**($415,130)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Department of Justice, NC State Crime Laboratory

EFFECTIVE DATE: December 1, 2015

TECHNICAL CONSIDERATIONS:
None

BILL SUMMARY:

The proposed bill adds additional felony offenses to the list of offenses for which DNA samples are collected upon arrest.

ASSUMPTIONS AND METHODOLOGY:

This bill will cost approximately $186,575 in the first year and $383,320 in the second year to analyze approximately 4,308 additional DNA on Arrest samples. A total of 4.5 full-time equivalent (FTE) positions will be required.

The following table shows the estimated fiscal impact of the bill by cost category.

Total Estimated Fiscal Impact of H.B. 225 by Cost Category

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Personnel	$127,507	$261,957	$269,492	$276,928	$283,681
Supplies	$59,068	$121,363	$124,861	$128,322	$131,449
Total	**$186,575**	**$383,320**	**$394,353**	**$405,250**	**$415,130**

Totals may not add exactly due to rounding.

ASSUMPTIONS AND METHODOLOGY:

Number of Arrestee Samples

In FY 2013-14, there were 111,374 felony defendants. Of those, 12,141 were arrested for crimes requiring DNA samples under current law. For the same year, the NC State Crime Laboratory (Crime Lab) received 10,447 DNA on Arrest submissions. Some people who are arrested already have DNA on file, so to estimate the number of new arrestee samples that may be submitted each year, the number of samples received by the Crime Lab (10,447) was divided by the defendants reported by AOC (12,141) to come up with a percentage of arrests requiring DNA submission (86%). There were 5,007 defendants for the new offenses in the proposed bill. The percentage of arrests requiring DNA submissions (86%) was applied to the total number of proposed new defendants (5,007). Based on these calculations, 4,308 new samples may be submitted (86% of 5,007 is 4,308). The following chart shows the number of defendants and submissions each year for the last three years for the proposed new offenses. Since the numbers remained relatively stagnant, FY 2013-14 defendant counts were used to estimate the costs of this bill.

Est. New DNA on Arrest Submissions

Fiscal Year	Proposed New Offenses	Percent Eligible Submitted	Est. Number of New Submissions
2011-12	4,950	86%	4,254
2012-13	4,984	87%	4,325
2013-14	5,007	86%	4,308

For the purposes of this fiscal estimate, the number of new DNA submissions estimated is **4,308**. This estimate assumes no changes to the number of arrests over the course of the five-year fiscal note period. Because the bill has an effective date of December 1, 2015, half of those submissions are estimated in FY 2015-16.

The number of defendants by charge can be found in Appendix A. Please note, AOC provided an unduplicated total headcount for this bill. Adding together the number of charges in Appendix A will result in double-counting some defendants.

NC State Crime Laboratory Personnel Required for DNA on Arrest Submissions

The Crime Lab provided estimates of personnel time per sample to process DNA requests. Currently, the times per sample are as follows:

Position	Time Per Sample (Hours)
Processing Technician	0.50
Forensic Scientist	0.90
Forensic Scientist Manager	0.25
Total Processing Time	**1.65**

Over the past year, the Crime Lab has been engaged in an efficiency study that has found that it would be more cost-effective to use more technicians to handle the clerical and technical work involved in processing submissions. They submitted revised time estimates based on the recommended workload split.

Position	Time Per Sample (Hours)
Processing Technician	1.00
Forensic Scientist	0.33
Forensic Scientist Manager	0.17
Total Processing Time	**1.50**

The revised time estimates were used to calculate the number of new positions needed as a result of the bill.

Each State full-time equivalent position (FTE) equates to approximately 1,776 hours of work time per year (40 hours per week times 52 weeks equals 2,080 work hours, minus 96 hours of State holidays, 112 hours of vacation leave for employees with less than five years of service, and 96 hours of sick leave equals 1,776). The following table shows the FTE required for each type of position based on the estimated number of samples submitted under this bill.

New Crime Lab FTE Positions Required for DNA on Arrest Submissions

Position	Time Per Sample	Number of Samples	Total Time for All Samples	Number of FTE Positions*
Evidence Technician I	1.00	4,308	4,308.39	2.50
Forensic Scientist I	0.33	4,308	1,421.77	1.00
Forensic Scientist Manager	0.17	4,308	732.43	0.50
Total	**1.50**	**4,308**	**6,462.58**	**4.00**

**FTE positions have been rounded to the nearest half position.*

Additional staff will also be required to handle an increased number of expunction requests resulting from the bill. The following table shows the number of expunction requests received by the Crime Lab over the previous three years.

Expunctions	
Year	**Requests**
2012	1,152
2013	1,289
2014	4,645
Average	**2,362**

The Crime Lab reports that the number of submissions in 2014 is abnormally high because one agency submitted requests that had accumulated since 2012. Therefore, the average number of requests for the past three years will be used for this analysis. G.S. 15A-266.3A(j) requires district attorneys to notify the Crime Lab when DNA collected on arrest is eligible for expunction. Approximately 25% of district attorney offices are currently complying with this law, so the number of expunction requests is lower than it should be. However, we have no way of calculating a more accurate estimate of expunction requests. The average number of expunction requests received by the Crime Lab over the last three years was 2,362.

Once the average number of expunction requests was determined, it was increased by the anticipated percent increase in submissions (41%). Therefore, the estimated total number of expunction requests expected is 3,330, of which 968 will be new requests resulting from this bill (3,330 total requests minus

2,362 existing requests equals 968 new requests). It takes 30 minutes for an Information Processing Technician to process one expunction request, so an additional half position may be necessary as a result of this bill. To the extent that expunction requests do not increase at the same rate as DNA on Arrest submissions or local agencies begin to process expunction requests in the manner provided by law, this estimate may be incorrect. The following chart shows the number of Information Processing Technician positions that may be required.

New Crime Lab FTE Positions Required for Expunction

Position	Time Per Request	Number of Requests	Total Time for All Samples	Number of FTE Positions*
Information Processing Technician	0.50	968	484.21	0.50

**FTE positions have been rounded to the nearest half position.*

Position costs were estimated using the minimum salary for each grade. Position operating costs ($3,396) were added to each position. Operating costs include funds for uniforms, travel, software, and supplies. Funding was also added to Forensic Scientist I and Forensic Scientist Manager positions for expenses related to certification and training requirements. The following table shows the total cost by position for both DNA on Arrest submissions and related expunction processing.

Total Cost by Position for DNA on Arrest Submissions and Expunctions

Position	FTE Required	Base Salary	Salaries/ Benefits Per Position	Position Operating Cost	Scientist Certification and Training	Total Cost Per Position	Total Cost
Evidence Technician	2.50	$34,190	$47,384	$3,396	$0	$50,780	$126,950
Forensic Scientist I	1.00	$42,677	$57,811	$3,396	$1,216	$62,423	$62,423
Forensic Scientist Manager	0.50	$57,393	$75,891	$3,396	$1,216	$80,503	$40,252
Information Processing Tech.	0.50	$34,190	$47,384	$3,396	$0	$50,780	$25,390
Total	**4.50**						**$255,014**

Totals may not add exactly due to rounding.

Once the total position cost was calculated, it was inflated for subsequent years using general inflation rates from Moody's economy.com (January 2015). The following table shows the cost estimates for each position over the five-year fiscal note period. Because the bill is not effective until December 1, 2015, the amount in FY 2015-16 has been reduced by 50%. Since expunction requests cannot be expected to increase until at least the first full year of implementation, no additional Information Processing Technician positions will be required until FY 2016-17.

Estimated Cost for Personnel for Five-Year Fiscal Note Period

Position	Total Cost	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Evidence Technicians	$126,950	$63,475	$130,406	$134,157	$137,859	$141,221
Forensic Scientist Is	$62,423	$31,211	$64,122	$65,967	$67,787	$69,440
Forensic Scientist Managers	$40,252	$20,126	$41,347	$42,537	$43,711	$44,776
Information Processing Techs.	$25,390	$0	$26,081	$26,831	$27,572	$28,244
Total	**$255,014**	**$114,812**	**$261,957**	**$269,492**	**$276,928**	**$283,681**

Supply Costs

Additional expenses will also be incurred for collection kits and analytical supplies. Clean collection kits are sent to local law enforcement agencies. The cost per kit is $4.68. Processing supplies are $22.74 per sample. The table below shows the supply costs for each year of the fiscal note period, adjusted for inflation. Because the bill is not effective until December 1, 2015, the amount in FY 2015-16 has been reduced by 50%.

Estimated Cost for Supplies for Five-Year Fiscal Note Period

Supplies	Total Cost	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Unused Kits	$4.68	$4.68	$4.81	$4.95	$5.09	$5.21
Processing Supplies	$22.74	$22.74	$23.36	$24.03	$24.69	$25.30
Submissions	4,308	2,154	4,308	4,308	4,308	4,308
Total Supply Cost	**$118,125**	**$59,068**	**$121,363**	**$124,861**	**$128,322**	**$131,449**

Totals may not add exactly due to rounding.

Equipment Costs

No additional equipment will be necessary because existing equipment at the Crime Lab can be used to process the additional samples. However, the increased load on the equipment may require earlier replacement of the existing equipment at some point beyond the five-year fiscal note period.

SOURCES OF DATA: Department of Justice, NC State Crime Laboratory; Administrative Office of the Courts; Department of Public Safety, State Bureau of Investigation; Office of State Human Resources.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristine Leggett

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: April 21, 2015

Appendix A: Proposed Offenses Listed in S.B. 351, DNA Upon Arrest Add'l Offenses

G.S. 15A-266.3A(f) ...	Offense G.S. Reference	Class	Offense Description (Draft Senate Bill)	Number of Defendants (adding together multiple offenses will double-count defendants) FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14
(1)	14-16.6(b)	F	Assault w/ deadly weapon on executive, legislative or court officer	0	1	0	0
(1)	14-16.6(c)	F	Assault inflicting serious bodily injury on executive, legislative, or court officer	0	0	0	0
(2a)	Article 6A	??	Any felony offense in Article 6A, Unborn Victims	---	3	1	2
above	above	D	above	---	0	0	0
above	above	F	above	---	0	1	1
above	above	F	above	---	2	2	4
(4)	14-28	C	Malicious castration	1	1	0	
(4)	14-29	E	Castration or other maiming without malice aforethought	0	0	0	0
above	above	E	above	11	17	11	11
(4)	14-30	C	Malicious maiming	3	4	7	2
(4)	14-30.1	E	Malicious throwing of corrosive acid or alkali	2	4	5	3
(4)	14-31	E	Maliciously assaulting in a secret manner	17	25	12	11
(4)	14-32.1(e)	F	Aggravated assault or assault and battery on handicapped person	63	48	59	53
(4)	14-32.2(a)	??	when punishable pursuant to 14-32.2(b)(1), Patient abuse and neglect, intentional conduct proximately causes death	1	1	0	1
(4)	14-32.3(a)	F	Domestic abuse of disabled or elder adults resulting in injury	7	8	7	9
(4)	14-32.4	H	*Assault inflicting serious bodily injury* or injury by strangulation (was only 14-32.4(a))	1,344	1,424	1,516	1,474
(4)	14-33.2	H	Habitual misdemeanor assault	311	398	395	410
(4)	14-34.1	D	Discharging certain barreled weapons or a firearm into occupied property	278	279	276	340

				Number of Defendants (adding together multiple offenses will double-count defendants)			
G.S. 15A-266.3A(f) ...	Offense G.S. Reference	Class	Offense Description (Draft Senate Bill)	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14
above	above	C	above	45	50	68	53
above	above	E	above	315	332	311	289
(4)	14-34.4	C	Adulterated or misbranded food, drugs, etc.; intent to cause serious injury or death; intent to extort	1	0	0	1
above	above	C	above	0	0	0	0
(4)	14-34.9	E	Discharging a firearm from within an enclosure	5	11	15	16
(4)	14-34.10	F	Discharging a firearm within enclosure to incite fear	---	---	---	21
(5a)	Article 13 (14-49; 14-49.1)	E	Any offense in Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material	0	0	0	0
above	above	D	above	3	5	7	1
above	above	G	above	23	37	12	19
(6)	14-54(a1)		Breaking or entering buildings with intent to terrorize or injury	0	0	0	58
(8)	14-87.1	G	Common law robbery punishable pursuant to 14-87.1	1,435	1,533	1,413	1,488
(8)	14-88		Train robbery	0	2	0	0
(8a)	14-163.1(a1)		Assaulting a law enforcement agency animal, an assistance animal, or a search and rescue animal willfully killing the animal	1	0	1	2
(10a)	14-202	??	Secretly peeping into room occupied by another person	28	30	48	23
(10b)	14-258.2	??	Possession of dangerous weapon in prison resulting in bodily injury or escape	43	66	69	78
(10b)	14-258.3		Taking of hostage, etc., by prisoner	0	0	0	0
(10b)	14-258.4	F	Malicious conduct by prisoner	375	420	423	367
(12)	14-288.9	F	Assault on emergency personnel with a dangerous weapon or substance	3	2	3	7

				Number of Defendants (adding together multiple offenses will double-count defendants)			
G.S. 15A-266.3A(f) ...	Offense G.S. Reference	Class	Offense Description (Draft Senate Bill)	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14
(13)	14-288.21	B1	Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction: exceptions	0	2	1	2
(13)	14-288.22	??	Unlawful use of a nuclear, biological, or chemical weapon of mass destruction	0	0	0	0
(14)	14-318.4(a)	D	Child abuse inflicting serious injury	126	144	146	135
(14)	14-318.4(a3)	B2	Child abuse inflicting serious bodily injury	71	68	80	110
(15)	14-360(a1)	H	Cruelty to animals, maliciously kill by intentional deprivation of necessary sustenance	14	36	57	36
(15)	14-360(b)	H	Cruelty to animals: maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill	126	157	181	139
(16)	14-401.22(E)	D	Attempt to conceal evidence of non-natural death by dismembering or destroying remains	---	3	0	1

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 595
Second Edition Engrossed 4/16/15

Short Title:	Military Experience/LEO Cert. Requirements.	(Public)
Sponsors:	Representatives Whitmire, McNeill, Cleveland, and G. Martin (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Homeland Security, Military, and Veterans Affairs.	

April 9, 2015

A BILL TO BE ENTITLED

AN ACT TO RECOGNIZE EXPERIENCE AS MILITARY POLICE OFFICERS FOR PURPOSES OF LAW ENFORCEMENT CERTIFICATION AND TO INCREASE THE SIZE OF THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 17C of the General Statutes is amended by adding a new section to read:

"**§ 17C-10.1. Certification of military service members and veterans with law enforcement training and experience.**

(a) Notwithstanding any other provision of law, the Commission shall waive an applicant's completion of the Commission-accredited training course and issue probationary certification to a current or honorably discharged former military police officer provided the Commission, upon evaluating the individual applicant's training and experience pursuant to G.S. 93B-15.1(a), determines that the applicant's combined training and experience is substantially equivalent to or exceeds the minimum expectations for employment as a law enforcement officer and the applicant satisfies all of the following conditions:

(1) Successfully completed a military police training program and been awarded a military police occupational specialty rating.

(2) Performed military police officer duties in any of the branches of military service, active or reserve, or the National Guard for not less than two of the five years preceding the date of the application for certification as a law enforcement officer.

(3) Meets the minimum standards for law enforcement officers as set out in 12 NCAC 9B. 0101 and NCAC 9B. 0111.

(b) An applicant certified pursuant to subsection (a) of this section must successfully complete the employing agency's in-service firearms training and qualification program prior to employment and shall serve a one-year period of probation. During the one-year period of probation, the applicant must successfully complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination in its entirety.

(c) The Commission shall issue certification to a current or honorably discharged former military police officer whose combined training and experience is not substantially

equivalent to or does not exceed the minimum expectations for employment as a law enforcement officer if the applicant meets all of the following requirements:

(1) Successfully completed a formal military basic training program and been awarded a military police occupational specialty rating.

(2) Engaged in the active practice of military police officer duties in any of the branches of military service, active or reserve, or the National Guard for not less than two of the five years preceding the date of the application for certification as a law enforcement officer.

(3) Meets the minimum standards for law enforcement officers as set out in 12 NCAC 9B. 0101 and NCAC 9B. 0111.

(4) Successfully completes the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course and any supplementary high-liability training as deemed necessary by the Commission, not to exceed an additional 180 hours.

(5) Obtains a passing grade on the State Comprehensive Basic Law Enforcement Training (BLET) Exam.

(d) Members of the Air/Army National Guard and Military Reserve Components who have performed as a military police officer for not less than 1,040 hours during the five years preceding the date of application shall be deemed to satisfy the requirements of subdivisions (a)(2) and (c)(2) of this section.

(e) An applicant who, after completing the required training in subsections (a) or (c) of this section, fails to obtain a passing score on not more than two of the units of the comprehensive exam may be retested in the units the applicant failed. An applicant who fails three or more of the units must enroll in and successfully complete a subsequent offering of the Basic Law Enforcement Training Course in its entirety in order to be eligible to be certified.

(f) An active duty military police officer who obtains certification under this section may retain the certification for the duration of active duty provided the officer continues to serve in a military police capacity and complies with any in-service training requirements as may be required by the Commission. An active duty member who is unable to complete annual in-service requirements due to deployment or overseas assignment shall have 12 months from the time the officer returns to the United States in which to complete any required in-service training. The officer shall retain the certification for a period of one year following separation from active duty.

(g) As used in this section, the following terms mean:

(1) Branches of military service. – The United States Armed Forces: Air Force; Army; Marine; Navy; active, reserve, Air/Army National Guard components and the Coast Guard.

(2) Combined training. – Basic military training, basic military police training, in-service or advanced military police training and any other military training courses that may be applicable to the performance of law enforcement duties.

(3) Military police. – All law enforcement occupational classifications in the various branches of the Armed Forces, including Military Police Officer, Security Forces Specialist, Master-at-Arms, Maritime Enforcement Specialist, Boarding Officer and Security forces."

SECTION 2. G.S. 17C-3 reads as rewritten:

"**§ 17C-3. North Carolina Criminal Justice Education and Training Standards Commission established; members; terms; vacancies.**

(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission." The Commission shall be composed of ~~31~~34 members as follows:

(1) Police Chiefs. – Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.

(2) Police Officers. – Three police officials appointed by the North Carolina Police Executives Association and two criminal justice officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.

(3) Departments. – The Attorney General of the State of North Carolina; the Secretary of Public Safety; the Director of the State Bureau of Investigation, the Commander of the State Highway Patrol, and the President of the North Carolina Community Colleges System.

(3a) Repealed by Session Laws 2001-490, s. 1.2, effective June 30, 2001.

(4) At-large Groups. – One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.

(5) Citizens and Others. – The President of The University of North Carolina; the Dean of the School of Government at the University of North Carolina at Chapel Hill; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint four persons, two upon the recommendation of the Speaker of the House of Representatives and two upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall be for two-year terms to conclude on June 30th in odd-numbered years.

(6) ~~Correctional Officers.~~ Adult Correction and Juvenile Justice. – Four correctional officers in management positions employed by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall be appointed, two from the Section of Community Corrections ~~of the Division of Adult Correction~~ upon the recommendation of the Speaker of the House of Representatives and two from the Section of Prisons ~~of the Division of Adult Correction~~ upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered ~~years.~~ years or until the appointee no longer serves in a management position with the Division of Adult Correction, whichever occurs first. The Governor shall appoint one correctional officer employed by the Division of Adult Correction of the Department of Public Safety and assigned to the Office of Staff Development and ~~Training.~~ Training, and one juvenile justice officer employed by the Section of Juvenile Justice. The Governor's ~~appointment~~ appointments shall serve ~~a~~ three-year ~~term.~~terms or until the appointee is no longer assigned to the Office of Staff Development and Training, or is no longer a juvenile justice officer, whichever occurs first.

(b) The members shall be appointed for staggered terms. The initial appointments shall be made prior to September 1, 1983, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; three members from subdivision (2) of subsection (a) of this section, one serving as a police official, and two criminal justice officers; one member from subdivision (4) of subsection (a) of this section, appointed by the North Carolina Law-Enforcement Training Officers' Association; and two members from subdivision (5) of subsection (a) of this section, one appointed by the Governor and one appointed by the Attorney General.

For the terms of two years: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and two members from subdivision (4) of subsection (a) of this section, one appointed by the League of Municipalities and one appointed by the North Carolina Association of District Attorneys.

For the terms of three years: two members from subdivision (1) of subsection (a) of this section, one police chief appointed by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and three members from subdivision (4) of subsection (a) of this section, one appointed by the North Carolina Law-Enforcement Women's Association, one appointed by the North Carolina Criminal Justice Association, and one appointed by the North State Law-Enforcement Officers' Association.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Attorney General, the President of The University of North Carolina, the Dean of the School of Government at the University of North Carolina at Chapel Hill, the President of the North Carolina Community Colleges System, the Director of the State Bureau of Investigation, the Commander of the State Highway Patrol, and the Secretary of Public Safety shall be continuing members of the Commission during their tenure. These members of the Commission shall serve ex officio and shall perform their duties on the Commission in addition to the other duties of their offices. The ex officio members may elect to serve personally at any or all meetings of the Commission or may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio members are unable to attend.

Vacancies in the Commission occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. A vacancy may be created by removal of a Commission member by majority vote of the Commission for misconduct, incompetence, or neglect of duty. A Commission member may be removed only pursuant to a hearing, after notice, at which the member subject to removal has an opportunity to be heard."

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

HOUSE BILL 595:
Military Experience/LEO Cert. Requirements

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 6, 2015
Introduced by:	Reps. Whitmire, McNeill, Cleveland, G. Martin	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 595 would establish procedures to be followed by the Criminal Justice Education and Training Standards Commission in certifying current or former military police officers and would add the SBI Director, the State Highway Patrol Commander and a juvenile justice officer appointed by the Governor to the Commission membership.***

CURRENT LAW: Criminal justice officers in North Carolina must meet minimum educational and training standards established by the North Carolina Criminal Justice Education and Training Standards Commission ("the Commission") under Chapter 17C of the General Statutes.

The Commission has 31 voting members appointed to staggered three-year terms, appointed to represent the following designated categories: police chiefs, police officers, departments, at-large groups, citizens and others, and correctional officers. G.S. 17C-3(a).

Under current law, the Attorney General, the Director of Public Safety, and the President of the North Carolina Community Colleges System are the members designated to represent departments on the Commission. G.S. 17C-3a)(3).

G.S. 93B-15.1 requires the Commission and all other occupational licensing boards to issue occupational licenses, certifications or registrations to military-trained applicants if the applicant:

1. was awarded a military occupational specialty;
2. completed a military program of training and testing or equivalent training and experience as determined by the board;
3. performed in that specialty at a level that is substantially equivalent to or exceeds the requirements for licensure; and
4. was engaged in the active practice of the occupation for at least two of the five years preceding the date of the application.

BILL ANALYSIS: **Section 1** of the bill would enact new G.S. 17C-10.1, which would require the Commission to waive the requirement of completing a Commission-accredited training course and issue probationary certification to an applicant who:

1. is a current or honorably discharged former military police officer having combined training and experience that meet or exceed minimum requirements for employment of a law enforcement officer;
2. was awarded a military police occupational specialty rating;
3. performed military police officer duties for not less than two of the five years preceding the date of the application; and

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

4. meets the minimum standards for law enforcement officers as set out in 12 NCAC 9B. 0101 and NCAC 9B. 0111

Before employment, a person issued probationary certification would be required to complete the employer's in-service firearms training. The certification would be probationary for a period of one year, during which time the applicant would be required to complete the Legal Unit in a Commission-accredited course and to pass the State Comprehensive Basic Law Enforcement Training (BLET) Exam.

An applicant who was awarded a military police occupational specialty and performed military police officer duties for at least two of the five years preceding the application date, but whose combined training and experience did not meet or exceed the minimum expectations for employment as a law enforcement officer, would be required to be certified by the Commission if the applicant:

- meets minimum standards set forth in 12 NCAC 9B. 0101 and NCAC 9B. 0111
- successfully completes the Legal Unit in a Commission-accredited BLET course and any supplementary high-liability training not to exceed 180 hours as deemed necessary by the Commission
- passes the State Comprehensive BLET Exam

An applicant who as member of the Air/Army National Guard and Military Reserve Components who served as a military police officer for at least 1,040 hours in the five years prior to the date of the application will be deemed to have satisfied the requirement of two years' performance of such duties in the five years prior to the application date.

An active duty military police officer who is certified would retain certification for as long as he or she is on active duty, serving as a military police officer, and complies with the Commission's in-service training requirements. The officer would retain certification for one year after separation from active duty. If unable to complete annual in-service training requirements because of deployment or overseas assignment, the officer would have 12 months from return to the United States to complete that training.

Section 2 of the bill would amend G.S. 17C-3 to add three members to the Commission: the Director of the State Bureau of Investigation, the Commander of the State Highway Patrol, and a juvenile justice officer employed by the Section of Juvenile Justice appointed by the Governor.

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

HOUSE BILL 597:
Mediated Settlement Agreements

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 6, 2015
Introduced by:	Reps. Bishop, Stam, Glazier, L. Hall	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 597 would require that certain mediated settlement agreements must be signed by the parties against whom enforcement is sought in order to be enforceable.

CURRENT LAW:

G.S. 7A-38.1, G.S. 7A-38.3B, G.S. 7A-38.3D, G.S. 7A-38.4A, and G.S. 8-110, apply to mediations in superior court civil actions, matters within the jurisdiction of the clerk of superior court or the district criminal courts, actions involving equitable distribution, alimony, or support in district court, and mediations at a community mediation center.

Each of these sections currently provides that in order to be enforceable, a settlement agreement resulting from the applicable mediation must be signed "by the parties."

BILL ANALYSIS: House Bill 597 would amend these statutes to provide that, to be enforceable, the mediated settlement agreements must be signed "by the parties against whom enforcement is sought," rather than "by the parties."

EFFECTIVE DATE: This act becomes effective July 1, 2015, and applies to agreements entered into on or after that date.

O. Walker Reagan
Director

H597-SMTG-84 E2 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 597
Committee Substitute Favorable 4/29/15

Short Title: Mediated Settlement Agreements. (Public)

Sponsors:

Referred to:

April 9, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS REQUIRING MEDIATED SETTLEMENT AGREEMENTS TO BE SIGNED BY THE PARTIES AGAINST WHOM ENFORCEMENT IS SOUGHT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-38.1(l) reads as rewritten:

"(l) Inadmissibility of negotiations. – Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(1) In proceedings for sanctions under this section;
(2) In proceedings to enforce or rescind a settlement of the action;
(3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or
(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless it has been reduced to writing and signed by the ~~parties.~~parties against whom enforcement is sought. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference or other settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 2. G.S. 7A-38.3B(i) reads as rewritten:

"(i) Agreements. – In matters before the clerk in which agreements are reached in a mediation conducted pursuant to this section, or during one of its recesses, those agreements shall be treated as follows:

(1) Where as a matter of law, a matter may be resolved by agreement of the parties, a settlement is enforceable only if it has been reduced to writing and signed by the ~~parties.~~parties against whom enforcement is sought.

(2) In all other matters before the clerk, including guardianship and estate matters, all agreements shall be delivered to the clerk for consideration in deciding the matter."

SECTION 3. G.S. 7A-38.3D(l) reads as rewritten:

"(l) Written Agreements. – Any agreement reached in mediation shall be reduced to writing and signed by the ~~parties.~~parties against whom enforcement is sought. A non-attorney mediator may assist parties in reducing the agreement to writing."

SECTION 4. G.S. 7A-38.4A(j) reads as rewritten:

"(j) Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(1) In proceedings for sanctions under this section;

(2) In proceedings to enforce or rescind a settlement of the action;

(3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or

(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this subsection, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this section or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties against whom enforcement is sought and in all other respects complies with the requirements of Chapter 50 of the General Statutes. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding under this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 5. G.S. 8-110(a) reads as rewritten:

"(a) Evidence of statements made and conduct occurring during mediation at a community mediation center authorized by G.S. 7A-38.5 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except in proceedings to enforce a settlement of the action. No such settlement shall be binding unless it has been reduced to writing and signed by the ~~parties.~~parties against whom enforcement is sought. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed during mediation."

SECTION 6. This act becomes effective July 1, 2015, and applies to agreements entered into on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, May 07, 2015

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

FAVORABLE

HB **597** **(CS#1)** Mediated Settlement Agreements.

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

HB **879** **(CS#1)** Juvenile Code Reform.

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

SB **351** Collect DNA All Violent Felony Arrests.

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

TOTAL REPORTED: 3

Senator Warren Daniel will handle HB 597
Senator Warren Daniel will handle HB 879
Senator Joshua Stein will handle SB 351



SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.
Dana Simpson	SA	
Susan Vick	Duke Energy	
Haydn Burgess	FSP	
Andy Walsh	SA	
Douglas Holbrook	UCSBA	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Lao Rubert	CYPC	
Msillian D Tolman	MWC LLC	
[signature]	MWC	
Bo Moore	Commerce / DWS	
Annalise Dalpin	DL	
Amanda Hbaker	TSS	
Sarah Preston	ACLU-NC	
Donna Beard	public	
Angel Sams	NCSR	
J. Hamill	Self	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.
[illegible]	[illegible]	
John Byrd	NC State Crime Lab	
NELS ROSELAND	NC DOS	
Amanda Thompson	NC State Crime Lab	
Peg Dorn	Conf. of DAs	
Kim Howes	Appellate Defender	
Eric Zogry	Office of the Juvenile Defender	
Eddie Caldwell	NC Sheriffs' Assn	
Susan Valaoras	NAACP NC State Conf	
Kyle Dam	Husband Rita Beard Perry	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Donna B Clark	UNC Dept Govt.	
Chris Whitmire	NC House	HB595
David Washburn	Senate Intern	
Joe Dugdale	DPS	HB 595
Ryan Combs	DPS	
Clara Townsend	Gov. office	
EDGAR GOLDBERG	INDIVIDUAL	
Mike Carato	NC DOT	
Phoebe Landon	Brooks Pierce	
Kim Crouch	NCBA	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.
Eric Zogry	AOC	SB79

Senate Committee on Judiciary II
Tuesday, May 12, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:00 AM on May 12, 2015 in Room 1124/1224 of the Legislative Building. 10 members were present.

Senator Shirley B. Randleman, Chair, presided.

Pages: Chris McCain of Burlington, Haley Williams of Harrisburg, Andrew Hall of Wrightsville Beach, Jessica Adams of Matthews, Makayla Littlejohn of Durham
Sgt. at Arms: Giles Jeffreys, Charles Marsalis, Terry Barnhardt

HB 79 Contempt for 50C/Scope of Stay for Appeals. (Representatives Glazier, Stevens, Zachary, Davis)
Rep. Glazier presented the bill to the committee. At least two different members of the committee brought up questions.
There were a few members of the public who spoke on the bill and assisted with answering questions:
Toby Hampston for the NC Bar Association; and Judge Richard Dietz.
After discussion, Sen. Lowe motioned to give the bill a favorable report. The motion carried. The bill was reported out by the clerk "Favorable."

HB 82 Execution/Nonsecure Custody Order/Child Abuse. (Representatives Stevens, Zachary, Glazier, Jordan)
With no objection, the PCS: PCS H82-CSTJ-30 was brought before the committee for consideration rather than the original bill.
Rep. Stevens presented the bill to the committee. At least five different members of the committee brought up questions or comments on the bill. The questions were answered by Rep. Stevens, Rep. Glazier, and the committee's legal staff, Jan Paul.
After discussion, Sen. Bingham motioned to give the bill a report unfavorable to the original bill, favorable to the PCS. The motion carried. The clerk reported the bill "Unfavorable as to bill, but Favorable as to Senate Committee Substitute bill."

HB 293 Adoption Law Changes. (Representative Stevens)
With no objection, the PCS: PCS H293-CSTJ-31 was brought before the committee for consideration rather than the original bill.
Rep. Stevens presented the bill to the committee. At least two members of the committee brought up questions or comments on the bill.
A member of the public spoke in favor of the bill and helped answer questions of the members:
Brinton Wright for the NC Bar Association.

After discussion, Sen. J. Davis motioned to give the bill a report unfavorable to the original bill, favorable to the PCS. The motion carried. The clerk reported the bill "Unfavorable as to bill, but Favorable as to Senate Committee Substitute bill."

The meeting adjourned at 10:30 am.

Senator Shirley B. Randleman, Chair
Presiding

Patrick Limer, Committee Clerk

Senate Committee on Judiciary II
Tuesday, May 12, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 79	Contempt for 50C/Scope of Stay for Appeals.	Representative Glazier Representative Stevens Representative Zachary Representative Davis
HB 82	Execution/Nonsecure Custody Order/Child Abuse.	Representative Stevens Representative Zachary Representative Glazier Representative Jordan
HB 293	Adoption Law Changes.	Representative Stevens

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 2

HOUSE BILL 79
Committee Substitute Favorable 3/11/15

Short Title: Contempt for 50C/Scope of Stay for Appeals. (Public)

Sponsors:

Referred to:

February 16, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS PERTAINING TO CIVIL NO-CONTACT ORDERS TO CLARIFY THAT A KNOWING VIOLATION OF A CIVIL NO-CONTACT ORDER IS PUNISHABLE BY CIVIL OR CRIMINAL CONTEMPT AND CLARIFYING THE SCOPE OF STAY ON PROCEEDINGS WHEN A CASE IS ON APPEAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50C-10 reads as rewritten:

"**§ 50C-10. Violation.**

A knowing violation of an order entered pursuant to this Chapter is punishable ~~as contempt of court.~~by civil or criminal contempt as provided in Chapter 5A of the General Statutes."

SECTION 2. G.S. 1-294 reads as rewritten:

"**§ 1-294. Scope of stay; security limited for fiduciaries.**

When an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced ~~therein;~~ therein, unless otherwise provided by the Rules of Appellate Procedure; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from. The court below may, in its discretion, dispense with or limit the security required, when the appellant is an executor, administrator, trustee, or other person acting in a fiduciary capacity. It may also limit such security to an amount not more than fifty thousand dollars ($50,000), where it would otherwise exceed that sum."

SECTION 3. Section 1 of this act becomes effective October 1, 2015, and applies to orders entered on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 79:
Contempt for 50C/Scope of Stay for Appeals

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 11, 2015
Introduced by:	Reps. Glazier, Stevens, Zachary, Davis	**Prepared by:**	Janice Paul
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 79 would clarify that a knowing violation of a civil no-contact order is punishable by civil or criminal contempt, and would amend G.S. 1-294 to specify the circumstances under which further proceedings are stayed after an appeal is perfected.***

BILL ANALYSIS:

Section 1 of House Bill 79 would clarify that a knowing violation of a civil no-contact order is punishable by civil or criminal contempt.

Section 2 of the bill would amend G.S. 1-294 to provide that the perfection of appeal operates as a stay of all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure.

CURRENT LAW:

I. Civil No-Contact Orders

Chapter 50C of the General Statutes addresses civil no-contact orders. A civil no-contact order is a court order designed to protect an individual from nonconsensual sexual conduct or stalking that has been committed by someone who is not involved a "personal relationship" under the Chapter on domestic violence [G.S. 50B-1(b)].[i]

A judge may order the following types of relief under civil no-contact orders: (1) order the respondent not to visit or otherwise interfere with the victim, (2) order the respondent to cease stalking, abusing, or harassing the victim, (3) order the respondent not to contact the victim, and (4) order other relief deemed necessary by the court. G.S. 50C-5(b). Civil no-contact orders may be temporary (effective for not more than 10 days) or permanent (effective for up to one year) G.S. 50C-8(a)-(b). Violations of civil no-contact orders are punishable as "contempt of court." G.S. 50C-10.

II. Criminal and Civil Contempt

"The line of demarcation between civil and criminal contempt is hazy at best." *Blue Jeans Corporation v. Amalgamated Clothing Workers of America, AFL-CIO*, 275 N.C. 503, 507-8 (1969). Generally, criminal contempt is used to punish a person for violating a court order or interrupting or disrespecting the court. Civil contempt is intended to make someone obey a court order. *Id.* Sometimes, a defendant's conduct may warrant either civil criminal contempt. A person cannot be held in both civil and criminal contempt for the same conduct, and the judge must choose one or the other. G.S. 5A-12(d) and G.S. 5A-21(c).

Criminal contempt may be imposed for specific grounds including, interruption of court proceedings, disrespect for the court, disobedience of the court's order, refusal to be sworn or answer questions, and

any act specified in the General Statutes as grounds for criminal contempt. G.S. 5A-11(a). The standard of proof for criminal contempt is proof beyond a reasonable doubt. G.S. 5A-15(f). Generally, the punishment for criminal contempt is censure, imprisonment up to 30 days, a fine of not more than $500 or a combination of the three. G.S. 5A-12.

Civil contempt is designed to coerce the defendant to comply with an order of the court. Failure to comply with an order of the court is a continuing civil contempt. G.S. 5A-21(a). An order of the court holding a person in contempt must specify how the person may purge himself of the contempt. G.S. 5A-22(a). The standard of proof is a preponderance of the evidence. The only sanction that the court may impose for civil contempt is imprisonment until the defendant complies with the court order. G.S. 5A-21.[ii] The total period of imprisonment for the same act of disobedience shall not exceed 12 months. *Id.*

EFFECTIVE DATE: Section 1 becomes effective October 1, 2015, and applies to orders entered on or after that date. The remainder of the act is effective when it becomes law.

Brad Krehely, counsel to House Judiciary II, substantially contributed to this summary.

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[i] G.S. 50B covers domestic violence protective orders and applies to personal relationships "wherein the parties involved:
(1) Are current or former spouses;
(2) Are persons of opposite sex who live together or have lived together;
(3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
(4) Have a child in common;
(5) Are current or former household members;
(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship."

[ii] For additional information on the difference between criminal and civil contempt, see "Contempt" by Michael Crowell, UNC School of Government, December 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

HOUSE BILL 82

Short Title:	Execution/Nonsecure Custody Order/Child Abuse.	(Public)
Sponsors:	Representatives Stevens, Zachary, Glazier, and Jordan (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Children, Youth, and Families, if favorable, Judiciary III.	

February 16, 2015

A BILL TO BE ENTITLED

AN ACT CLARIFYING THE MANNER IN WHICH A LAW ENFORCEMENT OFFICER MAY TAKE CUSTODY OF A JUVENILE WHEN EXECUTING A NONSECURE CUSTODY ORDER UNDER THE LAWS PERTAINING TO ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-504 reads as rewritten:

"**§ 7B-504. Order for nonsecure custody.**

The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to ~~assume~~ take physical custody of the juvenile and to make due return on the order. A copy of the order shall be given to the juvenile's parent, guardian, custodian, or caretaker by the official executing the order.

An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms. If the court finds on the basis of the petition and request for nonsecure custody or the testimony of the petitioner that a less intrusive remedy is not available, the court may authorize a law enforcement officer to enter private property to take physical custody of the juvenile. If required by exigent circumstances of the case, the court may authorize a law enforcement officer to make a forcible entry at any hour so long as the law enforcement officer has reason to believe the child is being abused at the time the officer is executing the nonsecure custody order. The officer is not required to inquire into the regularity or continued validity of the order and shall not incur criminal or civil liability for its due service."

SECTION 2. This act is effective when it becomes law and applies to orders issued on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 82
PROPOSED SENATE COMMITTEE SUBSTITUTE H82-CSTJ-30 [v.1]

5/11/2015 4:59:23 PM

Short Title: Execution/Nonsecure Custody Order/Child Abuse. (Public)

Sponsors:

Referred to:

February 16, 2015

A BILL TO BE ENTITLED

AN ACT CLARIFYING THE MANNER IN WHICH A LAW ENFORCEMENT OFFICER MAY TAKE CUSTODY OF A JUVENILE WHEN EXECUTING A NONSECURE CUSTODY ORDER UNDER THE LAWS PERTAINING TO ABUSE, NEGLECT, AND DEPENDENCY.

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An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms. If the court finds on the basis of the petition and request for nonsecure custody or the testimony of the petitioner that a less intrusive remedy is not available, the court may authorize a law enforcement officer to enter private property to take physical custody of the juvenile. If required by exigent circumstances of the case, the court may authorize a law enforcement officer to make a forcible entry at any hour. The officer is not required to inquire into the regularity or continued validity of the order and shall not incur criminal or civil liability for its due service."

SECTION 2. This act is effective when it becomes law and applies to orders issued on or after that date.

HOUSE BILL 82: Execution/Nonsecure Custody Order/Child Abuse

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 11, 2015
Introduced by:	Reps. Stevens, Zachary, Glazier, Jordan	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition H82-CSTJ-30		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 82 would clarify the manner in which a law enforcement officer may enter premises in order to take physical custody of a juvenile when there is a reasonable factual basis to believe the juvenile is abused, neglected or dependent and a nonsecure custody order has been issued.***

BILL ANALYSIS: The PCS for House Bill 82 would amend G.S. 7B-504 to allow the court to authorize a law enforcement officer to enter private property to take physical custody of the juvenile who is the subject of the nonsecure custody order and, under exigent circumstances, to make a forcible entry at any hour.

EFFECTIVE DATE: This act is effective when it becomes law and applies to nonsecure custody orders issued under Article 5 of Chapter 7B of the General Statutes on or after that date.

O. Walker Reagan
Director

H82-SMTJ-66 CSTJ-30 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 293

Short Title:	Adoption Law Changes.	(Public)
Sponsors:	Representative Stevens (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary III.	

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES UNDER THE LAWS PERTAINING TO ADOPTION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 48 of the General Statutes is amended by adding a new section to read:

"**§ 48-1-108A. Adoptees subject to the Hague Adoption Convention.**

If the adoption of the adoptee is subject to the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), the provisions of the Hague Adoption Convention shall control the individual's adoption. Documentation establishing whether the Hague Adoption Convention applies to an adoptee may be filed and copies thereof may be certified by the court before or after the decree of adoption has been granted."

SECTION 2. G.S. 48-1-109(c) reads as rewritten:

"(c) An order for a report to the court must be sent to a county department of social services in this State, an agency licensed by the Department, or a person or entity authorized to prepare home assessments for the purpose of adoption proceedings under the laws of the petitioner's state of residence. If the petitioner moves to a different state before the agency completes the report, the agency shall request a report ~~pursuant to the Interstate Compact on the Placement of Children under Article 38 of Chapter 7B of the General Statutes~~ from a person or entity authorized to prepare home assessments for the purpose of adoption proceedings under the laws of the petitioner's new state residence."

SECTION 3. G.S. 48-2-100(c) reads as rewritten:

"(c) The courts of this State shall not exercise jurisdiction under this Chapter if at the time the petition for adoption is filed, a court of any other state is exercising jurisdiction substantially in conformity with the Uniform Child-Custody Jurisdiction and Enforcement Act, Article 2 of Chapter 50A of the General Statutes. However, this subsection shall not apply if ~~within 60 days after the date the petition for adoption is filed,~~prior to the decree of adoption being granted the court of the other state dismisses its proceeding or releases its exclusive, continuing jurisdiction."

SECTION 4. G.S. 48-2-206 reads as rewritten:

"**§ 48-2-206. Prebirth determination of right to consent.**

(a) At any time after ~~six~~ approximately three months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the

court to determine whether consent of the biological father is required. The biological father shall be served with notice of the intent of the biological mother to place the child for adoption, allowing the biological father ~~15~~ 30 days after service to assert a claim that his consent is required.

(b) The notice required under subsection (a) of this section shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

"[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than ~~15~~ 30 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within ~~15~~ 30 days that you believe your consent is required, the court will rule that your consent is not required."

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption. A biological father who fails to respond within the time required under this section is not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding.

(d) If the biological father notifies the court within ~~15~~ 30 days of his receipt of the notice required by subsection (a) of this section that he believes his consent to the adoption is required, on motion of the petitioner, the court shall hold a hearing to determine whether the consent of the biological father is required. Promptly on receipt of the petitioner's motion, the court shall set a date for the hearing no earlier than 60 days ~~nor later than 70 days~~ after the biological father received the notice required by subsection (a) of this section and shall notify the petitioner and the biological father of the date, time, and place of the hearing. The notice of hearing to the biological father shall include a statement substantially similar to the following:

"To the biological father named above: You have told the court that you believe your consent is necessary for the adoption of the child described in the notice sent to you earlier. This hearing is being held to decide whether your consent is in fact necessary. Before the date of the hearing, you must have taken steps under G.S. 48-3-601 to establish that your consent is necessary or this court will decide that your consent is not necessary and the child can be adopted without it."

During the hearing, the court may take such evidence as necessary and enter an order determining whether or not the consent of the biological father is necessary. If the court determines that the consent of the biological father is not required, that individual is not entitled to receive notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-301.2 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

(i) A determination by the court under this section that the consent of the biological father is not required shall only apply to an adoption petition filed within three months of the birth of the minor."

SECTION 5. G.S. 48-2-401(f) reads as rewritten:

"(f) A notice required under this section must state that the person served must file a response to the petition within 30 days after service or, if service is by publication, 40 days after first publication of the notice, in order to participate in and to receive further notice of the proceeding, including notice of the time and place of any hearing."

SECTION 6. G.S. 48-3-202(b) reads as rewritten:

"(b) Information about a prospective adoptive parent shall be provided to a prospective placing parent or guardian by the prospective adoptive parent, the prospective adoptive parent's attorney, or a person or entity assisting the parent or guardian. Except as otherwise provided in this subsection, this information shall include the preplacement assessment prepared pursuant to Part 3 of this Article, and may include additional information requested by the parent or guardian. The agency preparing the preplacement assessment may redact from the preplacement assessment ~~provided to a placing parent or guardian detailed information reflecting the prospective adoptive parent's financial account balances and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under G.S. 48-3-303.~~the information described in G.S. 48-3-303(c)(12)."

SECTION 7. G.S. 48-3-301(b) reads of rewritten:

"(b) A preplacement assessment is not required in an independent adoption when a ~~parent or guardian places a minor directly with~~prospective adoptive parent is a grandparent, full or half sibling, first cousin, aunt, uncle, great-aunt, great-uncle, or great-grandparent of the minor."

SECTION 8. G.S. 48-3-603(a)(7) reads as rewritten:

"(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, or any of the following:

...

(7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice or, if service is by publication, 40 days from the first publication of the notice.

...."

SECTION 9. G.S. 48-3-605(b) reads as rewritten:

"(b) A parent who has not reached the age of 18 years shall have legal capacity to give consent to adoption and to release that parent's rights in a child, and shall be as fully bound as if the parent had attained 18 years of age. In addition to other methods of identification permitted by Chapter 10B of the General Statutes or other applicable law, a parent who has not reached the age of 18 years may be identified to an individual authorized to administer oaths or take acknowledgements by an affidavit of an adult relative of the minor parent, a teacher, a licensed professional social worker, or a health service provider."

SECTION 10. G.S. 48-3-606(2) reads as rewritten:

"**§ 48-3-606. Content of consent; mandatory provisions.**

A consent required from a minor to be adopted, a parent, or a guardian under G.S. 48-3-601 must be in writing and state each of the following:

...

(2) The name, date of birth, and permanent ~~address~~ address, if any, and if none, the current mailing address, of the individual executing the consent."

SECTION 11. G.S. 48-3-703(a)(2) reads as rewritten:

"(a) A relinquishment executed by a parent or guardian under G.S. 48-3-701 must be in writing and state the following:

...

(2) The name, date of birth, and permanent ~~address~~ address, if any, and if none, the current mailing address, of the individual executing the relinquishment."

SECTION 12. Sections 4, 5, and 8 of this act are effective when they become law and apply to proceedings filed after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 293
PROPOSED SENATE COMMITTEE SUBSTITUTE H293-CSTJ-31 [v.1]

5/11/2015 5:55:52 PM

Short Title: Adoption Law Changes. (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES UNDER THE LAWS PERTAINING TO ADOPTION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 48 of the General Statutes is amended by adding a new section to read:

"**§ 48-1-108A. Adoptees subject to the Hague Adoption Convention.**

If the adoption of the adoptee is subject to the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), the provisions of the Hague Adoption Convention shall control the individual's adoption. Documentation establishing whether the Hague Adoption Convention applies to an adoptee may be filed and copies thereof may be certified by the court before or after the decree of adoption has been granted."

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"(c) An order for a report to the court must be sent to a county department of social services in this State, an agency licensed by the Department, or a person or entity authorized to prepare home assessments for the purpose of adoption proceedings under the laws of the petitioner's state of residence. If the petitioner moves to a different state before the agency completes the report, the agency shall request a report ~~pursuant to the Interstate Compact on the Placement of Children under Article 38 of Chapter 7B of the General Statutes~~ from a person or entity authorized to prepare home assessments for the purpose of adoption proceedings under the laws of the petitioner's new state residence."

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"(c) The courts of this State shall not exercise jurisdiction under this Chapter if at the time the petition for adoption is filed, a court of any other state is exercising jurisdiction substantially in conformity with the Uniform Child-Custody Jurisdiction and Enforcement Act, Article 2 of Chapter 50A of the General Statutes. However, this subsection shall not apply if ~~within 60 days after the date the petition for adoption is filed,~~prior to the decree of adoption being granted the court of the other state dismisses its proceeding or releases its exclusive, continuing jurisdiction."

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"**§ 48-2-206. Prebirth determination of right to consent.**

(a) At any time after ~~six~~ approximately three months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the court to determine whether consent of the biological father is required. The biological father

shall be served with notice of the intent of the biological mother to place the child for adoption, allowing the biological father ~~15~~ 30 days after service to assert a claim that his consent is required.

(b) The notice required under subsection (a) of this section shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

"[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than ~~15~~ 30 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within ~~15~~ 30 days that you believe your consent is required, the court will rule that your consent is not required."

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption. A biological father who fails to respond within the time required under this section is not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding.

(d) If the biological father notifies the court within ~~15~~ 30 days of his receipt of the notice required by subsection (a) of this section that he believes his consent to the adoption is required, on motion of the petitioner, the court shall hold a hearing to determine whether the consent of the biological father is required. Promptly on receipt of the petitioner's motion, the court shall set a date for the hearing no earlier than 60 days nor later than 70 days after the biological father received the notice required by subsection (a) of this section and shall notify the petitioner and the biological father of the date, time, and place of the hearing. The notice of hearing to the biological father shall include a statement substantially similar to the following:

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During the hearing, the court may take such evidence as necessary and enter an order determining whether or not the consent of the biological father is necessary. If the court determines that the consent of the biological father is not required, that individual is not entitled to receive notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-301.2 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

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"**§ 48-3-606. Content of consent; mandatory provisions.**

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...

(2) The name, date of birth, and permanent ~~address~~address, if any, and if none, the current mailing address, of the individual executing the consent."

SECTION 11. G.S. 48-3-703(a)(2) reads as rewritten:

"(a) A relinquishment executed by a parent or guardian under G.S. 48-3-701 must be in writing and state the following:

...

(2) The name, date of birth, and permanent ~~address~~ address, if any, and if none, the current mailing address, of the individual executing the relinquishment."

SECTION 12. Sections 4, 5, and 8 of this act are effective when they become law and apply to proceedings filed after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 293:
Adoption Law Changes

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 11, 2015
Introduced by:	Rep. Stevens	**Prepared by:**	Janice Paul
Analysis of:	PCS to First Edition H293-CSTJ-31		Committee Counsel

SUMMARY: House Bill 293 would make various changes under the laws pertaining to adoption.

BILL ANALYSIS:

Section 1 would create a new G.S. 48-1-108A to provide that the provisions of the Hague Adoption Convention control when the adoption is subject to the regulations set forth by the Convention. Information on the Hague Convention can be found on the following website of the U.S. State Department: http://travel.state.gov/content/adoptionsabroad/en.html.

Section 2 of HB 293 would remove the requirement in G.S. 48-1-109(c) that if the petitioner for adoption moves to another state before a home assessment is completed, the Report on Proposed Adoption must be completed using Interstate Compact on the Placement of Children Procedures.

Section 3. G.S. 48-2-100(c) currently provides that courts of this State shall not exercise jurisdiction in an adoption proceeding if any other state is exercising jurisdiction under the uniform state act. HB 293 would specify that this provision does not apply if the other state's court dismisses the case or releases its jurisdiction prior to the granting of the adoption decree.

Section 4 of the bill would make several changes to the times for taking certain actions under G.S. 48-2-206, *"Prebirth determination of right to consent,"* as follows:

- A biological mother, agency or adoptive parents chosen by the biological mother may file an action requesting the court to decide whether the biological father's consent is required at any time after *approximately three* months from the date of conception (was, *six months*). G.S. 48-2-206(a).

- The biological father must have *30* (was, *15*) days after being served with the notice of intent of the biological mother to place the child for adoption to assert a claim that his consent is required. The notice must inform the biological father of the specific actions he must take within that *30* day period. G.S. 48-2-206(b).

- If the biological father notifies the court within *30* (was, *15*) days of his receipt of the notice of intent that he believes his consent is required, a hearing must be held no earlier than 60 days and no later than 70 days at the request of the petitioner. G.S. 48-2-206(d).

Section 5. G.S. 48-2-401 currently requires a response to the petition within 30 days after service in order to receive further notice of the proceeding. HB. 293 would add a provision allowing *40* days from date of first publication for a response when service is by publication.

O. Walker Reagan
Director

Research Division
(919) 733-2578

Section 6 would make clarifying changes to G.S. 48-3-202(b).

Section 7 of HB 293 would amend G.S. 48-3-301(b) to provide that a preplacement assessment is not required in an independent adoption when a prospective adoptive parent is one of the specified relatives, and clarifies that "sibling" means either full or half sibling.

Section 8 would provide that consent to a minor's adoption is not required of an individual who has not executed a consent or relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice, *or, if service is by publication, 40 days from the first publication of the notice.* G.S. 48-3-603(a)(7).

Section 9 would permit an adult relative of a parent who has not reached age 18, or a teacher, licensed professional social worker or a health service provider, to identify the parent to an individual authorized to administer oaths or take acknowledgments. G.S. 48-3-605(b).

Sections 10 and 11 of HB 293 would provide that if an individual executing either a written consent or a relinquishment does not have a permanent address, that individual must include his or her current mailing address. G.S. 48-3-606(2); G.S. 48-3-703(a)(2).

EFFECTIVE DATE: Sections 4, 5, and 8 of this act are effective when they become law and apply to proceedings filed after that date. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, May 12, 2015

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

FAVORABLE

HB **79** **(CS#1)** Contempt for 50C/Scope of Stay for Appeals.
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 **82** Execution/Nonsecure Custody Order/Child Abuse.
Draft Number: H82-PCS40455-TJ-30
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **293** Adoption Law Changes.
Draft Number: H293-PCS30379-TJ-31
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Senator Terry Van Duyn will handle HB 79
Senator Tamara Barringer will handle HB 82
Senator Tamara Barringer will handle HB 293



SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Mike Smallwood	SOG	
Trent Womble	DHHS	H293
Tom Vitaglione	NC Child	
Amanda Hoadley	TSS	
Lauren Coffey	DOA	
Tom Mann	NCAOC	
[illegible]	Bmc	
Carye Dunn	DPNC	
Annalise Dolph	DL	
Kevin Kelley	DHHS	293

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Avgenette Stephenson	DOJ on behalf of DSJ	293
ANDY WALSH	SAA	
Dodie Ronfeld	CCR	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.
Brinton Wright	NCBA	293
Toby Hampson	NCBA	H79
Ed		

Senate Committee on Judiciary II
Thursday, May 14, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:07 AM on May 14, 2015 in Room 1124/1224 of the Legislative Building. 14 members were present.

Senator Tamara Barringer, Chair, presided.

HB 595 Military Experience/LEO Cert. Requirements. (Representatives Whitmire, McNeill, Cleveland, G. Martin)
Senator Alexander motioned to hear the PCS to S595 rather than the original bill. The committee affirmed. The bill was brought before the committee and presented by Rep. Whitmire. Senator Daniel moved to amend the bill. Senator Bingham seconded the motion. The motion carried and the bill was back before the committee as amended. There were questions by Senators Cook, Jackson, McInnis, Davis, and Bryant. Members of the public who spoke for the bill: Gregory Lusk of the NC National Guard, Colonel Bill Grey of the NC State Highway Patrol, Hans Miller - the Onslow County Sheriff, Wayne Ayers of the NC Justice Academy, Thomas Bashore –Chief of Police for the Town of Nashville, and Bill Hollingshead of the CJ Commission. Senator Cook made a motion as unfavorable to the original bill, but favorable as to the PCS as amended, rolled into a new PCS. Senator Bingham seconded the motion. The motion passed.

HB 659 Controlled Substances/Update Precursor List. (Representatives Horn, Jackson)
Rep. Jackson presented the bill. Senator Davis made a motion as favorable to the original bill. Senator Cook seconded the motion. The motion passed.

The meeting adjourned at 10:48 AM.

Senator Tamara Barringer, Chair
Presiding

Gloria Whitehead, Committee Clerk

Senate Committee on Judiciary II
Thursday, May 14, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 595	Military Experience/LEO Cert. Requirements.	Representative Whitmire Representative McNeill Representative Cleveland Representative G. Martin
HB 659	Controlled Substances/Update Precursor List.	Representative Horn Representative Jackson

Presentations

Other Business

Adjournment

HOUSE BILL 595
Second Edition Engrossed 4/16/15

Short Title:	Military Experience/LEO Cert. Requirements.	(Public)
Sponsors:	Representatives Whitmire, McNeill, Cleveland, and G. Martin (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Homeland Security, Military, and Veterans Affairs.	

April 9, 2015

A BILL TO BE ENTITLED

AN ACT TO RECOGNIZE EXPERIENCE AS MILITARY POLICE OFFICERS FOR PURPOSES OF LAW ENFORCEMENT CERTIFICATION AND TO INCREASE THE SIZE OF THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 17C of the General Statutes is amended by adding a new section to read:

"**§ 17C-10.1. Certification of military service members and veterans with law enforcement training and experience.**

(a) Notwithstanding any other provision of law, the Commission shall waive an applicant's completion of the Commission-accredited training course and issue probationary certification to a current or honorably discharged former military police officer provided the Commission, upon evaluating the individual applicant's training and experience pursuant to G.S. 93B-15.1(a), determines that the applicant's combined training and experience is substantially equivalent to or exceeds the minimum expectations for employment as a law enforcement officer and the applicant satisfies all of the following conditions:

(1) Successfully completed a military police training program and been awarded a military police occupational specialty rating.

(2) Performed military police officer duties in any of the branches of military service, active or reserve, or the National Guard for not less than two of the five years preceding the date of the application for certification as a law enforcement officer.

(3) Meets the minimum standards for law enforcement officers as set out in 12 NCAC 9B. 0101 and NCAC 9B. 0111.

(b) An applicant certified pursuant to subsection (a) of this section must successfully complete the employing agency's in-service firearms training and qualification program prior to employment and shall serve a one-year period of probation. During the one-year period of probation, the applicant must successfully complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination in its entirety.

(c) The Commission shall issue certification to a current or honorably discharged former military police officer whose combined training and experience is not substantially

equivalent to or does not exceed the minimum expectations for employment as a law enforcement officer if the applicant meets all of the following requirements:

(1) Successfully completed a formal military basic training program and been awarded a military police occupational specialty rating.

(2) Engaged in the active practice of military police officer duties in any of the branches of military service, active or reserve, or the National Guard for not less than two of the five years preceding the date of the application for certification as a law enforcement officer.

(3) Meets the minimum standards for law enforcement officers as set out in 12 NCAC 9B. 0101 and NCAC 9B. 0111.

(4) Successfully completes the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course and any supplementary high-liability training as deemed necessary by the Commission, not to exceed an additional 180 hours.

(5) Obtains a passing grade on the State Comprehensive Basic Law Enforcement Training (BLET) Exam.

(d) Members of the Air/Army National Guard and Military Reserve Components who have performed as a military police officer for not less than 1,040 hours during the five years preceding the date of application shall be deemed to satisfy the requirements of subdivisions (a)(2) and (c)(2) of this section.

(e) An applicant who, after completing the required training in subsections (a) or (c) of this section, fails to obtain a passing score on not more than two of the units of the comprehensive exam may be retested in the units the applicant failed. An applicant who fails three or more of the units must enroll in and successfully complete a subsequent offering of the Basic Law Enforcement Training Course in its entirety in order to be eligible to be certified.

(f) An active duty military police officer who obtains certification under this section may retain the certification for the duration of active duty provided the officer continues to serve in a military police capacity and complies with any in-service training requirements as may be required by the Commission. An active duty member who is unable to complete annual in-service requirements due to deployment or overseas assignment shall have 12 months from the time the officer returns to the United States in which to complete any required in-service training. The officer shall retain the certification for a period of one year following separation from active duty.

(g) As used in this section, the following terms mean:

(1) Branches of military service. – The United States Armed Forces: Air Force; Army; Marine; Navy; active, reserve, Air/Army National Guard components and the Coast Guard.

(2) Combined training. – Basic military training, basic military police training, in-service or advanced military police training and any other military training courses that may be applicable to the performance of law enforcement duties.

(3) Military police. – All law enforcement occupational classifications in the various branches of the Armed Forces, including Military Police Officer, Security Forces Specialist, Master-at-Arms, Maritime Enforcement Specialist, Boarding Officer and Security forces."

SECTION 2. G.S. 17C-3 reads as rewritten:

"**§ 17C-3. North Carolina Criminal Justice Education and Training Standards Commission established; members; terms; vacancies.**

(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission." The Commission shall be composed of ~~31~~34 members as follows:

(1) Police Chiefs. – Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.

(2) Police Officers. – Three police officials appointed by the North Carolina Police Executives Association and two criminal justice officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.

(3) Departments. – The Attorney General of the State of North Carolina; the Secretary of Public Safety; the Director of the State Bureau of Investigation, the Commander of the State Highway Patrol, and the President of the North Carolina Community Colleges System.

(3a) Repealed by Session Laws 2001-490, s. 1.2, effective June 30, 2001.

(4) At-large Groups. – One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.

(5) Citizens and Others. – The President of The University of North Carolina; the Dean of the School of Government at the University of North Carolina at Chapel Hill; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint four persons, two upon the recommendation of the Speaker of the House of Representatives and two upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall be for two-year terms to conclude on June 30th in odd-numbered years.

(6) ~~Correctional Officers.~~ Adult Correction and Juvenile Justice. – Four correctional officers in management positions employed by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall be appointed, two from the Section of Community Corrections ~~of the Division of Adult Correction~~ upon the recommendation of the Speaker of the House of Representatives and two from the Section of Prisons ~~of the Division of Adult Correction~~ upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered ~~years.~~ years or until the appointee no longer serves in a management position with the Division of Adult Correction, whichever occurs first. The Governor shall appoint one correctional officer employed by the Division of Adult Correction of the Department of Public Safety and assigned to the Office of Staff Development and ~~Training.~~ Training, and one juvenile justice officer employed by the Section of Juvenile Justice. The Governor's ~~appointment~~ appointments shall serve ~~a~~ three-year ~~term.~~terms or until the appointee is no longer assigned to the Office of Staff Development and Training, or is no longer a juvenile justice officer, whichever occurs first.

(b) The members shall be appointed for staggered terms. The initial appointments shall be made prior to September 1, 1983, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; three members from subdivision (2) of subsection (a) of this section, one serving as a police official, and two criminal justice officers; one member from subdivision (4) of subsection (a) of this section, appointed by the North Carolina Law-Enforcement Training Officers' Association; and two members from subdivision (5) of subsection (a) of this section, one appointed by the Governor and one appointed by the Attorney General.

For the terms of two years: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and two members from subdivision (4) of subsection (a) of this section, one appointed by the League of Municipalities and one appointed by the North Carolina Association of District Attorneys.

For the terms of three years: two members from subdivision (1) of subsection (a) of this section, one police chief appointed by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and three members from subdivision (4) of subsection (a) of this section, one appointed by the North Carolina Law-Enforcement Women's Association, one appointed by the North Carolina Criminal Justice Association, and one appointed by the North State Law-Enforcement Officers' Association.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Attorney General, the President of The University of North Carolina, the Dean of the School of Government at the University of North Carolina at Chapel Hill, the President of the North Carolina Community Colleges System, the Director of the State Bureau of Investigation, the Commander of the State Highway Patrol, and the Secretary of Public Safety shall be continuing members of the Commission during their tenure. These members of the Commission shall serve ex officio and shall perform their duties on the Commission in addition to the other duties of their offices. The ex officio members may elect to serve personally at any or all meetings of the Commission or may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio members are unable to attend.

Vacancies in the Commission occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. A vacancy may be created by removal of a Commission member by majority vote of the Commission for misconduct, incompetence, or neglect of duty. A Commission member may be removed only pursuant to a hearing, after notice, at which the member subject to removal has an opportunity to be heard."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 595
Second Edition Engrossed 4/16/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H595-CSTG-27 [v.3]
5/13/2015 6:33:00 PM

Short Title: Military Experience/LEO Cert. Requirements. (Public)

Sponsors:

Referred to:

April 9, 2015

A BILL TO BE ENTITLED

AN ACT TO RECOGNIZE EXPERIENCE AS MILITARY POLICE OFFICERS FOR PURPOSES OF LAW ENFORCEMENT CERTIFICATION AND TO INCREASE THE SIZE OF THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 17C of the General Statutes is amended by adding a new section to read:

"**§ 17C-10.1. Certification of military service members and veterans with law enforcement training and experience.**

(a) Notwithstanding any other provision of law, the Commission shall waive an applicant's completion of the Commission-accredited training course and issue probationary certification to a current or honorably discharged former military police officer provided the Commission, upon evaluating the individual applicant's training and experience pursuant to G.S. 93B-15.1(a), determines that the applicant's combined training and experience is substantially equivalent to or exceeds the minimum expectations for employment as a law enforcement officer and the applicant satisfies all of the following conditions:

(1) Successfully completed a military police training program and been awarded a military police occupational specialty rating.

(2) Performed military police officer duties in any of the branches of military service, active or reserve, or the National Guard for not less than two of the five years preceding the date of the application for certification as a law enforcement officer.

(3) Meets the minimum standards for law enforcement officers as set out in 12 NCAC 9B. 0101 and NCAC 9B. 0111.

(b) An applicant certified pursuant to subsection (a) of this section must successfully complete the employing agency's in-service firearms training and qualification program prior to employment and shall serve a one-year period of probation. During the one-year period of probation, the applicant must successfully complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination in its entirety.

(c) The Commission shall issue certification to a current or honorably discharged former military police officer whose combined training and experience is not substantially equivalent to or does not exceed the minimum expectations for employment as a law enforcement officer if the applicant meets all of the following requirements:

(1) Successfully completed a formal military basic training program and been awarded a military police occupational specialty rating.
(2) Engaged in the active practice of military police officer duties in any of the branches of military service, active or reserve, or the National Guard for not less than two of the five years preceding the date of the application for certification as a law enforcement officer.
(3) Meets the minimum standards for law enforcement officers as set out in 12 NCAC 9B. 0101 and NCAC 9B. 0111.
(4) Successfully completes the Legal Unit and 24 hours of training in the service of civil process in a Commission-accredited Basic Law Enforcement Training Course.
(5) Successfully completes any supplementary high-liability training as deemed necessary by the Commission, not to exceed an additional 180 hours.
(6) Obtains a passing grade on the State Comprehensive Basic Law Enforcement Training (BLET) Exam.

(d) Members of the Air/Army National Guard and Military Reserve Components who have performed as a military police officer for not less than 1,040 hours during the five years preceding the date of application shall be deemed to satisfy the requirements of subdivisions (a)(2) and (c)(2) of this section.

(e) An applicant who, after completing the required training in subsections (a) or (c) of this section, fails to obtain a passing score on not more than two of the units of the comprehensive exam may be retested in the units the applicant failed. An applicant who fails three or more of the units must enroll in and successfully complete a subsequent offering of the Basic Law Enforcement Training Course in its entirety in order to be eligible to be certified.

(f) An active duty military police officer who obtains certification under this section may retain the certification for the duration of active duty provided the officer continues to serve in a military police capacity and complies with any in-service training requirements as may be required by the Commission. An active duty member who is unable to complete annual in-service requirements due to deployment or overseas assignment shall have 12 months from the time the officer returns to the United States in which to complete any required in-service training. The officer shall retain the certification for a period of one year following separation from active duty.

(g) As used in this section, the following terms mean:
(1) Branches of military service. – The United States Armed Forces: Air Force; Army; Marine; Navy; active, reserve, Air/Army National Guard components and the Coast Guard.
(2) Combined training. – Basic military training, basic military police training, in-service or advanced military police training and any other military training courses that may be applicable to the performance of law enforcement duties.
(3) Military police. – All law enforcement occupational classifications in the various branches of the Armed Forces, including Military Police Officer, Security Forces Specialist, Master-at-Arms, Maritime Enforcement Specialist, Boarding Officer and Security forces.

(h) The Commission shall adopt rules to implement the provisions of this section."

SECTION 2. G.S. 17C-3 reads as rewritten:

"**§ 17C-3. North Carolina Criminal Justice Education and Training Standards Commission established; members; terms; vacancies.**

(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission." The Commission shall be composed of ~~31~~34 members as follows:

(1) Police Chiefs. – Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.

(2) Police Officers. – Three police officials appointed by the North Carolina Police Executives Association and two criminal justice officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.

(3) Departments. – The Attorney General of the State of North Carolina; the Secretary of Public Safety; the Director of the State Bureau of Investigation, the Commander of the State Highway Patrol, and the President of the North Carolina Community Colleges System.

(3a) Repealed by Session Laws 2001-490, s. 1.2, effective June 30, 2001.

(4) At-large Groups. – One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.

(5) Citizens and Others. – The President of The University of North Carolina; the Dean of the School of Government at the University of North Carolina at Chapel Hill; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint four persons, two upon the recommendation of the Speaker of the House of Representatives and two upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall be for two-year terms to conclude on June 30th in odd-numbered years.

(6) ~~Correctional Officers.~~ Adult Correction and Juvenile Justice. – Four correctional officers in management positions employed by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall be appointed, two from the Section of Community Corrections ~~of the Division of Adult Correction~~ upon the recommendation of the Speaker of the House of Representatives and two from the Section of Prisons ~~of the Division of Adult Correction~~ upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered ~~years.~~ years or until the appointee no longer serves in a management position with the Division of Adult Correction, whichever occurs first. The Governor shall appoint one correctional officer employed by the Division of Adult Correction of the Department of Public Safety and assigned to the Office of Staff Development and ~~Training.~~ Training, and one juvenile justice officer employed by the Section of Juvenile Justice. The Governor's ~~appointment~~ appointments shall serve ~~a~~ three-year ~~term.~~terms or until the appointee is no longer assigned to the Office of Staff Development and Training, or is no longer a juvenile justice officer, whichever occurs first.

(b) The members shall be appointed for staggered terms. The initial appointments shall be made prior to September 1, 1983, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; three members from subdivision (2) of subsection (a) of this section, one serving as a police official, and two criminal justice officers; one member from subdivision (4) of subsection (a) of this section, appointed by the North Carolina Law-Enforcement Training Officers' Association; and two members from subdivision (5) of subsection (a) of this section, one appointed by the Governor and one appointed by the Attorney General.

For the terms of two years: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and two members from subdivision (4) of subsection (a) of this section, one appointed by the League of Municipalities and one appointed by the North Carolina Association of District Attorneys.

For the terms of three years: two members from subdivision (1) of subsection (a) of this section, one police chief appointed by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and three members from subdivision (4) of subsection (a) of this section, one appointed by the North Carolina Law-Enforcement Women's Association, one appointed by the North Carolina Criminal Justice Association, and one appointed by the North State Law-Enforcement Officers' Association.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Attorney General, the President of The University of North Carolina, the Dean of the School of Government at the University of North Carolina at Chapel Hill, the President of the North Carolina Community Colleges System, the Director of the State Bureau of Investigation, the Commander of the State Highway Patrol, and the Secretary of Public Safety shall be continuing members of the Commission during their tenure. These members of the Commission shall serve ex officio and shall perform their duties on the Commission in addition to the other duties of their offices. The ex officio members may elect to serve personally at any or all meetings of the Commission or may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio members are unable to attend.

Vacancies in the Commission occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. A vacancy may be created by removal of a Commission member by majority vote of the Commission for misconduct, incompetence, or neglect of duty. A Commission member may be removed only pursuant to a hearing, after notice, at which the member subject to removal has an opportunity to be heard."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 595

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

H595-ATG-27 [v.2]

Amends Title [NO]
H595-CSTG-27 [v.3]

Date _____,2015

Senator Daniel

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

"probation, the applicant must successfully complete the Legal Unit and 24 hours of training in the service of civil process in a Commission-accredited".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 595:
Military Experience/LEO Cert. Requirements

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 13, 2015
Introduced by:	Reps. Whitmire, McNeill, Cleveland, G. Martin	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Second Edition H595-CSTG-27		

SUMMARY: ***The Proposed Committee Substitute for House Bill 595 would establish procedures to be followed by the Criminal Justice Education and Training Standards Commission in certifying current or former military police officers and would increase the Commission's membership from 31 to 34 voting members by adding the SBI Director, the State Highway Patrol Commander and a juvenile justice officer appointed by the Governor. The PCS would require applicants to receive at least 24 hours of training in the service of civil process in addition to the other Commission requirements if their combined training and experience do not meet or exceed the minimum expectations for employment as a law enforcement officer, and would require the Commission to adopt rules to implement the provisions of Section 1 of the PCS.***

CURRENT LAW: Criminal justice officers in North Carolina must meet minimum educational and training standards established by the North Carolina Criminal Justice Education and Training Standards Commission ("the Commission") under Chapter 17C of the General Statutes.

The Commission has 31 voting members appointed to staggered three-year terms, appointed to represent the following designated categories: police chiefs, police officers, departments, at-large groups, citizens and others, and correctional officers. G.S. 17C-3(a).

Under current law, the Attorney General, the Director of Public Safety, and the President of the North Carolina Community Colleges System are the Commission members designated to represent departments. G.S. 17C-3(a)(3).

BILL ANALYSIS: **Section 1** of the PCS would enact new G.S. 17C-10.1, which would require the Commission to waive the requirement of completing a Commission-accredited training course and issue probationary certification to an applicant who:

1. is a current or honorably discharged former military police officer having combined training and experience that meet or exceed minimum requirements for employment of a law enforcement officer;
2. was awarded a military police occupational specialty rating;
3. performed military police officer duties for not less than two of the five years preceding the date of the application; and
4. meets the minimum standards for law enforcement officers as set out in 12 NCAC 9B. 0101 and NCAC 9B. 0111

Before employment, a person issued probationary certification would be required to complete the employer's in-service firearms training. The certification would be probationary for a period of one year, during which time the applicant would be required to complete the Legal Unit in a

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Commission-accredited course and to pass the State Comprehensive Basic Law Enforcement Training (BLET) Exam.

A current or honorably discharged former military police officer who was awarded a military police occupational specialty and who performed military police officer duties for at least two of the five years preceding the application date, but whose combined training and experience did not meet or exceed the minimum expectations for employment as a law enforcement officer, would be required to be certified by the Commission if the applicant:

- meets minimum standards set forth in 12 NCAC 9B. 0101 and NCAC 9B. 0111
- successfully completes the Legal Unit in a Commission-accredited BLET course and ***(added by the PCS)*** successfully completes at least 24 hours of training in the service of civil process
- successfully completes any supplementary high-liability training, as deemed necessary by the Commission, not to exceed 180 hours
- passes the State Comprehensive BLET Exam

An applicant who, as a member of the Air/Army National Guard and Military Reserve Components, served as a military police officer for at least 1,040 hours in the five years prior to the date of the application would be deemed to have satisfied the requirement of having performed such duties for at least two of the five years preceding the date of the application.

Applicants completing the required training but failing no more than two units of the comprehensive exam could be retested in the failed units, but applicants failing three or more units would be required to successfully complete a subsequent BLET course in its entirety to be eligible for certification.

An active duty military police officer who is certified would retain certification for as long as he or she (1) is on active duty, (2) is serving as a military police officer, and (3) complies with the Commission's in-service training requirements. The officer would retain certification for one year after separation from active duty. If unable to complete annual in-service training requirements because of deployment or overseas assignment, the officer would have 12 months from return to the United States to complete that training.

The Commission would be required to adopt rules to implement the provisions of this section. ***(Added by the PCS.)***

Section 2 of the PCS would amend G.S. 17C-3 to add three members to the Commission: the Director of the State Bureau of Investigation, the Commander of the State Highway Patrol, and a juvenile justice officer employed by the Section of Juvenile Justice appointed by the Governor.

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

OFFICE OF THE
SHERIFF OF ROCKINGHAM COUNTY
Sam S. Page, Sheriff
Physical Address:
Law Enforcement Center
170 NC 65 Reidsville, NC 27320
Mailing Address:
P.O. Box 128 Wentworth, NC 27375

Non-Emergency:	(336) 634-3232
Records:	(336) 634-3235
Detectives:	(336) 634-3238
Administration:	(336) 634-3239
Animal Control:	(336) 634-3300
Jail:	(336) 634-3236
Fax:	(336) 634-3064
Public Information:	(336) 634-3065
Website:	RockinghamSheriff.com
Twitter:	@rockcosheriff
Facebook:	Rockingham Sheriff
Instagram:	rockcosheriff

Date: Thursday May 14, 2015

Distinguished Members of the N.C. Senate,

My name is Sam Page and I am the duly elected Sheriff of Rockingham County North Carolina. I have had the pleasure of serving in this capacity for the past sixteen years. I have more than 30 years of law enforcement experience, having started my career as a Security Police K-9 Law Enforcement Specialist in the United States Air Force. I am writing this letter in support of the proposed N.C. House Bill 595 – "Military Experience/LEO Certification Requirements".

When first presented with this Bill two weeks ago, I initially opposed it; however, having had a chance to better educate myself on this Bill, I now feel comfortable supporting N.C. House Bill 595, both as a Sheriff and as a Veteran who supports hiring Veterans.

The training and experience provided by all branches of the United States Military is the best in the world, and this Bill will serve and an incentive to draw in applicants interested in continuing in the field of civilian law enforcement. In light of growing criticisms towards law enforcement officers in America, I fear that in the near future we will be faced with the challenge of finding those willing to enter into our profession. N.C. House Bill 595 provides an added enticement to draw disciplined, well-trained individuals into the field of law enforcement who are already serving in a similar capacity in the service of our great country.

As I stated earlier, I started my career in law enforcement while serving in the U.S. Air Force. It was the foundation on which I built my career upon. I apologize for not being able to attend and show my support in person for N.C. House Bill 595. Please feel free to contact me if I can be of any assistance to your committee.

Sincerely,

Sam S. Page
Sheriff of Rockingham County North Carolina

REPRESENTATIVE CHRIS WHITMIRE
N.C. HOUSE OF REPRESENTATIVES - DISTRICT 113
SERVING TRANSYLVANIA, SOUTHERN HENDERSON & POLK COUNTIES

537 LEGISLATIVE OFFICE BUILDING
300 N. SALISBURY STREET
RALEIGH, NC 27603-5925
(919) 715-4466
(919) 754-3288 FAX

DISTRICT ADDRESS:
PO BOX 931
ROSMAN, NC 28772
CHRIS. WHITMIRE@NCLEG.NET
YOUR EMAIL HELPS ME HELP YOU

HOUSE BILL 659
Second Edition Engrossed 4/28/15

Short Title:	Controlled Substances/Update Precursor List.	(Public)
Sponsors:	Representatives Horn and Jackson (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary III.	

April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE LIST OF IMMEDIATE PRECURSOR CHEMICALS THAT IT IS UNLAWFUL FOR A PERSON TO POSSESS WITH INTENT TO MANUFACTURE OR DELIVER AND TO CLARIFY WHAT CONSTITUTES CERTAIN DRUG OFFENSES INVOLVING METHAMPHETAMINE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95 reads as rewritten:

"**§ 90-95. Violations; penalties.**

...

(d1) (1) Except as authorized by this Article, it is unlawful for any person to:

a. Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

b. Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance; or

c. Possess a pseudoephedrine product if the person has a prior conviction for the possession <u>of methamphetamine, possession with the intent to sell or deliver methamphetamine, sell or deliver methamphetamine, trafficking methamphetamine, possession of an immediate precursor chemical,</u> or manufacture of methamphetamine. <u>The prior conviction may be from any jurisdiction within the United States.</u>

Except where the conduct is covered under subdivision (2) of this subsection, any person who violates this subdivision shall be punished as a Class H felon.

(2) Except as authorized by this Article, it is unlawful for any person to:

a. Possess an immediate precursor chemical with intent to manufacture methamphetamine; or

b. Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture methamphetamine.

Any person who violates this subdivision shall be punished as a Class F felon.

(d2) The immediate precursor chemicals to which subsection (d1) ~~and (d1a)~~ of this section applies are those immediate precursor chemicals designated by the Commission

pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Acetic anhydride.
(2) Acetone.
(2a) Ammonium nitrate.
(2b) Ammonium sulfate.
(3) Anhydrous ammonia.
(4) Anthranilic acid.
(5) Benzyl chloride.
(6) Benzyl cyanide.
(7) 2-Butanone (Methyl Ethyl Ketone).
(8) Chloroephedrine.
(9) Chloropseudoephedrine.
(10) D-lysergic acid.
(11) Ephedrine.
(12) Ergonovine maleate.
(13) Ergotamine tartrate.
(13a) Ether based starting fluids.
(14) Ethyl ether.
(15) Ethyl Malonate.
(16) Ethylamine.
(17) Gamma-butyrolactone.
(18) Hydrochloric Acid. (Muriatic Acid).
(19) Iodine.
(20) Isosafrole.
(21) ~~Lithium.~~Sources of lithium metal.
(22) Malonic acid.
(23) Methylamine.
(24) Methyl Isobutyl Ketone.
(25) N-acetylanthranilic acid.
(26) N-ethylephedrine.
(27) N-ethylepseudoephedrine.
(28) N-methylephedrine.
(29) N-methylpseudoephedrine.
(30) Norpseudoephedrine.
(30a) Petroleum based organic solvents such as camping fuels and lighter fluids.
(31) Phenyl-2-propane.
(32) Phenylacetic acid.
(33) Phenylpropanolamine.
(34) Piperidine.
(35) Piperonal.
(36) Propionic anhydride.
(37) Pseudoephedrine.
(38) Pyrrolidine.
(39) Red phosphorous.
(40) Safrole.
(40a) Sodium hydroxide (Lye).
(41) ~~Sodium.~~Sources of sodium metal.
(42) Sulfuric Acid.
(43) Tetrachloroethylene.
(44) Thionylchloride.

(45) Toluene.

...."

SECTION 2. The Joint Legislative Commission on Justice and Public Safety may study the current State and federal law regarding the authority for State agencies to schedule controlled substances without legislative action and the procedure for that scheduling or rescheduling.

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

HOUSE BILL 659:
Controlled Substances/Update Precursor List

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 13, 2015
Introduced by:	Reps. Horn, Jackson	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 659 would update the list of methamphetamine precursor chemicals, and clarify what constitutes certain drug offenses involving methamphetamine.

CURRENT LAW: The offense of Possession of Pseudoephedrine after Methamphetamine Conviction, G.S. 90-95(d1)(1)(c), was enacted by Section 1 of Session Law 2013-124. "Immediate precursor" is defined in G.S. 90-87(14) as a substance which the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services "has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture."

BILL ANALYSIS:

Section 1 would make possession of a pseudoephedrine product a crime if the defendant has a prior conviction in any United States jurisdiction for specified methamphetamine-related offenses, and would update the list of the immediate methamphetamine precursor chemicals.

Section 2 would authorize the Joint Legislative Commission on Justice and Public Safety to study the authority of state agencies to schedule controlled substances without legislative action and establish the related procedure.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

BACKGROUND: The House Select Committee on Methamphetamine Abuse was established by the Speaker of the House in September 2011. The Committee's report to the 2013 General Assembly can be found at: ***http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=152***

A link to the current Legislative Commission on Methamphetamine Abuse can be found at: ***http://ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_6273***

O. Walker Reagan
Director

* H 6 5 9 - S M T J - 6 9 E 2 - V 1 *

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, May 14, 2015

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

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

HB **595** Military Experience/LEO Cert. Requirements.

Draft Number:	H595-PCS40458-TG-28
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Warren Daniel will handle HB 595



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, May 14, 2015

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

FAVORABLE

HB **659** Controlled Substances/Update Precursor List.

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

TOTAL REPORTED: 1

Senator E.S. Newton will handle HB 659



SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Thompson, Clifton	NCARNG	595
Glen Allen	State Capitol Police	595
Will Parry-Hill	NCHFA	
Darius Black	NCPPS	595
Susan Vick	Duke Energy	
Wayne Ayers	NC Justice Academy	
Richard Squires	N.C. CJ Stats	595
Steven G. Combs	NC Standards	595
Dick Carlton	[illegible]	
Chris Agner	DOJ	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.

SENATE JUDICIARY II ~~PROSPECTIVE SPEAKER~~
SIGN-IN

NAME	ORGANIZATION	BILL NO.
SGT Felichia Likes	NC National Guard	S95
Lorrie L. Dollar	NCDPS	H595 (not speaking)
[signature]	UNC Dept Govt.	
SSG Edwards, Joseph G.	NC National Guard	H595
CSM Hummel James	NCANG	H595
SSG Brian Farmer	Burlington Police / NCANG	H595
Neil Woodcock	Col(Ret) USAF	H595
Joe Dugdale	DPS	H595
Ryan Combs	DPS	
KCN RcVa1	Pitt	

SENATE JUDICIARY II VISITOR SIGN-IN

	NAME	ORGANIZATION	BILL NO.
SSG	JOSEPH, MICAH E	NCNG	595
CW5	RICHARD COMER	NCNG	595
MG	Gregory A Lusk	NCNG	595
CSM	Timothy L James	NCNG	595
SPC	Derrick C. Wells	NCNG	595
SGT	Lindsey Schultz	NCNG	595
SPC	[illegible]	NCNG	595
SGT	Ruffin, Gene	NCNG	595
CW4	MARK Louder	NCNG	595
SGT	Christine Walker	NCNG	595

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.
Gregory H. Lusk	NC National Guard	
Bill Grey	NC Highway Patrol	
Optional Tonya Furtado	Div. of Veteran Affairs	
Sheriff Hans Miller	Onslow Co. Sheriff	
Wayne Ayers	Criminal Justice Training & Standards Commission	
THOMAS BOSHORE	Town of Nashville	
Bill Hollingsworth - Chair. of Chiefs of Police		

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.

Senate Committee on Judiciary II
Tuesday, May 19, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:05 AM on May 19, 2015 in Room 1124/1224 of the Legislative Building. 13 members were present.

Senator Shirley B. Randleman, Chair, presided.

Pages: Emma Thomas of Black Mountain, Meredith Stogner of Rockingham, Jacob Hart of Chapel Hill, Spencer Amos of Morganton, Mattie Mitchell of Morganton, Lili Vitale of Franklin
Sgt. at Arms: Steve McKaig, Matt Urben

HB 303 Dispute Resolution Amendments. (Representatives Horn, Daughtry, Davis, Stevens)
Rep. Stevens presented the bill to the committee with the help of the committee's legal staff, Bill Patterson. At least three different members brought up questions about the bill.
A member of the public spoke in favor of the bill and assisted in answering questions:
Andy Little for the NC Dispute Resolution Commission.
After discussion, Sen. J. Davis motioned to give the original bill a favorable report. The motion carried. The bill was reported out by the clerk "Favorable."

HB 513 Real Property/Technical Corrections. (Representatives Bryan, Stevens)
With no objection, the PCS: PCS H513-CSTJ-32 was brought before the committee for consideration rather than the original bill.
Rep. Stevens presented the bill to the committee. A member of the committee brought up a question about the bill.
After discussion, Sen. Bryant motioned to give the bill a report as unfavorable to the original, favorable to the PCS. The motion carried. The bill was reported by the clerk "Unfavorable as to bill, but Favorable as to Senate Committee Substitute bill."

The meeting adjourned at 10:18 am.

Senator Shirley B. Randleman, Chair
Presiding

Patrick Limer, Committee Clerk

Senate Committee on Judiciary II
Tuesday, May 19, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 303	Dispute Resolution Amendments.	Representative Horn Representative Daughtry Representative Davis Representative Stevens
HB 513	Real Property/Technical Corrections.	Representative Bryan Representative Stevens

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 2

HOUSE BILL 303
Committee Substitute Favorable 3/25/15

Short Title: Dispute Resolution Amendments. (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING MEDIATED SETTLEMENT CONFERENCES IN SUPERIOR COURT, MEDIATION IN DISTRICT COURT DOMESTIC CASES, AND THE REGULATION OF MEDIATORS, TO ESTABLISH A DISPUTE RESOLUTION FUND FOR MONIES COLLECTED THROUGH THE EXISTING ADMINISTRATIVE FEE FOR THE CERTIFICATION OF MEDIATORS AND MEDIATION TRAINING PROGRAMS, AND TO MAKE IT UNLAWFUL TO FALSELY REPRESENT ONESELF AS A CERTIFIED MEDIATOR OR TO FALSELY REPRESENT A MEDIATOR TRAINING PROGRAM AS CERTIFIED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-38.1(l) reads as rewritten:

"(l) Inadmissibility of negotiations. – Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(1) In proceedings for sanctions under this section;

(2) In proceedings to enforce or rescind a settlement of the action;

(3) In disciplinary ~~proceedings~~hearings before the State Bar or ~~any agency established to enforce standards of conduct for mediators or other neutrals;~~the Dispute Resolution Commission; or

(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference or other settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or ~~any agency established to enforce standards of conduct for~~

~~mediators or other neutrals;~~the Dispute Resolution Commission, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 2. G.S. 7A-38.4A(j) reads as rewritten:

"(j) Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(1) In proceedings for sanctions under this section;

(2) In proceedings to enforce or rescind a settlement of the action;

(3) In disciplinary ~~proceedings~~hearings before the State Bar or ~~any agency established to enforce standards of conduct for mediators or other neutrals;~~ the Dispute Resolution Commission; or

(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this subsection, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this section or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties and in all other respects complies with the requirements of Chapter 50 of the General Statutes. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding under this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or ~~any agency established to enforce standards of conduct for mediators or other neutrals;~~the Dispute Resolution Commission, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 3. G.S. 7A-38.3B reads as rewritten:

"**§ 7A-38.3B. Mediation in matters within the jurisdiction of the clerk of superior court.**

...

(g) Inadmissibility of Negotiations. – Evidence of statements made or conduct occurring during a mediation conducted pursuant to this section, whether attributable to any participant, mediator, expert, or neutral observer, shall not be subject to discovery and shall be inadmissible in any proceeding in the matter or other civil actions on the same claim, except in:

(1) Proceedings for sanctions pursuant to this section;

(2) Proceedings to enforce or rescind a written and signed settlement agreement;

(3) Incompetency, guardianship, or estate proceedings in which a mediated agreement is presented to the clerk;

(4) Disciplinary ~~proceedings~~hearings before the North Carolina State Bar or ~~any agency established to enforce standards of conduct for mediators or other neutrals;~~the Dispute Resolution Commission; or

(5) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse, neglect, or exploitation of an adult, for which there is a duty to report under G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes, respectively.

No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in mediation.

As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

(h) Testimony. – No mediator or neutral observer shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to the mediation in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the matter except to attest to the signing of any agreements reached in mediation, and except in:

(1) Proceedings for sanctions pursuant to this section;

(2) Disciplinary ~~proceedings~~hearings before the North Carolina State Bar or ~~any agency established to enforce standards of conduct for mediators or other neutrals;~~the Dispute Resolution Commission; or

(3) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse, neglect, or exploitation of an adult, for which there is a duty to report under G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes, respectively.

...."

SECTION 4. G.S. 7A-38.3D(k) reads as rewritten:

"(k) Testimony. – No mediator or neutral observer present at the mediation shall be compelled to testify or produce evidence concerning statements made and conduct occurring in or related to a mediation conducted under this section in any proceeding in the same action for any purpose, except in:

(1) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse, neglect, or exploitation of an adult, for which there is a duty to report under G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes, respectively.

(2) Disciplinary ~~proceedings~~ hearings before the North Carolina State Bar or ~~any agency established to enforce standards of conduct for mediators.~~the Dispute Resolution Commission.

(3) Proceedings in which the mediator acts as a witness pursuant to subsection (j) of this section.

(4) Trials of a felony, during which a presiding judge may compel the disclosure of any evidence arising out of the mediation, excluding a statement made by the defendant in the action under mediation, if it is to be introduced in the trial or disposition of the felony and the judge determines that the introduction of the evidence is necessary to the proper administration of justice and the evidence cannot be obtained from any other source."

SECTION 5. G.S. 7A-38.2 reads as rewritten:

"**§ 7A-38.2. Regulation of mediators and other neutrals.**

...

(d) An administrative fee, not to exceed two hundred dollars ($200.00), may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediation training programs operating under this Article. The fees collected ~~may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff. Notwithstanding the provisions of G.S. 143C-1-2(b), certification and renewal fees collected by the Dispute Resolution Commission are nonreverting and are only to be used at the direction of the Commission.~~shall be deposited in a Dispute Resolution Fund. The Dispute Resolution Fund is established within the Judicial Department as a nonreverting, interest-bearing special revenue account. Accordingly, interest and other investment income earned by the Fund shall be credited to it. All monies collected through the administrative fee authorized by this subsection shall be remitted to the Commission to be deposited by the Administrative Office of the Courts

and held in this Fund. Monies in the Fund shall be used to support the operations of the Commission and used at the direction of the Commission.

(e) The chair of the Commission may employ an executive ~~secretary~~director and other staff as necessary to assist the Commission in carrying out its duties. The chair may also employ special counsel or call upon the Attorney General to furnish counsel to assist the Commission in conducting hearings pursuant to its certification or qualification and regulatory responsibilities. Special counsel or counsel furnished by the Attorney General may present the evidence in support of a denial or revocation of certification or qualification or a complaint against a mediator, other neutral, training program, or trainers or staff affiliated with a program. Special counsel or counsel furnished by the Attorney General may also represent the Commission when its final determinations are the subject of an appeal.

...."

SECTION 6. G.S. 7A-38.2 is amended by adding two new subsections to read:

"(l) In order to protect the public and safeguard the courts, the Commission may issue a cease and desist letter to any individual who falsely represents himself or herself to the public as a certified mediator, or as eligible to be certified, pursuant to this section or who uses any words, letters, titles, signs, cards, Web postings, or advertisements to expressly or indirectly convey such misrepresentation to the public.

(m) It shall be unlawful for any individual to falsely represent himself or herself to the public as a certified mediator, or as eligible to be certified, pursuant to this section, or for an individual or firm to falsely represent a mediation training program to the public as certified, or eligible to be certified, pursuant to this section. Any individual or firm making such misrepresentations in violation of this subsection shall be (i) guilty of a Class 2 misdemeanor and (ii) subject to a civil penalty not to exceed five hundred dollars ($500.00) per day of the violation. Each day of such an unlawful representation constitutes a distinct and separate violation. The clear proceeds of any civil penalty collected under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The Commission may appear in its own name and apply to the superior court for an injunction to prevent violations of this section or any rules enacted pursuant to this section, and the court may grant such an injunction regardless of whether criminal prosecution or other actions have been or may be instituted as a result of those violations. Actions and prosecutions under this section shall be filed in the courts of Wake County."

SECTION 7. Section 6 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2015, and applies to mediations commenced after that date.

HOUSE BILL 303:
Dispute Resolution Amendments

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 18, 2015
Introduced by:	Reps. Horn, Daughtry, Davis, Stevens	**Prepared by:**	Bill Patterson* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 303 would:

- ***Make it a Class 2 misdemeanor for an individual falsely to represent that he or she is certified or eligible to be certified as a mediator by the Dispute Resolution Commission, or for an individual or firm falsely to represent that a mediation training program is certified or eligible for such certification by the Dispute Resolution Commission***
- ***Authorize the Dispute Resolution Commission to issue cease and desist letters to individuals who falsely represent themselves to be certified or eligible to be certified as a mediator and to impose a civil penalty not to exceed $500 per day of the violation***
- ***Revise the manner in which mediator certification fees are maintained in the Judicial Department***
- ***Make other technical and conforming changes to the law***

[As introduced, this bill was identical to S709, as introduced by Sen. Hartsell, which is currently in Senate Re-ref to Judiciary II. If fav, re-ref to Appropriations/Base Budget.]

CURRENT LAW: G.S. 7A-38.2 requires persons wishing to serve as mediators in the following actions to meet standards established by the Supreme Court:

G.S. 7A-38.1 (most superior court actions)
G.S. 7A-38.3 (farm nuisance disputes)
G.S. 7A-38.3B (matters within the jurisdiction of the clerk of superior court)
G.S. 7A-38.3D (matters within the jurisdiction of the district criminal courts)
G.S. 7A-38.3E (public records disputes)
G.S. 7A-38.4A (district court actions involving equitable distribution, alimony, or support)

The Dispute Resolution Commission ("Commission") is established within the Judicial Department to administer certification and training of mediators and to discipline violation of applicable laws and rules. Mediator certification and renewal fees are used by the Administrative Office of the Courts to establish and maintain the operation of the Commission and its staff, at the direction of the Commission.

BILL ANALYSIS: Sections 1-4 amend four statutory sections to replace the phrase "any agency established to enforce standards of conduct for mediators or other neutrals" with "the Dispute Resolution Commission," and replace the phrase "disciplinary proceedings" with "disciplinary hearings."

Section 5 requires mediator certification or renewal fees to be maintained in a Dispute Resolution Fund established within the Judicial Department. The fund's monies must be used by the Commission at its discretion to support its operation. Section 5 also replaces the phrase "executive director" with "executive secretary."

Section 6: (1) authorizes the Commission to issue cease and desist letters to persons falsely representing themselves to be certified by the Commission as mediators or eligible for such certification; (2) makes it a Class 2 misdemeanor falsely to represent to the public that one is certified by the Commission as a

mediator or eligible for such certification or falsely to represent to the public that a mediation training program is certified by the Commission or eligible for such certification; (3) subjects violators to a civil penalty of up to $500 for each day of violation; and (4) authorizes the Commission to seek injunctions against violations of the law governing mediators.

EFFECTIVE DATE: Section 6 of the act becomes effective December 1, 2015, and applies to offenses committed on or after that date. The remainder of the act becomes effective July 1, 2015, and applies to mediations commenced on or after that date.

** Greg Roney, counsel to the House Finance Committee, substantially contributed to this summary.*

HOUSE BILL 513

Short Title:	Real Property/Technical Corrections.	(Public)
Sponsors:	Representatives Bryan and Stevens (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary IV.	

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND OTHER CONFORMING CHANGES TO THE GENERAL STATUTES CONCERNING REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-36.10(c) reads as rewritten:

"(c) ~~The~~ Unless the satisfaction expressly states that the underlying obligation secured by the security instrument has been extinguished, the recording of a satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation."

SECTION 2. G.S. 47C-3-104 reads as rewritten:

"**§ 47C-3-104. Transfer of special declarant rights.**

(a) No special declarant right (G.S. 47C-1-103(23)) created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. ~~The~~ Except for the transfer of declarant rights pursuant to subsection (c) of this section, the instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the ~~transfer, including, but not limited to, liability or obligations relating to warranties.~~ transfer and remains liable for warranty obligations imposed upon the transferor by this Chapter. Lack of privity does not deprive any unit owner of standing to ~~bring~~ maintain an action to enforce any obligation of the transferor.

(2) If the successor to any special declarant right is an affiliate of a declarant (G.S. 47C-1-103(1)), the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium.

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special

declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage ~~instrument or~~ instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a ~~mortgage,~~ security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, ~~sale by a trustee under a deed of trust,~~ or sale under Bankruptcy Code or receivership proceedings, of any units owned by a declarant, or real estate in a condominium subject to development rights, or real estate subject to development rights for a condominium, a person acquiring title to all the ~~real estate~~ property being foreclosed or sold, but only upon ~~his request,~~ the person's request in an instrument recorded with the register of deeds in every county where any portion of the condominium is located, succeeds to all special declarant rights (G.S. 47C-1-103(23)) related to ~~that real estate~~ the property held by that ~~declarant, or only to any rights reserved in the declaration and held by that declarant to maintain models, sales offices and signs.~~ declarant and requested by the person acquiring title. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested. The mortgage, deed of trust, tax lien, or other conveyance to be foreclosed under this subsection shall not be required to contain specific reference to an assignment of special declarant rights but shall be deemed to include the special declarant rights as part of the right, title, and interest encumbered by the mortgage, deed of trust, tax lien, or other conveyance.

(d) Upon ~~foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of all units and other real estate in a condominium owned by a declarant the declarant ceases to have any special declarant rights.~~foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings of all units and other real estate in a condominium owned by a declarant, the declarant ceases to have any special declarant rights and the period of declarant control (G.S. 47C-3-103(d)) terminates unless either of the following applies:

(1) The judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(2) The declarant transferred special declarant rights related to the appointment of executive board members to another person pursuant to this section prior to the foreclosure or sale.

(e) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor ~~related to the condominium.~~by this Chapter or by the declaration.

(2) ~~A successor to any special declarant right, other than a successor described in paragraphs (3) and (4) who is not an affiliate of a declarant, is subject to all obligations and liabilities:~~Unless otherwise specified by the declaration as to the holder of a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, a successor to any special declarant right who is not an affiliate of a declarant, other than a successor described in subdivision (3) or (4) of this subsection, is subject to the obligations and liabilities expressly imposed by this Chapter or the declaration:

a. On a declarant which relate to ~~his~~ the successor's exercise or nonexercise of special declarant rights; or

b. On ~~his~~ the declarant's transferor, other ~~than:~~than any of the following:

~~(i)~~1. Misrepresentations by the transferor or any prior ~~declarant;~~declarant.

~~(ii)~~2. Warranty obligations on improvements made by the transferor or any previous declarant, or made before the condominium was ~~created;~~created.

~~(iii)~~3. Breach of any fiduciary obligation by the transferor or any previous declarant or ~~his~~ the declarant's appointees to the executive ~~board; or~~board.

~~(iv)~~4. Any liability or obligation imposed on the transferor or any previous declarant as a result of the transferor's acts or omissions after the transfer.

5. Obligations and liabilities arising out of contractual agreements between the transferor or any previous declarant and third parties other than those contained in the declaration.

(3) A successor to only a right reserved in the declaration to maintain models, management offices, sales offices, and signs advertising the condominium (G.S. 47C-2-115), if ~~he~~ the successor is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement, and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by ~~his~~ a transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title to units under subsection ~~(c),~~ (c) of this section, may declare ~~his intention~~ in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those ~~rights~~ rights, that successor may not exercise any of those rights other than the right held by ~~his~~ the successor's transferor to control the executive board in accordance with the provisions of G.S. 47C-3-103(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant ~~may~~ does not have the right to exercise special declarant rights under this subsection, ~~he~~ the successor declarant is not subject to any liability or obligation as a declarant other than liability for ~~his~~ the successor declarant's acts and omissions under G.S. 47C-3-103(d).

(f) Nothing in this section subjects any successor to a special declarant right to any claims against, or other obligations of, a transferor declarant other than claims and obligations expressly arising under this Chapter or the declaration.

(g) For the purposes of this section, "assignment of declarant rights" shall include any assignment by the declarant of special declarant rights to a person, including, without limitation, an assignment pursuant to this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 513
PROPOSED SENATE COMMITTEE SUBSTITUTE H513-CSTJ-32 [v.2]

5/18/2015 5:46:46 PM

Short Title: Real Property/Technical Corrections. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND OTHER CONFORMING CHANGES TO THE GENERAL STATUTES CONCERNING REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-36.10(c) reads as rewritten:

"(c) ~~The~~ Unless the satisfaction expressly states that the underlying obligation secured by the security instrument has been extinguished and the underlying note or other instrument evidencing the obligation has been cancelled, the recording of a satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation."

SECTION 2. G.S. 47C-3-104 reads as rewritten:

"**§ 47C-3-104. Transfer of special declarant rights.**

(a) No special declarant right (G.S. 47C-1-103(23)) created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. ~~The~~ Except for the transfer of declarant rights pursuant to subsection (c) of this section, the instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the ~~transfer, including, but not limited to, liability or obligations relating to warranties.~~ transfer and remains liable for warranty obligations imposed upon the transferor by this Chapter. Lack of privity does not deprive any unit owner of standing to ~~bring~~ maintain an action to enforce any obligation of the transferor.

(2) If the successor to any special declarant right is an affiliate of a declarant (G.S. 47C-1-103(1)), the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium.

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special

declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage ~~instrument or~~ instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a ~~mortgage,~~ security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, ~~sale by a trustee under a deed of trust,~~ or sale under Bankruptcy Code or receivership proceedings, of any units owned by a declarant, or real estate in a condominium subject to development rights, or real estate subject to development rights for a condominium, a person acquiring title to all the ~~real estate~~ property being foreclosed or sold, but only upon ~~his request,~~ the person's request in an instrument recorded with the register of deeds in every county where any portion of the condominium is located, succeeds to all special declarant rights (G.S. 47C-1-103(23)) related to ~~that real estate~~ the property held by that ~~declarant, or only to any rights reserved in the declaration and held by that declarant to maintain models, sales offices and signs.~~ declarant and requested by the person acquiring title. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested. The mortgage, deed of trust, tax lien, or other conveyance to be foreclosed under this subsection shall not be required to contain specific reference to an assignment of special declarant rights but shall be deemed to include the special declarant rights as part of the right, title, and interest encumbered by the mortgage, deed of trust, tax lien, or other conveyance.

(d) Upon ~~foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of all units and other real estate in a condominium owned by a declarant the declarant ceases to have any special declarant rights.~~ foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings of all units and other real estate in a condominium owned by a declarant, the declarant ceases to have any special declarant rights and the period of declarant control (G.S. 47C-3-103(d)) terminates unless either of the following applies:

(1) The judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(2) The declarant transferred special declarant rights related to the appointment of executive board members to another person pursuant to this section prior to the foreclosure or sale.

(e) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor ~~related to the condominium.~~ by this Chapter or by the declaration.

(2) ~~A successor to any special declarant right, other than a successor described in paragraphs (3) and (4) who is not an affiliate of a declarant, is subject to all obligations and liabilities:~~ Unless otherwise specified in the declaration as to the holder of a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, a successor to any special declarant right who is not an affiliate of a declarant, other than a successor described in subdivision (3) or (4) of this subsection, is subject to the obligations and liabilities expressly imposed by this Chapter or the declaration:

a. On a declarant which relate to ~~his~~ the successor's exercise or nonexercise of special declarant rights; or

b. On ~~his~~ the declarant's transferor, other ~~than:~~than any of the following:

~~(i)~~1. Misrepresentations by the transferor or any ~~prior declarant;~~previous declarant.

~~(ii)~~2. Warranty obligations on improvements made by the transferor or any previous declarant, or made before the condominium was ~~created;~~created.

~~(iii)~~3. Breach of any fiduciary obligation by the transferor or any previous declarant or ~~his~~ the declarant's appointees to the executive ~~board; or~~board.

~~(iv)~~4. Any liability or obligation imposed on the transferor or any previous declarant as a result of the transferor's acts or omissions after the transfer.

5. Obligations and liabilities arising out of contractual agreements between the transferor or any previous declarant and third parties other than those contained in the declaration.

(3) A successor to only a right reserved in the declaration to maintain models, management offices, sales offices, and signs advertising the condominium (G.S. 47C-2-115), if ~~he~~ the successor is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement, and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by ~~his~~ a transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title to units under subsection ~~(c),~~ (c) of this section, may declare ~~his intention~~ in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those ~~rights~~ rights, that successor may not exercise any of those rights other than the right held by ~~his~~ the successor's transferor to control the executive board in accordance with the provisions of G.S. 47C-3-103(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant ~~may~~ does not have the right to exercise special declarant rights under this subsection, ~~he~~ the successor declarant is not subject to any liability or obligation as a declarant other than liability for ~~his~~ the successor declarant's acts and omissions under G.S. 47C-3-103(d).

(f) Nothing in this section subjects any successor to a special declarant right to any claims against, or other obligations of, a transferor declarant other than claims and obligations expressly arising under this Chapter or the declaration.

(g) For the purposes of this section, "assignment of declarant rights" shall include any assignment by the declarant of special declarant rights to a person, including, without limitation, an assignment pursuant to this section."

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

HOUSE BILL 513:
Real Property/Technical Corrections

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 18, 2015
Introduced by:	Reps. Bryan, Stevens	**Prepared by:**	Janice Paul
Analysis of:	PCS to First Edition H513-CSTJ-32		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 513 makes conforming changes regarding the effect of recordation of a satisfaction of mortgages and deeds of trusts, and amends the North Carolina Condominium Act to make it consistent with the North Carolina Planned Community Act with regard to the transfer of special declarant rights. The PCS makes clarifying and technical changes.***

BILL ANALYSIS:

Section 1. G.S. 45-36.10 provides the requirements for the content and effect of a satisfaction of a security instrument (mortgage or deed of trust). The next section, G.S. 45-36.11, was amended by Session Law 2012-150 to provide an alternate mortgage satisfaction form that allows a secured creditor to indicate that the underlying obligation has been extinguished.

The PCS makes a change to provide that the recording of the satisfaction of the security instrument does not by itself extinguish liability *unless* the recorded document expressly states that the underlying obligation secured by the security instrument has been extinguished and the underlying note or other instrument evidencing the obligation has been cancelled.

Section 2. S.L. 2014-57 amended Chapter 47F, *"North Carolina Planned Community Act,"* pertaining to the transfer of special declarant rights. The PCS for HB 513 would make changes to G.S. Chapter 47C, *"North Carolina Condominium Act,"* to make the provisions relating to the transfer of special declarant rights consistent with those provisions as contained in the North Carolina Planned Community Act.

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

Layla Cummings, counsel to House Judiciary IV, contributed to this summary.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, May 19, 2015

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

FAVORABLE

HB **303** **(CS#1)** Dispute Resolution Amendments.

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

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

HB **513** Real Property/Technical Corrections.

Draft Number:	H513-PCS30385-TJ-32
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Fletcher Hartsell will handle HB 303
Senator Tamara Barringer will handle HB 513



DATE MAY 19th 2015

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Tom Mann	NCAOC	
Andy Little	NC DRC	
Elizabeth Hamcon	NCBA Real Property Section	
Kevin Crouch	NCBA	
Danielle Albert	Sen Alexander	

DATE_____

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Daniel Washburn	Senate In.	
Will Pamy-Hier	NCHFA	
Alex Little	KC16	
Kara Weishaar	SA	
Dan Farrell	VB	

Senate Committee on Judiciary II
Thursday, May 21, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:00 AM on May 21, 2015 in Room 1124/1224 of the Legislative Building. 14 members were present. Attending Sargeants-at-Arms: Terry Barnhardt and Canton Lewis. Attending pages: Emma Thomas of Black Mountain (Sen. Van Duyn); Meredith Stogner of Hamlet (Sen. McInnis); Emma Stogner of Hamlet (Sen. McInnis);

Senator Warren Daniel, Chair, presided.

HB 308 Clarify Reasonable Health Insur/LTC Ombudsman. (Representatives Zachary, Stevens, Glazier, Davis) Rep. Stevens presented the bill. There was only a brief committee discussion before Sen. Bingham moved to give the bill a favorable report. The motion carried and the committee reported the bill to the Senate Principal Clerk (SPC) as Favorable, with a Sequential Referral to the Senate Health Care Committee. Sen. Randleman agreed to be the floor handler for the bill.

HB 315 Sheriff & Landlord/Tenant-Writs of Poss. Chg. (Representative Stevens) Rep. Stevens asked the committee to consider her committee substitute bill. The committee agreed and listened to Rep. Stevens present the bill. There was no committee discussion and Sen. Cook motioned for a favorable report. The committee reported the bill to the SPC as Favorable. No referrals. Sen. Randleman agreed to handle this bill on the Senate floor.

HB 355 Evidence Passed Vehicle is a School Bus. (Representatives Reives, Stam) Rep. Stam presented this bill. There was some discussion about overall bus safety. Sen. Bryant requested the committee to adopt her amendment, H355-ATG-29 [v.1]. The amendment rewrote page 1, line 4 and page 1, lines 21-22 to basically require LEA's to provide instruction to students about bus safety procedures, including boarding and exiting school busses. The amendment was adopted and Sen. Cook motioned that the amendment be engrossed and the bill be given a favorable report. The committee reported the bill, with the engrossed amendment, to the SPC as Unfavorable as to Committee Substitute Bill No. 2, but Favorable as to Senate Committee Substitute Bill. No referrals. Sen. Barefoot agreed to be the floom manager.

HB 691 Assault on National Guard Member. (Representatives Whitmire, Pendleton, Robinson) Rep. Whitmire presented the bill and immediately recognized Sen. Randleman and the two amendments she offered. The amendments were intended to make the intended statute conform to proper sentencing structure by making an assault with a firearm upon a member of the NCNG a Class E Felony. The amendments were also intended to make conforming changes as to the title of the statute, GS 14-34.7. Both amendments were adopted. A couple of the committee members were wondering if an incarceration note was requested. Rep. Whitmire said the incarceration note had no determined outcome; and, the chairs agreed that the bill would not

be reported to the SPC until an updated incarceration note could be completed to reflect the engrossed amendments. Sen. Cook moved for a favorable report of the bill, with the engrossed amendments. After the updated incarceration note was completed and sent to committee members, the bill was reported to the SPC as Unfavorable as to the bill, but Favorable as to the Senate Committee Substitute Bill.

The meeting adjourned at 10:36.

Senator Warren Daniel, Chair
Presiding

Andy Perrigo, Committee Clerk

Senate Committee on Judiciary II
Thursday, May 21, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 308	Clarify Reasonable Health Insur/LTC Ombudsman.	Representatives Zachary, Stevens, Glazier, Davis
HB 315	Sheriff & Landlord/Tenant-Writs of Poss. Chg.	Representative Stevens
HB 355	Evidence Passed Vehicle is a School Bus.	Representatives Reives, Stam
HB 691	Assault on National Guard Member.	Representatives Whitmire, Pendleton, Robinson

Presentations

Other Business

Adjournment

HOUSE BILL 308

Short Title:	Clarify Reasonable Health Insur./Child Supp.	(Public)
Sponsors:	Representatives Zachary, Stevens, Glazier, and Davis (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary III, if favorable, Insurance.	

March 23, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS PERTAINING TO THE MEDICAL SUPPORT AND HEALTH INSURANCE COVERAGE RELATING TO CHILD SUPPORT TO ALIGN STATE LAW WITH FEDERAL GUIDELINES THAT NO LONGER INCLUDE THE PROVISION THAT EMPLOYER-PROVIDED GROUP HEALTH INSURANCE IS AUTOMATICALLY CONSIDERED "REASONABLE."

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.11(a1) reads as rewritten:

"(a1) The court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance is available at a reasonable cost. If health insurance is not presently available at a reasonable cost, the court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance becomes available at a reasonable cost. As used in this subsection, health insurance for the benefit of the child is considered reasonable in cost if (i) it is employment related or other group health insurance, ~~regardless of service delivery mechanism.~~and (ii) the coverage for the child is available to the parent at a cost that does not exceed seven percent (7%) of the parent's gross income. The court may require one or both parties to maintain dental insurance."

SECTION 2. This act is effective when it becomes law and applies to orders issued or agreements entered into on or after that date.

HOUSE BILL 308:
Clarify Reasonable Health Insur./Child Supp

2015-2016 General Assembly

Committee:	Senate Judiciary II; Senate Sequential Referral To Health Care Added	**Date:**	May 20, 2015
Introduced by:	Reps. Zachary, Stevens, Glazier, Davis	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 308 would amend the laws pertaining to the medical support and health insurance coverage relating to child support to conform with federal guidelines.***

CURRENT LAW: Current G.S. 50-13.11 requires the court to order the parent of a minor child or other responsible party to maintain health insurance for the child's benefit when that insurance is available at a reasonable cost.

BILL ANALYSIS: House Bill 308 would provide that health insurance for the child's benefits is considered reasonable in cost if it is employment related or other group health insurance *and if the coverage for the child is available to the parent at a cost that does not exceed 7% of the parent's gross income.*

EFFECTIVE DATE: This act is effective when the bill becomes law, applying to orders issued or agreements entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 2

HOUSE BILL 315
Committee Substitute Favorable 4/22/15

Short Title: Sheriff & Landlord/Tenant-Writs of Poss. Chg. (Public)

Sponsors:

Referred to:

March 23, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO LANDLORD/TENANT LAW AND TO PROVIDE FOR PROPER COLLECTION OF FEES AND COSTS FOR SHERIFFS EXECUTING WRITS OF POSSESSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-36.2(a) reads as rewritten:

"(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 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,~~ a statement described in subdivision (2) of this subsection, 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."

SECTION 2. G.S. 7A-311(b) reads as rewritten:

"**§ 7A-311. Uniform civil process fees.**

...

(b) All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected in advance (except in suits in forma pauperis) except those contingent on ~~expenses or~~ sales ~~prices.~~ prices or statutory commissions. When the fee is not collected in advance or at the time of assessment, a lien shall exist in favor of the county on all property of the party owing the fee. If the fee remains unpaid it shall be entered as a judgment against the debtor and shall be docketed in the judgment docket in the office of the clerk of superior court."

SECTION 3.(a) G.S. 1-474 reads as rewritten:

"**§ 1-474. Order of seizure and delivery to plaintiff.**

(a) Order. – The clerk of court may, upon notice and hearing as provided in G.S. 1-474.1 and upon the giving by the plaintiff of the undertaking prescribed in G.S. 1-475, require the sheriff of the county where the property claimed is located to take the property from the defendant and deliver it to the plaintiff. The act of the clerk in issuing or refusing to issue the order to the sheriff is a judicial act and may be appealed pursuant to G.S. 1-301.1 to the judge of the district or superior court having jurisdiction of the principal action.

(b) Expiration of Certain Orders. – When delivery of property is claimed from a debtor who allegedly defaulted on his payments for personal property purchased under a conditional sale contract, a purchase money security agreement or on a loan secured by personal property, an order of seizure and delivery to the plaintiff for that property expires 60 days after it is issued.

(c) Fee Deposit. – Upon issuance of the order described in subsection (a) of this section, a fee deposit shall be collected by the sheriff from the plaintiff to offset the reasonable and necessary fees and expenses for taking and storing the property seized pursuant to this Article."

SECTION 3.(b) G.S. 1-476 reads as rewritten:

"**§ 1-476. Sheriff's duties.**

Upon the receipt of the order from the clerk with the plaintiff's ~~undertaking,~~ undertaking and the fee deposit described in G.S. 1-474(c), the sheriff shall forthwith take the property described in the affidavit, if it is in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion."

SECTION 3.(c) G.S. 1-481 reads as rewritten:

"**§ 1-481. Care and delivery of seized property.**

When the sheriff has taken property, as provided in this Article, he must keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking and his necessary expenses for keeping ~~it.~~the property, minus any amount received pursuant to G.S. 1-474(c). If the amount due under this section is less than the amount received pursuant to G.S. 1-474(c), then the sheriff shall return the excess amount to the depositor. In the event that a third party intervener is entitled to possession of the property, any amount received pursuant to G.S. 1-474(c) shall be returned to the depositor."

SECTION 4. This act becomes effective October 1, 2015.

HOUSE BILL 315:
Sheriff & Landlord/Tenant-Writs of Poss. Chg

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 20, 2015
Introduced by:	Rep. Stevens	**Prepared by:**	Bill Patterson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 315 revises the procedure for executing a writ of possession in summary ejectment proceedings, modifies the requirement for advance payment of certain uniform civil process fees, and requires the plaintiff in a claim and delivery action to pay a fee deposit to the sheriff upon the issuance of an order for seizure of personal property.***

CURRENT LAW: Under G.S. 42-36.2(a), the sheriff is required to return unexecuted a writ of possession issued in favor of the landlord if the sheriff has received from the landlord or the landlord's agent a signed statement saying either: (1) that the tenant's property can remain on the premises; or (2) that the landlord does not want to eject the tenant because the tenant has paid all court costs and has satisfied his indebtedness to the landlord.

G.S. 7A-311(b) requires advance payment of all required civil process fees collected in civil actions or special proceedings not brought either *in forma pauperis* and or under Chapter 50B of the General Statutes, except for fees that are contingent on expenses or sales prices.

G.S. 1-474 authorizes the clerk of court to issue plaintiff in a claim and delivery action an order for seizure of personal property after a notice and hearing, and upon the plaintiff giving a written undertaking payable to the defendant pursuant to G.S. 1-475.

G.S. 1-476 provides that upon the sheriff's receipt of an order for seizure with the plaintiff's undertaking, the sheriff shall forthwith take the subject property and retain it in his custody.

G.S. 1-481 requires the sheriff to deliver the seized property to the party entitled to it after being paid the lawful fees for taking it and any expenses necessary to store it.

BILL ANALYSIS: **Section 1** of the bill would amend G.S. 42-36.2(a) to clarify that a writ of possession is not required to be returned unexecuted when the sheriff has received a signed statement from the landlord or landlord's agent permitting the tenant's property to remain on the premises.

Section 2 would amend G.S. 7A-311(b) to delete the exemption currently provided for fees contingent on expenses, and to add an exemption for fees contingent on statutory commissions.

Section 3.(a) would amend G.S. 1-474 to require the sheriff to collect a fee deposit from the plaintiff upon issuance of an order for seizure to offset the fees and expenses necessary to take and store the property.

Section 3.(b) would amend G.S. 1-476 to require the sheriff to receive the plaintiff's fee deposit before executing an order for seizure of personal property.

Section 3.(c) of the bill would amend G.S. 1-481 to require the sheriff to deliver the seized property to the party entitled to it upon receiving the lawful fees for keeping the property, less the amount of the plaintiff's fee deposit. However, in the event that a third-party intervener is entitled to possession of the property, the sheriff would be required to return the fee deposit to the plaintiff.

EFFECTIVE DATE: This act becomes effective October 1, 2015.

O. Walker Reagan
Director

H315-SMTG-90 E2 -V2

Research Division
(919) 733-2578

HOUSE BILL 355
Committee Substitute Favorable 4/15/15
Committee Substitute #2 Favorable 4/27/15

Short Title: Evidence Passed Vehicle is a School Bus. (Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL METHODS FOR PROVING THAT A STOPPED VEHICLE PASSED BY ANOTHER MOTOR VEHICLE IS A "SCHOOL BUS" SUBJECT TO THE PROVISIONS OF G.S. 20-217.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217(b) reads as rewritten:

"(b) For the purpose of this section, ~~a school bus~~ the term "school bus" includes a public school bus transporting children or school personnel, a public school bus transporting senior citizens under G.S. 115C-243, or a privately owned school bus transporting children. ~~This section applies only in the event the school bus bears upon the front and rear a plainly visible sign containing the words "school bus."~~The following shall be prima facie evidence that a vehicle was a school bus, as defined in this section and Chapter, at the time of a violation of subsection (a) of this section:

(1) A certified copy of a record from the Division showing the vehicle was registered as a school bus at the time of the violation of subsection (a) of this section. A certified copy of a record under this subdivision shall be admissible as evidence without further authentication.

(2) Testimony from the school bus driver, a passenger on the school bus, or the law enforcement officer investigating the violation of subsection (a) of this section."

SECTION 2. This act becomes effective October 1, 2015, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 355

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

H355-ATG-29 [v.1]

Amends Title [YES]
Third Edition

Date 5/21 ,2015

Senator Bryant

moves to amend the bill on page 1, line 4, by rewriting the line to read:

"SUBJECT TO THE PROVISIONS OF G.S. 20-217, TO REQUIRE LOCAL SCHOOL ADMINISTRATIVE UNITS TO PROVIDE INSTRUCTION IN SCHOOL BUS SAFETY TO STUDENTS, AND TO DIRECT THE DEPARTMENT OF PUBLIC INSTRUCTION TO STUDY HOW THE SAFETY OF CHILDREN BOARDING AND EXITING SCHOOL BUSES MAY BE INCREASED."; and

on page 1, lines 21-22, by rewriting the lines to read:

"**SECTION 2.** G.S. 115C-242 reads as rewritten:
"**§ 115C-242. Use and operation of school buses.**
(a) Public school buses may be used for the following purposes only, and it shall be the duty of the superintendent of the school of each local school administrative unit to supervise the use of all school buses operated by such local school administrative unit so as to assure and require compliance with this section:
...
(b) Local school administrative units shall provide instruction in school bus safety to all elementary school students every school year. The instruction provided under this subsection shall be developed by the State Board of Education."

SECTION 3. The Department of Public Instruction, in collaboration with the Department of Transportation, shall study procedures that may be employed, and equipment that may be utilized, to increase the safety of children boarding and exiting school buses. Included within this study shall be the feasibility and cost of extending the metal arm in which the mechanical stop signal is affixed or equipping school buses with a metal bar or other device that can extend from the school bus to provide a barrier between children boarding or exiting the school bus and motor vehicles that may be approaching. The Department of Public Instruction shall report its findings and recommendations, including any legislative proposals, to the Joint Legislative Education Oversight Committee by January 15, 2016.

SECTION 4. Section 1 of this act becomes effective October 1, 2015, and applies to offenses committed on or after that date. The remainder of this act is effective when it

becomes law, and the instruction required by G.S. 115C-242(b), as enacted by Section 2 this act, shall be provided beginning with the 2015-2016 school year.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

HOUSE BILL 355:
Evidence Passed Vehicle is a School Bus

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 21, 2015
Introduced by:	Reps. Reives, Stam	**Prepared by:**	Bill Patterson Jennifer Bedford* Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 355 amends the law making it a crime to pass a stopped school bus to provide two ways to prove that the vehicle passed by the defendant was, in fact, a "school bus."***

CURRENT LAW: G.S. 20-217 requires a driver of a motor vehicle to stop for a school bus[1] displaying its stop signal or flashing red lights.

BILL ANALYSIS: House Bill 355 amends G.S. 20-217 to provide that the following shall be *prima facie* evidence[2] that the vehicle was a "school bus" at the time of an alleged violation of this statute:

- A certified copy of a record from the Division of Motor Vehicles showing the vehicle was registered as a school bus at the time of the violation. A certified copy of this record would be admissible as evidence without further authentication.
- Testimony from the school bus driver, a passenger on the school bus, or the law enforcement officer investigating the violation.

EFFECTIVE DATE: This act becomes effective October 1, 2015, and applies to offenses committed on or after that date.

**Giles Perry, counsel to House Transportation, substantially contributed to this summary.*

[1] "School bus" is defined as "[a public, private or parochial] vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, that is painted primarily yellow below the roofline, and that bears the plainly visible words "School Bus" on the front and rear." G.S. 20-4.01(27)d4.

[2] "[P]rima facie or presumptive evidence does not of itself establish the fact or facts upon which the verdict or judgment must rest, nor does it shift the burden of the issue, which always remains with him who holds the affirmative. It is no more than sufficient evidence to establish the vital facts without other proof, if it satisfies the jury." State v. Wilkerson, 164 N.C. 431, 79 S.E. 888, 891 (1913).

O. Walker Reagan
Director



Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 691

Short Title:	Assault on National Guard Member.	(Public)
Sponsors:	Representatives Whitmire, Pendleton, and Robinson (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Homeland Security, Military, and Veterans Affairs, if favorable, Judiciary III.	

April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A FELONY TO ASSAULT A MEMBER OF THE NORTH CAROLINA NATIONAL GUARD WHO IS DISCHARGING OR ATTEMPTING TO DISCHARGE OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-34.6 reads as rewritten:

"**§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, a member of the North Carolina National Guard, and emergency department personnel.**

(a) A person is guilty of a Class I felony if the person commits an assault or affray causing physical injury on any of the following persons who are discharging or attempting to discharge their official duties:

(1) An emergency medical technician or other emergency health care provider.

(2) A medical responder.

(3) The following emergency department personnel: physicians, physicians assistants, nurses, and licensed nurse practitioners.

(4) Repealed by Session Laws 2011-356, s. 2, effective December 1, 2011, and applicable to offenses committed on or after that date.

(5) A firefighter.

(6) A member of the North Carolina National Guard.

(b) Unless a person's conduct is covered under some other provision of law providing greater punishment, a person is guilty of a Class H felony if the person violates subsection (a) of this section and (i) inflicts serious bodily injury or (ii) uses a deadly weapon other than a firearm.

(c) Unless a person's conduct is covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person violates subsection (a) of this section and uses a firearm."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 691
PROPOSED SENATE COMMITTEE SUBSTITUTE H691-PCS40463-TJ-33

Short Title: Assault on National Guard Member. (Public)

Sponsors:

Referred to:

April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A FELONY TO ASSAULT A MEMBER OF THE NORTH CAROLINA NATIONAL GUARD WHO IS DISCHARGING OR ATTEMPTING TO DISCHARGE OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-34.7 reads as rewritten:

"**§ 14-34.7. ~~Assault inflicting serious injury~~ Certain assaults on a law enforcement, probation, or parole ~~officer~~ officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility; penalty.**

(a) Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person assaults a law enforcement officer, probation officer, or parole officer while the officer is discharging or attempting to discharge his or her official duties and inflicts serious bodily injury on the officer.

(a1) Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person assaults a member of the North Carolina National Guard while he or she is discharging or attempting to discharge his or her official duties and inflicts serious bodily injury on the member.

(b) Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person ~~Anyone who~~ assaults a person who is employed at a detention facility operated under the jurisdiction of the State or a local government while the employee is in the performance of the employee's duties and inflicts serious bodily injury on the ~~employee is guilty of a Class F felony, unless the person's conduct is covered under some other provision of law providing greater punishment.~~employee.

(c) Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class I felony if the person does ~~either~~ any of the following:

(1) Assaults a law enforcement officer, probation officer, or parole officer while the officer is discharging or attempting to discharge his or her official duties and inflicts physical injury on the officer.

(2) Assaults a person who is employed at a detention facility operated under the jurisdiction of the State or a local government while the employee is in the performance of the employee's duties and inflicts physical injury on the employee.

(3) Assaults a member of the North Carolina National Guard while he or she is discharging or attempting to discharge his or her official duties and inflicts physical injury on the member.

For the purposes of this subsection, "physical injury" includes cuts, scrapes, bruises, or other physical injury which does not constitute serious injury."

SECTION 2. G.S. 14-34.5 reads as rewritten:

"**§ 14-34.5. Assault with a firearm on a law enforcement, probation, or parole ~~officer~~ officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility.**

(a) Any person who commits an assault with a firearm upon a law enforcement officer, probation officer, or parole officer while the officer is in the performance of his or her duties is guilty of a Class E felony.

(a1) Any person who commits an assault with a firearm upon a member of the North Carolina National Guard while the member is in the performance of his or her duties is guilty of a Class E felony.

(b) Anyone who commits an assault with a firearm upon a person who is employed at a detention facility operated under the jurisdiction of the State or a local government while the employee is in the performance of the employee's duties is guilty of a Class E felony."

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 691

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

H691-ATH-21 [v.1]

Amends Title [NO]
H691-CSTJ-33

Date _____ ,2015

~~Representative~~ Senator Randleman

moves to amend the bill on page 1, line 6, by deleting "G.S. 14-34.6" and substituting "G.S. 14-34.7".

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. 691 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.)
)
Sen.)

moves to amend the bill on page 2, lines 2 and 3

( ) WHICH CHANGES THE TITLE

by adding a new section ~~to read~~ between the lines to read:

is amended to add a new

"SECTION 2. G.S. 14-34.5 ~~reads as rewritten:~~ subsection to read as follows:

"(a1) Any person who commits an assault with a firearm upon a member of the North Carolina National Guard while the member is in the performance of his or her duties is guilty of a class E felony."

and by renumbering the remaining sections accordingly, and to make a conforming change to the short title of ~~the act~~ G.S. 14-34.5.

SIGNED Julie Randleman

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

REVISED

BILL NUMBER: House Bill 691 (First Edition)

SHORT TITLE: Assault on National Guard Member.

SPONSOR(S): Representatives Whitmire, Pendleton, and Robinson

FISCAL IMPACT

($ in millions)

☐ Yes ☐ No ☑ No Estimate Available

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
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; Indigent Defense Services; Department of Public Safety

EFFECTIVE DATE: December 1, 2015

TECHNICAL CONSIDERATIONS:
None

Revision Note: ***This note has been revised to correct the fiscal year column headers in the table above.***

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address the expanded scope of three offenses being enforced, adjudicated, and having penalties applied to those convicted of the offenses. However, given that there is no historical data on the expanded scope of these 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 this crime:

- Administrative Office of the Courts: $365 to $912 per disposition
- Indigent Defense Services: $315 to $497 per disposition
- Department of Public Safety (DPS) - Prison Section: $2,106 to $5,967 per active sentence
- DPS - Community Corrections: Minimum of $1,175 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

The bill expands the scope of three existing felony offenses under G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, and emergency department personnel, by adding a National Guard member to the list of potential victims.

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. 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.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

Since the bill expands the scope of existing offenses, 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 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.

Section (a) of the bill expands the scope a Class I felony offense for assaulting emergency workers by adding a National Guard member to the list of potential victims. In FY 2013-14, there were 68 charges under G.S. 14-34.6(a). It is not known how many additional charges there may have been under the expanded statute. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class I felony, the average cost to the court would be $315.

IDS has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. In FY 2011-12, 68% of Class I felony cases were handled through the Office of Indigent Defense Services (IDS). The weighted average cost of a new Class I felony is $315 per case for a

private appointed counsel (PAC) attorney. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

Section (b) of the bill expands the scope a Class H felony offense for assaulting emergency workers inflicting serious bodily injury or using a deadly weapon other than a firearm by adding a National Guard member to the list of potential victims. In FY 2013-14, there were five charges under G.S. 14-34.6(b). It is not known how many additional charges there may have been under the expanded statute. For every additional person charged with a Class H felony, the average cost to the court would be $501.

In FY 2011-12, 78% of Class H felony cases were handled through the Office of Indigent Defense Services (IDS). The weighted average cost of a new Class H felony is $353 per case for a private appointed counsel (PAC) attorney. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

Section (c) of the bill expands the scope a Class F felony offense for assaulting emergency workers using a firearm by adding a National Guard member to the list of potential victims. In FY 2013-14, there was one charge under G.S. 14-34.6(c). It is not known how many additional charges there may have been under the expanded statute. For every additional person charged with a Class F felony, the average cost to the court would be $912.

In FY 2011-12, 74% of Class F felony cases were handled through the Office of Indigent Defense Services (IDS). The weighted average cost of a new Class F felony is $497 per case for a private appointed counsel (PAC) attorney. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

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 2014.

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).

Since the bill expands the scope of three existing offenses, 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 beds may be required as a result of this bill.

[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 2016	**June 30 2017**	**June 30 2018**	**June 30 2019**	**June 30 2020**
1. Inmates[2]	37,360	37,522	37,348	37,462	37,610
2. Prison Beds (Expanded Capacity)	38,749	38,749	38,749	38,749	38,749
3. Beds Over/(Under) Inmate Population	1,389	1,227	1,401	1,287	1,139
4. Additional Inmates Due to this Bill[3]	**No estimate available**				
5. Additional Beds Required					

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is $11.53 per day, or $351 per month, which includes the cost of food, clothing, and health care. In FY 2013-14, there were eight convictions under G.S. 14-34.6(a). In FY 2013-14, 16% of Class I felony offenders received active sentences averaging six months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be $2,106 ($351 monthly cost times six months).

In FY 2013-14, there were two convictions under G.S. 14-34.6(b). In FY 2013-14, 35% of Class H felony offenders received active sentences averaging ten months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be $3,510 ($351 monthly cost times ten months).

In FY 2013-14, there were no convictions under G.S. 14-34.6(c). In FY 2013-14, 51% of Class F felony offenders received active sentences averaging 17 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be $5,967 ($351 monthly cost times 17 months).

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 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.

JRA essentially eliminated the distinction between "community" and "intermediate" supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

[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 2015.

[3] Criminal penalty bills effective December 1, 2015 should not affect prison population and bed needs until FY 2016-17 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs $130.50 per offender, per month; 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 and supervised probations.

In FY 2013-14, 16% of Class I felony offenders received active sentences; 84% received probation. All active sentences result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 23 months. Therefore, at a minimum, one conviction resulting from Section (a) of this bill will require at least nine months of supervision. The cost of nine months of supervision is $1,175 per offender ($130.50 per month times nine months).[4]

In FY 2013-14, 35% of Class H felony offenders received active sentences; 65% received probation. All active sentences result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 28 months. Therefore, at a minimum, one conviction resulting from Section (b) of this bill will require at least nine months of supervision. The cost of nine months of supervision is $1,175 per offender ($130.50 per month times nine months).[4]

In FY 2013-14, 51% of Class F felony offenders received active sentences; 49% received probation. All active sentences result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 32 months. Therefore, at a minimum, one conviction resulting from Section (c) of this bill will require at least nine months of supervision. The cost of nine months of supervision is $1,175 per offender ($130.50 per month times nine months).[4]

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: Kristine Leggett

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: April 22, 2015



Signed Copy Located in the NCGA Principal Clerk's Offices

[4] Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.

This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 691: Assault on National Guard Member

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 20, 2015
Introduced by:	Reps. Whitmire, Pendleton, Robinson	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition H691-CSTJ-33		

SUMMARY: House Bill 691 would make it a felony to commit an assault on a member of the North Carolina National Guard who is discharging or attempting to discharge official duties.

The Proposed Committee Substitute (PCS) would place the provisions relating to assault on National Guard members in G.S. 14-34.7 (was, G.S. 14-34.6), and would make other technical changes.

CURRENT LAW: Article 8 of Chapter 14 of the General Statutes sets out the conduct and punishment for different types of assaults.

- G.S. 14-34.6 pertains to an assault or affray on a firefighter, an emergency medical technical (EMT), medical responder, or emergency department (ED) personnel.
- G.S. 14-34.7 is entitled, "Assault inflicting serious injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; penalty."

BILL ANALYSIS: The original bill placed the crime of assaulting a member of the N.C. National Guard in the section of the criminal law relating to assaults on firefighters, EMTs, medical responders, and ED personnel. The PCS for HB 691 would amend G.S. 14-34.7 relating to assaults on law enforcement, probation, or parole officers, or on employees of detention facilities. Thus, the PCS would create felony offenses for committing particular types of assaults on a member of the N.C. National Guard who is discharging or attempting his or her official duties, as follows:

- Assault inflicting serious bodily injury – Class F felony.
  - "Serious bodily injury" is defined in the North Carolina Criminal Law as "bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization." [G.S. 14-32.4.]

- Assault inflicting physical injury – Class I felony.
  - "Physical injury" is defined in current G.S. 14-34.7(c) to include "cuts, scrapes, bruises, or other physical injury which does not constitute serious injury."

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

H691-SMTJ-25-CSTJ-33-V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, May 21, 2015

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

FAVORABLE

HB **308** Clarify Reasonable Health Insur./Child Supp.

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

HB **315** **(CS#1)** Sheriff & Landlord/Tenant-Writs of Poss. Chg.

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

TOTAL REPORTED: 2

Senator Shirley Randleman will handle HB 308
Senator Shirley Randleman will handle HB 315



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, May 21, 2015

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

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

HB **691** Assault on National Guard Member.

Draft Number:	H691-PCS40463-TJ-33
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 **355** **(CS#2)** Evidence Passed Vehicle is a School Bus.

Draft Number:	H355-PCS40464-TG-31
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

Report 2 of 2 for Senate J2 May 21, 2015

Senator Warren Daniel will handle HB 691
Senator John Barefoot will handle HB 355



SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Chris Emanuel	Emanuel Group	
Caroline Womble	DST	
Starnes	DST	
Tom Bowlin	NC Nat'l Guard	
Lt Col Richard Carver	NC National Guard	
Jennifer Keel	DMV	355
Hope Mayongo	NCDMV	
Sheri Reid	IOG	
Susan Ham	NCDTSEA	
Mike Carnette	NCEMA	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Colleen Kochanek	KCG	
Chris Agner	DOT	
Derek Graham	DRI	
David Forrell	VB	
Doug Miskew	PSG	
Trent Womble	DHHS	
Alan Scholar	DHHS	
Ashley Parker	Parker Poe	
Mildred Spearman	NCAOC	
Troy M. Hobowitz, MHS	NCNG	
Kim Stephenson	NC DHHS/ DSS.	
Elizabeth Bis	Poe	

Senate Committee on Judiciary II
Wednesday, May 27, 2015 at 4:00 PM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 4:00 PM on May 27, 2015 in Room 1124/1224 of the Legislative Building. 17 members were present. Attending Sgt-at Arms: Ed Kesler, Steve McCaig, and Steve Wilson. Attending pages: Grace Battle Thompson of Raleigh (Sen. Berger); Kathryn Cahill of Raleigh (Sen. Berger); Brooke Church of Wilkes (Sen. Randleman); Madison Tankard of Bath (Sen. Cook); Caroline Harris of Fountain (Sen. Pate); Emily DeBerry of Laurinburg (Sen. McInnis); Macy Wade Morgan of Pantego (Sen. Cook); and, Nikolas Frederick of Statesville (Sen. Curtis).

Senator Warren Daniel, Chair, presided.

HB 465 Women and Children's Protection Act of 2015. (Representatives Schaffer, McElraft, R. Turner, S. Martin) Sen. Daniel asked that the committee move to consider the Proposed Committee Substitute, H465-PCS10389-TG-33. Sen. Randleman and Sen. Krawiec presented and explained the bill by going through and explaining each section of the bill, since the PCS was an aggregate of other bills. During committee discussion, Sen. Woodard asked if DHHS had a position on the physician to send ultrasounds and other records to DHHS. Committee staff, Bill Patterson pointed to page 9 that listed the requirements of the records that were to be sent to DHHS. Sen. Woodard was concerned about HIPAA requirements. Mr. Patterson pointed out the portion of the bill that dealt with that information. Adam Sholar from DHHS was asked about HIPAA implications. Mr. Sholar said the provision was not DHHS recommendation, but said it would be the doctor's responsibility to comply with HIPAA. Sen. Woodard asked Mr. Sholar what kind of impact collecting the extra information would have on DHHS. Mr. Sholar said it may cost an additional $8000. Sen. Van Duyn questioned why the ultrasound is necessary. Sen. Krawiec said that it is necessary to determine if the physician has determined the gestational age. Sen. Van Duyn was concerned that DHHS would be evaluating the work of the physician. Sen. Smith-Ingram asked a question the 72-hr wait period and if there were statistics that supported the benefit of a longer waiting period. Sen. Krawiec responded by giving examples of other areas where a waiting period is utilized and that the waiting periods do include phone consultations with providers. Committee staffer, Jan Paul referenced some data from the Guttmacher Institute regarding other states' waiting periods. Sen. Lowe was interested as to why the ultrasound data is necessary and if it is worth the $8,000 cost that is incurred. Sen. Jackson offered an amendment that would change page 1, line 4through page 2 line37, by deleting Section 1 in its entirety. The amendment would also change page 7 line44 through page 8 line 2 by deleting Section 5 in its entirety. Sen. Jackson wanted to eliminate these sections because they were his provisions from other bills and didn't want them to be included with the pro-life bill. He asserted that these provisions were added in order to make the bill more attractive. Sen. Randleman commented on the amendment and explained that the provisions dealt with women and children and were added so that the bills would get passed. Sen. Randleman asked the committee to not vote for the amendment. The amendment failed. Sen. Bingham also moved to amend the bill on page 9, line 44 by rewriting the line to emphasize the

confidentiality of the data that would be collected by DHHS. Time was given for staff to properly draw up the language of the amendment.This amendment was adopted by the committee following the public comments.

The Chair opened up the public comment section. Dr. Stacy Boulton, representing pregnancy care centers spoke for the bill. The next speaker, Dr. Amy Bryant, of UNC spoke against the bill on behalf of Planned Parenthood. Dr. Malinda Snyder spoke in favor of the bill. Dr. Kim Boggess, UNC physician spoke against the bill on behalf of Planned Parenthood. Barbara Holt of NC Right to Life spoke in favor of the bill. Gregg Griggs of the NC Academy of Family Physicians spoke against the bill over concerns that the bill interferes with the 'scope of practice' of a physician. Wendy Bannister of a Wake pregnancy resource center spoke in favor of the bill.

The focus of the committee returned to the Bingham amendment. Committee staff, Bill Patterson very carefully explained the amendment and how it deals with patient privacy. The bill sponsors agreed to the amendment and the committee adopted the amendment.

Sarah Preston of the ACLU was invited to speak against the bill. "Abortion is medically safe."

Sen. Cook motioned for a favorable report for the PCS as amendment. The vote was by show of hands. The bill passed and was reported to the Senate Principal Clerk as Unfavorable as to the Committee Substitute Bill No.1, but Favorable as to the Senate Committee Substitute Bill. No referrals. Sen. Randleman was to handle the bill on the Senate floor.

The meeting adjourned at 4:53.

Senator Warren Daniel, Chair
Presiding

Andy Perrigo, Committee Clerk

Senate Committee on Judiciary II
Wednesday, May 27, 2015, 4:00 PM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 465	Women and Children's Protection Act of 2015.	Representative Schaffer Representative McElraft Representative R. Turner Representative S. Martin

Presentations

Other Business

Adjournment

HOUSE BILL 465
Committee Substitute Favorable 4/22/15
Senate Judiciary II Committee Substitute Adopted 5/27/15

Short Title: Women and Children's Protection Act of 2015. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO ENACT THE WOMEN AND CHILDREN'S PROTECTION ACT OF 2015.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-27.7A reads as rewritten:

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

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse or a sexual act with another person who is ~~13, 14, or~~ 15 years ~~old~~ of age or younger and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

(b) ~~A~~ Unless the conduct is covered under some other provision of law providing greater punishment, a defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse or a sexual act with another person who is ~~13, 14, or~~ 15 years ~~old~~ of age or younger and the defendant is more than four but less than six years older than the person, except when the defendant is lawfully married to the person."

SECTION 1.(b) G.S. 14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

...

(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is ~~13, 14, or 15 years old where~~ 15 years of age or younger and the defendant is at least six years older), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor),

G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled person), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

...."

SECTION 1.(c) G.S. 90-210.25B reads as rewritten:

"**§ 90-210.25B. Persons who shall not be licensed under this Article.**

...

(b) For purposes of this Article, the term "sexual offense against a minor" means a conviction of any of the following offenses: G.S. 14-27.4A(a) (sex offense with a child; adult offender), G.S. 14-27.7A (statutory rape or sexual offense of person who is ~~13, 14, or 15 years old where~~ 15 years of age or younger and the defendant is at least six years older), G.S. 14-190.16 (first-degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term shall also include a conviction of the following: any attempt, solicitation, or conspiracy to commit any of these offenses or any aiding and abetting any of these offenses. The term shall also include a conviction in another jurisdiction for an offense which if committed in this State has the same or substantially similar elements to an offense against a minor as defined by this section.

...."

SECTION 1.(d) This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SECTION 2.(a) G.S. 110-130.1(d) reads as rewritten:

"(d) Any fee imposed by the North Carolina Department of Revenue or the Secretary of the Treasury to cover their costs of withholding for non-Work First arrearages certified for the collection of past due support from State or federal income tax refunds or administrative offsets, as defined by 31 C.F.R. § 285.1(a), shall be borne by the client by deducting the fee from the amount collected.

Any income tax refund offset amounts or administrative offsets, as defined by 31 C.F.R. § 285.1(a), which are subsequently determined to have been incorrectly withheld and distributed to a client, and which must be refunded by the State to a responsible parent or the nondebtor spouse, shall constitute a debt to the State owed by the client."

SECTION 2.(b) G.S. 110-136.4 reads as rewritten:

"**§ 110-136.4. Implementation of withholding in IV-D cases.**

(a) Withholding based on arrearages or obligor's request.

(1) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:

a. Whether the proposed withholding is based on the obligor's failure to make legally obligated child support, alimony or postseparation support payments on the obligor's request for withholding, on the obligee's request for withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);

b. The amount of overdue child support, overdue alimony or postseparation support payments, the total amount to be withheld, and when the withholding will occur;

c. The name of each child or person for whose benefit the child support, alimony or postseparation support payments are due and information sufficient to identify the court order under which the obligor has a duty to support the child, spouse, or former spouse;

d. The amount and sources of disposable income;

e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;

f. An explanation of the obligor's rights and responsibilities pursuant to this section;

g. That withholding will be continued until terminated pursuant to G.S. 110-136.10.

(3) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligor's or obligee's request for withholding. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a hearing in the county where the support order was entered before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

(4) Uncontested withholding. If the obligor does not contest the withholding within the 10-day response period, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.

(5) Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.

(6) Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall either request the clerk of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other appropriate available measures to enforce the support obligation.

(b) Immediate income withholding. When a new or modified child support order is entered, the district court judge shall, after hearing evidence regarding the obligor's disposable income, place the obligor under an order for immediate income withholding. The IV-D agency shall serve the payor pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with a notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. If information is unavailable regarding an obligor's disposable income, or the obligor is unemployed, or an agreement is reached between both parties which provides for an alternative arrangement, immediate income withholding shall not apply. The obligor, however, is subject to income withholding pursuant to G.S. 110-136.4(a).

(c) Subsequent payors. If the obligor changes employment or source of disposable income, notice to subsequent payors of their obligation to withhold shall be served as required by G.S. 1A-1, Rule 5, Rules of Civil ~~Procedure.~~ Procedure, or by electronic transmission in compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(d) Multiple withholdings. The obligor must notify the obligee if the obligor is currently subject to another withholding for child support. In the case of two or more withholdings against one obligor, the obligee or obligees shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured party, upon request, shall be granted a hearing in accordance with the procedure specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be resolved in accordance with G.S. 110-136.7.

(e) Modification of withholding. When an order for withholding has been entered under this section, the obligee may modify the withholding based on changed circumstances. The obligee shall proceed as is provided in this section.

(f) Applicability of section. The provisions of this section apply to IV-D cases only."

SECTION 2.(c) G.S. 110-139.2(b1) reads as rewritten:

"(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that an obligor who maintains an identified account with the financial institution has a child support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the amount of unpaid support owed. In order to be able to attach a lien on and levy an obligor's account, the amount

of unpaid support owed shall be an amount not less than the amount of support owed for six months or one thousand dollars ($1,000), whichever is less.

Upon certification of the amount of unpaid support owed in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the obligor, and when the matched account is owned jointly, any other nonliable owner of the account, and the financial institution a notice as provided by this subsection. The notice shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied to satisfy the lien, the certified amount of unpaid support, information for the obligor or account owner on how to remove the lien or contest the lien in order to avoid the levy, and a ~~copy of~~ reference to the applicable law, G.S. 110-139.2. The notice shall be served on the obligor, and any nonliable account owner, in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The financial institution shall be served notice in accordance with Rule 5 of the North Carolina Rules of Civil Procedure. Upon service of the notice, the financial institution shall proceed in the following manner:

(1) Immediately attach a lien to the identified account.

(2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

In order for an obligor or account owner to contest the lien, within 10 days after the obligor or account owner is served with the notice, the obligor or account owner shall send written notice of the basis of the contest to the Child Support Agency and shall request a hearing before the district court in the county where the support order was entered. The obligor account holder may contest the lien only on the basis that the amount owed is an amount less than the amount of support owed for six months, or is less than one thousand dollars ($1,000), whichever is less, or the contesting party is not the person subject to the court order of support. The district court may assess court costs against the nonprevailing party. If no response is received from the obligor or account owner within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the obligor.

A financial institution shall not be liable to any person for complying in good faith with this subsection. The remedy set forth in this section shall be in addition to all other remedies available to the State for the reduction of the obligor's child support arrears. This remedy shall not prevent the State from taking any and all other concurrent measures available by law.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this State without involvement of the Department."

SECTION 2.(d) This section is effective when it becomes law.

SECTION 3.(a) Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-343.6. Electronic filing in Chapter 50B and Chapter 50C cases.**

The North Carolina Administrative Office of the Courts is authorized to develop a program for electronic filing in Chapter 50B and Chapter 50C cases in district court in all counties in North Carolina. In order to implement the program in one or more counties in a district, the chief district court judge in each district shall draft local rules and submit the rules to the Administrative Office of the Courts for approval. The local rules shall permit the clerk of superior court for the county to accept electronically filed complaints requesting a domestic violence protective order pursuant to Chapter 50B of the General Statutes, or a civil no-contact order pursuant to Chapter 50C of the General Statutes, that are transmitted from a domestic violence program as defined in G.S. 8-53.12. The authorization for local rules shall be superseded by the promulgation of uniform State rules by the Supreme Court."

SECTION 3.(b) G.S. 50B-2 reads as rewritten:

"**§ 50B-2. Institution of civil action; motion for emergency relief; temporary orders; temporary custody.**

...

(e) All documents filed, issued, registered, or served in an action under this Chapter relating to an ex parte, emergency, or permanent domestic violence protective order may be filed electronically. Hearings held to consider ex parte relief pursuant to subsection (c) of this section may be held via video conference. Hearings held to consider emergency or permanent relief pursuant to subsections (a) or (b) of this section shall not be held via video conference."

SECTION 3.(c) G.S. 50C-2 reads as rewritten:

"**§ 50C-2. Commencement of action; filing fees not permitted; assistance.**

...

(e) All documents filed, issued, registered, or served in an action under this Chapter relating to an ex parte, emergency, or permanent civil no-contact order may be filed electronically."

SECTION 3.(d) G.S. 50C-6 reads as rewritten:

"**§ 50C-6. Temporary civil no-contact order; court holidays and evenings.**

...

(e) Hearings held to consider ex parte relief pursuant to subsection (a) of this section may be held via video conference."

SECTION 3.(e) 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. Hearings held to consider permanent relief pursuant to this section shall not be held via video conference."

SECTION 3.(f) Sections 3(b) through 3(e) become effective December 1, 2015, and apply to documents filed and hearings held on or after that date.

SECTION 4.(a) G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(13a) The defendant committed a violent offense and knew or reasonably should have known that a person under the age of 16 who was not involved in the commission of the offense was in a position to see or hear the offense."

SECTION 4.(b) G.S. 14-33(d) reads as rewritten:

"(d) Any person who, in the course of an assault, assault and battery, or affray, inflicts serious injury upon another person, or uses a deadly weapon, in violation of subdivision (c)(1) of this section, on a person with whom the person has a personal relationship, and in the presence of a minor, is guilty of a Class A1 misdemeanor. A person convicted under this subsection, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court.

A person committing a second or subsequent violation of this subsection shall be sentenced to an active punishment of no less than 30 days in addition to any other punishment imposed by the court.

The following definitions apply to this subsection:

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

(2) "In the presence of a minor" means that the minor was in a position to ~~have observed~~ see or hear the assault.

(3) "Minor" is any person under the age of 18 years who is residing with or is under the care and supervision of, and who has a personal relationship with, the person assaulted or the person committing the assault."

SECTION 4.(c) G.S. 15A-534.1(a) reads as rewritten:

"(a) In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former ~~spouse or~~ spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge. The judge shall direct a law enforcement officer or a district attorney to provide a criminal history report for the defendant and shall consider the criminal history when setting conditions of release. After setting conditions of release, the judge shall return the report to the providing agency or department. No judge shall unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. The following provisions shall apply in addition to the provisions of G.S. 15A-534:

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

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

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

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

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

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

e. That the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney.

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

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

SECTION 4.(d) This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SECTION 5.(a) G.S. 14-208.18(c)(1) reads as rewritten:

"(c) Subsection (a) of this section is applicable only to persons required to register under this Article who have committed any of the following offenses:

(1) Any offense in Article 7A of this ~~Chapter.~~Chapter or any federal offense or offense committed in another state, which if committed in this State, is substantially similar to an offense in Article 7A of this Chapter."

SECTION 5.(b) This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SECTION 6.(a) Article 1B of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 5. Maternal Mortality Review Committee.

"**§ 130A-33.52. Maternal Mortality Review Committee; membership, compensation.**

(a) The Maternal Mortality Review Committee is established in the Department. The purpose of the committee is to reduce maternal mortality in this State by conducting multidisciplinary maternal death reviews and developing recommendations for the prevention of future maternal deaths.

(b) The Secretary shall appoint a multidisciplinary committee comprised of nine members who represent several academic disciplines and professional specializations essential to reviewing cases of mortality due to complications from pregnancy or childbirth. Committee members shall serve without compensation, but may receive travel reimbursement from funds available to the Department.

(c) The duties of the committee shall include:

(1) Identifying maternal death cases.

(2) Reviewing medical records and other relevant data.

(3) Contacting family members and other affected or involved persons to collect additional relevant data.

(4) Consulting with relevant experts to evaluate relevant data.

(5) Making nonindividual determinations with no legal meaning regarding the preventability of maternal deaths.

(6) Making recommendations for the prevention of maternal deaths.

(7) Disseminating findings and recommendations to policy makers, health care providers, health care facilities, and the general public. Reports shall include only aggregated, nonindividually identifiable data.

(d) Licensed health care providers, health care facilities, and pharmacies shall provide reasonable access to the committee to all relevant medical records associated with a case under review by the committee. A health care provider, health care facility, or pharmacy providing access to medical records pursuant to this Part shall not be held liable for civil damages or be subject to any criminal or disciplinary action for good faith efforts to provide such records.

(e) Except as provided in subsection (h) of this section, information, records, reports, statements, notes, memoranda, or other data collected pursuant to this Part shall not be admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency, or person, nor shall they be exhibited nor their contents disclosed in any way, in whole or in part, by any officer or representative of the Department or any other person, except as may be necessary for the purpose of furthering the committee's review of the case to which they relate. No person participating in such review shall disclose, in any manner, the information so obtained except in strict conformity with the review process.

(f) All information, records of interviews, written reports, statements, memoranda, or other data obtained by the Department, the committee, and other persons, agencies, or organizations so authorized by the Department pursuant to this Part shall be confidential.

(g) All proceedings and activities of the committee pursuant to this Part, opinions of committee members formed as a result of such proceedings and activities, and records obtained, created, or maintained pursuant to this Part, including records of interviews, written reports, and statements procured by the Department or any other person, agency, or organization acting jointly or under contract with the Department in connection with the requirements of this Part, shall be confidential and shall not be subject to statutes relating to open meetings and open records, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding.

(h) Nothing in this Part shall be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source.

(i) Members of the committee shall not be questioned in any civil or criminal proceeding regarding the information presented or opinions formed as a result of a meeting or communication of the committee; provided, however, that nothing in this Part shall be construed to prevent a member of the committee from testifying to information obtained independently of the committee or which is public information."

SECTION 6.(b) This section becomes effective on December 1, 2015.

SECTION 7.(a) G.S. 14-45.1 reads as rewritten:

"§ 14-45.1. When abortion not unlawful.

(a) Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be unlawful, during the first 20 weeks of a woman's pregnancy, to advise, procure, or cause a miscarriage or abortion when the procedure is performed by a qualified physician licensed to practice medicine in North Carolina in a hospital or clinic certified by the Department of Health and Human Services to be a suitable facility for the performance of abortions.

(a1) The Department of Health and Human Services shall annually inspect any clinic, including ambulatory surgical facilities, where abortions are performed. The Department of Health and Human Services shall publish on the Department's Web site and on the State Web site established under G.S. 90-21.84 the results and findings of all inspections conducted on or after January 1, 2013, of clinics, including ambulatory surgical facilities, where abortions are performed, including any statement of deficiencies and any notice of administrative action resulting from the inspection. No person who is less than 18 years of age shall be employed at any clinic, including ambulatory surgical facilities, where abortions are performed.

(b) Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be unlawful, after the twentieth week of a woman's pregnancy, to advise, procure or cause a miscarriage or abortion when the procedure is performed by a qualified physician licensed to practice medicine in North Carolina in a hospital licensed by the Department of Health and Human Services, if there is ~~substantial risk that continuance of the pregnancy would threaten the life or gravely impair the health of the woman.~~a medical emergency as defined by G.S. 90-21.81(5).

(b1) A qualified physician who advises, procures, or causes a miscarriage or abortion after the sixteenth week of a woman's pregnancy shall record all of the following: the method used by the qualified physician to determine the probable gestational age of the unborn child at the time the procedure is to be performed; the results of the methodology, including the measurements of the unborn child; and an ultrasound image of the unborn child that depicts the measurements. The qualified physician shall provide this information, including the ultrasound image, to the Department of Health and Human Services pursuant to G.S. 14-45.1(c).

A qualified physician who procures or causes a miscarriage or abortion after the twentieth week of a woman's pregnancy shall record the findings and analysis on which the qualified physician based the determination that there existed a medical emergency as defined by G.S. 90-21.81(5) and shall provide that information to the Department of Health and Human Services pursuant to G.S. 14-45.1(c). Materials generated by the physician or provided by the physician to the Department of Health and Human Services pursuant to this section shall not be public records under G.S. 132-1.

The information provided under this subsection shall be for statistical purposes only, and the confidentiality of the patient and the physician shall be protected. It is the duty of the qualified physician to submit information to the Department of Health and Human Services that omits identifying information of the patient and complies with Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(c) The Department of Health and Human Services shall prescribe and collect on an annual basis, from hospitals or ~~clinics~~ clinics, including ambulatory surgical facilities, where abortions are performed, ~~such representative samplings of~~ statistical summary reports concerning the medical and demographic characteristics of the abortions provided for in this

~~section~~ section, including the information described in subsection (b1) of this section as it shall deem to be in the public interest. Hospitals or clinics where abortions are performed shall be responsible for providing these statistical summary reports to the Department of Health and Human Services. The reports shall be for statistical purposes only and the confidentiality of the patient relationship shall be protected. Materials generated by the physician or provided by the physician to the Department of Health and Human Services pursuant to this section shall not be public records under G.S. 132-1.

(d) The requirements of ~~G.S. 130-43~~ G.S. 130A-114 are not applicable to abortions performed pursuant to this section.

(e) ~~Nothing in this section shall require a physician licensed to practice medicine in North Carolina, any~~ No physician, nurse, or any other health care provider who shall state an objection to abortion on moral, ethical, or religious ~~grounds,~~ grounds shall be required to perform or participate in medical procedures which result in an abortion. The refusal of a physician, nurse, or health care provider to perform or participate in these medical procedures shall not be a basis for damages for the refusal, or for any disciplinary or any other recriminatory action against the physician, nurse, or health care provider. For purposes of this section, the phrase "health care provider" shall have the same meaning as defined under G.S. 90-410(1).

(f) Nothing in this section shall require a hospital, other health care institution, or other health care provider to perform an abortion or to provide abortion services.

(g) For purposes of this section, "qualified physician" means (i) a physician who possesses, or is eligible to possess, board certification in obstetrics or gynecology or (ii) a physician who performs an abortion in a medical emergency as defined by G.S. 90-21.81(5)."

SECTION 7.(b) G.S. 90-21.82 reads as rewritten:

"**§ 90-21.82. Informed consent to abortion.**

No abortion shall be performed upon a woman in this State without her voluntary and informed consent. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if all of the following conditions are satisfied:

(1) At least ~~24 hours~~ 72 hours prior to the abortion, a physician or qualified professional has orally informed the woman, by telephone or in person, of all of the following:

...

If the physician or qualified professional does not know the information required in sub-subdivisions a., f., or g. of this subdivision, the woman shall be advised that this information will be directly available from the physician who is to perform the abortion. However, the fact that the physician or qualified professional does not know the information required in sub-subdivisions a., f., or g. shall not restart the ~~24-hour~~ 72-hour period. The information required by this subdivision shall be provided in English and in each language that is the primary language of at least two percent (2%) of the State's population. The information may be provided orally either by telephone or in person, in which case the required information may be based on facts supplied by the woman to the physician and whatever other relevant information is reasonably available. The information required by this subdivision may not be provided by a tape recording but shall be provided during a consultation in which the physician is able to ask questions of the patient and the patient is able to ask questions of the physician. If, in the medical judgment of the physician, a physical examination, tests, or the availability of other information to the physician subsequently indicates a revision of the information previously supplied to the patient, then that revised information may be communicated to the patient at any time before

the performance of the abortion. Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

(2) The physician or qualified professional has informed the woman, either by telephone or in person, of each of the following at least ~~24 hours~~ 72 hours before the abortion:

a. That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care.

b. That public assistance programs under Chapter 108A of the General Statutes may or may not be available as benefits under federal and State assistance programs.

c. That the father is liable to assist in the support of the child, even if the father has offered to pay for the abortion.

d. That the woman has other alternatives to abortion, including keeping the baby or placing the baby for adoption.

e. That the woman has the right to review the printed materials described in G.S. 90-21.83, that these materials are available on a State-sponsored Web site, and the address of the State-sponsored Web site. The physician or a qualified professional shall orally inform the woman that the materials have been provided by the Department and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view the materials other than on the Web site, the materials shall either be given to her at least ~~24 hours~~ 72 hours before the abortion or be mailed to her at least 72 hours before the abortion by certified mail, restricted delivery to addressee.

f. That the woman is free to withhold or withdraw her consent to the abortion at any time before or during the abortion without affecting her right to future care or treatment and without the loss of any State or federally funded benefits to which she might otherwise be entitled.

The information required by this subdivision shall be provided in English and in each language that is the primary language of at least two percent (2%) of the State's population. The information required by this subdivision may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to have the printed materials given or mailed to her. Nothing in this subdivision shall be construed to prohibit the physician or qualified professional from e-mailing a Web site link to the materials described in this subdivision or G.S. 90-21.83.

...."

SECTION 7.(c) G.S. 90-21.86 reads as rewritten:

"**§ 90-21.86. Procedure in case of medical emergency.**

When a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a ~~24-hour~~ 72-hour delay will create a serious risk of substantial and irreversible impairment of a major bodily function, not including psychological or emotional conditions. As soon as feasible, the physician shall document in writing the medical indications upon which the physician relied and shall cause the original of the writing to be maintained in the woman's medical records and a copy given to her."

SECTION 7.(d) G.S. 14-45.1(b1) and G.S. 14-45.1(c), as enacted by subsection (a) of this section, become effective January 1, 2016, and apply to abortions performed or attempted on or after that date. The remainder of subsections (a), (b), and (c) of this section become effective October 1, 2015, and apply to abortions performed or attempted on or after that date.

SECTION 8.(a) If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. If any provision of this act is temporarily or permanently restrained or enjoined by judicial order, this act shall be enforced as though such restrained or enjoined provisions had not been adopted, provided that whenever such temporary or permanent restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

SECTION 8.(b) Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 465
Committee Substitute Favorable 4/22/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H465-PCS10389-TG-33

Short Title: Women and Children's Protection Act of 2015. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO ENACT THE WOMEN AND CHILDREN'S PROTECTION ACT OF 2015.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-27.7A reads as rewritten:

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

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse or a sexual act with another person who is ~~13, 14, or~~ 15 years ~~old~~ of age or younger and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

(b) ~~A~~ Unless the conduct is covered under some other provision of law providing greater punishment, a defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse or a sexual act with another person who is ~~13, 14, or~~ 15 years ~~old~~ of age or younger and the defendant is more than four but less than six years older than the person, except when the defendant is lawfully married to the person."

SECTION 1.(b) G.S. 14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

...

(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is ~~13, 14, or 15 years old where~~ 15 years of age or younger and the defendant is at least six years older), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor),

G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled person), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

...."

SECTION 1.(c) G.S. 90-210.25B reads as rewritten:

"**§ 90-210.25B. Persons who shall not be licensed under this Article.**

...

(b) For purposes of this Article, the term "sexual offense against a minor" means a conviction of any of the following offenses: G.S. 14-27.4A(a) (sex offense with a child; adult offender), G.S. 14-27.7A (statutory rape or sexual offense of person who is ~~13, 14, or 15 years old where~~ 15 years of age or younger and the defendant is at least six years older), G.S. 14-190.16 (first-degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term shall also include a conviction of the following: any attempt, solicitation, or conspiracy to commit any of these offenses or any aiding and abetting any of these offenses. The term shall also include a conviction in another jurisdiction for an offense which if committed in this State has the same or substantially similar elements to an offense against a minor as defined by this section.

...."

SECTION 1.(d) This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SECTION 2.(a) G.S. 110-130.1(d) reads as rewritten:

"(d) Any fee imposed by the North Carolina Department of Revenue or the Secretary of the Treasury to cover their costs of withholding for non-Work First arrearages certified for the collection of past due support from State or federal income tax refunds or administrative offsets, as defined by 31 C.F.R. § 285.1(a), shall be borne by the client by deducting the fee from the amount collected.

Any income tax refund offset amounts or administrative offsets, as defined by 31 C.F.R. § 285.1(a), which are subsequently determined to have been incorrectly withheld and distributed to a client, and which must be refunded by the State to a responsible parent or the nondebtor spouse, shall constitute a debt to the State owed by the client."

SECTION 2.(b) G.S. 110-136.4 reads as rewritten:

"**§ 110-136.4. Implementation of withholding in IV-D cases.**

(a) Withholding based on arrearages or obligor's request.

(1) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:

a. Whether the proposed withholding is based on the obligor's failure to make legally obligated child support, alimony or postseparation support payments on the obligor's request for withholding, on the obligee's request for withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);

b. The amount of overdue child support, overdue alimony or postseparation support payments, the total amount to be withheld, and when the withholding will occur;

c. The name of each child or person for whose benefit the child support, alimony or postseparation support payments are due and information sufficient to identify the court order under which the obligor has a duty to support the child, spouse, or former spouse;

d. The amount and sources of disposable income;

e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;

f. An explanation of the obligor's rights and responsibilities pursuant to this section;

g. That withholding will be continued until terminated pursuant to G.S. 110-136.10.

(3) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligor's or obligee's request for withholding. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a hearing in the county where the support order was entered before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

(4) Uncontested withholding. If the obligor does not contest the withholding within the 10-day response period, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.

(5) Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.

(6) Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall either request the clerk of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other appropriate available measures to enforce the support obligation.

(b) Immediate income withholding. When a new or modified child support order is entered, the district court judge shall, after hearing evidence regarding the obligor's disposable income, place the obligor under an order for immediate income withholding. The IV-D agency shall serve the payor pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with a notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. If information is unavailable regarding an obligor's disposable income, or the obligor is unemployed, or an agreement is reached between both parties which provides for an alternative arrangement, immediate income withholding shall not apply. The obligor, however, is subject to income withholding pursuant to G.S. 110-136.4(a).

(c) Subsequent payors. If the obligor changes employment or source of disposable income, notice to subsequent payors of their obligation to withhold shall be served as required by G.S. 1A-1, Rule 5, Rules of Civil ~~Procedure.~~ Procedure, or by electronic transmission in compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(d) Multiple withholdings. The obligor must notify the obligee if the obligor is currently subject to another withholding for child support. In the case of two or more withholdings against one obligor, the obligee or obligees shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured party, upon request, shall be granted a hearing in accordance with the procedure specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be resolved in accordance with G.S. 110-136.7.

(e) Modification of withholding. When an order for withholding has been entered under this section, the obligee may modify the withholding based on changed circumstances. The obligee shall proceed as is provided in this section.

(f) Applicability of section. The provisions of this section apply to IV-D cases only."

SECTION 2.(c) G.S. 110-139.2(b1) reads as rewritten:

"(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that an obligor who maintains an identified account with the financial institution has a child support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the amount of unpaid support owed. In order to be able to attach a lien on and levy an obligor's account, the amount

of unpaid support owed shall be an amount not less than the amount of support owed for six months or one thousand dollars ($1,000), whichever is less.

Upon certification of the amount of unpaid support owed in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the obligor, and when the matched account is owned jointly, any other nonliable owner of the account, and the financial institution a notice as provided by this subsection. The notice shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied to satisfy the lien, the certified amount of unpaid support, information for the obligor or account owner on how to remove the lien or contest the lien in order to avoid the levy, and a ~~copy of~~ reference to the applicable law, G.S. 110-139.2. The notice shall be served on the obligor, and any nonliable account owner, in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The financial institution shall be served notice in accordance with Rule 5 of the North Carolina Rules of Civil Procedure. Upon service of the notice, the financial institution shall proceed in the following manner:

(1) Immediately attach a lien to the identified account.

(2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

In order for an obligor or account owner to contest the lien, within 10 days after the obligor or account owner is served with the notice, the obligor or account owner shall send written notice of the basis of the contest to the Child Support Agency and shall request a hearing before the district court in the county where the support order was entered. The obligor account holder may contest the lien only on the basis that the amount owed is an amount less than the amount of support owed for six months, or is less than one thousand dollars ($1,000), whichever is less, or the contesting party is not the person subject to the court order of support. The district court may assess court costs against the nonprevailing party. If no response is received from the obligor or account owner within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the obligor.

A financial institution shall not be liable to any person for complying in good faith with this subsection. The remedy set forth in this section shall be in addition to all other remedies available to the State for the reduction of the obligor's child support arrears. This remedy shall not prevent the State from taking any and all other concurrent measures available by law.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this State without involvement of the Department."

SECTION 2.(d) This section is effective when it becomes law.

SECTION 3.(a) Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-343.6. Electronic filing in Chapter 50B and Chapter 50C cases.**

The North Carolina Administrative Office of the Courts is authorized to develop a program for electronic filing in Chapter 50B and Chapter 50C cases in district court in all counties in North Carolina. In order to implement the program in one or more counties in a district, the chief district court judge in each district shall draft local rules and submit the rules to the Administrative Office of the Courts for approval. The local rules shall permit the clerk of superior court for the county to accept electronically filed complaints requesting a domestic violence protective order pursuant to Chapter 50B of the General Statutes, or a civil no-contact order pursuant to Chapter 50C of the General Statutes, that are transmitted from a domestic violence program as defined in G.S. 8-53.12. The authorization for local rules shall be superseded by the promulgation of uniform State rules by the Supreme Court."

SECTION 3.(b) G.S. 50B-2 reads as rewritten:

"**§ 50B-2. Institution of civil action; motion for emergency relief; temporary orders; temporary custody.**

...

(e) All documents filed, issued, registered, or served in an action under this Chapter relating to an ex parte, emergency, or permanent domestic violence protective order may be filed electronically. Hearings held to consider ex parte relief pursuant to subsection (c) of this section may be held via video conference. Hearings held to consider emergency or permanent relief pursuant to subsections (a) or (b) of this section shall not be held via video conference."

SECTION 3.(c) G.S. 50C-2 reads as rewritten:

"**§ 50C-2. Commencement of action; filing fees not permitted; assistance.**

...

(e) All documents filed, issued, registered, or served in an action under this Chapter relating to an ex parte, emergency, or permanent civil no-contact order may be filed electronically."

SECTION 3.(d) G.S. 50C-6 reads as rewritten:

"**§ 50C-6. Temporary civil no-contact order; court holidays and evenings.**

...

(e) Hearings held to consider ex parte relief pursuant to subsection (a) of this section may be held via video conference."

SECTION 3.(e) 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. Hearings held to consider permanent relief pursuant to this section shall not be held via video conference."

SECTION 3.(f) Sections 3(b) through 3(e) become effective December 1, 2015, and apply to documents filed and hearings held on or after that date.

SECTION 4.(a) G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(13a) The defendant committed a violent offense and knew or reasonably should have known that a person under the age of 16 who was not involved in the commission of the offense was in a position to see or hear the offense."

SECTION 4.(b) G.S. 14-33(d) reads as rewritten:

"(d) Any person who, in the course of an assault, assault and battery, or affray, inflicts serious injury upon another person, or uses a deadly weapon, in violation of subdivision (c)(1) of this section, on a person with whom the person has a personal relationship, and in the presence of a minor, is guilty of a Class A1 misdemeanor. A person convicted under this subsection, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court.

A person committing a second or subsequent violation of this subsection shall be sentenced to an active punishment of no less than 30 days in addition to any other punishment imposed by the court.

The following definitions apply to this subsection:

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

(2) "In the presence of a minor" means that the minor was in a position to ~~have observed~~ see or hear the assault.

(3) "Minor" is any person under the age of 18 years who is residing with or is under the care and supervision of, and who has a personal relationship with, the person assaulted or the person committing the assault."

SECTION 4.(c) G.S. 15A-534.1(a) reads as rewritten:

"(a) In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former ~~spouse or~~ spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge. The judge shall direct a law enforcement officer or a district attorney to provide a criminal history report for the defendant and shall consider the criminal history when setting conditions of release. After setting conditions of release, the judge shall return the report to the providing agency or department. No judge shall unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. The following provisions shall apply in addition to the provisions of G.S. 15A-534:

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

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

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

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

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

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

e. That the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney.

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

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

SECTION 4.(d) This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SECTION 5.(a) G.S. 14-208.18(c)(1) reads as rewritten:

"(c) Subsection (a) of this section is applicable only to persons required to register under this Article who have committed any of the following offenses:

(1) Any offense in Article 7A of this ~~Chapter.~~Chapter or any federal offense or offense committed in another state, which if committed in this State, is substantially similar to an offense in Article 7A of this Chapter."

SECTION 5.(b) This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SECTION 6.(a) Article 1B of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 5. Maternal Mortality Review Committee.

"**§ 130A-33.52. Maternal Mortality Review Committee; membership, compensation.**

(a) The Maternal Mortality Review Committee is established in the Department. The purpose of the committee is to reduce maternal mortality in this State by conducting multidisciplinary maternal death reviews and developing recommendations for the prevention of future maternal deaths.

(b) The Secretary shall appoint a multidisciplinary committee comprised of nine members who represent several academic disciplines and professional specializations essential to reviewing cases of mortality due to complications from pregnancy or childbirth. Committee members shall serve without compensation, but may receive travel reimbursement from funds available to the Department.

(c) The duties of the committee shall include:

(1) Identifying maternal death cases.

(2) Reviewing medical records and other relevant data.

(3) Contacting family members and other affected or involved persons to collect additional relevant data.

(4) Consulting with relevant experts to evaluate relevant data.

(5) Making nonindividual determinations with no legal meaning regarding the preventability of maternal deaths.

(6) Making recommendations for the prevention of maternal deaths.

(7) Disseminating findings and recommendations to policy makers, health care providers, health care facilities, and the general public. Reports shall include only aggregated, nonindividually identifiable data.

(d) Licensed health care providers, health care facilities, and pharmacies shall provide reasonable access to the committee to all relevant medical records associated with a case under review by the committee. A health care provider, health care facility, or pharmacy providing access to medical records pursuant to this Part shall not be held liable for civil damages or be subject to any criminal or disciplinary action for good faith efforts to provide such records.

(e) Except as provided in subsection (h) of this section, information, records, reports, statements, notes, memoranda, or other data collected pursuant to this Part shall not be admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency, or person, nor shall they be exhibited nor their contents disclosed in any way, in whole or in part, by any officer or representative of the Department or any other person, except as may be necessary for the purpose of furthering the committee's review of the case to which they relate. No person participating in such review shall disclose, in any manner, the information so obtained except in strict conformity with the review process.

(f) All information, records of interviews, written reports, statements, memoranda, or other data obtained by the Department, the committee, and other persons, agencies, or organizations so authorized by the Department pursuant to this Part shall be confidential.

(g) All proceedings and activities of the committee pursuant to this Part, opinions of committee members formed as a result of such proceedings and activities, and records obtained, created, or maintained pursuant to this Part, including records of interviews, written reports, and statements procured by the Department or any other person, agency, or organization acting jointly or under contract with the Department in connection with the requirements of this Part, shall be confidential and shall not be subject to statutes relating to open meetings and open records, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding.

(h) Nothing in this Part shall be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source.

(i) Members of the committee shall not be questioned in any civil or criminal proceeding regarding the information presented or opinions formed as a result of a meeting or communication of the committee; provided, however, that nothing in this Part shall be construed to prevent a member of the committee from testifying to information obtained independently of the committee or which is public information."

SECTION 6.(b) This section becomes effective on December 1, 2015.

SECTION 7.(a) G.S. 14-45.1 reads as rewritten:

"**§ 14-45.1. When abortion not unlawful.**

(a) Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be unlawful, during the first 20 weeks of a woman's pregnancy, to advise, procure, or cause a miscarriage or abortion when the procedure is performed by a qualified physician licensed to practice medicine in North Carolina in a hospital or clinic certified by the Department of Health and Human Services to be a suitable facility for the performance of abortions.

(a1) The Department of Health and Human Services shall annually inspect any clinic, including ambulatory surgical facilities, where abortions are performed. The Department of Health and Human Services shall publish on the Department's Web site and on the State Web site established under G.S. 90-21.84 the results and findings of all inspections conducted on or after January 1, 2013, of clinics, including ambulatory surgical facilities, where abortions are performed, including any statement of deficiencies and any notice of administrative action resulting from the inspection. No person who is less than 18 years of age shall be employed at any clinic, including ambulatory surgical facilities, where abortions are performed.

(b) Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be unlawful, after the twentieth week of a woman's pregnancy, to advise, procure or cause a miscarriage or abortion when the procedure is performed by a qualified physician licensed to practice medicine in North Carolina in a hospital licensed by the Department of Health and Human Services, if there is ~~substantial risk that continuance of the pregnancy would threaten the life or gravely impair the health of the woman.~~a medical emergency as defined by G.S. 90-21.81(5).

(b1) A qualified physician who advises, procures, or causes a miscarriage or abortion after the sixteenth week of a woman's pregnancy shall record all of the following: the method used by the qualified physician to determine the probable gestational age of the unborn child at the time the procedure is to be performed; the results of the methodology, including the measurements of the unborn child; and an ultrasound image of the unborn child that depicts the measurements. The qualified physician shall provide this information, including the ultrasound image, to the Department of Health and Human Services pursuant to G.S. 14-45.1(c).

A qualified physician who procures or causes a miscarriage or abortion after the twentieth week of a woman's pregnancy shall record the findings and analysis on which the qualified physician based the determination that there existed a medical emergency as defined by G.S. 90-21.81(5) and shall provide that information to the Department of Health and Human Services pursuant to G.S. 14-45.1(c). Materials generated by the physician or provided by the physician to the Department of Health and Human Services pursuant to this section shall not be public records under G.S. 132-1.

The information provided under this subsection shall be for statistical purposes only, and the confidentiality of the patient and the physician shall be protected. It is the duty of the qualified physician to submit information to the Department of Health and Human Services that omits identifying information of the patient and complies with Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(c) The Department of Health and Human Services shall prescribe and collect on an annual basis, from hospitals or ~~clinics~~ clinics, including ambulatory surgical facilities, where abortions are performed, ~~such representative samplings of~~ statistical summary reports concerning the medical and demographic characteristics of the abortions provided for in this

~~section~~ section, including the information described in subsection (b1) of this section as it shall deem to be in the public interest. Hospitals or clinics where abortions are performed shall be responsible for providing these statistical summary reports to the Department of Health and Human Services. The reports shall be for statistical purposes only and the confidentiality of the patient relationship shall be protected. Materials generated by the physician or provided by the physician to the Department of Health and Human Services pursuant to this section shall not be public records under G.S. 132-1.

(d) The requirements of ~~G.S. 130-43~~ G.S. 130A-114 are not applicable to abortions performed pursuant to this section.

(e) ~~Nothing in this section shall require a physician licensed to practice medicine in North Carolina, any~~ No physician, nurse, or any other health care provider who shall state an objection to abortion on moral, ethical, or religious ~~grounds, grounds~~ shall be required to perform or participate in medical procedures which result in an abortion. The refusal of a physician, nurse, or health care provider to perform or participate in these medical procedures shall not be a basis for damages for the refusal, or for any disciplinary or any other recriminatory action against the physician, nurse, or health care provider. For purposes of this section, the phrase "health care provider" shall have the same meaning as defined under G.S. 90-410(1).

(f) Nothing in this section shall require a hospital, other health care institution, or other health care provider to perform an abortion or to provide abortion services.

(g) For purposes of this section, "qualified physician" means (i) a physician who possesses, or is eligible to possess, board certification in obstetrics or gynecology or (ii) a physician who performs an abortion in a medical emergency as defined by G.S. 90-21.81(5)."

SECTION 7.(b) G.S. 90-21.82 reads as rewritten:

"**§ 90-21.82. Informed consent to abortion.**

No abortion shall be performed upon a woman in this State without her voluntary and informed consent. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if all of the following conditions are satisfied:

(1) At least ~~24 hours~~ 72 hours prior to the abortion, a physician or qualified professional has orally informed the woman, by telephone or in person, of all of the following:

...

If the physician or qualified professional does not know the information required in sub-subdivisions a., f., or g. of this subdivision, the woman shall be advised that this information will be directly available from the physician who is to perform the abortion. However, the fact that the physician or qualified professional does not know the information required in sub-subdivisions a., f., or g. shall not restart the ~~24-hour~~ 72-hour period. The information required by this subdivision shall be provided in English and in each language that is the primary language of at least two percent (2%) of the State's population. The information may be provided orally either by telephone or in person, in which case the required information may be based on facts supplied by the woman to the physician and whatever other relevant information is reasonably available. The information required by this subdivision may not be provided by a tape recording but shall be provided during a consultation in which the physician is able to ask questions of the patient and the patient is able to ask questions of the physician. If, in the medical judgment of the physician, a physical examination, tests, or the availability of other information to the physician subsequently indicates a revision of the information previously supplied to the patient, then that revised information may be communicated to the patient at any time before

the performance of the abortion. Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

(2) The physician or qualified professional has informed the woman, either by telephone or in person, of each of the following at least ~~24 hours~~ 72 hours before the abortion:

a. That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care.

b. That public assistance programs under Chapter 108A of the General Statutes may or may not be available as benefits under federal and State assistance programs.

c. That the father is liable to assist in the support of the child, even if the father has offered to pay for the abortion.

d. That the woman has other alternatives to abortion, including keeping the baby or placing the baby for adoption.

e. That the woman has the right to review the printed materials described in G.S. 90-21.83, that these materials are available on a State-sponsored Web site, and the address of the State-sponsored Web site. The physician or a qualified professional shall orally inform the woman that the materials have been provided by the Department and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view the materials other than on the Web site, the materials shall either be given to her at least ~~24 hours~~ 72 hours before the abortion or be mailed to her at least 72 hours before the abortion by certified mail, restricted delivery to addressee.

f. That the woman is free to withhold or withdraw her consent to the abortion at any time before or during the abortion without affecting her right to future care or treatment and without the loss of any State or federally funded benefits to which she might otherwise be entitled.

The information required by this subdivision shall be provided in English and in each language that is the primary language of at least two percent (2%) of the State's population. The information required by this subdivision may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to have the printed materials given or mailed to her. Nothing in this subdivision shall be construed to prohibit the physician or qualified professional from e-mailing a Web site link to the materials described in this subdivision or G.S. 90-21.83.

...."

SECTION 7.(c) G.S. 90-21.86 reads as rewritten:

"**§ 90-21.86. Procedure in case of medical emergency.**

When a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a ~~24-hour~~ 72-hour delay will create a serious risk of substantial and irreversible impairment of a major bodily function, not including psychological or emotional conditions. As soon as feasible, the physician shall document in writing the medical indications upon which the physician relied and shall cause the original of the writing to be maintained in the woman's medical records and a copy given to her."

SECTION 7.(d) G.S. 14-45.1(b1) and G.S. 14-45.1(c), as enacted by subsection (a) of this section, become effective January 1, 2016, and apply to abortions performed or attempted on or after that date. The remainder of subsections (a), (b), and (c) of this section become effective October 1, 2015, and apply to abortions performed or attempted on or after that date.

SECTION 8.(a) If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. If any provision of this act is temporarily or permanently restrained or enjoined by judicial order, this act shall be enforced as though such restrained or enjoined provisions had not been adopted, provided that whenever such temporary or permanent restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

SECTION 8.(b) Except as otherwise provided, this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 465

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

H465-ATG-41 [v.2]

Amends Title [NO]
H465-CSMC-10 [v.15]

Date 5/27/2015 ,2015

Senator J. Jackson

moves to amend the bill on page 1, line 4 through page 2, line 37, by deleting Section 1 of the bill in its entirety; and

on page 7, line 44, through page 8, line 2, by deleting Section 5 of the bill in its entirety.

SIGNED Jeff Jackson
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. _____ DATE May 26, 2015

S. B. No. 465 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Sen.) Bingham

moves to amend the bill on page 9, line 44

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"the confidentiality of the patient and the physician shall be protected. It is the duty of the qualified physician to"

and on p. 9, line 42 and on p. 10, line 5, by adding the following at the end of the lines

"Materials generated by the physician or provided by the physician to the Department of Health and Human Services pursuant to this section shall not be public records under G.S. 132-1.".

and on p. 10, line 5, by adding the following at the end of the line

SIGNED Stan Bingham

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Wednesday, May 27, 2015

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 **465** **(CS#1)** 72 Hours Informed Consent by Person or Phone.

Draft Number:	H465-PCS10389-TG-33
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Shirley Randleman will handle HB 465



SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

DATE 5-27-15

NAME	ORGANIZATION	BILL NO. H 465
~~Barbara Holt~~	NCRTL	
Dr. ~~Melinda Snyder~~	NCRTL	
~~Greg Griggs~~	NC Academy of Family Physicians	
Wendy Banister	Gateway Pregnancy Center	
Angela Graham	Gateway "	
Tami Fitzgerald	NC Family Values	
Dr. ~~Amy Bryant~~	UNC Hospitals	
Nancy Christine	UNC	
~~Josh Boggs~~	~~Kim Boggess~~ UNC	
~~Paige Johnson~~	~~Kim~~ Jes Morse UNC	

not representing UNC

Planned Parenthood

Sto

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE_____

NAME	ORGANIZATION	BILL NO.
Barbara Hunt	NCRTL	
Melinda Snyder		
DPClark	→ UNCDOG	
Mark Johnson	Rhino Times	
Mary Marie Ashill	SELC	Pro choice
Brooks Rainey Pearson	SELC	(Also prochoice)
Lanier Swann Hodgson	UNC Health Care	
Chari Koretu	NARAL Pro-choice NC	
Conner Sokolovic	NARAL Pro-choice NC	
Julie Tulbert	NARAL Pro-choice NC	

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE_____

NAME	ORGANIZATION	BILL NO.
Paige Johnson	Planned Parenthood South Atlantic	
Amy Bryant		
Shirley Swan		
John Bell	Planned Parenthood	
Stacy Boulton	MD prolife	
Petrina Williams	NC Values / pro-life	HB465
Lauren Coffy	DOA/Policy	
Cara Tonnesen	Gov office	

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE_____

NAME	ORGANIZATION	BILL NO.
Sarah Preston	ACLU-NC	
BRIAN LEWIS	NEWFRAME	
Bubba White	New Frame	
JW Joyner	NewFRAME	
Janet Colmo	PPSAT	

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE_____

NAME	ORGANIZATION	BILL NO.
Josue Berduo	Senate intern	
Lorhonda Farmer	Senator Clark	
Nancy LaPlaca	self	
Anna Brann Graulty	NC Family Action	
Grace Stuns	self-rep.	
Susan Eder MD	Plann'd Parenthood (self)	
Anne Link	CFSA	
KEN WONDRA	NC VALUES	
Kajuan wright	Self	
Greg Abbey	St. Joseph Catholic Church	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

DATE 5-27-15

NAME	ORGANIZATION	BILL NO. 465
Dr. Stacy (Cy) Bouton	~~MD~~ Pro ~~(Move up)~~	
Lisa Hackett	Wake Co.	
Eliana Smith	NC values	
~~[illegible]~~	~~NC values~~	
Alex Miller	Coalition Against Domestic Violence	
Sarah Preston	ACLU-NC	465
Amber Lehman	1st choice Pregnancy Care	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Wendy Kelly	Focus Carolina	
D Walker	Gun Rights	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Cara Tousley	Law office	

Senate Committee on Judiciary II
Tuesday, June 2, 2015 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 2, 2015 in Room 1124/1224 of the Legislative Building. 12 members were present.

Senator Tamara Barringer, Chair, presided.

HB 273 Clarify Cond. Discharge Law/No DWI Expunge. (Representatives Jackson, Glazier)
Sen. Alexander moved to hear the PCS to HB273 rather than the original bill. The motion carried. Rep. Jackson presented this bill. Senator Smith-Ingram asked a question. Senator Smith-Ingram motioned, unfavorable to the original bill, favorable as to the PCS.

HB 352 Standard of Proof/Public Safety Dispatchers. (Representative Torbett)
This was the first bill discussed. Rep. Torbett presented this bill. Senator Davis made a favorable motion. The motion carried.

The meeting adjourned at 10:10 AM.

Senator Tamara Barringer, Chair
Presiding

Gloria Whitehead, Committee Clerk

Senate Committee on Judiciary II
Tuesday, June 2, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 273	Clarify Cond. Discharge Law/No DWI Expunge.	Representative Jackson Representative Glazier
HB 352	Standard of Proof/Public Safety Dispatchers.	Representative Torbett

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 273
Committee Substitute Favorable 3/31/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H273-CSTJ-37 [v.1]
6/1/2015 9:00:45 PM

Short Title: Clarify Cond. Discharge Law/No DWI Expunge. (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE PROVISIONS REGARDING DEFERRED PROSECUTION AND CONDITIONAL DISCHARGE FOR CONVICTIONS OF H AND I FELONIES AND MISDEMEANORS UNDER STRUCTURED SENTENCING DO NOT APPLY TO CONVICTIONS OF IMPAIRED DRIVING, TO CLARIFY THAT OFFENSES INVOLVING IMPAIRED DRIVING CANNOT BE EXPUNGED, AND TO MODIFY THE LAW CONCERNING WHEN A NEW SENTENCING HEARING MUST BE HELD IN DISTRICT COURT ON AN IMPLIED CONSENT CONVICTION FOR WHICH THE APPEAL TO SUPERIOR COURT HAS BEEN WITHDRAWN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1341(a) reads as rewritten:

"(a) Use of Probation. – Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1. The provisions of subsections (a1), (a2), (a4), and (a5) of this section do not apply and a person is not eligible for deferred prosecution or a conditional discharge under those subsections if the person is being placed on probation under this Article for a conviction of impaired driving under G.S. 20-138.1."

SECTION 2. G.S. 15A-145 is amended by adding a new subsection to read:

"(a1) Nothing in this section shall be interpreted to allow the expunction of any offense involving impaired driving as defined in G.S. 20-4.01(24a)."

SECTION 3. G.S. 15A-145.4(a) reads as rewritten:

"(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through G felony.
(2) A felony that includes assault as an essential element of the offense.
(3) A felony that is 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) Repealed by Session Laws 2012-191, s. 2, effective December 1, 2012.
(5) Any felony offense under the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.

(6) 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; except that if a prayer for judgment continued has been entered for an offense classified as either a Class G, H, or I felony, the prayer for judgment continued shall be subject to expunction under the procedures in this section.

(7) A felony offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any felony offense for which punishment was determined pursuant to G.S. 14-3(c).

(8) A felony offense under G.S. 14-401.16.

(9) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(10) Any felony offense involving impaired driving as defined in G.S. 20-4.01(24a)."

SECTION 4. 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), or 14-56.

(8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).

(9) Any offense that is an attempt to commit an offense described in subdivisions (1) through ~~(8)~~ (8a) of this subsection."

SECTION 5. G.S. 20-38.7(c) reads as rewritten:

"(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, ~~the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When~~ when an appeal is withdrawn or a case is remanded back to district court, the sentence imposed by the district court is vacated and the district court shall hold a new sentencing hearing and shall consider any new ~~convictions.~~convictions unless one of the following conditions is met:

(1) If the appeal is withdrawn pursuant to G.S. 15A-1431(c), the prosecutor has certified to the clerk, in writing, that the prosecutor has no new sentencing factors to offer the court.

(2) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1431(g), the prosecutor has certified to the clerk, in writing, that the prosecutor has no new sentencing factors to offer the court.

(3) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1341(h), the prosecutor has certified to the clerk, in writing, that the prosecutor consents to the withdrawal and remand and has no new sentencing factors to offer the court."

SECTION 6. Section 1 of this act becomes effective December 1, 2015, and applies to any order placing a person on probation on or after that date. Sections 2 through 4 of this act become effective December 1, 2015, and apply to petitions filed and petitions pending on or after that date. Section 5 of this act becomes effective December 1, 2015, and applies to appeals filed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 273
Committee Substitute Favorable 3/31/15

Short Title: Clarify Cond. Discharge Law/No DWI Expunge. (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE PROVISIONS REGARDING DEFERRED PROSECUTION AND CONDITIONAL DISCHARGE FOR CONVICTIONS OF H AND I FELONIES AND MISDEMEANORS UNDER STRUCTURED SENTENCING DO NOT APPLY TO CONVICTIONS OF IMPAIRED DRIVING AND TO CLARIFY THAT OFFENSES INVOLVING IMPAIRED DRIVING CANNOT BE EXPUNGED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1341(a) reads as rewritten:

"(a) Use of Probation. – Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1. The provisions of subsections (a1), (a2), (a4), and (a5) of this section do not apply and a person is not eligible for deferred prosecution or a conditional discharge under those subsections if the person is being placed on probation under this Article for a conviction of impaired driving under G.S. 20-138.1."

SECTION 2. G.S. 15A-145 is amended by adding a new subsection to read:

"(a1) Nothing in this section shall be interpreted to allow the expunction of any offense involving impaired driving as defined in G.S. 20-4.01(24a)."

SECTION 3. G.S. 15A-145.4(a) reads as rewritten:

"(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through G felony.

(2) A felony that includes assault as an essential element of the offense.

(3) A felony that is 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) Repealed by Session Laws 2012-191, s. 2, effective December 1, 2012.

(5) Any felony offense under the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.

(6) 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; except that if a prayer for judgment continued has been entered for an offense classified as either a Class G, H,

or I felony, the prayer for judgment continued shall be subject to expunction under the procedures in this section.

(7) A felony offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any felony offense for which punishment was determined pursuant to G.S. 14-3(c).

(8) A felony offense under G.S. 14-401.16.

(9) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(10) Any felony offense involving impaired driving as defined in G.S. 20-4.01(24a)."

SECTION 4. 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), or 14-56.

(8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).

(9) Any offense that is an attempt to commit an offense described in subdivisions (1) through ~~(8)~~ (8a) of this subsection."

SECTION 5. Section 1 of this act becomes effective December 1, 2015, and applies to any order placing a person on probation on or after that date. Sections 2 through 4 of this act become effective July 1, 2015, and apply to petitions filed and petitions pending on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 273:
Clarify Cond. Discharge Law/No DWI Expunge

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 1, 2015
Introduced by:	Reps. Jackson, Glazier	**Prepared by:**	Janice Paul
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 273 would clarify that the provisions regarding deferred prosecution and conditional discharge for convictions of H and I felonies and misdemeanors under Structured Sentencing do not apply to convictions of impaired driving and that offenses involving impaired driving cannot be expunged.***

BILL ANALYSIS:

Section 1 of House Bill 273 would clarify that a person convicted of impaired driving under G.S. 20-138.1 may be placed on probation but is not eligible for deferred prosecution or a conditional discharge.

Sections 2, 3 & 4 would specify that an offense involving impaired driving, as defined in G.S. 20-4.01(24a), is not eligible to be expunged.

EFFECTIVE DATE: Section 1 of this act becomes effective December 1, 2015, and applies to any order placing a person on probation on or after that date. Sections 2 through 4 of this act become effective July 1, 2015, and apply to petitions filed and petitions pending on or after that date. The remainder of this act is effective when it becomes law.

BACKGROUND:

(24a) Offense Involving Impaired Driving. – Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.
b. Any offense set forth under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially similar offense under previous law.
c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially similar offense under previous law.
d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.
e. A repealed or superseded offense substantially similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.
f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.
g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

Susan Sitze, counsel to House Judiciary II, substantially contributed to this summary.

O. Walker Reagan
Director

H273-SMTJ-84-E2-V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 2

HOUSE BILL 352
Committee Substitute Favorable 4/29/15

Short Title: Standard of Proof/Public Safety Dispatchers. (Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ALTER THE STANDARD OF PROOF FOR PUBLIC SAFETY TELECOMMUNICATORS AND DISPATCHERS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99E of the General Statutes is amended by adding a new Article to read:

"Article 7.

"Liability for Public Safety Telecommunicators and Dispatchers.

"**§ 99E-56. Standard of proof.**

In any civil action arising from any act or omission by the defendant in the performance of any lawful and prescribed actions pertaining to the defendant's assigned job duties as a 911 or public safety telecommunicator or dispatcher at a primary public safety answering point as defined in G.S. 62A-40(18) or at any public safety agency to which 911 calls are transferred from a primary PSAP as defined in G.S. 62A-40(16) for dispatch of appropriate public safety agencies, the plaintiff's burden of proof shall be by clear and convincing evidence."

SECTION 2. This act is effective when it becomes law and applies to any cause of action arising on or after that date.

HOUSE BILL 352:
Standard of Proof/Public Safety Dispatchers

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 1, 2015
Introduced by:	Rep. Torbett	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 352 would provide that the plaintiff's burden of proof shall by clear and convincing evidence in any civil action arising out of an act or omission by 911 or public safety telecommunicators or dispatchers pertaining to their job duties at a public safety answering point (PSAP) or at a public safety agency receiving 911 calls from a primary PSAP for dispatch.

CURRENT LAW: Public employees, including 911 dispatchers, may be sued in their individual capacity in a civil action for mere negligence, gross negligence, and intentional misconduct.[1]

In a civil action against a 911 or public safety telecommunicator or dispatcher, the plaintiff is required to prove his or her case by a preponderance of the evidence.

By contrast, in a medical malpractice action against health care professionals providing emergency medical care, the plaintiff is required to prove his or her case by clear and convincing evidence.[2]

"The clear and convincing evidence standard is greater than a preponderance of the evidence standard required in most civil cases, and requires evidence which should fully convince."[3] It is "evidence which, in its character and weight, establishes what the plaintiff seeks to prove in a clear and convincing fashion."[4]

BILL ANALYSIS: House Bill 352 would provide that the plaintiff must prove its case by clear and convincing evidence in any civil action against a 911 or public safety telecommunicator or dispatcher arising out of an act or omission in the performance of any lawful and prescribed actions pertaining to the defendant's assigned job duties at a public safety answering point (PSAP)[5] or at any public safety agency receiving 911 calls from a primary PSAP[6] for dispatch of appropriate public safety agencies.

EFFECTIVE DATE: This act is effective when it becomes law and applies to all actions brought on or after that date.

Brad Krehely, Counsel to House Judiciary II Committee, and Shelly DeAdder, former Research Division Staff Attorney, substantially contributed to this summary.

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[1] , In *Wright v. Gaston County*, 698 S.E.2d 83 (N.C. Ct. App. 2010), the Court of Appeals held that emergency dispatchers could be sued in their individual capacity for negligence in carrying out their duties.

[2] G.S. 90-21.12(b).

[3] *Schenk v. HNA Holdings, Inc.*, 170 N.C. App. 555, 560, 613 S.E.2d 503, *disc. review denied*, 360 N.C. 177, 626 S.E.2d 649 (2005).

[4] N.C. Pattern Jury Instruction 810.96.

[5] A PSAP is "[t]he public safety agency that receives an incoming 911 call and dispatches appropriate public safety agencies to respond to the call." G.S. 62A-40(18).

[6] A primary PSAP is "[t]he first point of reception of a 911 call by a public safety answering point." G.S. 62A-40(16).

O. Walker Reagan
Director

Research Division
(919) 733-2578

* H 3 5 2 - S M T G - 9 6 E 2 - V 1 *

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, June 02, 2015

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

FAVORABLE

HB **352** **(CS#1)** Standard of Proof/Public Safety Dispatchers.

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

TOTAL REPORTED: 1

Senator James Davis will handle HB 352



VISITOR REGISTRATION SHEET

Senate Judiciary II Committee

(Committee Name)

6/2/15

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
[signature]	NCMMC
[signature]	[illegible]
Todd Bar[illegible]	NC Advocates for Ju[illegible]
Isabel Villa-Gracia	NCAR

VISITOR REGISTRATION SHEET

Senate Judiciary II Committee

(Committee Name)

6/2/15

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Donna B Clark	UNC Dept Gov.
Tom Murry	NC AOC
Jillian D Tolman	MWCCCC
Lao Russell	CJPC
Fred Schmidt	DMV

09-22-2012

Senate Committee on Judiciary II
Thursday, June 4, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:06 AM on June 4, 2015 in Room 1124/1224 of the Legislative Building. 10 members were present.

Senator Tamara Barringer, Chair, presided.

HB 100 Record of Excusals from Jury Duty. (Representative Cleveland)
Sen. Cook motioned to consider the PCS to HB100 rather than the original bill. Rep. Cleveland presented the bill. Sen. Bryant, Sen. Cook, and Sen. Smith-Ingram asked questions. Senator Daniel moved to amend the bill. Senator Cook seconded the motion. The PCS as amended was returned before the committee. Sen. Van Duyn asked a question. Senator Cook moved, unfavorable to the original bill, favorable to the PCS as amended, rolled into a new PCS. The motion was seconded by Sen. Krawiec. The motion carried. The bill maintained a serial referral to Senate Redistricting.

The meeting adjourned at 10:29 AM.

Senator Tamara Barringer, Chair
Presiding

Gloria Whitehead, Committee Clerk

Senate Committee on Judiciary II
Thursday, June 4, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 100	Record of Excusals from Jury Duty.	Representative Cleveland

Presentations

Other Business

Adjournment

HOUSE BILL 100
Committee Substitute Favorable 4/28/15
Third Edition Engrossed 4/29/15

Short Title: Record of Excusals from Jury Duty. (Public)

Sponsors:

Referred to:

February 24, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE NAMES AND ADDRESSES OF PERSONS EXCUSED FROM JURY DUTY BASED ON DISQUALIFICATION SHALL BE RETAINED BY THE CLERK OF SUPERIOR COURT FOR NOT LESS THAN TWO YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 9 of the General Statutes is amended by adding a new section to read:

"**§ 9-6.2. Records of excusals from jury duty based on disqualification.**

The name and address of each person who requests to be excused from jury duty on the basis that he or she is not qualified to serve as a juror under G.S. 9-3, along with the reason for that request, shall be retained by the clerk of superior court for not less than two years from the date of excusal, but are not public record. The clerk of superior court shall provide a copy of a list of persons excused for any reason related to qualifications under G.S. 163-55 to the State Board of Elections for the purposes of G.S. 163-82.14."

SECTION 2. G.S. 9-6(e) reads as rewritten:

"(e) The judge shall inform the clerk of superior court of persons excused under this section, and the clerk shall keep a record of excuses separate from the master jury ~~list.~~list in accordance with G.S. 9-6.2."

SECTION 3. This act becomes effective July 1, 2016.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 100
Committee Substitute Favorable 4/28/15
Third Edition Engrossed 4/29/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H100-CSTJ-42 [v.5]
6/3/2015 8:35:40 PM

Short Title: Record of Excusals from Jury Duty. (Public)

Sponsors:

Referred to:

February 24, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE NAMES AND ADDRESSES OF PERSONS REQUESTING TO BE EXCUSED FROM JURY DUTY BASED ON DISQUALIFICATION SHALL BE RETAINED BY THE CLERK OF SUPERIOR COURT FOR NOT LESS THAN TWO YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 9 of the General Statutes is amended by adding a new section to read:

"**§ 9-6.2. Records of excusals from jury duty based on disqualification.**

(a) The name and address of each person who requests to be excused from jury duty on the basis that he or she is not qualified to serve as a juror under G.S. 9-3, along with the reason for that request, shall be retained by the clerk of superior court for not less than two years from the date of excusal. The records retained by the clerk are not public records under G.S. 132-1.

(b) If a person is excused from jury duty for any reason relating to qualifications under G.S. 163-55, the record of his or her name, address, and the date of excusal shall be a public record under G.S. 132-1 and shall be provided by the clerk of superior court to the State Board of Elections for the purposes listed in G.S. 163-82.14."

SECTION 2. G.S. 9-6(e) reads as rewritten:

"(e) The judge shall inform the clerk of superior court of persons excused under this section, and the clerk shall keep a record of excuses separate from the master jury ~~list.~~list in accordance with G.S. 9-6.2."

SECTION 3. The Administrative Office of the Courts shall amend the Rules of Recordkeeping to include procedures to implement the provisions of G.S. 9-6.2, as enacted by Section 1 of this act.

SECTION 4. This act becomes effective January 1, 2016.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 100

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

H100-ATG-54 [v.1]

Amends Title [NO]
H100-CSTJ-42[v.5]

Date _____,2015

Senator Daniel

moves to amend the bill on page 1, line 15, by rewriting the line to read:

"G.S. 163-55(b), the record of his or her name, address, reason for excusal, and the date of excusal shall be a public".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 100:
Record of Excusals from Jury Duty

2013-2014 General Assembly

Committee:	Senate Sequential Referral To Redistricting Added	**Date:**	June 3, 2015
Introduced by:	Rep. Cleveland	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to Third Edition H100-CSTJ-42		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 100 would provide for the retention of the names of persons requesting excuses from jury service on the basis they are not qualified to serve as jurors, along with the reason for the excusal, for a period of not less than two years, and would require the clerk of superior court to provide specified information relating to persons excused from jury duty to the State Board of Elections (SBOE).***

BILL ANALYSIS:

Section 1 of the PCS for House Bill 100 would provide:

- That the name and address of each person who requests to be excused from jury duty because they do not meet the qualifications for jury service, along with the reason for that request, shall be retained by the clerk of superior court for not less than two years from the date of excusal, and is not a public record under G.S. 132-1.
- That specified information relating to persons whom the court excuses from jury duty must reported to the SBOE and are a public record.

Section 2 would make a conforming change.

Section 3 of the PCS would direct the Administrative Office of the Courts to adopt rules to implement the provisions of the act.

EFFECTIVE DATE: This act becomes effective January 1, 2015.

O. Walker Reagan
Director

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, June 04, 2015

Senator Barringer,
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 **100** **(CS#1)** Record of Excusals from Jury Duty.

Draft Number:	H100-PCS40468-TJ-42
Sequential Referral:	Redistricting
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Shirley Randleman will handle HB 100



SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Susan Vick	Duke Energy	
Penny Huffin	Self	
Mildred Spearman	NCAOC	
Tom Murry	NCAOC	
Annaliese Dolph	DL	
Fred Bone	Bone : Assoc	
Sarah Preston	ACLU-NC	
Lao Rubert	CYPC	

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Mia Bailey	ElectriCities	
Sam Skinner	NCACC	
Natalie Hobran	NCHFA	
Will Parry-Hill	NCHFA	
Derik Carlton	Law Office of [illegible]	
Hillary Li	ACLU	
[illegible]	[illegible]	
Cara [illegible]	[illegible]	
Chapman	DOT	

Senate Committee on Judiciary II
Thursday, June 25, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:04 AM on June 25, 2015 in Room 1124/1224 of the Legislative Building. 15 members were present.

Senator Shirley B. Randleman, Chair, presided.

Pages: Justin Condry of Jacksonville, Jeffery Condry of Jacksonville, Elizabeth O'Donnell of Mills River, Jesse Narron of Southport, Hayden Cheek of Burlington, Watson Lander of Burlington, Kendall Hunt of Greensboro, Josie Britt of Winston-Salem, Emma West of Fayetteville, Annie Haunton of Hickory, Megan Evans of Princeton
Sgt. at Arms: Donna Blake, Canton Lewis

HB 273 Clarify Cond. Discharge Law/No DWI Expunge. (Representatives Jackson, Glazier)
Having already discussed this bill, the PCS: PCS H273-CSTJ-37 was before the committee for reconsideration rather than the original bill.
Rep. Jackson presented the bill to the committee.
After discussion, Sen. McInnis motioned to give the bill a report as unfavorable to the original bill, favorable to the PCS. The motion carried. The bill was reported out by the clerk as "Favorable."

HB 561 School System Auth. Re: Legal Proceedings. (Representatives Blackwell, Glazier)
This bill was heard last. Co-Chair Daniel presented the bill to the committee.
At least two different members of the committee brought up questions about the bill.
A member of the public spoke in response to the questions:
Lorianne Winter of the NC council of School Attorneys.
After discussion, Sen. Bingham motioned to give the bill a report as favorable to the original bill. The motion carried. The bill was reported out by the clerk "Unfavorable as to Committee Substitute bill NO. 1, but Favorable as to Senate Committee Substitute bill."

HB 669 Juvenile Law Changes/Abuse/Neglect/Dependency. (Representative Stevens)
This bill was heard second. With no objection, the PCS: PCS H669-CSTJ-45 was brought before the committee for consideration rather than the original bill. Co-Chair Barringer moved to amend the bill on page 3, lines 46-47. The motion was seconded by Sen. Bingham. The motion carried. The bill, as amended, was back before the committee.
There were at least four different members of the public who brought questions up about the bill.
A member of the public spoke in response to some of the questions:
Kevin Kelley, MSW for NC DHHS Division of Social Services.
After discussion, Sen. Bingham motioned to give the bill a report as unfavorable to the original bill, but favorable to the PCS allowing staff to make technical and clarifying corrections. The

motion carried. The bill was reported out by the clerk "Unfavorable as to Committee Substitute bill NO. 1, but Favorable as to Senate Committee Substitute bill."

The meeting adjourned at 10:40 am.

Senator Shirley B. Randleman, Chair
Presiding

Patrick Limer, Committee Clerk

Senate Committee on Judiciary II
Thursday, June 25, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 273	Clarify Cond. Discharge Law/No DWI Expunge.	Representative Jackson Representative Glazier
HB 561	School System Auth. Re: Legal Proceedings.	Representative Blackwell Representative Glazier
HB 669	Juvenile Law Changes/Abuse/Neglect/Dependency.	Representative Stevens

Presentations

Other Business

Adjournment

HOUSE BILL 273
Committee Substitute Favorable 3/31/15

Short Title: Clarify Cond. Discharge Law/No DWI Expunge. (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE PROVISIONS REGARDING DEFERRED PROSECUTION AND CONDITIONAL DISCHARGE FOR CONVICTIONS OF H AND I FELONIES AND MISDEMEANORS UNDER STRUCTURED SENTENCING DO NOT APPLY TO CONVICTIONS OF IMPAIRED DRIVING AND TO CLARIFY THAT OFFENSES INVOLVING IMPAIRED DRIVING CANNOT BE EXPUNGED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1341(a) reads as rewritten:

"(a) Use of Probation. – Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1. The provisions of subsections (a1), (a2), (a4), and (a5) of this section do not apply and a person is not eligible for deferred prosecution or a conditional discharge under those subsections if the person is being placed on probation under this Article for a conviction of impaired driving under G.S. 20-138.1."

SECTION 2. G.S. 15A-145 is amended by adding a new subsection to read:

"(a1) Nothing in this section shall be interpreted to allow the expunction of any offense involving impaired driving as defined in G.S. 20-4.01(24a)."

SECTION 3. G.S. 15A-145.4(a) reads as rewritten:

"(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through G felony.
(2) A felony that includes assault as an essential element of the offense.
(3) A felony that is 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) Repealed by Session Laws 2012-191, s. 2, effective December 1, 2012.
(5) Any felony offense under the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
(6) 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; except that if a prayer for judgment continued has been entered for an offense classified as either a Class G, H,

or I felony, the prayer for judgment continued shall be subject to expunction under the procedures in this section.

(7) A felony offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any felony offense for which punishment was determined pursuant to G.S. 14-3(c).

(8) A felony offense under G.S. 14-401.16.

(9) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(10) Any felony offense involving impaired driving as defined in G.S. 20-4.01(24a)."

SECTION 4. 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), or 14-56.

(8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).

(9) Any offense that is an attempt to commit an offense described in subdivisions (1) through ~~(8)~~ (8a) of this subsection."

SECTION 5. Section 1 of this act becomes effective December 1, 2015, and applies to any order placing a person on probation on or after that date. Sections 2 through 4 of this act become effective July 1, 2015, and apply to petitions filed and petitions pending on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 273
Committee Substitute Favorable 3/31/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H273-CSTJ-37 [v.1]
6/1/2015 9:00:45 PM

Short Title: Clarify Cond. Discharge Law/No DWI Expunge. (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE PROVISIONS REGARDING DEFERRED PROSECUTION AND CONDITIONAL DISCHARGE FOR CONVICTIONS OF H AND I FELONIES AND MISDEMEANORS UNDER STRUCTURED SENTENCING DO NOT APPLY TO CONVICTIONS OF IMPAIRED DRIVING, TO CLARIFY THAT OFFENSES INVOLVING IMPAIRED DRIVING CANNOT BE EXPUNGED, AND TO MODIFY THE LAW CONCERNING WHEN A NEW SENTENCING HEARING MUST BE HELD IN DISTRICT COURT ON AN IMPLIED CONSENT CONVICTION FOR WHICH THE APPEAL TO SUPERIOR COURT HAS BEEN WITHDRAWN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1341(a) reads as rewritten:

"(a) Use of Probation. – Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1. The provisions of subsections (a1), (a2), (a4), and (a5) of this section do not apply and a person is not eligible for deferred prosecution or a conditional discharge under those subsections if the person is being placed on probation under this Article for a conviction of impaired driving under G.S. 20-138.1."

SECTION 2. G.S. 15A-145 is amended by adding a new subsection to read:

"(a1) Nothing in this section shall be interpreted to allow the expunction of any offense involving impaired driving as defined in G.S. 20-4.01(24a)."

SECTION 3. G.S. 15A-145.4(a) reads as rewritten:

"(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through G felony.
(2) A felony that includes assault as an essential element of the offense.
(3) A felony that is 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) Repealed by Session Laws 2012-191, s. 2, effective December 1, 2012.
(5) Any felony offense under the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.

(6) 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; except that if a prayer for judgment continued has been entered for an offense classified as either a Class G, H, or I felony, the prayer for judgment continued shall be subject to expunction under the procedures in this section.

(7) A felony offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any felony offense for which punishment was determined pursuant to G.S. 14-3(c).

(8) A felony offense under G.S. 14-401.16.

(9) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(10) Any felony offense involving impaired driving as defined in G.S. 20-4.01(24a)."

SECTION 4. 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), or 14-56.

(8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).

(9) Any offense that is an attempt to commit an offense described in subdivisions (1) through ~~(8)~~ (8a) of this subsection."

SECTION 5. G.S. 20-38.7(c) reads as rewritten:

"(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, ~~the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When~~ when an appeal is withdrawn or a case is remanded back to district court, the sentence imposed by the district court is vacated and the district court shall hold a new sentencing hearing and shall consider any new ~~convictions.~~convictions unless one of the following conditions is met:

(1) If the appeal is withdrawn pursuant to G.S. 15A-1431(c), the prosecutor has certified to the clerk, in writing, that the prosecutor has no new sentencing factors to offer the court.

(2) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1431(g), the prosecutor has certified to the clerk, in writing, that the prosecutor has no new sentencing factors to offer the court.

(3) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1341(h), the prosecutor has certified to the clerk, in writing, that the prosecutor consents to the withdrawal and remand and has no new sentencing factors to offer the court."

SECTION 6. Section 1 of this act becomes effective December 1, 2015, and applies to any order placing a person on probation on or after that date. Sections 2 through 4 of this act become effective December 1, 2015, and apply to petitions filed and petitions pending on or after that date. Section 5 of this act becomes effective December 1, 2015, and applies to appeals filed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 273:
Clarify Cond. Discharge Law/No DWI Expunge

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 24, 2015
Introduced by:	Reps. Jackson, Glazier	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to Second Edition H273-CSTJ-37		

SUMMARY: ***House Bill 273 would clarify that the provisions regarding deferred prosecution and conditional discharge for convictions of H and I felonies and misdemeanors under Structured Sentencing do not apply to convictions of impaired driving and that offenses involving impaired driving cannot be expunged.***

BILL ANALYSIS:

Section 1 of House Bill 273 would clarify that a person convicted of impaired driving under G.S. 20-138.1 may be placed on probation but is not eligible for deferred prosecution or a conditional discharge.

Sections 2, 3 & 4 would specify that an offense involving impaired driving, as defined in G.S. 20-4.01(24a), is not eligible to be expunged.

EFFECTIVE DATE: Section 1 of this act becomes effective December 1, 2015, and applies to any order placing a person on probation on or after that date. Sections 2 through 4 of this act become effective July 1, 2015, and apply to petitions filed and petitions pending on or after that date. The remainder of this act is effective when it becomes law.

BACKGROUND:

(24a) Offense Involving Impaired Driving. – Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.
b. Any offense set forth under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially similar offense under previous law.
c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially similar offense under previous law.
d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.
e. A repealed or superseded offense substantially similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.
f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.
g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

Susan Sitze, counsel to House Judiciary II, substantially contributed to this summary.

O. Walker Reagan
Director

H273-SMTJ-93 CSTJ-37 -V1

Research Division
(919) 733-2578

HOUSE BILL 561
Committee Substitute Favorable 4/15/15

Short Title: School System Auth. Re: Legal Proceedings. (Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE AUTHORITY OF SCHOOL SYSTEMS WITH REGARD TO LEGAL PROCEEDINGS AND INVESTIGATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-321(a) reads as rewritten:

"(a) All information contained in a personnel file, except as otherwise provided in this Chapter, is confidential and shall not be open for inspection and examination except to any of the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment.

(2) The superintendent and other supervisory personnel.

(3) Members of the local board of education and the board's attorney.

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file.

(5) Any state or federal administrative agency that has a quasi-judicial function or any court of law, when disclosure is necessary in the discretion of the superintendent or superintendent's designee to adequately defend against a claim filed by a current or former employee against the local board of education or a school official or employee for any alleged act or omission arising during the course and scope of his or her official duties or employment. Such disclosure shall be limited to those confidential portions of the personnel file of the employee who filed the claim and only to the extent necessary for the defense of the Board of Education."

SECTION 2. G.S. 115C-45(a) reads as rewritten:

"(a) Power to Subpoena and to Punish for Contempt. – Local boards of education shall have power to issue subpoenas for the attendance of ~~witnesses.~~witnesses and for the production of all tangible things, including, but not limited to, documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic communications, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics. Subpoenas for the attendance of witnesses may be issued in any and all matters which may lawfully come within the powers of the board and which, in the discretion of the board, require ~~investigation;~~investigation. ~~and it shall be the duty of the sheriff or any process serving officer to serve such subpoena upon payment of their lawful fees.~~ Subpoenas for the production of tangible things may be issued in matters where an employee is

suspected of committing job-related misconduct and which, in the discretion of the board or superintendent, require investigation. It shall be the duty of the sheriff or any process serving officer to serve such subpoena upon payment of their lawful fees.

Local boards of education shall have power to punish for contempt for any disorderly conduct or disturbance tending to disrupt them in the transaction of official business."

SECTION 3. This act becomes effective October 1, 2015.

HOUSE BILL 561:
School System Auth. Re: Legal Proceedings

2015-2016 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to Education/Higher Education	**Date:**	June 10, 2015
Introduced by:	Reps. Blackwell, Glazier	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 561 would provide local boards of education (1) with the discretion to allow inspection of confidential employee personnel records in defense of certain employee claims, and (2) with the authority to subpoena tangible things in matters where an employee is suspected of committing job-related misconduct. The bill would limit disclosure of confidential employee records only to records of the employee who filed the claim and only to the extent necessary for the defense of the Board of Education, and also limit issuance of subpoenas for the production of tangible things to matters where an employee is suspected of committing job-related misconduct and which, in the discretion of the board or superintendent, require investigation.***

CURRENT LAW: G.S. 115C-321 requires information in personnel files of public school employees be kept confidential, with certain exceptions. Information required to be kept confidential is limited to inspection and examination by the following:

(1) the employee (or the employee's agent);

(2) the superintendent and supervisory personnel;

(3) members of the local board of education and the local board attorney; and

(4) a party by authority of a subpoena or court order.

Confidential information may also be made available to law enforcement in specified circumstances, and certain information may be released in the discretion of the board if the board has determined that such release is essential to maintaining the board's integrity or in maintaining the level or quality of services provided by the board, as set out in a memorandum.

G.S. 115C-45 provides local boards of education with the power to issue subpoenas for the attendance of witnesses in any and all matters that may lawfully come within the powers of the board and which, in the discretion of the board, require investigation.

BILL ANALYSIS: House Bill 561 would make the following changes:

Section 1 would permit a state or federal administrative agency with a quasi-judicial function or court of law to inspect confidential portions of an employee's personnel file if all of the following apply:

1) A current or former employee has filed a claim against the local board of education or a school official or employee for any alleged act or omission arising during the course and scope of the employee's official duties or employment.

2) In the discretion of the superintendent or superintendent's designee, disclosure was necessary to adequately defend against the employee's claim.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

3) Disclosure was limited to that employee's records only, and to the extent necessary for the defense of the Board of Education.

Section 2 of HB 561 would empower local boards of education to issue subpoenas for the production of all tangible things in matters where an employee is suspected of committing job-related misconduct and which, in the discretion of the board or superintendent, requires investigation. The types of tangible things to be subpoenaed could include but would not be limited to: documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic communications, electronic data processing records, artifacts, or other documentary material, regardless of physical form or characteristics.

EFFECTIVE DATE: HB 561 would become effective October 1, 2015.

Kara McCraw, counsel to House Judiciary Committee IV, substantially contributed to this summary.

HOUSE BILL 669
Committee Substitute Favorable 4/29/15

Short Title: Juvenile Law Changes/Abuse/Neglect/Dependency. (Public)

Sponsors:

Referred to:

April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE JUVENILE LAWS PERTAINING TO ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101 is amended by adding the following new subdivisions to read:

"**§ 7B-101. Definitions.**

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

...

(8a) Department. – Each county's child welfare agency. Unless the context clearly implies otherwise, when used in this Subchapter, "department" or "department of social services" shall refer to the county agency providing child welfare services, regardless of the name of the agency or whether the county has consolidated human services, pursuant to G.S. 153A-77.

...

(15a) Nonrelative kin. – 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.

...."

SECTION 2. G.S. 7B-401.1 reads as rewritten:

"**§ 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.

(e1) Foster Parent. – A foster parent as defined in G.S. 131D-10.2(9a) providing foster care for the juvenile is not a party to the case and may be allowed to intervene only if the foster parent has authority to file a petition to terminate the parental rights of the juvenile's parents pursuant to G.S. 7B-1103.

(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),~~ G.S. 7B-1103(b) and subsection (e1) of this section, 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 3. G.S. 7B-502 reads as rewritten:

"**§ 7B-502. Authority to issue custody orders; delegation.**

(a) In the case of any juvenile alleged to be within the jurisdiction of the court, the court may order that the juvenile be placed in nonsecure custody pursuant to criteria set out in G.S. 7B-503 when custody of the juvenile is necessary. The order for nonsecure custody may be entered ex parte. Unless the petition is being filed pursuant to G.S. 7B-404, telephonic communication of intent to seek nonsecure custody shall be given to counsel, or if unavailable, to a partner or employee at the attorney's office when any of the following occur:

(1) The department has received written notification that a respondent has counsel for the juvenile matter.

(2) The respondent is represented by counsel in a juvenile proceeding within the same county involving another juvenile of the respondent.

Notice is not required to provisional counsel appointed pursuant to G.S. 7B-602.

(b) Any district court judge shall have the authority to issue nonsecure custody orders pursuant to G.S. 7B-503. The chief district court judge may delegate the court's authority to persons other than district court judges by administrative order which shall be filed in the office of the clerk of superior court. The administrative order shall specify which persons shall be contacted for approval of a nonsecure custody order pursuant to G.S. 7B-503."

SECTION 4. G.S. 7B-505 reads as rewritten:

"**§ 7B-505. 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) The court shall order the department to make diligent efforts to notify relatives and any custodial parents of the juvenile's siblings that the juvenile is in nonsecure custody and of any hearings scheduled to occur pursuant to G.S. 7B-506, unless the court finds the notification would be contrary to the juvenile's best interest. 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 or a custodial parent of the juvenile's sibling 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~~ 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 5. Article 5 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-505.1. Juvenile placed in nonsecure custody of a department of social services.**

(a) Unless the court orders otherwise, when a juvenile is placed in the nonsecure custody of a county department of social services, the director may arrange for, provide, or consent to any of the following:

(1) Routine medical and dental care or treatment.

(2) Emergency medical, surgical, psychiatric, psychological, or mental health care or treatment.

(b) When placing a juvenile in nonsecure custody of a county department of social services pursuant to G.S. 7B-502, the court may authorize the director to consent to a Child Medical Evaluation upon written findings that demonstrate the director's compelling interest in having the juvenile evaluated prior to the hearing required by G.S. 7B-506.

(c) The director shall obtain consent from the juvenile's parent, guardian, or custodian for all care or treatment not covered by subsection (a) or (b) of this section, except that the court may authorize the director to provide consent after a hearing at which the court finds by clear and convincing evidence that the care, treatment, or evaluation requested is in the juvenile's best interest. Care and treatment covered by this subsection includes:

(1) Prescriptions for psychotropic medications.

(2) Participation in clinical trials.

(3) Immunizations when it is known that the parent has a bona fide religious objection to the standard schedule of immunizations.

(4) Child Medical Evaluations not governed by subsection (b), comprehensive clinical assessments, or other mental health evaluations.

(5) Surgical, medical, or dental procedures or tests that require informed consent.

(6) Psychiatric, psychological, or mental health care or treatment that requires informed consent.

(d) For any care or treatment provided, the director shall make reasonable efforts to promptly notify the parent, guardian, or custodian that care or treatment will be or has been provided and give the parent or guardian frequent status reports on the juvenile's treatment and the care provided. Upon request of the juvenile's parent, guardian, or custodian, the director shall make available to the parent, guardian, or custodian any results or records of the aforementioned evaluations, except when prohibited by G.S. 122C-53(d). The results of a Child Medical Evaluation shall only be disclosed according to the provisions of G.S. 7B-700.

(e) To the extent provided by federal law, the department may disclose confidential information deemed necessary for the juvenile's assessment and treatment to a health care provider serving the juvenile.

(f) Unless the court has ordered otherwise, to the extent provided by federal law, a health care provider shall disclose confidential information about a juvenile to a director of a county department of social services with custody of the juvenile and a parent, guardian, or custodian.

(g) The director is immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of any action taken or omission pursuant to the requirements of this section as long as the director was acting in good faith. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

SECTION 6. G.S. 7B-506(h)(2a) reads as rewritten:

"(h) At each hearing to determine the need for continued custody, the court shall determine the following:

…

(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~~ 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."

SECTION 7. G.S. 7B-507 reads as rewritten:

"**§ 7B-507. ~~Reasonable efforts.~~Juvenile placed in nonsecure custody of a department of social services.**

(a) An order placing or continuing the placement of a juvenile in the nonsecure 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:~~services:

(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;~~health and safety.

(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;~~of the juvenile. In determining whether efforts to prevent the placement of the juvenile were reasonable, the juvenile's health and safety shall be the paramount concern. The court may find that efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile. A finding that reasonable efforts were not 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.

~~(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~~ juvenile, unless after considering the department's recommendations, the court ~~may order~~ orders a specific placement the court finds to be in the juvenile's best ~~interest; and~~interest.

(5) May ~~provide for~~ order services or other efforts aimed at returning the juvenile to a safe ~~home or at achieving another permanent plan for the juvenile.~~home.

~~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; has~~

~~committed a felony assault resulting in serious bodily injury to the child or another child of the 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-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-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.~~

~~(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 8. G.S. 7B-800.1(a)(4) reads as rewritten:

"(a) Prior to the adjudicatory hearing, the court shall consider the following:

…

(4) Whether ~~relatives~~ relatives, a custodial parent of a sibling of the juvenile, or nonrelative kin have been identified and notified as potential resources for placement or support."

SECTION 9. G.S. 7B-901 reads as rewritten:

"**§ 7B-901. ~~Dispositional~~ Initial dispositional hearing.**

(a) 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, including testimony or evidence from any person who 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. ~~The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.~~

(b) 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~~ At the disposition hearing, the court shall ~~also~~ inquire about efforts made to identify and notify ~~relatives as potential resources for placement or support.~~ relatives, the custodial parent of a sibling of the juvenile, or nonrelative kin about the juvenile's placement and any scheduled hearings.

(c) If the disposition order places a juvenile in the custody of a county department of social services, the court may direct that reasonable efforts for reunification as defined in G.S. 7B-101 shall not be required if the court makes written findings of fact pertaining to any of the following:

(1) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7B-101.

(2) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent.

(3) A court of competent jurisdiction has determined that (i) the parent has committed murder or voluntary manslaughter of another child of the parent; (ii) has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; (iii) has committed a felony assault resulting in serious bodily injury to the child or another child of the parent; (iv) has committed sexual abuse against the child or another child of the parent; or (v) has been required to register as a sex offender on any government-administered registry.

(d) When the court determines that reunification efforts are not required, the court shall order a permanent plan as soon as possible, after providing each party with a reasonable opportunity to prepare and present evidence. The court shall schedule a subsequent hearing within 30 days to address the permanent plans in accordance with G.S. 7B-906.1 and G.S. 7B-906.2."

SECTION 10. G.S. 7B-903 reads as rewritten:

"**§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.**

(a) The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile:

(1) ~~The court may dismiss~~ Dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.

(2) ~~In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:~~Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county or by another individual as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify.

~~a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify; or~~

~~b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or~~

~~c. Place the juvenile in the custody of the 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 the 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. The director may, unless otherwise ordered by the court, 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, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court or the court'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 or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has been provided and shall give the parent frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care 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 the placement is contrary to the best interests of the juvenile. 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. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile:

a. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the

~~parent is unable to pay the cost of treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.~~

~~b. If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, custodian, or caretaker refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.~~

(4) Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person. If the court determines that the juvenile should be placed in the custody of an individual other than a parent, the court shall verify that the person receiving custody of the juvenile understands the legal significance of the placement and will have adequate resources to care appropriately for the juvenile.

(5) Appoint a guardian of the person for the juvenile as provided in G.S. 7B-600.

(6) Place the juvenile in the custody of the department of social services in the county of the juvenile's residence. In the case of a juvenile who has legal residence outside the State, the court may place the juvenile in the physical custody of the 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.

(a1) In placing a juvenile in out-of-home care 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 the placement is contrary to the best interests of the juvenile. 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. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(a2) An order under this section placing or continuing the juvenile in out-of-home care 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 health and safety.

(a3) An order under this section placing the juvenile in out-of-home care shall contain specific findings as to whether the department has made reasonable efforts to prevent the need for placement of the juvenile. In determining whether efforts to prevent the placement of the juvenile were reasonable, the juvenile's health and safety shall be the paramount concern.

The court may find that efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile. A finding that reasonable efforts were not 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.

(b) When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior against people, the court shall consider the opinion of the mental health professional who performed an evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual.

~~(c) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents, the court shall verify that the person receiving custody of the juvenile understands the legal significance of the placement and will have adequate resources to care appropriately for the juvenile.~~

(d) The court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. Subject to G.S. 7B-903.1, if the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

(e) If the court determines that the juvenile may be mentally ill or developmentally disabled, the court may order the county department of social services to coordinate with the appropriate representative of the area mental health, developmental disabilities, and substance abuse services authority or other managed care organization responsible for managing public funds for mental health and developmental disabilities to develop a treatment plan for the juvenile. The court shall not commit a juvenile directly to a State hospital or developmental center for persons with intellectual and developmental disabilities and orders purporting to commit a juvenile directly to a State hospital or developmental center for persons with intellectual and developmental disabilities shall be void and of no effect. If the court determines that institutionalization is the best service for the juvenile, admission shall be with the voluntary consent of the parent, guardian, or custodian. If the parent, guardian, or custodian

refuses to consent to admission to a mental hospital or developmental center for persons with intellectual and developmental disabilities, the signature and consent of the court may be substituted for that purpose. A State hospital or developmental center for persons with intellectual and developmental disabilities that refuses admission to a juvenile referred for admission by a court, or discharges a juvenile previously admitted on court referral prior to completion of treatment, shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness or intellectual and developmental disabilities, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question."

SECTION 11. Article 9 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-903.1. Juvenile placed in custody of a department of social services.**

(a) When a juvenile is placed in the custody of a county department of social services, G.S. 7B-505.1 applies.

(b) To the extent authorized by federal law, the director of a county department of social services with custody of a juvenile shall be authorized to make decisions about matters not addressed herein that are generally made by a juvenile's custodian, including, but not limited to, educational decisions and consenting to the sharing of the juvenile's information. The court may delegate any part of this authority to the juvenile's parent, foster parent, or another individual.

(c) When a juvenile is in the custody or placement responsibility of a county department of social services, the placement provider may, in accordance with G.S. 131D-10.2A, provide or withhold permission, without prior approval of the court or county department of social services, to allow a juvenile to participate in normal childhood activities. If such authorization is not in the juvenile's best interest, the court shall set out alternative parameters for approving normal childhood activities.

(d) If a juvenile is removed from the home and placed in the custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with or return physical custody of the juvenile to the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

(e) 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 12. 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-906.1 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.~~

~~(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 13. Article 9 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-906.2. Permanent plans; concurrent planning.**

(a) At any permanency planning hearing pursuant to G.S. 7B-906.1, the court shall adopt one or more of the following permanent plans the court finds is in the juvenile's best interest:

(1) Reunification as defined by G.S. 7B-101.
(2) Adoption under Article 3 of Chapter 48 of the General Statutes.
(3) Guardianship pursuant to G.S. 7B-600(b).
(4) Custody to a relative or other suitable person.
(5) Another Planned Permanent Living Arrangement (APPLA) pursuant to G.S. 7B-912.
(6) Reinstatement of parental rights pursuant to G.S. 7B-1114.

(b) At any permanency planning hearing, the court shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan. Reunification shall remain a primary or secondary plan unless the court made findings under G.S. 7B-901(c) or makes written findings that reunification efforts clearly would be futile or would be inconsistent with the juvenile's health or safety. The court shall order the county department of social services to make efforts toward finalizing the primary and secondary permanent plans and may specify efforts that are reasonable to timely achieve permanence for the juvenile.

(c) At the first permanency planning hearing held pursuant to G.S. 7B-906.1, the court shall make a finding about whether the efforts of the county department of social services toward reunification were reasonable, unless reunification efforts were ceased in accordance with G.S. 7B-901(c). In every subsequent permanency planning hearing held pursuant to G.S. 7B-906.1, the court shall make written findings about the efforts the county department of social services has made toward the primary permanent plan and any secondary permanent plans in effect prior to the hearing. The court shall make a conclusion about whether efforts to finalize the permanent plan were reasonable to timely achieve permanence for the juvenile.

(d) If the juvenile is 14 years of age or older, the court shall make written findings in accordance with G.S. 7B-912(a), regardless of the juvenile's permanent plan.

SECTION 14. Article 9 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-912. Juveniles 14 years of age and older; Another Planned Permanent Living Arrangement.**

(a) In addition to the permanency planning requirements of G.S. 7B-906.1, at every permanency planning hearing for a juvenile in the custody of a county department of social services that is 14 years of age or older, the court shall inquire and make written findings about each of the following:

(1) The services provided to assist the juvenile in making a transition to adulthood.

(2) The steps the county department of social services is taking to ensure that the foster family or other licensed placement provider follows the reasonable and prudent parent standard as provided in G.S. 131D-10.2A.

(3) Whether the juvenile has regular opportunities to engage in age- or developmentally appropriate activities.

(b) At or before the last scheduled permanency planning hearing, but at least 90 days before a juvenile's 18th birthday, the court shall inquire about whether the juvenile has a copy of the juvenile's birth certificate, Social Security card, health insurance information, drivers license or other identification card, and any educational or medical records the juvenile requests, and determine the person or entity that should assist the juvenile in obtaining these documents before the juvenile's 18th birthday.

(c) The plan of Another Planned Permanent Living Arrangement (APPLA) is only available as a juvenile's primary permanent plan when the court concludes each of the following:

(1) The juvenile is 16 or 17 years old.

(2) The county department of social services has made diligent efforts to place the juvenile permanently with a parent, relative, or in a guardianship or adoptive placement.

(3) There are compelling reasons why it is not in the best interest of the juvenile to be placed permanently with a parent, relative, or in a guardianship or adoptive placement.

(4) APPLA is the best permanency plan for the juvenile.

(d) When APPLA is the juvenile's permanent plan, the court shall, after questioning the juvenile, make written findings addressing the juvenile's desired permanency outcome."

SECTION 15. 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)~~ G.S. 7B-906.2(b) with rights to appeal properly preserved, as follows:

a. The Court of Appeals shall review the order ~~to cease reunification~~ eliminating reunification as a permanent plan 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~~ eliminating reunification as a permanent plan 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. In the case of an appeal by a juvenile, notice of appeal shall be signed by the guardian ad litem attorney advocate."

SECTION 16. Part 1 of Article 1A of Chapter 131D of the General Statutes is amended by adding a new section to read:

"**§ 131D-10.2A. Reasonable and prudent parenting standard.**

(a) The reasonable and prudent parenting standard is characterized by careful and sensible parental decisions that maintain a child's health, safety, and best interests while at the same time encouraging the child's emotional and developmental growth.

(b) Every child care institution shall designate an on-site official authorized to apply the reasonable and prudent parenting standard.

(c) A caregiver, including the child's foster parent or the designated official at a child care institution where the child is placed, shall use the reasonable and prudent parenting standard when determining whether to allow a child in foster care to participate in extracurricular, enrichment, and social activities.

(d) Unless otherwise ordered by a court with jurisdiction pursuant to G.S. 7B-200, a caregiver exercising the reasonable and prudent parenting standard has the authority to provide or withhold permission, without prior approval of the court or county department of social services, to allow a child in foster care, in the custody of a county department of social services, or under the placement authority of a county department of social services through a voluntary placement agreement, to participate in normal childhood activities. Normal childhood activities include, but are not limited to, extracurricular, enrichment, and social activities, and may include overnight activities outside the direct supervision of the caregiver for periods of over 24 hours and up to 72 hours.

(e) The caregiver or the county department of social services with custody of or placement authority over the child is immune from any civil or criminal liability as a result of injuries to the child that might otherwise be incurred or imposed as a result of any omission or action taken pursuant to this section as long as that individual was acting in good faith. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

SECTION 17. G.S. 7B-906.1 reads as rewritten:

"**§ 7B-906.1. Review and permanency planning hearings.**

...

(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 primary 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~~ permanent plans to achieve a safe, permanent home for the juvenile within a reasonable period of time.

...

(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~~ G.S. 7B-903.1 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 primary 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 18. This act becomes effective October 1, 2015, and applies to actions filed or pending on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 669
Committee Substitute Favorable 4/29/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H669-CSTJ-45 [v.4]

6/24/2015 5:45:40 PM

Short Title: Juvenile Law Changes/Abuse/Neglect/Dependency. (Public)

Sponsors:

Referred to:

April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE JUVENILE LAWS PERTAINING TO ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101 is amended by adding the following new subdivisions to read:

"**§ 7B-101. Definitions.**

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

...

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

...

(8a) Department. – Each county's child welfare agency. Unless the context clearly implies otherwise, when used in this Subchapter, "department" or "department of social services" shall refer to the county agency providing child welfare services, regardless of the name of the agency or whether the county has consolidated human services, pursuant to G.S. 153A-77.

...

(15a) Nonrelative kin. – 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.

...."

SECTION 2. G.S. 7B-401.1 reads as rewritten:

"**§ 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.

(e1) Foster Parent. – A foster parent as defined in G.S. 131D-10.2(9a) providing foster care for the juvenile is not a party to the case and may be allowed to intervene only if the foster parent has authority to file a petition to terminate the parental rights of the juvenile's parents pursuant to G.S. 7B-1103.

(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),~~ G.S. 7B-1103(b) and subsection (e1) of this section, 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 3. G.S. 7B-502 reads as rewritten:

"**§ 7B-502. Authority to issue custody orders; delegation.**

(a) In the case of any juvenile alleged to be within the jurisdiction of the court, the court may order that the juvenile be placed in nonsecure custody pursuant to criteria set out in G.S. 7B-503 when custody of the juvenile is necessary. The order for nonsecure custody may be entered ex parte. Unless the petition is being filed pursuant to G.S. 7B-404, telephonic communication that the department will be seeking nonsecure custody shall be given to counsel, or if unavailable, to a partner or employee at the attorney's office when any of the following occur:

(1) The department has received written notification that a respondent has counsel for the juvenile matter.

(2) The respondent is represented by counsel in a juvenile proceeding within the same county involving another juvenile of the respondent.

Notice is not required to provisional counsel appointed pursuant to G.S. 7B-602.

(b) Any district court judge shall have the authority to issue nonsecure custody orders pursuant to G.S. 7B-503. The chief district court judge may delegate the court's authority to persons other than district court judges by administrative order which shall be filed in the office of the clerk of superior court. The administrative order shall specify which persons shall be contacted for approval of a nonsecure custody order pursuant to G.S. 7B-503."

SECTION 4. G.S. 7B-505 reads as rewritten:

"**§ 7B-505. 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) The court shall order the department to make diligent efforts to notify relatives and other persons with legal custody of a sibling of the juvenile that the juvenile is in nonsecure custody and of any hearings scheduled to occur pursuant to G.S. 7B-506, unless the court finds the notification would be contrary to the best interests of the juvenile. 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 or other persons with legal custody of a sibling of the juvenile ~~is~~ are 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~~ 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 5. Article 5 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-505.1. Juvenile placed in nonsecure custody of a department of social services.**

(a) Unless the court orders otherwise, when a juvenile is placed in the nonsecure custody of a county department of social services, the director may arrange for, provide, or consent to any of the following:

(1) Routine medical and dental care or treatment.

(2) Emergency medical, surgical, psychiatric, psychological, or mental health care or treatment.

(b) When placing a juvenile in nonsecure custody of a county department of social services pursuant to G.S. 7B-502, the court may authorize the director to consent to a Child Medical Evaluation upon written findings that demonstrate the director's compelling interest in having the juvenile evaluated prior to the hearing required by G.S. 7B-506.

(c) The director shall obtain consent from the juvenile's parent, guardian, or custodian for all care or treatment not covered by subsection (a) or (b) of this section, except that the court may authorize the director to provide consent after a hearing at which the court finds by clear and convincing evidence that the care, treatment, or evaluation requested is in the juvenile's best interest. Care and treatment covered by this subsection includes:

(1) Prescriptions for psychotropic medications.

(2) Participation in clinical trials.

(3) Immunizations when it is known that the parent has a bona fide religious objection to the standard schedule of immunizations.

(4) Child Medical Evaluations not governed by subsection (b), comprehensive clinical assessments, or other mental health evaluations.

(5) Surgical, medical, or dental procedures or tests that require informed consent.

(6) Psychiatric, psychological, or mental health care or treatment that requires informed consent.

(d) For any care or treatment provided, the director shall make reasonable efforts to promptly notify the parent, guardian, or custodian that care or treatment will be or has been provided and give the parent or guardian frequent status reports on the juvenile's treatment and the care provided. Upon request of the juvenile's parent, guardian, or custodian, the director shall make available to the parent, guardian, or custodian any results or records of the aforementioned evaluations, except when prohibited by G.S. 122C-53(d). The results of a Child Medical Evaluation shall only be disclosed according to the provisions of G.S. 7B-700.

(e) Except as prohibited by federal law, the department may disclose confidential information deemed necessary for the juvenile's assessment and treatment to a health care provider serving the juvenile.

(f) Unless the court has ordered otherwise, except as prohibited by federal law, a health care provider shall disclose confidential information about a juvenile to a director of a county department of social services with custody of the juvenile and a parent, guardian, or custodian."

SECTION 6. G.S. 7B-506(h)(2a) reads as rewritten:

"(h) At each hearing to determine the need for continued custody, the court shall determine the following:

...

(2a) If the court does not place the juvenile with a relative, the court may consider whether nonrelative kin or other persons with legal custody of a sibling of the juvenile 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~~ 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 or other persons with legal custody of a sibling of the juvenile if the court finds the placement is in the juvenile's best interests."

SECTION 7. G.S. 7B-507 reads as rewritten:

"**§ 7B-507. ~~Reasonable efforts.~~Juvenile placed in nonsecure custody of a department of social services.**

(a) An order placing or continuing the placement of a juvenile in the nonsecure 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:~~services:

(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;~~health and safety.

(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;~~of the juvenile. In determining whether efforts to prevent the placement of the juvenile were reasonable, the juvenile's health and safety shall be the paramount concern. The court may find that efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile. A finding that reasonable efforts were not 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.

~~(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~~ juvenile, unless after considering the department's recommendations, the court ~~may order~~ orders a specific placement the court finds to be in the juvenile's best ~~interest; and~~interests.

(5) May ~~provide for~~ order services or other efforts aimed at returning the juvenile to a safe ~~home or at achieving another permanent plan for the juvenile.~~home.

~~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; has committed a felony assault resulting in serious bodily injury to the child or another child of the 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-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-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.~~

~~(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 8. G.S. 7B-800.1(a)(4) reads as rewritten:

"(a) Prior to the adjudicatory hearing, the court shall consider the following:

…

(4) Whether ~~relatives~~relatives, parents, or other persons with legal custody of a sibling of the juvenile have been identified and notified as potential resources for placement or support."

SECTION 9. G.S. 7B-901 reads as rewritten:

"**§ 7B-901. ~~Dispositional~~ Initial dispositional hearing.**

(a) 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, including testimony or evidence from any person who 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. ~~The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.~~

(b) 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~~ relatives, parents, or other persons with legal custody of a sibling of the juvenile, as potential resources for placement or support.

(c) If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification as defined in G.S. 7B-101 shall not be required if the court makes written findings of fact pertaining to any of the following:

(1) A court of competent jurisdiction has determined that the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon the juvenile:
   a. Sexual abuse.
   b. Chronic physical or emotional abuse.
   c. Torture.
   d. Abandonment.
   e. Chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the juvenile.
   f. Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.

(2) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent.

(3) A court of competent jurisdiction has determined that (i) the parent has committed murder or voluntary manslaughter of another child of the parent; (ii) has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; (iii) has committed a felony assault resulting in serious bodily injury to the child or another child of the parent; (iv) has committed sexual abuse against the child or another child of the parent; or (v) has been required to register as a sex offender on any government-administered registry.

(d) When the court determines that reunification efforts are not required, the court shall order a permanent plan as soon as possible, after providing each party with a reasonable opportunity to prepare and present evidence. The court shall schedule a subsequent hearing within 30 days to address the permanent plans in accordance with G.S. 7B-906.1 and G.S. 7B-906.2."

SECTION 10. G.S. 7B-903 reads as rewritten:

"**§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.**

(a) The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile:

(1) ~~The court may dismiss~~ Dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.

(2) ~~In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:~~Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county or by another individual as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify.
   ~~a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions~~

applicable to the parent, guardian, custodian, or caretaker as the court may specify; or

b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of the 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 the 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. The director may, unless otherwise ordered by the court, 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, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court or the court'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 or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has been provided and shall give the parent frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care 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 the placement is contrary to the best interests of the juvenile. 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. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile:

~~a. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.~~

~~b. If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, custodian, or caretaker refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.~~

(4) Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person. If the court determines that the juvenile should be placed in the custody of an individual other than a parent, the court shall verify that the person receiving custody of the juvenile

understands the legal significance of the placement and will have adequate resources to care appropriately for the juvenile.

(5) Appoint a guardian of the person for the juvenile as provided in G.S. 7B-600.

(6) Place the juvenile in the custody of the department of social services in the county of the juvenile's residence. In the case of a juvenile who has legal residence outside the State, the court may place the juvenile in the physical custody of the 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.

(a1) In placing a juvenile in out-of-home care 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 the placement is contrary to the best interests of the juvenile. 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. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(a2) An order under this section placing or continuing the placement of the juvenile in out-of-home care 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 health and safety.

(a3) An order under this section placing the juvenile in out-of-home care shall contain specific findings as to whether the department has made reasonable efforts to prevent the need for placement of the juvenile. In determining whether efforts to prevent the placement of the juvenile were reasonable, the juvenile's health and safety shall be the paramount concern.

The court may find that efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile. A finding that reasonable efforts were not 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.

(b) When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior against people, the court shall consider the opinion of the mental health professional who performed an evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual.

~~(c) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents, the court shall verify that the person receiving custody of the juvenile understands the legal significance of the placement and will have adequate resources to care appropriately for the juvenile.~~

(d) The court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. Subject to G.S. 7B-903.1, if the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of

treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

(e) If the court determines that the juvenile may be mentally ill or developmentally disabled, the court may order the county department of social services to coordinate with the appropriate representative of the area mental health, developmental disabilities, and substance abuse services authority or other managed care organization responsible for managing public funds for mental health and developmental disabilities to develop a treatment plan for the juvenile. The court shall not commit a juvenile directly to a State hospital or developmental center for persons with intellectual and developmental disabilities and orders purporting to commit a juvenile directly to a State hospital or developmental center for persons with intellectual and developmental disabilities shall be void and of no effect. If the court determines that institutionalization is the best service for the juvenile, admission shall be with the voluntary consent of the parent, guardian, or custodian. If the parent, guardian, or custodian refuses to consent to admission to a mental hospital or developmental center for persons with intellectual and developmental disabilities, the signature and consent of the court may be substituted for that purpose. A State hospital or developmental center for persons with intellectual and developmental disabilities that refuses admission to a juvenile referred for admission by a court, or discharges a juvenile previously admitted on court referral prior to completion of treatment, shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness or intellectual and developmental disabilities, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question."

SECTION 11. Article 9 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-903.1. Juvenile placed in custody of a department of social services.**

(a) Except as prohibited by federal law, the director of a county department of social services with custody of a juvenile shall be authorized to make decisions about matters not addressed herein that are generally made by a juvenile's custodian, including, but not limited to, educational decisions and consenting to the sharing of the juvenile's information. The court may delegate any part of this authority to the juvenile's parent, foster parent, or another individual.

(b) When a juvenile is in the custody or placement responsibility of a county department of social services, the placement provider may, in accordance with G.S. 131D-10.2A, provide or withhold permission, without prior approval of the court or county department of social services, to allow a juvenile to participate in normal childhood activities. If such authorization is not in the juvenile's best interest, the court shall set out alternative parameters for approving normal childhood activities.

(c) If a juvenile is removed from the home and placed in the custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with or return physical custody of the juvenile to the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

(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.

(e) When a juvenile is placed in the custody of a county department of social services, the provisions of G.S. 7B-505.1 apply."

SECTION 12. 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-906.1 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.~~

~~(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 13. G.S. 7B-906.1(g) reads as rewritten:

"(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. The judge shall inform the parent, guardian, or custodian that failure or refusal to cooperate with the plan may result in an order of the court in a subsequent permanency planning hearing that reunification efforts may cease.

SECTION 14. Article 9 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-906.2. Permanent plans; concurrent planning.**

(a) At any permanency planning hearing pursuant to G.S. 7B-906.1, the court shall adopt one or more of the following permanent plans the court finds is in the juvenile's best interest:

(1) Reunification as defined by G.S. 7B-101.
(2) Adoption under Article 3 of Chapter 48 of the General Statutes.
(3) Guardianship pursuant to G.S. 7B-600(b).
(4) Custody to a relative or other suitable person.
(5) Another Planned Permanent Living Arrangement (APPLA) pursuant to G.S. 7B-912.
(6) Reinstatement of parental rights pursuant to G.S. 7B-1114.

(b) At any permanency planning hearing, the court shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan. Reunification shall remain a primary or secondary plan unless the court made findings under G.S. 7B-901(c) or makes written findings that reunification efforts clearly would be futile or would be inconsistent with the juvenile's health or safety. The court shall order the county department of social services to

make efforts toward finalizing the primary and secondary permanent plans and may specify efforts that are reasonable to timely achieve permanence for the juvenile.

(c) At the first permanency planning hearing held pursuant to G.S. 7B-906.1, the court shall make a finding about whether the efforts of the county department of social services toward reunification were reasonable, unless reunification efforts were ceased in accordance with G.S. 7B-901(c) or this section. In every subsequent permanency planning hearing held pursuant to G.S. 7B-906.1, the court shall make written findings about the efforts the county department of social services has made toward the primary permanent plan and any secondary permanent plans in effect prior to the hearing. The court shall make a conclusion about whether efforts to finalize the permanent plan were reasonable to timely achieve permanence for the juvenile.

(d) At any permanency planning hearing under subdivisions (b) and (c) of this section, the court shall make written findings as to each of the following:

(1) Whether the parent is making adequate progress within a reasonable period of time under the plan.

(2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.

(3) Whether the parent remains available to the court, the department and the guardian ad litem for the juvenile.

(4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

(e) If the juvenile is 14 years of age or older, the court shall make written findings in accordance with G.S. 7B-912(a), regardless of the juvenile's permanent plan.

SECTION 15. Article 9 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-912. Juveniles 14 years of age and older; Another Planned Permanent Living Arrangement.**

(a) In addition to the permanency planning requirements under G.S. 7B-906.1, at every permanency planning hearing for a juvenile in the custody of a county department of social services who has attained the age of 14 years, the court shall inquire and make written findings regarding each of the following:

(1) The services provided to assist the juvenile in making a transition to adulthood.

(2) The steps the county department of social services is taking to ensure that the foster family or other licensed placement provider follows the reasonable and prudent parent standard as provided in G.S. 131D-10.2A.

(3) Whether the juvenile has regular opportunities to engage in age-appropriate or developmentally appropriate activities.

(b) At or before the last scheduled permanency planning hearing, but at least 90 days before a juvenile attains 18 years of age, the court shall (i) inquire as to whether the juvenile has a copy of the juvenile's birth certificate, Social Security card, health insurance information, drivers license or other identification card, and any educational or medical records the juvenile requests and (ii) determine the person or entity that should assist the juvenile in obtaining these documents before the juvenile attains the age of 18 years.

(c) If the court finds each of the following conditions applies, the court shall approve Another Planned Permanent Living Arrangement (APPLA) as defined by P.L. 113-183, as the juvenile's primary permanent plan:

(1) The juvenile is 16 or 17 years old.

(2) The county department of social services has made diligent efforts to place the juvenile permanently with a parent or relative or in a guardianship or adoptive placement.

(3) Compelling reasons exist that it is not in the best interest of the juvenile to be placed permanently with a parent or relative or in a guardianship or adoptive placement.

(4) APPLA is the best permanency plan for the juvenile.

(d) If the court approves APPLA as the juvenile's permanent plan, the court shall, after questioning the juvenile, make written findings addressing the juvenile's desired permanency outcome."

SECTION 16. 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)~~ G.S. 7B-906.2(b) with rights to appeal properly preserved, as follows:

a. The Court of Appeals shall review the order ~~to cease reunification~~ eliminating reunification as a permanent plan 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~~ eliminating reunification as a permanent plan 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. In the case of an appeal by a juvenile, notice of appeal shall be signed by the guardian ad litem attorney advocate."

SECTION 17. G.S. 7B-906.1 reads as rewritten:

"**§ 7B-906.1. Review and permanency planning hearings.**

...

(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 primary 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~~ permanent plans to achieve a safe, permanent home for the juvenile within a reasonable period of time.

...

(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~~ G.S. 7B-903.1 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 primary 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 18. Section 3 of this act becomes effective when it becomes law. The remainder of this act becomes effective October 1, 2015, and applies to actions filed or pending on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 669

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

H669-ATG-57 [v.1]

Amends Title [NO]
H669-CSTJ-45 [v.4]

Date 6-25 ,2015

Senator Barringer

moves to amend the bill on page 3, lines 46-47, by inserting the following between those lines:

"(3) Testing and evaluation in exigent circumstances."; and

on page 12, line 49, by replacing the word "futile" with the word "unsuccessful"; and

on page 13, line 13, by rewriting the line to read:

"the court shall make written findings as to each of the following, which shall demonstrate lack of success:".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

HOUSE BILL 669: Juvenile Law Changes/Abuse/Neglect/Dependency

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 25, 2015
Introduced by:	Rep. Stevens	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to Second Edition H669-CSTJ-45		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 669 would make various changes to the juvenile laws pertaining to abuse, neglect, and dependency. The PCS makes changes following the ratification of Senate Bill 423, the "Foster Care Family Act," including the removal of the "Reasonable and Prudent Parent Standard," and makes other clarifying and technical changes.***

CURRENT LAW: The provisions of the North Carolina Juvenile Code pertaining to abuse, neglect and dependency are contained in Subchapter I of Chapter 7B of the General Statutes.

BACKGROUND: House Bill 669 comes as recommended by the Juvenile Code Revision Subcommittee of the North Carolina Court Improvement Project.

BILL ANALYSIS:

Section 1 of the PCS adds definitions of "Department" and "Nonrelative kin" to G.S. 7B-101, and deletes the definition of "aggravated circumstances," which are now described in Section 8 of the PCS.

Section 2 of the PCS addresses the standing of a foster parent to intervene in certain juvenile proceedings.

Section 3 authorizes a nonsecure custody order to be entered *ex parte*, and sets out certain notice provisions. This section would become effective when it becomes law.

Section 4 of the bill requires each county's child welfare agency ("department") to make diligent efforts to notify relatives and custodial parents of the juvenile's siblings that the juvenile is in nonsecure custody, unless not in the juvenile's best interest.

Section 5 creates a new G.S. 7B-505.1, that clarifies the authority the department has to authorize specified medical and dental care when a juvenile is placed in nonsecure custody, and addresses notice and consent requirements.

Section 6 adds provisions to G.S. 7B-506(h)(2a) to require notification to persons with legal custody of a juvenile's sibling when a juvenile is not placed with a relative.

Section 7 addresses the required contents of a court order placing or continuing the placement of a juvenile in the nonsecure custody of the department.

Section 8 adds provisions to G.S. 7B-800.1(a)(4) to require the court to consider whether certain other persons have been considered for purposes of placement or support.

Section 9 amends G.S. 7B-901 relating to the initial dispositional hearing. It specifies the circumstances under which a department is not required to make reasonable efforts for reunification. It deletes the "open courts" provision that is also contained in current G.S. 7B-801. It also lists the aggravated

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

circumstances the court must consider if the court directs the department not to make reasonable efforts for reunification.

Section 10 modifies G.S. 7B-903, relating to dispositional alternatives available to the court.

Section 11 adds a new section to Article 9 of Chapter 7B of the General Statutes that cross-references new G.S. 7B-505.1 (*see Section 5 of the PCS),* and allows a placement provider to provide or withhold permission to allow a juvenile to participate in normal childhood activities as specified.

Section 12 makes conforming changes relating to the contents of the dispositional order.

Section 13 requires the court to inform the parent, guardian or custodian that failure or refusal to cooperate with the plan may result in an order to cease reunification efforts.

Sections 14 and 15 add new sections to the Juvenile Code, requiring the court to adopt one or more of the specified concurrent permanent plans that the court finds to be in the best interest of the juvenile. This section also directs the court to make specified written findings relating to juveniles who are 14 years of age and older concerning transition-to-adulthood planning, as required by federal law.

Section 16 makes conforming changes in G.S. 7B-1001 pertaining to appeal rights.

Section 17 makes conforming changes pertaining to review and permanency planning hearings.

EFFECTIVE DATE: Section 3 of this act is effective when it becomes law. This act becomes effective October 1, 2015, and applies to actions filed or pending after that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, June 25, 2015

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

FAVORABLE

HB **561** **(CS#1)** School System Auth. Re: Legal Proceedings.

Draft Number:	None
Sequential Referral:	Education/Higher Education
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Warren Daniel will handle HB 561



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Monday, June 29, 2015

Senator Randleman,
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 **273** **(CS#1)** Clarify Cond. Discharge Law/No DWI Expunge.

Draft Number:	H273-PCS30389-TJ-37
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

HB **669** **(CS#1)** Juvenile Law Changes/Abuse/Neglect/Dependency.

Draft Number:	H669-PCS20374-TJ-45
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Jeff Jackson will handle HB 273
Senator Tamara Barringer will handle HB 669



DATE 6-25-15

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Wendy Sotolongo	IOS - NC	669
Deana Fleming	GAL/AOC	669
Argenette Stephenson	DOJ for DHHS	669
Kevin Kelley	NC DHHS - DSS	669
[illegible]	[illegible]	
Kelle Hatcher	Child Fat. Task [illegible]	669
Leanne Winner	NCSBA	561
Anna Washburn		
Austin Pruitt	Perkinson Law	
Trent Womble	DHHS	
Chip Kelly	Nelson Mullins	

DATE 6-25-15

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Adam Sholar	DHHS	
Taylor Emery	Intern	
Ali. Davidson	Rep. Blackwell	SB1
Ptg Bt	MWC	
Ginger Anne Rumstadt	Citizens	

DATE_____

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Aden Providence	NCBA	
Bruce Muldwurf	NCSBA	
Tom Mann	NC AOC	
Mildred Spearman	NCAOC	
Annaliese Dolph	DL	
Kim Crouch	NCBA	
Evan Lee	NCDPI	
Rachel Bealin	"	
Susan Vick	Duke Energy	
Mike Smallwood	UNC SOG	

DATE_____

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Peg Dunn	Conf. of DAs	
David Collins	SEANC	
Skye David	KLG	
Douglas Holbrook	NCSBA	
Chris Agee	DOT	
Mary Freeman	NCAE	
David Fairhill	VB	
Millian Totman	MWC LLC	
Bill Rowe	NC Justice Center	

Senate Committee on Judiciary II
June 30, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:09 AM on June 30, 2015 in Room 1124/1224 of the Legislative Building. 16 members were present.

Senator Tamara Barringer, Chair, presided.

Sergeant at Arms: Giles Jefferies, Ed Kesler.

H 376 Civ/Pro Modernization Expert Discovery

Representative Bishop presented the bill to the committee.

After discussion, Senator McInnis moved for finding the original bill unfavorable but favorable as to the PCS. The PCS carried. The bill was reported out by the clerk as "Unfavorable as to bill, but favorable as to committee substitute bill." Senator Daniel will be the floor Chair.

H 39 Labor/Up Amusement Device Penalties

Representative Ted Davis presented the PCS after motion to bring forward the PCS by Senator Bryant. After discussion, Senator Bingham moved for favorable report to the PCS, unfavorable to the original. Senator Bingham seconded the motion. Senator Brent Jackson will be the floor manager.

The meeting adjourned at 10:29 am.

Senator Tamara Barringer, Chair
Presiding

Gloria Whitehead, Committee Clerk

Senate Committee on Judiciary II
Tuesday, June 30, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 39	Labor/Up Amusement Device Penalties.	Representative Davis Representative Howard
HB 376	Civ Pro/Modernize Expert Discovery.	Representative Jordan Representative Stam Representative Bishop Representative Glazier

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 376
Committee Substitute Favorable 4/21/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H376-CSTG-36 [v.4]

6/29/2015 6:07:54 PM

Short Title: Civ Pro/Modernize Expert Discovery. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING THE RULES OF CIVIL PROCEDURE TO MODERNIZE DISCOVERY OF EXPERT WITNESSES AND CLARIFYING EXPERT WITNESS COSTS IN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 26(b)(4) reads as rewritten:

"(4) ~~Trial Preparation; Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:~~

~~a. 1. A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.~~

~~2. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to sub-subdivision (b)(4)b. of this rule, concerning fees and expenses as the court may deem appropriate.~~

~~b. Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivision (b)(4)a.2. of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)a.2. of this rule the court may require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.~~

Trial Preparation; Discovery of Experts. – Discovery of facts known and opinions held by experts, that are otherwise discoverable under the provisions of subdivision (1) of this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as provided by this subdivision:

a. 1. In General. – In order to provide openness and avoid unfair tactical advantage in the presentation of a case at trial, a party must disclose to the other parties in accordance with this subdivision the identity of any witness it may use at trial to present evidence under Rule 702, Rule 703, or Rule 705 of the North Carolina Rules of Evidence.

2. Witnesses Providing a Written Report. – The parties shall have the option, in connection with the disclosures required by this subdivision, of accompanying the disclosure with a written report prepared and signed by the witness if the witness is one retained or specifically employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. If the parties agree to accompany their disclosure pursuant to this subdivision with a written report, the report must contain all of the following:

I. A complete statement of all opinions the witness will express and the basis and reasons for them.

II. The facts or data considered by the witness in forming them.

III. Any exhibits that will be used to summarize or support them.

IV. The witness' qualifications, including a list of all publications authored in the previous 10 years.

V. A list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition.

VI. A statement of the compensation to be paid for the study and testimony in the case.

3. Witnesses Not Providing Expert Reports. – Unless otherwise stipulated to by the parties, or ordered by the court, a party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify pursuant to Rule 702, Rule 703, or Rule 705 of the North Carolina Rules of Evidence and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. Depositions. –

1. Depositions of an Expert Who May Testify. – A party may depose any person who has been identified as an expert pursuant to this subdivision, with such deposition to be conducted after any written report is provided or identification by response to interrogatory has been made pursuant to sub-subdivision f. of this subdivision.

2. Expert Employed Only for Trial Preparation. – Except as otherwise provided in this sub-sub-subdivision, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to

prepare for trial and who is not expected to be called as a witness at trial. A party may take such discovery only as provided in Rule 35(b) or upon showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

c. Payment. – Unless manifest injustice would result and absent court order, the party seeking discovery under sub-subdivision b. of this subdivision shall pay the expert a reasonable fee for the time spent at that expert's deposition.

d. Trial Preparation Protection for Draft Reports or Disclosures. – Drafts of reports provided under sub-sub-subdivision a.2. of this subdivision are protected from disclosure and are not discoverable regardless of the form in which the draft is recorded.

e. Trial Preparation Protection for Communications Between a Party's Attorney and Expert Witness. – Except as otherwise provided in this sub-subdivision, communications between a party's attorney and any witness providing a report pursuant to sub-sub-subdivision a.2. of this subdivision or identified under sub-sub-subdivision a.3. of this subdivision, regardless of the form of the communication, are protected from disclosure and are not discoverable. Such communications are discoverable only to the extent that the communications do any of the following:

1. Relate to compensation for the expert's study or testimony;
2. Identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
3. Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

f. Time to Disclose Expert Witness Testimony. – Parties agreeing to the submission of written reports pursuant to sub-sub-subdivision a.2. of this subdivision or parties otherwise seeking to obtain disclosure as set forth herein by interrogatory shall, unless otherwise stipulated, set by scheduling order or otherwise ordered by the court, serve such written report or in the case of no agreement on the submission of written reports, interrogatory:

1. At least 90 days before the date set for trial or the case to be ready for trial; or
2. If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under sub-subdivision a. of this subdivision, within 30 days after the other party's disclosure. If a party fails to provide timely disclosure under this rule, the court may, upon motion, take such action as it deems just, including ordering that the party may not present at trial the expert witness for whom disclosure was not timely made.

The time requirements of this sub-subdivision shall not apply if all parties had less than 120-days' notice of the trial date.

g. Supplementation. – The parties must supplement these disclosures when required under subsection (e) of this rule."

SECTION 2. G.S. 7A-314(d) reads as rewritten:

"(d) ~~An~~ Subject to the specific limitations set forth in G.S. 7A-305(d)(11), an expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court, or the Judicial Standards Commission, in its discretion, may authorize. A law-enforcement officer who appears as an expert witness shall receive reimbursement for travel expenses only, as provided in subsection (b) of this section. Compensation of experts acting on behalf of the court or prosecutorial offices shall be paid in accordance with the rules established by the Administrative Office of the Courts. Compensation of experts provided under G.S. 7A-454 shall be in accordance with rules established by the Office of Indigent Defense Services."

SECTION 3. This act becomes effective October 1, 2015. Section 1 applies to actions commenced on or after that date. Section 2 applies to motions or applications for costs filed on or after that date.

HOUSE BILL 376:
Civ Pro/Modernize Expert Discovery

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 29, 2015
Introduced by:	Reps. Jordan, Stam, Bishop, Glazier	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Second Edition H376-CSTG-36		

SUMMARY: ***House Bill 376 amends the rules of civil procedure to modernize discovery of expert witnesses and to clarify expert witness costs in civil actions. The Proposed Committee Substitute (PCS) makes the revised expert witness discovery rule applicable to actions commenced on or after the effective date of the act. The PCS also makes technical changes.***

CURRENT LAW: Rule 26(b)(4) permits a party to serve interrogatories requiring another party to identify each expert witness expected to testify at trial, to state the subject matter on which the witness is expected to testify, and to state the substance of the facts and opinions the witness is expected to present and a summary of the grounds for each. Upon motion, the court may order further discovery by other means, including depositions. Unless manifest justice would result, the party seeking discovery must pay the expert a reasonable fee for time spent in responding to discovery, and a party seeking discovery beyond that obtained by interrogatories must pay the other party a fair portion of the fees and expenses reasonably incurred in obtaining facts and opinions from the expert.

G.S. 7A-305(d)(11) requires the court to include in any award of costs the reasonable and necessary fees of expert witnesses "solely for actual time spent providing testimony at trial, deposition, or other proceedings." G.S. 7A-314(a) requires all witnesses subpoenaed to appear at trial to receive a fee of $5.00 per day, but in addition, G.S. 7A-314(d) authorizes payment to an expert witness of such compensation and allowances as the court, in its discretion, may authorize. The North Carolina Court of Appeals has interpreted G.S. 7A-314(d) as authorizing trial courts to award compensation to an expert witness for time spent in attendance at trial, in addition to compensation for the actual time spent testifying.[1]

BILL ANALYSIS: **Section 1** of the PCS for House Bill 376 would rewrite Rule 26(b)(4) in the Rules of Civil Procedure.

As amended by Section 1, Rule 26(b)(4) would provide the following procedures governing expert witness discovery, which correspond in large part to the current practice in federal courts:

- A party must disclose the identity of any witness it may use at trial to present evidence.
- A party may elect to accompany the required disclosure with a written report prepared and signed by the witness. Any such report must include:
  - a statement of all opinions the witness will express and the reasons for them;
  - the facts or data considered by the witness in forming the opinions;
  - any exhibits that will be used to summarize or support the opinions;
  - the witness's qualifications and publications authored in the past 10 years;

[1] Springs v. City of Charlotte, 209 N.C. App. 271, 284, 704 S.E.2d 319, 328 (2011) aff'd sub nom. Springs v. City of Charlotte, 222 N.C. App. 132, 730 S.E.2d 803 (2012).

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

  - all other cases in which the witness testified as an expert in the previous four years; and
  - the expert's compensation for work in the case.
- If a party elects not to provide a written report, then the party must, in response to interrogatories, identify each expert witness expected to be called at trial, state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert witness is expected to testify.
- A party may depose any expert witness after that expert's identification is disclosed or identified in response to interrogatories.
- Generally, parties may not use discovery to learn facts known or opinions held by an expert who is not expected to testify at trial. Under the following circumstances, however, such discovery may be conducted:
  - if the party shows that exceptional circumstances exist making it is impracticable for the party to obtain facts or opinions on the same subject by other means; or
  - if the expert is the physician to whom a party has been ordered by the court to submit for a physical or mental examination in a case in which that party's mental or physical condition is in controversy.
- The party deposing an expert witness must pay the witness a reasonable fee for the time spent at the deposition unless this would result in manifest injustice.
- A party is not required to produce drafts of any written report provided as part of that party's expert witness disclosure.
- Communications between a party's attorney and any expert witness providing a report are not discoverable, except to the extent that the communications:
  - relate to compensation for the expert's study or testimony;
  - identify facts or data that the attorney provided and that the expert considered in forming the opinions to be expressed; or
  - identify assumptions that the attorney provided and that the expert relied on in forming the opinions to be expressed.
- Unless otherwise stipulated by the parties or ordered by the court, parties opting to provide written reports of their expert witnesses, and parties wishing to serve interrogatories seeking expert witness information, must do so:
  - at least 90 days before the date set for trial or the case to be ready for trial; or
  - if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party, within 30 days after the other party's disclosure.

  These time requirements do not apply if all parties had less than 120 days' notice of the trial date.
- Expert witness disclosures must be supplemented under the same circumstances as other discovery responses.

Section 2 of the PCS would amend G.S. 7A-314(d) to clarify that the compensation that may be awarded to an expert witness in the discretion of the court under that subsection is limited to the reasonable and necessary fees solely for actual time spent providing testimony, as provided in G.S. 7A-305(d)(11).

EFFECTIVE DATE: The act becomes effective October 1, 2015. Section 1 applies to actions commenced on or after that date. Section 2 applies to motions or applications for costs filed on or after that date.

BACKGROUND: House Bill 376 is a recommendation of the North Carolina Bar Association.

Brad Krehely, counsel to House Judiciary II, substantially contributed to this summary.

HOUSE BILL 39
Second Edition Engrossed 3/31/15
Senate Judiciary II Committee Substitute Adopted 6/30/15

Short Title: Labor/Up Amusement Device Penalties. (Public)

Sponsors:

Referred to:

February 4, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES FOR THE ILLEGAL OPERATION OF AMUSEMENT DEVICES AND TO DIRECT THE DEPARTMENT OF LABOR TO STUDY THE REGULATION OF THE OPERATION OF ZIP-LINES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-111.3 reads as rewritten:

"**§ 95-111.3. Definitions.**

…

(b) The term "amusement park" shall mean any tract or area used principally as a permanent location for amusement devices.

(b1) The term "annual gross volume" shall mean the gross receipts a person or device receives from all types of sales made and business done during a 12-month period.

~~(b1)~~(b2) The term "carnival area" shall mean any area, track, or structure that is rented, leased, or owned as a temporary location for amusement devices.

…

(g) The term "person" shall mean any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision thereof or any unit of local government.

…."

SECTION 2. G.S. 95-111.13 reads as rewritten:

"**§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.**

(a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) ~~shall be~~ or G.S. 95-111.8 (Location notice) is subject to a civil penalty not to exceed ~~two hundred fifty dollars ($250.00)~~ one thousand two hundred fifty dollars ($1,250) for each rule, regulation, or section of this Article violated and for each day each device is so operated or used.

(b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) ~~shall be~~ is subject to a civil penalty not to exceed ~~five hundred dollars ($500.00)~~ two thousand five hundred dollars ($2,500) for each day each device is so operated or used.

~~(c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day any device is operated or used without the location notice having been provided.~~

(d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a)

(Operator requirements) ~~shall be~~ is subject to a civil penalty not to exceed ~~five hundred dollars ($500.00).~~two thousand five hundred dollars ($2,500) for each day each device is so operated or used.

(e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) ~~shall be~~ is subject to a civil penalty not to exceed ~~one thousand dollars ($1,000).~~five thousand dollars ($5,000) for each day each device is so operated or used.

(f) 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~~ annual gross volume of the person being charged, the gravity of the violation, the good faith of the ~~person~~ person, and the record of previous violations.

(g) The determination of the amount of the penalty by the Commissioner ~~shall be~~ is 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 and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(h) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.

(i) ~~Any~~ Except as provided under subsection (j) of this section, any person who willfully violates any provision of this ~~Article, and the violation causes the death of any person, shall be~~Article is guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ($10,000); except that if the conviction is for a violation committed after a first conviction of ~~such~~ the person, the person shall be guilty of a Class 1 misdemeanor, which may include a fine of not more than twenty thousand dollars ($20,000). ~~This subsection shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such person on a prosecution charging any degree of willful or culpable homicide.~~

(j) Any person who willfully violates any provision of this Article, and that violation causes the serious injury or death of any person, then the person is guilty of a Class E felony, which shall include a fine.

(k) Nothing in this section prevents any prosecuting officer of the State of North Carolina from proceeding against a person who violates this Article on a prosecution charging any degree of willful or culpable homicide."

SECTION 3. G.S. 95-111.12(a) reads as rewritten:

"(a) No owner shall operate a device subject to the provisions of this Article, unless at the time, there is in existence a contract of insurance providing coverage of not less than one million dollars ($1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of such device or there is in existence a contract of insurance providing coverage of not less than five hundred thousand dollars ($500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the amusement ~~devices~~ device if the annual gross volume of the ~~devices~~ device does not exceed two hundred seventy-five thousand dollars ($275,000); provided waterslides shall not be

required to be insured as herein provided for an amount in excess of one hundred thousand dollars ($100,000) per occurrence. The insurance contract to be provided must be by any insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State; provided, however, that insurance for waterslides may be purchased under Article 21 of Chapter 58 of the General Statutes or under G.S. 58-28-5(b)."

SECTION 4. The General Assembly recognizes that the unsafe operation of zip-lines places the health, safety, and welfare of the public at risk. The Department of Labor (Department) shall study the need for regulation of zip-line operations. The study shall include the following issues:

(1) The number of zip-line operations in the State, excluding zip-lines operated on private residence property.
(2) Whether any counties or cities in the State regulate zip-lines by ordinance and the content of any such ordinances.
(3) The reasons for the specific statutory exclusion of zip-lines from the definition of "amusement device" that was enacted in S.L. 2011-36 and whether this exclusion should be repealed.
(4) The consequences and risks to the public of failure to regulate zip-line operations.
(5) The types of liability insurance coverage recommended for zip-line operations and the costs and availability of such coverage.
(6) The number and nature of reported accidents and injuries involving zip-lines in the State over the last five years.
(7) Protections available under existing law to zip-line amusement operators and participants.
(8) Costs associated with safety inspections of zip-line equipment, gear, and operations.
(9) A summary and analysis of other states' laws, ordinances, and regulations for zip-lines and for amusement rides that include zip-lines.
(10) Any federal standards that may apply to zip-lines.
(11) Any training requirements, certifications, and standards recommended for zip-line operators and employees.
(12) Strategies for addressing the safe operations of zip-lines.
(13) Possible regulatory bodies for zip-line operations.
(14) Any other issues the Department deems relevant.

The Department shall consult with the Department of Insurance, the Association for Challenge Course Technology (ACCT), the American Society for Testing and Materials (ASTM), and any other relevant federal or State agencies in conducting this study and formulating recommendations. The Department of Labor shall submit a report of its findings and recommendations, including any proposed legislation, to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the chairs of the House Committee on Agriculture, and the chairs of the Senate Committee on Agriculture, Environment, and Natural Resources on or before February 1, 2016. The Department of Labor shall conduct the study within existing funds.

SECTION 5. G.S. 95-120.1(a)(2) reads as rewritten:

"(2) A contract of insurance providing coverage of not less than five hundred thousand dollars ($500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the devices if the annual gross volume of the receipts of the devices as defined in G.S. 95-111.3(b1) does not exceed two hundred seventy-five thousand dollars ($275,000)."

SECTION 6. G.S. 95-111.13(i) and (j), as enacted in Section 1 of this act, become effective December 1, 2015, and apply to violations occurring on or after that date. The remainder of Section 1 of this act is effective when this act becomes law and applies to violations occurring on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 39
PROPOSED SENATE COMMITTEE SUBSTITUTE H39-CSTJ-46 [v.6]

6/29/2015 10:07:40 PM

Short Title: Labor/Up Amusement Device Penalties. (Public)

Sponsors:

Referred to:

February 4, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES FOR THE ILLEGAL OPERATION OF AMUSEMENT DEVICES AND TO DIRECT THE DEPARTMENT OF LABOR TO STUDY THE REGULATION OF THE OPERATION OF ZIP-LINES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-111.3 reads as rewritten:

"…

(b) The term "amusement park" shall mean any tract or area used principally as a permanent location for amusement devices.

(b1) The term "annual gross volume" shall mean the gross receipts a person receives from all types of sales made and business done during a 12-month period.

~~(b1)~~(b2) The term "carnival area" shall mean any area, track, or structure that is rented, leased, or owned as a temporary location for amusement devices.

…

(g) The term "person" shall mean any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision thereof or any unit of local government.

…."

SECTION 2. G.S. 95-111.13 reads as rewritten:

"**§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.**

(a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) ~~shall be~~ or G.S. 95-111.8 (Location notice) is subject to a civil penalty not to exceed ~~two hundred fifty dollars ($250.00)~~ one thousand two hundred fifty dollars ($1,250) for each rule, regulation, or section of this Article violated and for each day each device is so operated or used.

(b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) ~~shall be~~ is subject to a civil penalty not to exceed ~~five hundred dollars ($500.00)~~ two thousand five hundred dollars ($2,500) for each day each device is so operated or used.

~~(c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day any device is operated or used without the location notice having been provided.~~

(d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a) (Operator requirements) ~~shall be~~ is subject to a civil penalty not to exceed ~~five hundred dollars~~

~~($500.00).~~two thousand five hundred dollars ($2,500) for each day each device is so operated or used.

(e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) ~~shall be~~ is subject to a civil penalty not to exceed ~~one thousand dollars ($1,000).~~five thousand dollars ($5,000) for each day each device is so operated or used.

(f) 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~~ annual gross volume ~~of the business~~ of the person being charged, the gravity of the violation, the good faith of the ~~person~~ person, and the record of previous violations.

(g) The determination of the amount of the penalty by the Commissioner ~~shall be~~ is 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 and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(h) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.

(i) ~~Any~~ Except as provided under subsection (j) of this section, any person who willfully violates any provision of this ~~Article, and the violation causes the death of any person, shall be~~Article is guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ($10,000); except that if the conviction is for a violation committed after a first conviction of ~~such~~ the person, the person shall be guilty of a Class 1 misdemeanor, which may include a fine of not more than twenty thousand dollars ($20,000). ~~This subsection shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such person on a prosecution charging any degree of willful or culpable homicide.~~

(j) Any person who willfully violates any provision of this Article, and that violation causes the serious injury or death of any person, then the person is guilty of a Class E felony, which shall include a fine.

(k) Nothing in this section prevents any prosecuting officer of the State of North Carolina from proceeding against a person who violates this Article on a prosecution charging any degree of willful or culpable homicide."

SECTION 3. The General Assembly recognizes that the unsafe operation of zip-lines places the health, safety, and welfare of the public at risk. The Department of Labor (Department) shall study the need for regulation of zip-line operations. The study shall include the following issues:

(1) The number of zip-line operations in the State, excluding zip-lines operated on private residence property.

(2) Whether any counties or cities in the State regulate zip-lines by ordinance, and the content of any such ordinances.

(2) The reasons for the specific statutory exclusion of zip-lines from the definition of "amusement device" that was enacted in S.L. 2011-36, and whether this exclusion should be repealed.
(3) The consequences and risks to the public of failure to regulate zip-line operations.
(4) The types of liability insurance coverage recommended for zip-line operations, and the costs and availability of such coverage.
(5) The number and nature of reported accidents and injuries involving zip-lines in the State over the last five years.
(6) Protections available under existing law to zip-line amusement operators and participants.
(7) Costs associated with safety inspections of zip-line equipment, gear and operations.
(8) A summary and analysis of other states' laws, ordinances, and regulations for zip-lines, and for amusement rides that include zip-lines.
(9) Any federal standards that may apply to zip-lines.
(10) Any training requirements, certifications and standards recommended for zip-line operators and employees.
(11) Strategies for addressing the safe operations of zip-lines.
(12) Possible regulatory bodies for zip-line operations.
(13) Any other issues the Department deems relevant.

The Department shall consult with the Department of Insurance, the Association for Challenge Course Technology (ACCT), the American Society for Testing and Materials (ASTM), and any other relevant federal or State agencies, in conducting this study and formulating recommendations. The Department of Labor shall submit a report of its findings and recommendations, including any proposed legislation, to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the Chairs of the House Committee on Agriculture, and the Chairs of the Senate Committee on Agriculture, Environment, and Natural Resources, on or before February 1, 2016. The Department of Labor shall conduct the study within existing funds.

SECTION 4. G.S. 95-120.1(a)(2) is rewritten to read:

"...

(2) A contract of insurance providing coverage of not less than five hundred thousand dollars ($500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the devices if the annual gross ~~volume of the devices~~ volume of the person as defined in G.S. 95-111.3(b1) does not exceed two hundred seventy-five thousand dollars ($275,000).

...."

SECTION 5. G.S. 95-111.13 (i) and (j), as enacted in Section 1 of this act, become effective December 1, 2015, and apply to violations occurring on or after that date. The remainder of Section 1 of this act is effective when this act becomes law and applies to violations occurring on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 39:
Labor/Up Amusement Device Penalties

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 29, 2015
Introduced by:	Reps. Davis, Howard	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to Second Edition H39-CSTJ-46		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 39 would increase the civil and criminal penalties for the violation of safety laws pertaining to amusement devices. The PCS creates a definition of "annual gross volume," requires the imposition of a fine following a conviction for a willful violation of the Amusement Device Safety Act, directs the Department of Labor to study the need for regulation of zip-line, and makes technical and conforming changes.***

[As introduced, this bill was identical to S75, which is currently in Senate Agriculture/Environment/Natural Resources.]

CURRENT LAW: The Amusement Device Safety Act of North Carolina is contained in Article 14B of Chapter 95 of the General Statutes. The purpose of the Article is to prevent injuries, and governs the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration, relocation and investigation of accidents involving amusement devices.

BILL ANALYSIS: The PCS for House Bill 39 would amend the Amusement Device Safety Act to increase the penalties for violations of certain provisions of the Act. Specifically, the PCS would do the following:

Section 1 would create a definition of "annual gross volume" as used in the Amusement Device Safety Act and the Passenger Tramway Safety Act.

Section 2 would amend G.S. 95-111.13 by:

- Increasing penalties for each day each device is operated or used in violation of the article by five times the amounts specified in current law.
- Authorizing the Commissioner of Labor to determine whether the amount of the fine is appropriate given the annual gross volume of the person[1], the seriousness of the violation, the presence or absence of good faith, and any record of previous violations.
- Adding a new subsection (j) providing that willful violation of any provision of the Article that results in serious injury or death constitutes a Class E felony, and requiring the court to impose a fine *(under Structured Sentencing[2], the court may but is not required to impose a fine).*
- Setting out in a separate subsection (k) the provision that any State prosecutor may proceed against a violator on a charge of willful or culpable homicide [*under current law, this provision is contained in subsection (i)].*

[1] The term "person" is defined in G.S. 95-111.3(g) as "any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision thereof or any unit of local government."
[2] G.S. 15A-1340.17(b).

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Section 3 of the PCS would direct the Department of Labor to study the need for regulation of zip-line operations, to include consideration of certain listed issues. The Department of Labor would be directed to submit a report containing its findings, recommendations, and any proposed legislation as specified by February 1, 2016.

Section 4 would make a conforming change in the Passenger Tramway Safety Act.

EFFECTIVE DATE: G.S. 95-111.13 (i) and (j), as enacted in Section 1 of this act, become effective December 1, 2015, and apply to violations occurring on or after that date. The remainder of Section 1 of this act is effective when this act becomes law and applies to violations occurring on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 376
Committee Substitute Favorable 4/21/15

Short Title: Civ Pro/Modernize Expert Discovery. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING THE RULES OF CIVIL PROCEDURE TO MODERNIZE DISCOVERY OF EXPERT WITNESSES AND CLARIFYING EXPERT WITNESS COSTS IN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 1A-1, Rule 26(b) of the Rules of Civil Procedure, is amended by adding a new subdivision to read:

"(b) Discovery scope and limits. – Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

...

(4a) Trial Preparation; Discovery of Experts. – Discovery of facts known and opinions held by experts, that are otherwise discoverable under the provisions of subdivision (1) of this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as provided by this subdivision:

a. 1. In General. – In order to provide openness and avoid unfair tactical advantage in the presentation of a case at trial, a party must disclose to the other parties in accordance with this subdivision the identity of any witness it may use at trial to present evidence under Rule 702, Rule 703, or Rule 705 of the North Carolina Rules of Evidence.

2. Witnesses Providing a Written Report. – The parties shall have the option, in connection with the disclosures required by this subdivision, of accompanying the disclosure with a written report prepared and signed by the witness if the witness is one retained or specifically employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. If the parties agree to accompany their disclosure pursuant to this subdivision with a written report, the report must contain all of the following:

I. A complete statement of all opinions the witness will express and the basis and reasons for them.

II. The facts or data considered by the witness in forming them.

III. Any exhibits that will be used to summarize or support them.

IV. The witness' qualifications, including a list of all publications authored in the previous 10 years.

V. A list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition.

VI. A statement of the compensation to be paid for the study and testimony in the case.

3. Witnesses Not Providing Expert Reports. – Unless otherwise stipulated to by the parties, or ordered by the court, a party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify pursuant to Rule 702, Rule 703, or Rule 705 of the North Carolina Rules of Evidence and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. Depositions. –

1. Depositions of an Expert Who May Testify. – A party may depose any person who has been identified as an expert pursuant to this subdivision, with such deposition to be conducted after any written report is provided or identification by response to interrogatory has been made pursuant to sub-subdivision f. of this subdivision.

2. Expert Employed Only for Trial Preparation. – Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may take such discovery only:

I. As provided in Rule 35(b); or

II. On showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

c. Payment. – Unless manifest injustice would result and absent court order, the party seeking discovery under sub-subdivision b. of this subdivision shall pay the expert a reasonable fee for the time spent at that expert's deposition.

d. Trial Preparation Protection for Draft Reports or Disclosures. – Drafts of reports provided under sub-sub-subdivision a.2. of this subdivision are protected from disclosure and are not discoverable regardless of the form in which the draft is recorded.

e. Trial Preparation Protection for Communications Between a Party's Attorney and Expert Witness. – Communications between a party's attorney and any witness providing a report pursuant to sub-sub-subdivision a.2. of this subdivision or identified under sub-sub-subdivision a.3. of this subdivision, regardless of the form of

the communication, are protected from disclosure and are not discoverable, except to the extent that the communications:

1. Relate to compensation for the expert's study or testimony;
2. Identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
3. Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

f. Time to Disclose Expert Witness Testimony. – Parties agreeing to the submission of written reports pursuant to sub-sub-subdivision a.2. of this subdivision or parties otherwise seeking to obtain disclosure as set forth herein by interrogatory shall, unless otherwise stipulated, set by scheduling order or otherwise ordered by the court, serve such written report or in the case of no agreement on the submission of written reports, interrogatory:

1. At least 90 days before the date set for trial or the case to be ready for trial; or
2. If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under sub-subdivision a. of this subdivision, within 30 days after the other party's disclosure. If a party fails to provide timely disclosure under this rule, the court may, upon motion, take such action as it deems just, including ordering that the party may not present at trial the expert witness for whom disclosure was not timely made.

The notice requirements of this sub-subdivision shall not apply if neither party had less than 120-days notice of the trial date.

g. Supplementation. - The parties must supplement these disclosures when required under subsection (e) of this rule."

SECTION 2. G.S. 7A-314(d) reads as rewritten:

"(d) ~~An~~ Subject to the specific limitations set forth in G.S. 7A-305(d)(11), an expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court, or the Judicial Standards Commission, in its discretion, may authorize. A law-enforcement officer who appears as an expert witness shall receive reimbursement for travel expenses only, as provided in subsection (b) of this section. Compensation of experts acting on behalf of the court or prosecutorial offices shall be paid in accordance with the rules established by the Administrative Office of the Courts. Compensation of experts provided under G.S. 7A-454 shall be in accordance with rules established by the Office of Indigent Defense Services."

SECTION 3. This act becomes effective October 1, 2015. Section 1 applies to claims pending on or after that date. Section 2 applies to motions or applications for costs filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

CORRECTED REPORT #1

Tuesday, June 30, 2015

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

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

HB **39** Labor/Up Amusement Device Penalties.

Draft Number:	H39-PCS20376-TJ-46
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

2 of 2

Senator W. Jackson will handle HB 39



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, June 30, 2015

Senator Barringer,
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 **376** **(CS#1)** Civ Pro/Modernize Expert Discovery.

Draft Number:	H376-PCS40479-TG-36
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

I of 2

Senator Warren Daniel will handle HB 376



Senate Committee on Judiciary II
Tuesday, July 14, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:00 AM on July 14, 2015 in Room 1124/1224 of the Legislative Building. 11 members were present. Attending Sergeants-at-Arms: Steve Wilson, Marcus Kitts, and Steve McKaig. Attending pages: Caroline Putze of Raleigh (Sen. Berger); Kate Finkelstein of Raleigh (Sen. Stein); KrisAnna McLamb of Dunn (Sen. Brown); Carrie Ruff of Ruthfordton (Sen. Hise); Anna Beth McCormick of Apex (Sen. Stein); John Beasley of Dunn (Sen. Rabin); and Rachel Woods of Clayton (Sen. Newton).

Senator Warren Daniel, Chair, presided.

HB 341 Controlled Substances/NBOMe & Other Drugs. (Representatives Jackson, Faircloth, Horn, Stevens) Rep. Darren Jackson presented the bill. He said that the Crime Lab and the Conference of District Attorneys are in favor of the bill. State Bureau of Investigation Director John Byrd fielded questions about how the FDA views the NBOM drugs. Sen. Bingham motioned for a favorable report. The motion carried and the bill was recommended to the Senate Principal Clerk (SPC) as Favorable. No referrals. Sen. Bingham agreed to handle the bill on the floor.

HB 814 The William C. Lindley, Jr. SUDEP Law. (Representatives Riddell, Ross) Rep. Riddell explained the bill and gave some background on the bill. Sen. Davis asked about the two-medical-examiner requirement. Sen. Daniel asked about the coroner position. Sen. McInnis moved for a favorable report at the appropriate time. However, the chairs decided to hold the bill over for the next meeting of the committee.

HB 870 Cert. of Title/Manuf. Home Changes. (Representative Jordan) Pulled from the agenda.

The meeting adjourned at 10:20.

Senator Warren Daniel, Chair
Presiding

Andy Perrigo, Committee Clerk

Senate Committee on Judiciary II
Tuesday, July 14, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 341	Controlled Substances/NBOMe & Other Drugs.	Representative Jackson Representative Faircloth Representative Horn Representative Stevens
HB 814	The William C. Lindley, Jr. SUDEP Law.	Representative Riddell Representative Ross
HB 870	Cert. of Title/Manuf. Home Changes.	Representative Jordan

Presentations

Other Business

Adjournment

HOUSE BILL 341

Short Title:	Controlled Substances/NBOMe & Other Drugs.	(Public)
Sponsors:	Representatives Jackson, Faircloth, Horn, and Stevens (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

March 25, 2015

A BILL TO BE ENTITLED

AN ACT TO ADD "NBOME" COMPOUNDS AND OTHER SUBSTANCES TO THE CONTROLLED SUBSTANCES SCHEDULES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-89 reads as rewritten:

"**§ 90-89. Schedule I 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 a substance comes within this schedule, the Commission shall find: a high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

(1) Any of the following opiates, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

...

eee. Acetyl Fentanyl.

...

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

...

ff. Methoxetamine (other names: MXE, 3-MeO-2-Oxo-PCE).

...

(6) NBOMe Compounds. – Any material compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation unless specifically excepted or unless listed in another schedule:

a. 25B-NBOMe (2C-B-NBOMe) – 2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine

.

b. 25C-NBOMe (2C-C-NBOMe) – 2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.

c. 25D-NBOMe (2C-D-NBOMe) – 2-(2,5-dimethoxy-4-methylphenyl)-N-(2-methoxybenzyl)ethanamine.

d 25E-NBOMe (2C-E-NBOMe) – 2-(4-Ethyl-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.

e. 25G-NBOMe (2C-G-NBOMe) – 2-(2,5-dimethoxy-3,4-dimethylphenyl)-N-(2-methoxybenzyl)ethanamine.

f. 25H-NBOMe (2C-H-NBOMe) – 2-(2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.

g. 25I-NBOMe (2C-I-NBOMe) – 2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.

h. 25N-NBOMe (2C-N-NBOMe) – 2-(2,5-dimethoxy-4-nitrophenyl)-N-(2-methoxybenzyl)ethanamine.

i. 25P-NBOMe (2C-P-NBOMe) – 2-(4-Propyl-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.

j. 25T2-NBOMe (2C-T2-NBOMe) – 2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-4-(methylthio)-benzeneethanamine.

k. 25T4-NBOMe (2C-T4-NBOMe) – 2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-4-[(1-methylethyl)thio]-benzeneethanamine.

l. 25T7-NBOMe (2C-T7-NBOMe) – 2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-4-(propylthio)-benzeneethanamine."

SECTION 2. G.S. 90-90(3) reads as rewritten:

"(3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system unless specifically exempted or listed in another schedule:

a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.

b. Phenmetrazine and its salts.

c. Methamphetamine, including its salts, isomers, and salts of isomers.

d. ~~Methylphenidate.~~Methylphenidate, including its salts, isomers, and salts of its isomers.

e. Phenylacetone. Some trade or other names: Phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

f. Lisdexamfetamine, including its salts, isomers, and salts of isomers."

SECTION 3. 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 that is not listed as a controlled substance in Schedule I through V, and is not an FDA-approved 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 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. 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".~~ 3-(cyclopropylmethanone) indole or 3-(cyclobutylmethanone) indole or 3-(cyclopentylmethanone) indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not further substituted on the cyclopropyl, cyclobutyl, or cyclopentyl rings to any extent. Substances in this class include, but are not limited to: UR-144, fluoro-UR-144, XLR-11, A-796,260 and A-834,735.

k. Indole carboxaldehydes. Any compound structurally derived from 1H-indole-3-carboxaldehyde or 1H-indole-2-carboxaldehyde substituted in both of the following ways:

1. 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, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and

2. At the carbon of the carboxaldehyde by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group.

Whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of

the indole ring, or (iv) anitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring. Substances in this class include but are not limited to: AB-001.

l. Indole carboxamides. Any compound structurally derived from 1H-indole-3-carboxamide or 1H-indole-2-carboxamide substituted in both of the following ways:

1. 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, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and

2. At the nitrogen of the carboxamide by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group.

Whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring. Substances in this class include, but are not limited to: SDB-001 and STS-135.

m. Indole carboxylic acids. Any compound structurally derived from 1H-indole-3-carboxylic acid or 1H-indole-2-carboxylic acid substituted in both of the following ways:

1. 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, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and

2. At the hydroxyl group of the carboxylic acid by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group.

Whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring. Substances in this class include, but are not limited to: PB-22 and fluoro-PB-22.

n. Indazole carboxaldehydes. Any compound structurally derived from 1H-indazole-3-carboxaldehyde or 1H-indazole-2-carboxaldehyde substituted in both of the following ways:

1. At the nitrogen atom of the indazole 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, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and

2. At the carbon of the carboxaldehyde by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group.

Whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indazole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indazole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.

o. Indazole carboxamides. Any compound structurally derived from 1H-indazole-3-carboxamide or 1H-indazole-2-carboxamide substituted in both of the following ways:

1. At the nitrogen atom of the indazole 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, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and
2. At the nitrogen of the carboxamide by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group.

Whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indazole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indazole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring. Substances in this class include, but are not limited to: AKB-48, fluoro-AKB-48, APINCACA, AB-PINACA, AB-FUBINACA, ADB-FUBINACA, and ADB-PINACA.

p. Indazole carboxylic acids. Any compound structurally derived from 1H-indazole-3-carboxylic acid or 1H-indazole-2-carboxylic acid substituted in both of the following ways:

1. At the nitrogen atom of the indazole 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, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and
2. At the hydroxyl group of the carboxylic acid by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group.

Whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indazole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indazole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring."

SECTION 4. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

HOUSE BILL 341:
Controlled Substances/NBOMe & Other Drugs

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 2, 2015
Introduced by:	Reps. Jackson, Faircloth, Horn, Stevens	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 341 would add a number of drugs to the list of controlled substances in Schedules I, II, and VI of the North Carolina Controlled Substances Act.

CURRENT LAW: Under the North Carolina Controlled Substances Act (Article 5 of Chapter 90 of the General Statutes), controlled substances are classified in six schedules, including:

- Schedule I controlled substances (G.S. 90-89), which have a high potential for abuse, no currently accepted medical use in the United States, or which have not been accepted as safe for use in treatment under medical supervision
- Schedule II controlled substances (G.S. 90-90), which have a high potential for abuse, currently have an accepted medical use in the United States or an accepted medical use with severe restrictions, and are substances the abuse of which may lead to severe psychic or physical dependence
- Schedule VI controlled substances (G.S. 90-94), which have 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

BILL ANALYSIS:

Section 1 of the bill would amend G.S. 90-89 to add acetyl fentanyl, methoxetamine, and specified NBOMe compounds (which mimic LSD) as Schedule I controlled substances.

Section 2 would amend G.S. 90-90 (3) to add salts, isomers, and salts of isomers of methylphenidate as Schedule II controlled substances having a potential for abuse associated with a stimulant effect on the central nervous system.

Section 3 would amend G.S. 90-94 to add a number of specified substances to the synthetic cannabinoids listed as Schedule VI controlled substances.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

H341-SMTG-105 E1 - V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note
REVISED

BILL NUMBER: House Bill 341 (First Edition)

SHORT TITLE: Controlled Substances/NBOMe & Other Drugs.

SPONSOR(S): Representatives Jackson, Faircloth, Horn, and Stevens

FISCAL IMPACT
($ in millions)

☐ Yes ☐ No ☑ No Estimate Available

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
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; Indigent Defense Services; Department of Public Safety

EFFECTIVE DATE: December 1, 2015

TECHNICAL CONSIDERATIONS:
None

Revision Note: ***This note has been revised to correct the fiscal year column headers in the table above.***

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address the expansion of several existing offenses. However, given that there is no historical data on the number of additional offenses that may result from the bill, 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 one of the impacted offenses:

- Administrative Office of the Courts: $88 to $4,240 per disposition
- Indigent Defense Services: $181 to $900 per disposition
- Department of Public Safety (DPS) - Prison Section: $0 to $27,378 per active sentence
- DPS - Community Corrections: $0 to $4,437 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

The bill adds several substances to the list of Schedules I, II, and VI controlled substances, thereby expanding all offenses that involve Schedule I, II, or VI controlled substances.

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. 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.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

Since the bill expands several existing offenses, 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 additional offenders might be convicted and sentenced under the expanded statutes.

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.

The bill expands the scope of several existing offenses. AOC does not have historical data upon which to estimate the number of additional charges that may occur. AOC provides estimates of the average cost to the court for a charge by offense class. The following table shows the cost by offense class for each subdivision of Chapter 90 impacted by the bill.

AOC		
Chapter 90 Subdivision	**Offense Class**	**Cost**
95(e)(5); 95.1; 95.4(b)(2); 98	Class C Felony	$4,240
95(e)(5); 95.4(b)(1); 95.4(b)(2); 95.6; 98	Class D Felony	$3,465
95(e)(8); 95(e)(10); 95.4(a)(2); 95.4(b)(1); 95.4(b)(2); 98	Class E Felony	$1,618
95.4(a)(1); 95.4(a)(2); 95.4(b)(1); 98	Class F Felony	$912
95(b)(1); 95.4(a)(1); 95.4(a)(2); 95.7; 98	Class G Felony	$752
95(b)(1); 95(b)(2); 95(d1)(1); 95(e)(9); 95.4(a)(1); 98; and, G.S. 14-258.1(a) and 14-410.16	Class H Felony	$501
95(e)(1); 95(b)(2); 95(c); 95(d)(1); 98; 108(b)	Class I Felony	$365
95(d)(2); 98; 108(b)	Class 1 MD	$165
95(d)(4); 98	Class 2 MD	$88

IDS has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The following table shows the percentage of cases handled by IDS at each offense level as well as the weighted average cost a new charge for each offense by Chapter 90 subdivision. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

IDS			
Chapter 90 Subdivision	**Offense Class**	**Percent Handled by IDS**	**Weighted Average Cost Per Offense**
95(e)(5); 95.1; 95.4(b)(2); 98	Class C Felony	82%	$900
95(e)(5); 95.4(b)(1); 95.4(b)(2); 95.6; 98	Class D Felony	89%	$789
95(e)(8); 95(e)(10); 95.4(a)(2); 95.4(b)(1); 95.4(b)(2); 98	Class E Felony	79%	$512
95.4(a)(1); 95.4(a)(2); 95.4(b)(1); 98	Class F Felony	74%	$497
95(b)(1); 95.4(a)(1); 95.4(a)(2); 95.7; 98	Class G Felony	78%	$462
95(b)(1); 95(b)(2); 95(d1)(1); 95(e)(9); 95.4(a)(1); 98; and, G.S. 14-258.1(a) and 14-410.16	Class H Felony	78%	$353
95(e)(1); 95(b)(2); 95(c); 95(d)(1); 98; 108(b)	Class I Felony	68%	$315
95(d)(2); 98; 108(b)	Class 1 MD	39%	$188
95(d)(4); 98	Class 2 MD	30%	$181

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 2014.

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).

Since the bill expands the scope of existing offenses, 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 beds may be required as a result of this bill.

Population Projections and Bed Capacity
Five Year Impact

	June 30 2016	June 30 2017	June 30 2018	June 30 2019	June 30 2020
1. Inmates[2]	37,360	37,522	37,348	37,462	37,610
2. Prison Beds (Expanded Capacity)	38,749	38,749	38,749	38,749	38,749
3. Beds Over/(Under) Inmate Population	1,389	1,227	1,401	1,287	1,139
4. Additional Inmates Due to this Bill[3]	**No estimate available**				
5. Additional Beds Required					

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is $11.53 per day, or $351 per month, which includes the cost of food, clothing, and health care. The following table shows the percent of convicted offenders receiving active sentences, the average length of the sentence, and the per diem cost for that sentence for each offense impacted by the bill. Please note, misdemeanor offenders will serve their time in county jails, so no costs are estimated for those offenses.

[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 2015.

[3] Criminal penalty bills effective December 1, 2015 should not affect prison population and bed needs until FY 2016-17 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 - Prisons				
Chapter 90 Subdivision	**Offense Class**	**Percent Receiving Active Sentence**	**Average Length of Sentence (Months)**	**Total Per Diem Cost of Sentence**
95(e)(5); 95.1; 95.4(b)(2); 98	Class C Felony	100%	78	$27,378
95(e)(5); 95.4(b)(1); 95.4(b)(2); 95.6; 98	Class D Felony	100%	66	$23,166
95(e)(8); 95(e)(10); 95.4(a)(2); 95.4(b)(1); 95.4(b)(2); 98	Class E Felony	64%	27	$9,477
95.4(a)(1); 95.4(a)(2); 95.4(b)(1); 98	Class F Felony	51%	17	$5,967
95(b)(1); 95.4(a)(1); 95.4(a)(2); 95.7; 98	Class G Felony	40%	14	$4,914
95(b)(1); 95(b)(2); 95(d1)(1); 95(e)(9); 95.4(a)(1); 98; and, G.S. 14-258.1(a) and 14-410.16	Class H Felony	35%	10	$3,510
95(e)(1); 95(b)(2); 95(c); 95(d)(1); 98; 108(b)	Class I Felony	16%	6	$2,106
95(d)(2); 98; 108(b)	Class 1 MD	30%	37 days	N/A
95(d)(4); 98	Class 2 MD	33%	21 days	N/A

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 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.

JRA essentially eliminated the distinction between "community" and "intermediate" supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs $130.50 per offender, per month; 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 and supervised probations.

The following table shows the percent of convicted offenders receiving active sentences, the length of PRS required, and the cost for each felony offense impacted by the bill.[4]

Department of Public Safety - Community Corrections Post-Release Supervision (PRS)				
Chapter 90 Subdivision	**Offense Class**	**Percent Receiving Active Sentence**	**Length of PRS (Months)**	**Cost of PRS**
95(e)(5); 95.1; 95.4(b)(2); 98	Class C Felony	100%	12	$1,566
95(e)(5); 95.4(b)(1); 95.4(b)(2); 95.6; 98	Class D Felony	100%	12	$1,566
95(e)(8); 95(e)(10); 95.4(a)(2); 95.4(b)(1); 95.4(b)(2); 98	Class E Felony	64%	12	$1,566
95.4(a)(1); 95.4(a)(2); 95.4(b)(1); 98	Class F Felony	51%	9	$1,175
95(b)(1); 95.4(a)(1); 95.4(a)(2); 95.7; 98	Class G Felony	40%	9	$1,175
95(b)(1); 95(b)(2); 95(d1)(1); 95(e)(9); 95.4(a)(1); 98; and, G.S. 14-258.1(a) and 14-410.16	Class H Felony	35%	9	$1,175
95(e)(1); 95(b)(2); 95(c); 95(d)(1); 98; 108(b)	Class I Felony	16%	9	$1,175

The following table shows the percent of convicted offenders receiving probation, the average length of probation, and the cost for each offense impacted by the bill.[4]

Department of Public Safety - Community Corrections Probation				
Chapter 90 Subdivision	**Offense Class**	**Percent Receiving Probation**	**Average Length of Probation (Months)**	**Cost of Probation**
95(e)(5); 95.1; 95.4(b)(2); 98	Class C Felony	0%	0	$0
95(e)(5); 95.4(b)(1); 95.4(b)(2); 95.6; 98	Class D Felony	0%	0	$0
95(e)(8); 95(e)(10); 95.4(a)(2); 95.4(b)(1); 95.4(b)(2); 98	Class E Felony	36%	34	$4,437
95.4(a)(1); 95.4(a)(2); 95.4(b)(1); 98	Class F Felony	49%	32	$4,176
95(b)(1); 95.4(a)(1); 95.4(a)(2); 95.7; 98	Class G Felony	60%	29	$3,785
95(b)(1); 95(b)(2); 95(d1)(1); 95(e)(9); 95.4(a)(1); 98; and, G.S. 14-258.1(a) and 14-410.16	Class H Felony	65%	28	$3,654

[4] Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.

Chapter 90 Subdivision	Offense Class	Percent Receiving Probation	Average Length of Probation (Months)	Cost of Probation
95(e)(1); 95(b)(2); 95(c); 95(d)(1); 98; 108(b)	Class I Felony	84%	23	$3,002
95(d)(2); 98; 108(b)	Class 1 MD	70%	15	$1,958
95(d)(4); 98	Class 2 MD	67%	13	$1,697

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: Kristine Leggett

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: April 22, 2015



Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 814

Committee Substitute Favorable 4/27/15
Senate Health Care Committee Substitute Adopted 6/30/15

Short Title: The William C. Lindley, Jr. SUDEP Law. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT REQUIRING THE CHIEF MEDICAL EXAMINER TO ESTABLISH A MEDICAL EXAMINER TRAINING PROGRAM THAT INCLUDES TRAINING REGARDING SUDDEN UNEXPECTED DEATH IN EPILEPSY DURING MEDICOLEGAL DEATH INVESTIGATIONS.

Whereas, sudden unexpected death in epilepsy (SUDEP) is a mysterious, rare condition in which typically young or middle-aged individuals with epilepsy die without a clear cause and is generally defined by the medical community as a sudden, unexpected, nontraumatic, nondrowning death in an otherwise healthy individual with epilepsy, where the postmortem examination does not reveal an anatomic or toxicologic cause of the death; and

Whereas, SUDEP is believed to account for up to 17 percent of deaths in individuals with epilepsy; and

Whereas, autopsy plays a key role in determining the diagnosis of SUDEP, yet the Institute of Medicine has found that SUDEP may be underreported for several reasons, including, but not limited to, a lack of awareness about SUDEP among medical examiners; and

Whereas, the cause of SUDEP is not known, and opportunities for its prevention have been hindered by the lack of a systematic effort to collect information about individuals who have died from SUDEP, as is done with many other disorders; and

Whereas, it is appropriate to raise awareness of SUDEP among medical examiners by developing a SUDEP awareness program and by facilitating research into the causes and prevention of SUDEP; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-382 reads as rewritten:

"**§ 130A-382. County medical examiners; appointment; term of office; ~~vacancies.~~vacancies; training requirements; revocation for cause.**

(a) The Chief Medical Examiner shall appoint ~~one~~ two or more county medical examiners for each county for a three-year term. In appointing medical examiners for each county, the Chief Medical Examiner shall give preference to physicians licensed to practice medicine in this State but may also appoint licensed physician assistants, nurse practitioners, nurses, ~~coroners,~~ or emergency medical technician paramedics. A medical examiner may serve more than one county. The Chief Medical Examiner may take jurisdiction in any case or appoint another medical examiner to do so.

(b) County medical examiners shall complete continuing education training as directed by the Office of the Chief Medical Examiner and based upon established and published guidelines for conducting death investigations. The continuing education training shall include

training regarding sudden unexplained death in epilepsy. The Office of the Chief Medical Examiner shall annually update and publish these guidelines on its Internet Web site. Newly appointed county medical examiners shall complete mandatory orientation training as directed by the Office of the Chief Medical Examiner within 90 days of their appointment.

(c) The Chief Medical Examiner may revoke a county medical examiner's appointment for failure to adequately perform the duties of the office after providing the county medical examiner with written notice of the basis for the revocation and an opportunity to respond."

SECTION 2. This act becomes effective January 1, 2016.

HOUSE BILL 814:
The William C. Lindley, Jr. SUDEP Law

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 14, 2015
Introduced by:	Reps. Riddell, Ross	**Prepared by:**	Bill Patterson Jennifer Bedford Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 814 requires the Office of the Chief Medical Examiner to direct county medical examiners to complete continuing education training that includes training regarding Sudden Unexpected Death in Epilepsy (SUDEP).

CURRENT LAW: G.S. 130A-385 outlines the duties of a medical examiner. A medical examiner is responsible for making inquiries regarding the cause and manner of death for each body in his or her charge, reducing the findings to writing, and making a full report to the Chief Medical Examiner. Medical examiners are authorized to inspect and copy medical records of the decedent. Upon completion of the investigation, the medical examiner is required to complete a death certificate, which includes the cause, means or manner of death, including if such a cause, means, or manner is undeterminable.

BILL ANALYSIS: House Bill 814 amends G.S. 130A-382 in the following ways:

- Requires the Chief Medical Examiner to appoint two or more county medical examiners for each county.
- Eliminates coroners from the list of medical professionals whom the Chief Medical Examiner may appoint as county medical examiners.
- Requires continuing education training for county medical examiners based upon established and published guidelines.
- Requires the continuing education training to include training on sudden unexpected death in epilepsy (SUDEP).
- Requires the continuing education training guidelines to be published and annually updated on the Web site of the Office of Chief Medical Examiner.
- Requires newly appointed county medical examiners to complete mandatory orientation training as directed by the Office of the Chief Medical Examiner within 90 days of their appointment.
- Allows the Chief Medical Examiner to revoke a county medical examiner's appointment for failure adequately to perform the duties of the office after giving written notice of the basis for the revocation and an opportunity to respond.

EFFECTIVE DATE: This act becomes effective January 1, 2016.

BACKGROUND: According to the Epilepsy Foundation, SUDEP "is said to occur when a person with epilepsy dies unexpectedly and was previously in their usual state of health. The death is not known to be related to an accident or seizure emergency such as status epilepticus. When an autopsy is done, no other of cause of death can be found. Each year, more than 1 out of 1,000 people with epilepsy die from SUDEP." [1]

Former Staff Attorney Amy Jo Johnson and Theresa Matula, Staff to Senate Health Care, substantially contributed to this summary.

[1] http://www.epilepsy.com/sudep-institute

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 870

Short Title:	Cert. of Title/Manuf. Home Changes.	(Public)
Sponsors:	Representative Jordan (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RENEWAL, RELEASE, AND CANCELLATION PROCESS FOR SECURITY INTERESTS ON A CERTIFICATE OF TITLE FOR A MANUFACTURED HOME, TO CLARIFY THE CALCULATION OF THE COST OF THE UNDERTAKING FOR THE INSTALLATION OF A MANUFACTURED HOME, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE LAW AND PROCESS RELATED TO MANUFACTURED HOME TITLES AND SECURITY INTERESTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

...

(14) House Trailer. – Any trailer or semitrailer designed and equipped to provide living or sleeping facilities and drawn by a motor vehicle. This term shall not include a manufactured home as defined in G.S. 20-4.01(18a).

...

(18a) Manufacured Home. – Defined in G.S. 143-143.9(6).

...

(32b) Recreational Vehicle. – A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motive power or is mounted on, or towed by, another vehicle. The basic entities are camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper. This term shall not include a manufactured home as defined in G.S. 143-143.9(6).

a. Motor home. – As defined in G.S. 20-4.01(27)d2.

b. Travel trailer. – A vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require a special highway movement permit when towed by a motorized vehicle.

c. Fifth-wheel trailer. – A vehicular unit mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use, of a size and weight that does not require a special highway movement permit and designed to be towed by a motorized

vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

d. Camping trailer. – A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

e. Truck camper. – A portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use, consisting of a roof, floor, and sides and is designed to be loaded onto and unloaded from the bed of a pickup truck.

...

(49) Vehicle. – Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including on sidewalks, and is limited by design to 15 miles per hour when the device is being operated by a person with a mobility impairment, or who uses the device for mobility enhancement. This term shall not include an electric personal assistive mobility device as defined in G.S. 20-4.01(7a). Unless the context requires otherwise, and except as provided under G.S. 20-109.2, 47-20.6, or 47-20.7, a manufactured home shall be deemed a vehicle.

...."

SECTION 2. G.S. 20-58 reads as rewritten:

"**§ 20-58. Perfection by indication of security interest on certificate of title.**

...

(c) On and after January 1, 2016, an application for the notation of a security interest pursuant to subsection (a) of this section on a certificate of title for a manufactured home shall state the maturity date of the secured obligation. The Division shall include the stated maturity date for the certificate of title, including the notation of the maturity date on the certificate of title, in its public records and in any reports regarding the certificate of title provided to third parties. For the purposes of this subsection, the maturity date of the security interest is defined in G.S. 45-36.24."

SECTION 3. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-58.3A. Automatic expiration of security interest in manufactured home; renewal of security interests in manufactured homes.**

(a) For the purposes of this section, the term "secured party" means the secured party named on a certificate of title for a manufactured home and those parties that succeed to the rights of the secured party as a secured creditor by assignment or otherwise. The term "borrower" means the borrower of the obligation secured by the security interest noted on the certificate of title for a manufactured home.

(b) With the exception of a security interest in a manufactured home perfected pursuant to G.S. 20-58(c), unless satisfied pursuant to G.S. 20-58.4 or G.S. 20-109.2, a security interest in a manufactured home that is perfected by a notation on the certificate of title shall

automatically expire 30 years after the date of the issuance of the original certificate of title containing the notation of the security interest.

(c) Unless satisfied pursuant to G.S. 20-58.4 or G.S. 20-109.2, a security interest in a manufactured home perfected by a notation on the certificate of title pursuant to G.S. 20-58(c) shall automatically expire as follows:

(1) If the perfection of the security interest has not been renewed as provided in this section, on the earlier of (i) 90 days after the maturity date stated on the application for the security interest or (ii) 15 years plus 180 days after the date of issuance of the original certificate of title containing the notation of the security interest.

(2) If the perfection of the security interest has been renewed as provided in this section, on the earlier of (i) 10 years after the date of the renewal of the perfection of the security interest, (ii) 90 days after the original maturity date of the security interest, or (iii) 90 days after any extended maturity date stated on the application of renewal.

(d) Prior to the date that perfection of a secured party's security interest in a manufactured home automatically expires pursuant to subsection (c) of this section, the secured party may deliver to the Division an application for renewal of the perfection of the secured party's security interest. The application for the renewal of the perfection of the secured party's security interest shall be in a form prescribed by the Division. Nothing in this section shall be construed to extend the maturity date of the secured obligation unless an agreement in writing has been executed by the borrower extending the original maturity date. The application for renewal of the perfection of the secured party's security interest shall contain all of the following:

(1) The secured party's signature.

(2) The existing certificate of title, unless it is in the possession of a prior secured party.

(3) An affirmative statement of any agreement executed by the borrower to extend the maturity date.

(4) If the application is submitted by the assignee or successor in interest of the secured party listed on the certificate of title, documentary evidence that the applicant is the assignee or successor in interest of the secured party listed on the certificate of title.

(5) The name and address of the party from whom information concerning the security interest may be obtained.

(6) Any other information requested by the Division.

(e) Upon receipt of the application for renewal of the perfection of the secured party's security interest, the Division shall do one of the following:

(1) If the existing certificate of title is included with the application for renewal, the Division shall issue a new certificate of title bearing (i) the date of the original security interest, (ii) a notation of the renewed perfection of the security interest, (iii) the maturity date of the security interest, and (iv) the date of renewal.

(2) If the existing certificate of title is in the possession of a prior secured party, the Division, if satisfied as to the genuineness and regularity of the application for renewal, shall obtain the certificate of title from the party in possession for the purpose of notating (i) the date of the original security interest, (ii) the renewal of the perfection of the security interest, (iii) the original or extended maturity date, and (iv) the date of renewal. Once the notations have been made, the Division shall return the certificate of title to the possession of the secured party.

(3) If the existing certificate of title cannot be obtained, the Division shall cancel the existing certificate of title and issue a new certificate of title. The new certificate of title shall list all known security interests and shall bear notation that shows (i) the date of the original security interest, (ii) the renewal of the perfection of the security interest, (iii) the original or extended maturity date, and (iv) the date of renewal.

(f) An application for the renewal of a secured party's security interest pursuant to this section shall be effective to renew the perfection of the security interest as of the date the application is delivered to the Division. Each renewed security interest shall retain its original date of perfection and shall thereafter expire on the earlier to occur of (i) 10 years after the date of renewal of the perfection of the security interest or (ii) the original or extended maturity date. Perfection of a security interest in a manufactured home may be renewed more than once pursuant to this section."

SECTION 4. G.S. 20-58.4 reads as rewritten:

"**§ 20-58.4. Release of security interest.**

...

(e) If it is impossible for the owner to secure from the secured party the release contemplated by this section, the owner may exhibit to the Division either such evidence as may be available showing satisfaction or other discharge of the debt secured, together with a sworn affidavit by the owner that the debt has been ~~satisfied,~~satisfied or a sworn affidavit by the owner that the debt has been satisfied and that either (i) after diligent inquiry the owner has been unable to determine the identity or the current location of the secured creditor or its successor in interest or (ii) the secured creditor has not responded within 30 days to a written request from the owner to release the secured creditor's security interest. ~~which the~~The Division may treat either of the above as a proper release for purposes of this section when satisfied as to the genuineness, truth and sufficiency thereof. Prior to cancellation of a security interest under the provisions of this subsection, at least 15 days' notice of the pendency thereof shall be given to the secured party at his last known address by the Division by registered letter. The Division shall not cancel a security interest pursuant to this subsection if, within 15 days after the Division gives notice, the secured party responds to the Division indicating that the security interest remains in effect.

(f) In addition to the methods described in this section for the release of a security interest noted on a certificate of title, the owner of a manufactured home or the owner of the real property on which the manufactured home is physically located may effect the satisfaction and release of a security interest in a manufactured home noted on the certificate of title as provided in G.S. 20-109.2."

SECTION 5. G.S. 44A-11.1 is amended by adding a new subsection to read:

"(a1) Where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143-143.9(6), for which there is a current certificate of title, the purchase price of the manufactured home shall be excluded in determining whether the costs of the undertaking are thirty thousand dollars ($30,000) or more."

SECTION 6. G.S. 153A-357(e) reads as rewritten:

"(e) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars ($30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the owner occupies as a residence, or for the addition of an accessory building or accessory structure as defined in the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in

the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued. Where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143-143.9(6), for which there is a current certificate of title, the purchase price of the manufactured home shall be excluded in determining whether the costs of the undertaking are thirty thousand dollars ($30,000) or more."

SECTION 7. G.S. 160A-417(d) reads as rewritten:

"(d) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars ($30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the owner occupies as a residence, or for the addition of an accessory building or accessory structure as defined in the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued. Where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143-143.9(6), for which there is a current certificate of title, the purchase price of the manufactured home shall be excluded in determining whether the costs of the undertaking are thirty thousand dollars ($30,000) or more."

SECTION 8. The Legislative Research Commission may study the law and process related to manufactured housing title and security interests, including the involvement and possible elimination of the Division of Motor Vehicles from the registration and titling process for manufactured homes in this State.

SECTION 9. Section 8 is effective when this act becomes law. The remainder of this act becomes effective January 1, 2016.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 870
Committee Substitute Favorable 4/27/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H870-CSTGf-41 [v.1]
7/13/2015 2:06:19 PM

Short Title: Cert. of Title/Manuf. Home Changes. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RENEWAL, RELEASE, AND CANCELLATION PROCESS FOR SECURITY INTERESTS ON A CERTIFICATE OF TITLE FOR A MANUFACTURED HOME AND TO CLARIFY THE CALCULATION OF THE COST OF THE UNDERTAKING FOR THE INSTALLATION OF A MANUFACTURED HOME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

...

(14) House Trailer. – Any trailer or semitrailer designed and equipped to provide living or sleeping facilities and drawn by a motor vehicle. This term shall not include a manufactured home as defined in G.S. 20-4.01(18a).

...

(18a) Manufactured Home. – Defined in G.S. 143-143.9(6).

...

(32b) Recreational Vehicle. – A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motive power or is mounted on, or towed by, another vehicle. The basic entities are camping trailer, fifth-wheel travel trailer, motor home, travel trailer, park model RV, and truck camper. This term shall not include a manufactured home as defined in G.S. 143-143.9(6).

a. Motor home. – As defined in G.S. 20-4.01(27)d2.

b. Travel trailer. – A vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require a special highway movement permit when towed by a motorized vehicle.

c. Fifth-wheel trailer. – A vehicular unit mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use, of a size and weight that does not require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

d. Camping trailer. – A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

e. Truck camper. – A portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use, consisting of a roof, floor, and sides and is designed to be loaded onto and unloaded from the bed of a pickup truck.

f. Park model RV.—A vehicle that is all of the following:

1. is designed and marketed as temporary living quarters for recreational, camping, travel, or seasonal use.
2. is not permanently affixed to real property for use as a permanent dwelling.
3. is certified by the manufacturer as complying with ANSI A119.5.
4. is built on a single chassis mounted on wheels with a gross trailer area not exceeding 400 square feet in the setup mode.

...

(49) Vehicle. – Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including on sidewalks, and is limited by design to 15 miles per hour when the device is being operated by a person with a mobility impairment, or who uses the device for mobility enhancement. This term shall not include an electric personal assistive mobility device as defined in G.S. 20-4.01(7a). Unless the context requires otherwise, and except as provided under G.S. 20-109.2, 47-20.6, or 47-20.7, a manufactured home shall be deemed a vehicle.

...."

SECTION 2. G.S. 20-58 reads as rewritten:

"**§ 20-58. Perfection by indication of security interest on certificate of title.**

...

(c) An application for the notation of a security interest pursuant to subsection (a) of this section on a certificate of title for a manufactured home shall state the maturity date of the secured obligation. The Division shall include the stated maturity date for the certificate of title, including the notation of the maturity date on the certificate of title, in its public records and in any reports regarding the certificate of title provided to third parties. For the purposes of this subsection, the maturity date of the security interest is defined in G.S. 45-36.24."

SECTION 3. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-58.3A. Automatic expiration of security interest in manufactured home; renewal of security interests in manufactured homes.**

(a) For the purposes of this section, the term "secured party" means the secured party named on a certificate of title for a manufactured home and those parties that succeed to the rights of the secured party as a secured creditor by assignment or otherwise. The term

"borrower" means the homeowner or the debtor on the obligation secured by the security interest noted on the certificate of title for a manufactured home.

(b) With the exception of a security interest in a manufactured home perfected pursuant to G.S. 20-58(c), unless satisfied pursuant to G.S. 20-58.4 or G.S. 20-109.2, the perfection of a security interest in a manufactured home that is perfected by a notation on the certificate of title shall automatically expire 30 years after the date of the issuance of the original certificate of title containing the notation of the security interest, unless a longer maturity date is stated on the title.

(c) Unless satisfied pursuant to G.S. 20-58.4 or G.S. 20-109.2, the perfection of a security interest in a manufactured home perfected by a notation on the certificate of title pursuant to G.S. 20-58(c) shall automatically expire as follows:

(1) If the perfection of the security interest has not been renewed as provided in this section, on the earlier of (i) 90 days after the maturity date stated on the application for the security interest or (ii) 15 years plus 180 days after the date of issuance of the original certificate of title containing the notation of the security interest.

(2) If the perfection of the security interest has been renewed as provided in this section, on the earlier of (i) 10 years after the date of the renewal of the perfection of the security interest, (ii) 90 days after the original maturity date of the security interest, or (iii) 90 days after any extended maturity date stated on the application of renewal.

(d) Prior to the date that perfection of a secured party's security interest in a manufactured home automatically expires pursuant to subsection (b) or (c) of this section, the secured party may deliver to the Division an application for renewal of the perfection of the secured party's security interest. The application for the renewal of the perfection of the secured party's security interest shall be in a form prescribed by the Division. Nothing in this section shall be construed to extend the maturity date of the secured obligation unless an agreement in writing has been executed by the borrower extending the original maturity date. The application for renewal of the perfection of the secured party's security interest shall contain all of the following:

(1) The secured party's signature.

(2) The existing certificate of title, unless it is in the possession of a prior secured party.

(3) An affirmative statement of any agreement executed by the borrower to extend the maturity date.

(4) If the application is submitted by the assignee or successor in interest of the secured party listed on the certificate of title, documentary evidence that the applicant is the assignee or successor in interest of the secured party listed on the certificate of title.

(5) The name and address of the party from whom information concerning the security interest may be obtained.

(6) Any other information requested by the Division.

(e) Upon receipt of the application for renewal of the perfection of the secured party's security interest, the Division shall do one of the following:

(1) If the existing certificate of title is included with the application for renewal, the Division shall issue a new certificate of title bearing the original or extended maturity date of the security interest.

(2) If the existing certificate of title is in the possession of a prior secured party, the Division, if satisfied as to the genuineness and regularity of the application for renewal, may request the certificate of title from the party in possession for the purpose of notating the original or extended maturity date

of the security interest. Once the notations have been made, the Division shall return the certificate of title to the possession of the secured party.

(3) If the existing certificate of title is not obtained upon request, the Division shall cancel the existing certificate of title and issue a new certificate of title. The new certificate of title shall list all known security interests and shall bear notation that shows the original or extended maturity date of the security interest.

(f) An application for the renewal of a secured party's security interest pursuant to this section shall be effective to renew the perfection of the security interest as of the date the application is delivered to the Division. Each renewed security interest shall retain its original date of perfection and the perfection shall thereafter expire on the earlier to occur of (i) 10 years after the date of renewal of the perfection of the security interest, (ii) 90 days after the original maturity date of the security interest, or (iii) 90 days after any extended maturity date stated on the application of renewal. Perfection of a security interest in a manufactured home may be renewed more than once pursuant to this section.

(g) The Division shall not be subject to a claim under Article 31 of Chapter 143 of the General Statutes related to the renewal of the perfection of a security interest on a certificate of title for a manufactured home pursuant to this section if the claim is based on reliance by the Division on any application for renewal submitted to the Division by a third party pursuant to this section."

SECTION 4. G.S. 20-58.4 reads as rewritten:

"**§ 20-58.4. Release of security interest.**

...

(e) If it is impossible for the owner to secure from the secured party the release contemplated by this section, the owner may exhibit to the Division either such evidence as may be available showing satisfaction or other discharge of the debt secured, together with a sworn affidavit by the owner that the debt has been ~~satisfied,~~satisfied or a sworn affidavit by the owner that the debt has been satisfied and that either (i) after diligent inquiry the owner has been unable to determine the identity or the current location of the secured creditor or its successor in interest or (ii) the secured creditor has not responded within 30 days to a written request from the owner to release the secured creditor's security interest. ~~which the~~The Division may treat either of the above as a proper release for purposes of this section when satisfied as to the genuineness, truth and sufficiency thereof. Prior to cancellation of a security interest under the provisions of this subsection, at least 15 days' notice of the pendency thereof shall be given to the secured party at his last known address by the Division by registered letter. The Division shall not cancel a security interest pursuant to this subsection if, within 15 days after the Division gives notice, the secured party responds to the Division indicating that the security interest remains in effect.

(f) In addition to the methods described in this section for the release of a security interest noted on a certificate of title, the owner of a manufactured home or the owner of the real property on which the manufactured home is physically located may effect the satisfaction and release of a security interest in a manufactured home noted on the certificate of title as provided in G.S. 20-109.2.

(g) The Division shall not be subject to a claim under Article 31 of Chapter 143 of the General Statutes related to the release of the perfection of a security interest on a certificate of title for a manufactured home pursuant to this section if the claim is based on reliance by the Division on any release, affidavit, notation of the certificate of title, or documents evidencing the release or satisfaction of a security interest submitted to the Division by a third party pursuant to this section."

SECTION 5. G.S. 20-85(a)(8) reads as rewritten:

"**§ 20-85. Schedule of fees.**

(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

...

(8) Each application for renewing a security interest on a certificate of title or removing a lien or security interest from a certificate of title 15.00

..."

SECTION 6. G.S. 20-109.2(d) reads as rewritten:

"(d) Application for Title After Cancellation. – If the owner of a manufactured home whose certificate of title has been cancelled under this section subsequently seeks to separate the manufactured home from the real property, the owner may apply for a new certificate of title. The owner must submit to the Division an affidavit containing the same information set out in subsection (b) of this section, verification that the manufactured home has been removed from the real property, verification of the identity of the current owner of the real property upon which the manufactured home is located, and written consent of any affected owners of recorded mortgages, deeds of trust, or security interests in the real property where the manufactured home was placed. The Commissioner may require evidence sufficient to demonstrate that all affected owners of security interests have been notified and consent. Upon receipt of this information, together with a title application and required fee, the Division ~~is authorized to issue a new title for the manufactured home.~~shall issue a new title for the manufactured home in the name of the current owner of the real property upon which the manufactured home is located."

SECTION 7. G.S. 44A-11.1 is amended by adding a new subsection to read:

"(a1) Where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143-143.9(6), for which there is a current certificate of title, the purchase price of the manufactured home shall be excluded in determining whether the costs of the undertaking are thirty thousand dollars ($30,000) or more."

SECTION 8. G.S. 153A-357(e) reads as rewritten:

"(e) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars ($30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the owner occupies as a residence, or for the addition of an accessory building or accessory structure as defined in the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued. Where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143-143.9(6), for which there is a current certificate of title, the purchase price of the manufactured home shall be excluded in determining whether the cost of the work is thirty thousand dollars ($30,000) or more."

SECTION 9. G.S. 160A-417(d) reads as rewritten:

"(d) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars ($30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the owner occupies as a residence, or for the addition of an accessory

building or accessory structure as defined in the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued. Where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143-143.9(6), for which there is a current certificate of title, the purchase price of the manufactured home shall be excluded in determining whether the cost of the work is thirty thousand dollars ($30,000) or more."

SECTION 10. Section 6 becomes effective August 1, 2015, and applies to titles issued on or after that date. The remainder of this act becomes effective July 1, 2016.

HOUSE BILL 870:
Cert. of Title/Manuf. Home Changes

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 13, 2015
Introduced by:	Rep. Jordan	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Second Edition H870-CSTGf-41		

SUMMARY: ***The Proposed Committee Substitute for House Bill 870 would clarify the process for renewing, releasing, and canceling security interests on the certificate of title for a manufactured home and the method for calculation of the cost of the undertaking when a manufactured home us being installed on leased real property for purposes of determining whether a lien agent must be appointed. The PCS:***

- ***Revises the definition of "recreational vehicle" to include park model RVs and defines the term "park model RV".***
- ***Provides immunity to DMV from claims under the Torts Claim Act based on DMV reliance on a renewal application submitted pursuant to new G.S. 20-58.3A.***
- ***Adds new Section 5 imposing a $15.00 fee for renewing a security interest on a certificate of title or removing a security interest from a certificate of title.***
- ***Adds new Section 6 revising the procedure by which a manufactured home that has become an improvement to real property may be separated from the land.***
- ***Deletes former Section 8, which had authorized a study of manufactured housing title and security interests by the Legislative Research Commission.***
- ***Makes other technical and clarifying changes.***

BILL ANALYSIS:

Section 1 of the PCS would amend the definitions applicable throughout Chapter 20 (Motor Vehicles) to define "manufactured home" the same way it is defined under the statutes relating to the Manufactured Housing Board.[1]

Section 1 would also clarify that the terms "house trailer" and "recreational vehicle" do not include a manufactured home, but that the term "vehicle" does include a manufactured home unless the context requires otherwise or as otherwise provided in G.S. 20-109.2, 47-20.6, or 47-20.7.[2]

Section 1 would also define "park model RV" and would amend the definition of "recreational vehicle" to include a park model RV as so defined.

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[1] "A structure, transportable in one or more sections, which, in the traveling mode, is eight feet or more in width or is 40 feet more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein." G.S. 143-143.9(6).

[2] These statutes govern the process by which a manufactured home becomes an improvement to real property after being placed on a permanent foundation.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Section 2 would add a new subsection (c) to G.S. 20-58 to require an application for the notation of a security interest on a certificate of title for a manufactured home to state the maturity date of the secured obligation, and to require the Division of Motor Vehicles (DMV) to include the maturity date on the certificate of title, in DMV public records, and in any reports regarding the certificate of title provided to third parties by DMV.

Section 3 would enact a new G.S. 20-58.3A to provide for automatic expiration of a security interest and to establish a procedure for renewal of a security interest on manufactured homes.

An unsatisfied security interest in a manufactured home for which the maturity date is not noted on the certificate of title in accordance with the requirement in new G.S. 20-58(c) would automatically expire 30 years after the date of issuance of the original certificate of title, unless a longer maturity date is stated in the title.

An unsatisfied security interest in a manufactured home that is perfected in accordance with G.S. 20-58(c) would automatically expire:

(1) if the perfection has not been renewed on the earlier of 90 days after the stated maturity date or 15 years plus 180 days after the date of issuance of the original certificate, or

(2) if the perfection has been renewed on the earlier of 10 years after the date of the renewal, 90 days after the original maturity date, or 90 days after any extended maturity date.

Section 3 also provides a process for renewal of the perfection of a security interest, but conditions the extension of the maturity date of the secured obligation upon the borrower having agreed to the extension in writing.

Section 3 also provides that DMV is not subject to a claim under the State Tort Claims Act on DMV's reliance on any application for renewal of a security interest on a manufactured home submitted to DMV by a third party pursuant to G.S. 20-58.3A.

Section 4 would provide a method by which the owner of a vehicle who has satisfied the secured debt can obtain a cancellation of the security interest when it is impossible for the owner to obtain a release from the secured party.

Section 5 would authorize the DMV to charge a $15.00 fee for renewing a security interest on a certificate of title or removing a security interest from a certificate of title.

Section 6 would amend G.S. 20-109.2(d) to provide that when an owner of a manufactured home that has become an improvement to real property seeks to separate the manufactured home from the real property, the owner must include in the required affidavit to DMV verification of the identity of the current owner of the real property upon which the manufactured home is located. Section 6 would also require DMV to issue a new title for the manufactured home in the name of the current owner of the real property upon which the manufactured home is located.

Section 7 would amend G.S. 44A-11.1, which requires appointment of a lien agent for improvements to real property when the cost of the undertaking is $30,000 or more, to provide that when improvements to a real property leasehold are limited to the purchase, transportation or setup of a manufactured home for which there is a current certificate of title, the purchase price of the home is not included in calculating the costs of the undertaking.

Sections 8 and 9 would make conforming changes to statutes requiring designation of a lien agent as a condition precedent to issuance of building permits for improvements to real property where the cost of work is $30,000 or more, to provide that when improvements to a real property leasehold are limited to the purchase, transportation or setup of a manufactured home, with a current certificate of title, the purchase price of the home must be excluded in calculating the costs of the undertaking.

EFFECTIVE DATE: Section 6 becomes effective August 1, 2015, and applies to titles issued on or after that date. The remainder of this act becomes effective July 1, 2016.

Susan Sitze, counsel to House Judiciary II, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, July 14, 2015

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

FAVORABLE

HB **341** Controlled Substances/NBOMe & Other Drugs.

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

TOTAL REPORTED: 1

Senator Stan Bingham will handle HB 341



SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

DATE 7-14

NAME	ORGANIZATION	BILL NO.
M. Smallwood	UNC SOG	
Lexi Morgan Armour	NCRMA	
J Peters	CSS	
Susan Vick	Duke Energy	
Sam Skinner	NCACC	
[illegible]	NCSAA	

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE 7-14-15

NAME	ORGANIZATION	BILL NO.
[illegible]	Misc	
Roston Jones	NCDOT	
Kara Weishaar	SA	
Courtney Johnson	NP	
Jarret Burr	NCOPS	
Tracy Kimbrell	Parker Poe	
Tim Couch	NCBA	
Andy Chase	KMA	
Araca Wadsworth		
Phoebe Landon	Brooks Pierce	
Skye David	KLG	

SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

DATE 7-14-15

NAME	ORGANIZATION	BILL NO.
Will Berry-Hill	NCHFA	
Natalie Hobson	NCHFA	
Ruian Merwald	WM	
MJillianDTotman	MWCLLC	
Cara Townsend	Gov. office	

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE 7-14-15

NAME	ORGANIZATION	BILL NO.
Chris McClure	BOP	
LAO RUBERT	CJR	
Amanda Honaker	TSS	
Rachel Herzog	NC Health News	
Jane Powell	NC Family Policy Council	
ANDY WALSH	SA	
Alison Roach	NCDMV	
Hope Mozenga	NCDMV	
MICHAEL FRAMER	NC DOT	
Chris Agan	DOJ	

Senate Committee on Judiciary II
Thursday, July 16, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:03 AM on July 16, 2015 in Room 1124/1224 of the Legislative Building. 16 members were present.

Senator Shirley B. Randleman, Chair, presided.

Pages: Caroline Putze of Raleigh, KrisAnna McLamb of Dunn, Alex Beroth of Pfafftown, Kendall Gillespy of Clayton.
Sgt. at Arms: Donna Blake, Steve Wilson, Jim Hamilton

HB 814 The William C. Lindley, Jr. SUDEP Law. (Representatives Riddell, Ross)
Representative Riddell presented the bill to the committee.
After discussion, Sen. J. Davis motioned to give the bill a report as favorable to the original bill. The motion carried. The bill was reported out by the clerk "Favorable."

HB 383 Clarify Statutory Scheme/Sex Offenses. (Representatives Glazier, Stam, Jordan, Faircloth)
With no objection, the PCS: PCS H383-CSSA-77 was brought before the committee for consideration rather than the original bill.
Rep. Glazier presented the bill to the committee.
There were at least five different members of the committee who brought up questions about the bill. Questions were answered with the assistance of the committee's legal staff, Jan Paul.
After discussion, Sen. Cook motioned to give the bill a report as unfavorable to the original bill, favorable to the PCS. The motion carried. The bill was reported out by the clerk" Unfavorable as to Committee Substitute bill NO. 1, but Favorable as to Senate Committee Substitute bill."

HB 721 Subdivision Ordinance/Land Develop. Changes. (Representatives Bryan, Stam, Bishop, Bradford)
With no objection, the PCS: PCS H721-CSTG-37 was brought before the committee for consideration rather than the original bill.
Rep. Bryan presented the bill to the committee. Co-Chair Barringer moved to amend the bill on page 4, line 35. The motion carried. The bill as amended was back before the committee.
There were at least four different members of the committee who brought up questions about the bill.
A member of the public spoke for the bill and in response to some of the questions:
Mike Carpenter, General Counsel for the Home Builders Association.
After discussion, Sen. Bingham motioned to give the bill a report as unfavorable to the original bill, but favorable to the PCS, with a serial referral to the Senate Committee on State and Local Government. The motion carried. The bill was reported out by the clerk "Unfavorable as to Committee Substitute bill NO. 1, but Favorable as to Senate Committee Substitute bill" with a notation for a sequential referral to State and Local Government.

The meeting adjourned at 10:37 am.

Senator Shirley B. Randleman, Chair
Presiding

Patrick Limer, Committee Clerk

Senate Committee on Judiciary II
Thursday, July 16, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 814	The William C. Lindley, Jr. SUDEP Law.	Representative Riddell Representative Ross
HB 383	Clarify Statutory Scheme/Sex Offenses.	Representative Glazier Representative Stam Representative Jordan Representative Faircloth
HB 721	Subdivision Ordinance/Land Develop. Changes.	Representative Bryan Representative Stam Representative Bishop Representative Bradford

Presentations

Other Business

Adjournment

HOUSE BILL 814

Committee Substitute Favorable 4/27/15
Senate Health Care Committee Substitute Adopted 6/30/15

Short Title: The William C. Lindley, Jr. SUDEP Law. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT REQUIRING THE CHIEF MEDICAL EXAMINER TO ESTABLISH A MEDICAL EXAMINER TRAINING PROGRAM THAT INCLUDES TRAINING REGARDING SUDDEN UNEXPECTED DEATH IN EPILEPSY DURING MEDICOLEGAL DEATH INVESTIGATIONS.

Whereas, sudden unexpected death in epilepsy (SUDEP) is a mysterious, rare condition in which typically young or middle-aged individuals with epilepsy die without a clear cause and is generally defined by the medical community as a sudden, unexpected, nontraumatic, nondrowning death in an otherwise healthy individual with epilepsy, where the postmortem examination does not reveal an anatomic or toxicologic cause of the death; and

Whereas, SUDEP is believed to account for up to 17 percent of deaths in individuals with epilepsy; and

Whereas, autopsy plays a key role in determining the diagnosis of SUDEP, yet the Institute of Medicine has found that SUDEP may be underreported for several reasons, including, but not limited to, a lack of awareness about SUDEP among medical examiners; and

Whereas, the cause of SUDEP is not known, and opportunities for its prevention have been hindered by the lack of a systematic effort to collect information about individuals who have died from SUDEP, as is done with many other disorders; and

Whereas, it is appropriate to raise awareness of SUDEP among medical examiners by developing a SUDEP awareness program and by facilitating research into the causes and prevention of SUDEP; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-382 reads as rewritten:

"**§ 130A-382. County medical examiners; appointment; term of office; ~~vacancies.~~vacancies; training requirements; revocation for cause.**

(a) The Chief Medical Examiner shall appoint ~~one~~ two or more county medical examiners for each county for a three-year term. In appointing medical examiners for each county, the Chief Medical Examiner shall give preference to physicians licensed to practice medicine in this State but may also appoint licensed physician assistants, nurse practitioners, nurses, ~~coroners,~~ or emergency medical technician paramedics. A medical examiner may serve more than one county. The Chief Medical Examiner may take jurisdiction in any case or appoint another medical examiner to do so.

(b) County medical examiners shall complete continuing education training as directed by the Office of the Chief Medical Examiner and based upon established and published guidelines for conducting death investigations. The continuing education training shall include

training regarding sudden unexplained death in epilepsy. The Office of the Chief Medical Examiner shall annually update and publish these guidelines on its Internet Web site. Newly appointed county medical examiners shall complete mandatory orientation training as directed by the Office of the Chief Medical Examiner within 90 days of their appointment.

(c) The Chief Medical Examiner may revoke a county medical examiner's appointment for failure to adequately perform the duties of the office after providing the county medical examiner with written notice of the basis for the revocation and an opportunity to respond."

SECTION 2. This act becomes effective January 1, 2016.

HOUSE BILL 814:
The William C. Lindley, Jr. SUDEP Law

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 14, 2015
Introduced by:	Reps. Riddell, Ross	**Prepared by:**	Bill Patterson Jennifer Bedford Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 814 requires the Office of the Chief Medical Examiner to direct county medical examiners to complete continuing education training that includes training regarding Sudden Unexpected Death in Epilepsy (SUDEP).

CURRENT LAW: G.S. 130A-385 outlines the duties of a medical examiner. A medical examiner is responsible for making inquiries regarding the cause and manner of death for each body in his or her charge, reducing the findings to writing, and making a full report to the Chief Medical Examiner. Medical examiners are authorized to inspect and copy medical records of the decedent. Upon completion of the investigation, the medical examiner is required to complete a death certificate, which includes the cause, means or manner of death, including if such a cause, means, or manner is undeterminable.

BILL ANALYSIS: House Bill 814 amends G.S. 130A-382 in the following ways:

- Requires the Chief Medical Examiner to appoint two or more county medical examiners for each county.
- Eliminates coroners from the list of medical professionals whom the Chief Medical Examiner may appoint as county medical examiners.
- Requires continuing education training for county medical examiners based upon established and published guidelines.
- Requires the continuing education training to include training on sudden unexpected death in epilepsy (SUDEP).
- Requires the continuing education training guidelines to be published and annually updated on the Web site of the Office of Chief Medical Examiner.
- Requires newly appointed county medical examiners to complete mandatory orientation training as directed by the Office of the Chief Medical Examiner within 90 days of their appointment.
- Allows the Chief Medical Examiner to revoke a county medical examiner's appointment for failure adequately to perform the duties of the office after giving written notice of the basis for the revocation and an opportunity to respond.

EFFECTIVE DATE: This act becomes effective January 1, 2016.

BACKGROUND: According to the Epilepsy Foundation, SUDEP "is said to occur when a person with epilepsy dies unexpectedly and was previously in their usual state of health. The death is not known to be related to an accident or seizure emergency such as status epilepticus. When an autopsy is done, no other of cause of death can be found. Each year, more than 1 out of 1,000 people with epilepsy die from SUDEP." [1]

Former Staff Attorney Amy Jo Johnson and Theresa Matula, Staff to Senate Health Care, substantially contributed to this summary.

[1] http://www.epilepsy.com/sudep-institute

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 383*
Committee Substitute Favorable 4/21/15

Short Title: Clarify Statutory Scheme/Sex Offenses. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO REORGANIZE, RENAME, AND RENUMBER VARIOUS SEXUAL OFFENSES TO MAKE THEM MORE EASILY DISTINGUISHABLE FROM ONE ANOTHER AS RECOMMENDED BY THE NORTH CAROLINA COURT OF APPEALS IN "STATE OF NORTH CAROLINA V. SLADE WESTON HICKS, JR."

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 7B.

"Rape and other Sex Offenses.

SECTION 2. G.S. 14-27.1 is recodified as G.S. 14-27.20 under Article 7B of the General Statutes as created by Section 1 of this act.

SECTION 3.(a) G.S. 14-27.2 is recodified as G.S. 14-27.21 under Article 7B of the General Statutes as created by Section 1 of this act.

SECTION 3.(b) G.S. 14-27.2, recodified as G.S. 14-27.21 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.21. First-degree forcible rape.**

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

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

~~(2)~~ ~~With~~ intercourse with another person by force and against the will of the other person, ~~and:~~ does any of the following:

~~a.~~(1) Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly ~~weapon; or~~ weapon.

~~b.~~(2) Inflicts serious personal injury upon the victim or another ~~person; or~~ person.

~~c.~~(3) The person commits the offense aided and abetted by one or more other persons.

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

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 4.(a) G.S. 14-27.3 is recodified as G.S. 14-27.22 under Article 7B of the General Statutes.

SECTION 4.(b) G.S. 14-27.3, recodified as G.S. 14-27.22 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.22. Second-degree forcible rape.**

(a) A person is guilty of ~~rape in the second degree~~ second-degree forcible rape if the person engages in vaginal intercourse with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.

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

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 5.(a) G.S. 14-27.2A is recodified as G.S. 14-27.23 under Article 7B of the General Statutes.

SECTION 5.(b) G.S. 14-27.2A, recodified as G.S. 14-27.23 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.23. ~~Rape of a child; adult offender.~~Statutory rape of a child by an adult.**

(a) A person is guilty of ~~rape of a child~~ statutory rape of a child by an adult if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

...

(e) The offense under ~~G.S. 14-27.2(a)(1)~~ G.S. 14-27.24 is a lesser included offense of the offense in this section."

SECTION 6. Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act is amended by adding a new section to read:

"**§ 14-27.24. First-degree statutory rape.**

(a) A person is guilty of first-degree statutory rape if the person engages in vaginal intercourse with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.

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

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 7.(a) G.S. 14-27.7A is recodified as G.S. 14-27.25 under Article 7B of Chapter 14 of the General Statutes.

SECTION 7.(b) G.S. 14-27.7A, recodified as G.S. 14-27.25 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.25. Statutory rape ~~or sexual offense~~ of person who is 13, 14, or 15 years old.**

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse ~~or a sexual act~~ with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

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

is more than four but less than six years older than the person, except when the defendant is lawfully married to the person."

SECTION 8.(a) G.S. 14-27.4 is recodified as G.S. 14-27.26 under Article 7B of Chapter 14 of the General Statutes.

SECTION 8.(b) G.S. 14-27.4, recodified as G.S. 14-27.26 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.26. First-degree forcible sexual offense.**

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

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

~~(2) With~~ act with another person by force and against the will of the other person, ~~and:~~and does any of the following:

~~a.~~(1) Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly ~~weapon; or~~ weapon.

~~b.~~(2) Inflicts serious personal injury upon the victim or another ~~person; or~~person.

~~c.~~(3) The person commits the offense aided and abetted by one or more other persons.

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

SECTION 9.(a) G.S. 14-27.5 is recodified as G.S. 14-27.27 under Article 7B of Chapter 14 of the General Statutes.

SECTION 9.(b) G.S. 14-27.5, recodified as G.S. 14-27.27 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.27. Second-degree forcible sexual offense.**

(a) A person is guilty of ~~a sexual offense in the~~ second degree forcible sexual offense if the person engages in a sexual act with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony."

SECTION 10.(a) G.S. 14-27.4A is recodified as G.S. 14-27.28 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 10.(b) G.S. 14-27.4A, recodified as G.S. 14-27.28 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.28. ~~Sexual offense with a child; adult offender.~~Statutory sexual offense with a child by an adult.**

(a) A person is guilty of ~~sexual offense with a child~~ statutory sexual offense with a child by an adult if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

...

(d) The offense under ~~G.S. 14-27.4(a)(1)~~ G.S. 14-27.29 is a lesser included offense of the offense in this section."

SECTION 11. Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act is amended by adding a new section to read:

"**§ 14-27.29. First-degree statutory sexual offense.**

(a) A person is guilty of first-degree statutory sexual offense if the person engages in a sexual act with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.

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

SECTION 12. Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act is amended by adding the following new section:

"**§ 14-27.30. Statutory sexual offense against a person who is 13, 14, or 15 years old.**

(a) A defendant is guilty of a Class B1 felony if the defendant engages in a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

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

SECTION 13.(a) G.S. 14-27.7(a) is recodified as G.S. 14-27.31 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 13.(b) G.S. 14-27.7(a), recodified as G.S. 14-27.31 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.31. ~~Intercourse and sexual offenses with certain victims; consent no defense.~~Sexual activity by a substitute parent or custodian.**

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the ~~home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim,~~ home, the defendant is guilty of a Class E felony.

(b) If a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony.

(c) Consent is not a defense to a charge under this section."

SECTION 14.(a) G.S. 14-27.7(b) is recodified as G.S. 14-27.32 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 14.(b) G.S. 14-27.7(b), recodified as G.S. 14-27.32 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.32. Sexual activity with a student.**

~~(b)~~(a) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers.

(b) A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor.

(c) This ~~subsection~~ section shall apply unless the conduct is covered under some other provision of law providing for greater punishment.

(d) Consent is not a defense to a charge under this section.

(e) For purposes of this ~~subsection,~~ section, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d). For purposes of this ~~subsection,~~ section, the term "school safety officer" shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools."

SECTION 15. G.S. 14-27.5A. is recodified as G.S. 14-27.33 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act. G.S. 14-27.8 through G.S. 14-27.10 are recodified as G.S. 14-27.34 through G.S. 14-27.36 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 16. G.S. 14-202.4(d)(1) reads as rewritten:

"(d) For purposes of this section, the following definitions apply:

(1) "Indecent liberties" means:

a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or

b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. ~~14-27.1.~~14-27.20."

SECTION 17. G.S. 14-203(5) reads as rewritten:

"(5) Prostitution. – The performance of, offer of, or agreement to perform vaginal intercourse, any sexual act as defined in G.S. ~~14-27.1,~~ 14-27.20, or any sexual contact as defined in G.S. ~~14-27.1,~~ 14-27.20, for the purpose of sexual arousal or gratification for any money or other consideration."

SECTION 18. G.S. 14-205.2(a) reads as rewritten:

"(a) Any person who willfully performs any of the following acts with a person not his or her spouse commits the offense of patronizing a prostitute:

(1) Engages in vaginal intercourse, any sexual act as defined in G.S. ~~14-27.1,~~ 14-27.20, or any sexual contact as defined in G.S. ~~14-27.1,~~ 14-27.20, for the purpose of sexual arousal or gratification with a prostitute.

(2) Enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. ~~14-27.1,~~ 14-27.20, or any sexual contact as defined in G.S. ~~14-27.1,~~ 14-27.20, for the purpose of sexual arousal or gratification."

SECTION 19. G.S. 15A-136 reads as rewritten:

"**§ 15A-136. Venue for sexual offenses.**

If a person is transported by any means, with the intent to violate any of the provisions of Article 7A of Chapter 14 (§ ~~14-27.1~~14-27.20 et seq.) of the General Statutes and the intent is followed by actual violation thereof, the defendant may be tried in the county where transportation was offered, solicited, begun, continued or ended."

SECTION 20. G.S. 50-16.1A(3) reads as rewritten:

"(3) "Marital misconduct" means any of the following acts that occur during the marriage and prior to or on the date of separation:

a. Illicit sexual behavior. For the purpose of this section, illicit sexual behavior means acts of sexual or deviate sexual intercourse, deviate sexual acts, or sexual acts defined in G.S. ~~14-27.1(4),~~14-27.20(4), voluntarily engaged in by a spouse with someone other than the other spouse;

b. Involuntary separation of the spouses in consequence of a criminal act committed prior to the proceeding in which alimony is sought;
c. Abandonment of the other spouse;
d. Malicious turning out-of-doors of the other spouse;
e. Cruel or barbarous treatment endangering the life of the other spouse;
f. Indignities rendering the condition of the other spouse intolerable and life burdensome;
g. Reckless spending of the income of either party, or the destruction, waste, diversion, or concealment of assets;
h. Excessive use of alcohol or drugs so as to render the condition of the other spouse intolerable and life burdensome;
i. Willful failure to provide necessary subsistence according to one's means and condition so as to render the condition of the other spouse intolerable and life burdensome."

SECTION 21. G.S. 7B-101(1) reads as rewritten:

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

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. ~~14-27.2;~~14-27.21; rape of a child by an adult offender, as provided in G.S. ~~14-27.2A;~~14-27.23; second degree rape as provided in G.S. ~~14-27.3;~~14-27.22; first-degree sexual offense, as provided in G.S. ~~14-27.4;~~14-27.26; sexual offense with a child by an adult offender, as provided in G.S. ~~14-27.4A;~~14-27.28; second degree sexual offense, as provided in G.S. ~~14-27.5;~~14-27.27; sexual act by a custodian, as provided in G.S. ~~14-27.7;~~14-27.31; 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. 14-205.3(b); 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;

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

g. Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) against the child."

SECTION 22. G.S. 7B-401.1(b) reads as rewritten:

"(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~~14-27.21 or G.S. ~~14-27.3~~14-27.22 for an offense that resulted in the conception of the juvenile."

SECTION 23. G.S. 7B-1103(c) reads as rewritten:

"(c) No person whose actions resulted in a conviction under G.S. ~~14-27.2~~14-27.2 or G.S. ~~14-27.3~~14-27.22 and the conception of the juvenile may file a petition to terminate the parental rights of another with respect to that juvenile."

SECTION 24. G.S. 7B-1104(3) reads as rewritten:

"(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference. A person whose actions resulted in a conviction under G.S. ~~14-27.2~~14-27.21 or G.S. ~~14-27.3~~14-27.22 and the conception of the juvenile need not be named in the petition."

SECTION 25. G.S. 7B-1602(a) reads as rewritten:

"(a) When a juvenile is committed to the Division for placement in a youth development center for an offense that would be first degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2,~~14-27.21, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 21 years, whichever occurs first."

SECTION 26. G.S. 7B-2509 reads as rewritten:

"**§ 7B-2509. Registration of certain delinquent juveniles.**

In any case in which a juvenile, who was at least 11 years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. ~~14-27.2~~14-27.21 (first-degree rape), G.S. ~~14-27.3~~14-27.22 (second degree rape), G.S. ~~14-27.4~~14-27.4 (first-degree sexual offense), G.S. ~~14-27.5~~14-27.27 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

SECTION 27. G.S. 7B-2513(a)(1) reads as rewritten:

"(1) The twenty-first birthday of the juvenile if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2,~~14-27.21, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult;"

SECTION 28. G.S. 7B-2514(c)(2) reads as rewritten:

"(2) The juvenile's twenty-first birthday if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2,~~ 14-27.21, or

first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult."

SECTION 29. G.S. 7B-2516(c)(1) reads as rewritten:

"(1) The juvenile's twenty-first birthday if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2,~~14-27.2, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult."

SECTION 30. G.S. 7B-2600(c) reads as rewritten:

"(c) In any case where the court finds the juvenile to be delinquent or undisciplined, the jurisdiction of the court to modify any order or disposition made in the case shall continue (i) during the minority of the juvenile, (ii) until the juvenile reaches the age of 19 years if the juvenile has been adjudicated delinquent and committed to the Division for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in G.S. 7B-1602(a), (iii) until the juvenile reaches the age of 21 years if the juvenile has been adjudicated delinquent and committed for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2,~~14-27.2, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult, or (iv) until terminated by order of the court."

SECTION 31. G.S. 8-53.12(a)(7) reads as rewritten:

"(7) Sexual assault. – Any alleged violation of G.S. ~~14-27.2,~~14-27.21, ~~14-27.3,~~14-27.22, ~~14-27.4,~~14-27.26, ~~14-27.5,~~14-27.27, ~~14-27.7,~~14-27.31, ~~14-27.7A,~~14-27.25, or 14-202.1, whether or not a civil or criminal action arises as a result of the alleged violation."

SECTION 32. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. ~~14-27.2~~14-27.21 (first degree rape), G.S. ~~14-27.2A~~14-27.23 (rape of a child; adult offender), G.S. ~~14-27.3~~14-27.22 (second degree rape), G.S. ~~14-27.4~~14-27.26 (first degree sexual offense), G.S. ~~14-27.4A~~14-27.28 (sex offense with a child; adult offender), G.S. ~~14-27.5~~14-27.27 (second degree sexual offense), G.S. ~~14-27.5A~~14-27.33 (sexual battery), former G.S. 14-27.6 (attempted rape or sexual offense), G.S. ~~14-27.7~~14-27.31 (intercourse and sexual offense with certain victims), G.S. ~~14-27.7A(a)~~14-27.25(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled person), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or

G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 33. G.S. 14-208.26(a) reads as rewritten:

"Part 4. Registration of Certain Juveniles Adjudicated for Committing Certain Offenses.

"**§ 14-208.26. Registration of certain juveniles adjudicated delinquent for committing certain offenses.**

"(a) When a juvenile is adjudicated delinquent for a violation of G.S. ~~14-27.2~~14-27.21 (first degree rape), G.S. ~~14-27.3~~14-27.22 (second degree rape), G.S. ~~14-27.4~~14-27.26 (first degree sexual offense), G.S. ~~14-27.5~~14-27.27 (second degree sexual offense), or former G.S. 14-27.6 (attempted rape or sexual offense), and the juvenile was at least eleven years of age at the time of the commission of the offense, the court shall consider whether the juvenile is a danger to the community. If the court finds that the juvenile is a danger to the community, then the court shall consider whether the juvenile should be required to register with the county sheriff in accordance with this Part. The determination as to whether the juvenile is a danger to the community and whether the juvenile shall be ordered to register shall be made by the presiding judge at the dispositional hearing. If the judge rules that the juvenile is a danger to the community and that the juvenile shall register, then an order shall be entered requiring the juvenile to register. The court's findings regarding whether the juvenile is a danger to the community and whether the juvenile shall register shall be entered into the court record. No juvenile may be required to register under this Part unless the court first finds that the juvenile is a danger to the community.

A juvenile ordered to register under this Part shall register and maintain that registration as provided by this Part."

SECTION 34. G.S. 48-3-603(a)(9) reads as rewritten:

"(9) An individual whose actions resulted in a conviction under G.S. ~~14-27.2,~~14-27.21, G.S. ~~14-27.2A,~~14-27.23, or G.S. ~~14-27.3~~14-27.22 and the conception of the minor to be adopted."

SECTION 35. G.S. 50-13.1(a) reads as rewritten:

"(a) Any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as hereinafter provided. Any person whose actions resulted in a conviction under G.S. ~~14-27.2,~~14-27.21, G.S. ~~14-27.2A,~~14-27.23, or G.S. ~~14-27.3~~14-27.22 and the conception of the minor child may not claim the right to custody of that minor child. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both."

SECTION 36. G.S. 50B-1(a)(3) reads as rewritten:

"(3) Committing any act defined in G.S. ~~14-27.2~~14-27.21 through G.S. ~~14-27.7.~~14-27.31."

SECTION 37. G.S. 90-171.38(b) reads as rewritten:

"(b) Any individual, organization, association, corporation, or institution may establish a program for the purpose of training or educating any registered nurse licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to conduct examinations for the purpose of collecting evidence from the victims of first-degree rape as defined in G.S. ~~14-27.2,~~14-27.21, second-degree rape as defined in G.S. ~~14-27.3,~~14-27.22, statutory rape as defined in G.S. ~~14-27.7A,~~14-27.25, first-degree sexual offense as defined in G.S. ~~14-27.4,~~14-27.26, second-degree sexual offense as defined in G.S. ~~14-27.5~~14-27.27 or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense. The Board, pursuant to G.S. 90-171.23(b)(14), shall establish, revise, or repeal standards for any such program. Any individual, organization, association, corporation, or institution which desires to establish a program under this subsection shall apply

to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board."

SECTION 38. G.S. 143B-1200(i)(3) reads as rewritten:

"(3) Sexual assault. – Any of the following crimes:

a. First-degree rape as defined in G.S. ~~14-27.2.~~14-27.21.

b. Second degree rape as defined in G.S. ~~14-27.3.~~14-27.22.

c. First-degree sexual offense as defined in G.S. ~~14-27.4.~~14-27.26.

d. Second degree sexual offense as defined in G.S. ~~14-27.5.~~14-27.27.

e. Statutory rape as defined in G.S. ~~14-27.7A.~~14-27.25."

SECTION 39. G.S. 14-401.16(c) reads as rewritten:

"(c) A violation of this section is a Class H felony. However, if a person violates this section with the intent of committing an offense under G.S. ~~14-27.3~~14-27.22 or G.S. ~~14-27.5,~~14-27.27, the violation is a Class G felony."

SECTION 40. G.S. 14-208.40(a)(3) reads as rewritten:

"(3) Any offender who is convicted of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, who shall be enrolled in the satellite-based monitoring program for the offender's natural life upon termination of the offender's active punishment."

SECTION 41. G.S. 14-208.40A reads as rewritten:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, (iv) the conviction offense was a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, or (v) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, (iv) the conviction offense was a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, or (v) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, has committed an aggravated offense, or was convicted of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A~~14-27.28 and the offender is not a recidivist, the court shall order that the Division of Adult Correction do a risk assessment of the offender. The Division of Adult Correction shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Division of Adult Correction pursuant to subsection (d) of this section, the court shall determine whether, based on the Division of Adult Correction's risk assessment, the offender requires the highest possible level of supervision and

monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 42. G.S. 14-208.40B(c) reads as rewritten:

"(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the conviction offense was a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.4A, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, and the offender is not a recidivist, the court shall order that the Division of Adult Correction do a risk assessment of the offender. The Division of Adult Correction shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Division of Adult Correction may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Division of Adult Correction, the court shall determine whether, based on the Division of Adult Correction's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 43. G.S. 15A-145.5(a)(4) reads as rewritten:

"(4) Any of the following sex-related or stalking offenses: G.S. ~~14-27.7A(b),~~14-27.25(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."

SECTION 44. G.S. 15A-145.4(5) reads as rewritten:

"(5) Any felony offense under the following sex-related or stalking offenses: G.S. ~~14-27.7A(b),~~14-27.25(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1."

SECTION 45. G.S. 90-210.25B(b) reads as rewritten:

"(b) For purposes of this Article, the term "sexual offense against a minor" means a conviction of any of the following offenses: G.S. ~~14-27.4A(a)~~14-27.28(a) (sex offense with a child; adult offender), G.S. ~~14-27.7A~~14-27.25 (statutory rape or sexual offense of person who is 13, 14, or 15 years old where the defendant is at least six years older), G.S. 14-190.16 (first-degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term shall also include a conviction of the following: any attempt, solicitation, or conspiracy to commit any of these offenses or any aiding and abetting any of these offenses. The term shall also include a conviction in another jurisdiction for an offense which if committed in this State has the same or substantially similar elements to an offense against a minor as defined by this section."

SECTION 46. G.S. 15A-290(c)(1) reads as rewritten:

"(1) Any felony offense against a minor, including any violation of G.S. ~~14-27.7~~14-27.31 (Intercourse and sexual offenses with certain victims; consent no defense), G.S. 14-41 (Abduction of children), G.S. 14-43.11 (Human trafficking), G.S. 14-43.12 (Involuntary servitude), G.S. 14-43.13 (Sexual servitude), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), G.S. 14-202.1 (Taking indecent liberties with children), G.S. 14-205.2(c) or (d) (Patronizing a prostitute who is a minor or a mentally disabled person), or G.S. 14-205.3(b) (Promoting prostitution of a minor or a mentally disabled person)."

SECTION 47. The Revisor of Statutes may correct statutory references as required by this act, throughout the General Statutes. In making the changes authorized by this act, the Revisor may also adjust subject and verb agreement and the placement of conjunctions.

SECTION 48. This act becomes effective October 1, 2015, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act and the statutes that would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 383*
Committee Substitute Favorable 4/21/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H383-CSSA-77 [v.8]
7/15/2015 6:49:33 PM

Short Title: Clarify Statutory Scheme/Sex Offenses. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO REORGANIZE, RENAME, AND RENUMBER VARIOUS SEXUAL OFFENSES TO MAKE THEM MORE EASILY DISTINGUISHABLE FROM ONE ANOTHER AS RECOMMENDED BY THE NORTH CAROLINA COURT OF APPEALS IN "STATE OF NORTH CAROLINA V. SLADE WESTON HICKS, JR AND TO MAKE OTHER TECHNICAL CHANGES."

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 7B.

"Rape and other Sex Offenses.

SECTION 2. G.S. 14-27.1 is recodified as G.S. 14-27.20 under Article 7B of the General Statutes as created by Section 1 of this act.

SECTION 3.(a) G.S. 14-27.2 is recodified as G.S. 14-27.21 under Article 7B of the General Statutes as created by Section 1 of this act.

SECTION 3.(b) G.S. 14-27.2, recodified as G.S. 14-27.21 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.21. First-degree forcible rape.**

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

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

~~(2)~~ ~~With~~ intercourse with another person by force and against the will of the other person, ~~and:~~does any of the following:

~~a.~~(1) Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly ~~weapon; or~~weapon.

~~b.~~(2) Inflicts serious personal injury upon the victim or another ~~person; or~~ person.

~~c.~~(3) The person commits the offense aided and abetted by one or more other persons.

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

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall

the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 4.(a) G.S. 14-27.3 is recodified as G.S. 14-27.22 under Article 7B of the General Statutes.

SECTION 4.(b) G.S. 14-27.3, recodified as G.S. 14-27.22 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.22. Second-degree forcible rape.**

(a) A person is guilty of ~~rape in the second degree~~ second-degree forcible rape if the person engages in vaginal intercourse with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.

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

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 5.(a) G.S. 14-27.2A is recodified as G.S. 14-27.23 under Article 7B of the General Statutes.

SECTION 5.(b) G.S. 14-27.2A, recodified as G.S. 14-27.23 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.23. ~~Rape of a child; adult offender.~~Statutory rape of a child by an adult.**

(a) A person is guilty of ~~rape of a child~~ statutory rape of a child by an adult if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

...

(e) The offense under ~~G.S. 14-27.2(a)(1)~~ G.S. 14-27.24 is a lesser included offense of the offense in this section."

SECTION 6. Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act is amended by adding a new section to read:

"**§ 14-27.24. First-degree statutory rape.**

(a) A person is guilty of first-degree statutory rape if the person engages in vaginal intercourse with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.

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

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 7.(a) G.S. 14-27.7A is recodified as G.S. 14-27.25 under Article 7B of Chapter 14 of the General Statutes.

SECTION 7.(b) G.S. 14-27.7A, as amended by S.L. 2015-62 and recodified as G.S. 14-27.25 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.25. Statutory rape ~~or sexual offense~~ of person who is 15 years of age or younger.**

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse ~~or a sexual act~~ with another person who is 15 years of age or younger and the defendant is at least 12 years old and at least six years older than the person, except when the defendant is lawfully married to the person.

(b) Unless the conduct is covered under some other provision of law providing greater punishment, a defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse ~~or a sexual act~~ with another person who is 15 years of age or younger and the defendant is at least 12 years old and more than four but less than six years older than the person, except when the defendant is lawfully married to the person."

SECTION 8.(a) G.S. 14-27.4 is recodified as G.S. 14-27.26 under Article 7B of Chapter 14 of the General Statutes.

SECTION 8.(b) G.S. 14-27.4, recodified as G.S. 14-27.26 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.26. First-degree forcible sexual offense.**

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

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

~~(2)~~ ~~With~~ act with another person by force and against the will of the other person, ~~and:~~and does any of the following:

~~a.~~(1) Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly ~~weapon; or~~ weapon.

~~b.~~(2) Inflicts serious personal injury upon the victim or another ~~person; or~~person.

~~c.~~(3) The person commits the offense aided and abetted by one or more other persons.

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

SECTION 9.(a) G.S. 14-27.5 is recodified as G.S. 14-27.27 under Article 7B of Chapter 14 of the General Statutes.

SECTION 9.(b) G.S. 14-27.5, recodified as G.S. 14-27.27 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.27. Second-degree forcible sexual offense.**

(a) A person is guilty of ~~a sexual offense in the~~ second degree forcible sexual offense if the person engages in a sexual act with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony."

SECTION 10.(a) G.S. 14-27.4A is recodified as G.S. 14-27.28 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 10.(b) G.S. 14-27.4A, recodified as G.S. 14-27.28 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.28. ~~Sexual offense with a child; adult offender.~~Statutory sexual offense with a child by an adult.**

(a) A person is guilty of ~~sexual offense with a child~~ statutory sexual offense with a child by an adult if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

...

(d) The offense under ~~G.S. 14-27.4(a)(1)~~ G.S. 14-27.29 is a lesser included offense of the offense in this section."

SECTION 11. Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act is amended by adding a new section to read:

"**§ 14-27.29. First-degree statutory sexual offense.**

(a) A person is guilty of first-degree statutory sexual offense if the person engages in a sexual act with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.

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

SECTION 12. Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act is amended by adding the following new section:

"**§ 14-27.30. Statutory sexual offense with a person who is 15 years of age or younger.**

(a) A defendant is guilty of a Class B1 felony if the defendant engages in a sexual act with another person who is 15 years of age or younger and the defendant is at least 12 years old and at least six years older than the person, except when the defendant is lawfully married to the person.

(b) Unless the conduct is covered under some other provision of law providing greater punishment, a defendant is guilty of a Class C felony if the defendant engages in a sexual act with another person who is 15 years of age or younger and the defendant is at least 12 years old and more than four but less than six years older than the person, except when the defendant is lawfully married to the person."

SECTION 13.(a) G.S. 14-27.7(a) is recodified as G.S. 14-27.31 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 13.(b) G.S. 14-27.7(a), recodified as G.S. 14-27.31 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.31. ~~Intercourse and sexual offenses with certain victims; consent no defense.~~Sexual activity by a substitute parent or custodian.**

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the ~~home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim,~~ home, the defendant is guilty of a Class E felony.

(b) If a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony.

(c) Consent is not a defense to a charge under this section."

SECTION 14.(a) G.S. 14-27.7(b) is recodified as G.S. 14-27.32 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 14.(b) G.S. 14-27.7(b), recodified as G.S. 14-27.32 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.32. Sexual activity with a student.**

~~(b)~~(a) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers.

(b) A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim

and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor.

(c) This ~~subsection~~ section shall apply unless the conduct is covered under some other provision of law providing for greater punishment.

(d) Consent is not a defense to a charge under this section.

(e) For purposes of this ~~subsection,~~ section, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d). For purposes of this ~~subsection,~~ section, the term "school safety officer" shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools."

SECTION 15. G.S. 14-27.5A. is recodified as G.S. 14-27.33 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act. G.S. 14-27.8 through G.S. 14-27.10 are recodified as G.S. 14-27.34 through G.S. 14-27.36 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 16. G.S. 14-202.4(d)(1) reads as rewritten:

"(d) For purposes of this section, the following definitions apply:

(1) "Indecent liberties" means:

a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or

b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. ~~14-27.1.~~14-27.20."

SECTION 17. G.S. 14-203(5) reads as rewritten:

"(5) Prostitution. – The performance of, offer of, or agreement to perform vaginal intercourse, any sexual act as defined in G.S. ~~14-27.1,~~ 14-27.20, or any sexual contact as defined in G.S. ~~14-27.1,~~ 14-27.20, for the purpose of sexual arousal or gratification for any money or other consideration."

SECTION 18. G.S. 14-205.2(a) reads as rewritten:

"(a) Any person who willfully performs any of the following acts with a person not his or her spouse commits the offense of patronizing a prostitute:

(1) Engages in vaginal intercourse, any sexual act as defined in G.S. ~~14-27.1,~~ 14-27.20, or any sexual contact as defined in G.S. ~~14-27.1,~~ 14-27.20, for the purpose of sexual arousal or gratification with a prostitute.

(2) Enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. ~~14-27.1,~~ 14-27.20, or any sexual contact as defined in G.S. ~~14-27.1,~~ 14-27.20, for the purpose of sexual arousal or gratification."

SECTION 19. G.S. 15A-136 reads as rewritten:

"**§ 15A-136. Venue for sexual offenses.**

If a person is transported by any means, with the intent to violate any of the provisions of Article 7A of Chapter 14 (§ ~~14-27.1~~14-27.20 et seq.) of the General Statutes and the intent is followed by actual violation thereof, the defendant may be tried in the county where transportation was offered, solicited, begun, continued or ended."

SECTION 20. G.S. 50-16.1A(3) reads as rewritten:

"(3) "Marital misconduct" means any of the following acts that occur during the marriage and prior to or on the date of separation:

a. Illicit sexual behavior. For the purpose of this section, illicit sexual behavior means acts of sexual or deviate sexual intercourse, deviate

sexual acts, or sexual acts defined in G.S. ~~14-27.1(4),~~14-27.20(4), voluntarily engaged in by a spouse with someone other than the other spouse;

b. Involuntary separation of the spouses in consequence of a criminal act committed prior to the proceeding in which alimony is sought;

c. Abandonment of the other spouse;

d. Malicious turning out-of-doors of the other spouse;

e. Cruel or barbarous treatment endangering the life of the other spouse;

f. Indignities rendering the condition of the other spouse intolerable and life burdensome;

g. Reckless spending of the income of either party, or the destruction, waste, diversion, or concealment of assets;

h. Excessive use of alcohol or drugs so as to render the condition of the other spouse intolerable and life burdensome;

i. Willful failure to provide necessary subsistence according to one's means and condition so as to render the condition of the other spouse intolerable and life burdensome."

SECTION 21. G.S. 7B-101(1) reads as rewritten:

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

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

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

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

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: ~~first-degree rape, as provided in G.S. 14-27.2; 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;~~ first-degree forcible rape, as provided in G.S. 14-27.21; second-degree forcible rape as provided in G.S. 14-27.22; statutory rape of a child by an adult as provided in G.S. 14-27.23; first-degree statutory rape as provided in G.S. 14-27.24; first-degree forcible sex offense as provided in G.S. 14-27.26; second-degree forcible sex offense as provided in G.S. 14-27.27; statutory sexual offense with a child by an adult as provided in G.S. 14-27.28; first-degree statutory sexual offense as provided in G.S. 14-27.29; sexual activity by a substitute parent or custodian as provided in G.S. 14-27.31; sexual activity with a student as provided in G.S. 14-27.32; 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. 14-205.3(b); 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;

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

g. Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) against the child."

SECTION 22. G.S. 7B-401.1(b) reads as rewritten:

"(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~~ G.S. 14-27.21, G.S. 14-27.22, or G.S. 14-27.24 for an offense that resulted in the conception of the juvenile."

SECTION 23. G.S. 7B-1103(c) reads as rewritten:

"(c) No person whose actions resulted in a conviction under ~~G.S. 14-27.2 or G.S. 14-27.3~~ G.S. 14-27.21, G.S. 14-27.22, or G.S. 14-27.24 and the conception of the juvenile may file a petition to terminate the parental rights of another with respect to that juvenile."

SECTION 24. G.S. 7B-1104(3) reads as rewritten:

"(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference. A person whose actions resulted in a conviction under ~~G.S. 14-27.2 or G.S. 14-27.3~~ G.S. 14-27.21, G.S. 14-27.22, or G.S. 14-27.24 and the conception of the juvenile need not be named in the petition."

SECTION 25. G.S. 7B-1602(a) reads as rewritten:

"(a) When a juvenile is committed to the Division for placement in a youth development center for an offense that would be first degree murder pursuant to G.S. 14-17, first-degree forcible rape pursuant to G.S. ~~14-27.2,~~14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24,~~or~~ first-degree forcible sexual offense pursuant to G.S. ~~14-27.4~~14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 21 years, whichever occurs first."

SECTION 26. G.S. 7B-2509 reads as rewritten:

"**§ 7B-2509. Registration of certain delinquent juveniles.**

In any case in which a juvenile, who was at least 11 years of age at the time of the offense, is adjudicated delinquent for committing a violation of ~~G.S. 14-27.2 (first-degree rape), G.S. 14-27.3 (second-degree rape), G.S. 14-27.4 (first-degree sexual offense), G.S. 14-27.5~~

~~(second-degree sexual offense), or~~ G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree forcible rape), G.S. 14-27.22 (second-degree forcible rape), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.26 (first degree forcible sexual offense), G.S. 14-27.27 (second-degree forcible sexual offense), or G.S. 14-27.29 (first-degree statutory sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

SECTION 27. G.S. 7B-2513(a)(1) reads as rewritten:

"(1) The twenty-first birthday of the juvenile if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree forcible rape pursuant to G.S. ~~14-27.2,~~14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, ~~or~~ first-degree forcible sexual offense pursuant to G.S. ~~14-27.4~~14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult;"

SECTION 28. G.S. 7B-2514(c)(2) reads as rewritten:

"(2) The juvenile's twenty-first birthday if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree forcible rape pursuant to G.S. ~~14-27.2,~~14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, ~~or~~ first-degree forcible sexual offense pursuant to G.S. ~~14-27.4~~14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult."

SECTION 29. G.S. 7B-2516(c)(1) reads as rewritten:

"(1) The juvenile's twenty-first birthday if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree forcible rape pursuant to G.S. ~~14-27.2,~~14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, ~~or~~ first-degree forcible sexual offense pursuant to G.S. ~~14-27.4~~14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult."

SECTION 30. G.S. 7B-2600(c) reads as rewritten:

"(c) In any case where the court finds the juvenile to be delinquent or undisciplined, the jurisdiction of the court to modify any order or disposition made in the case shall continue (i) during the minority of the juvenile, (ii) until the juvenile reaches the age of 19 years if the juvenile has been adjudicated delinquent and committed to the Division for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in G.S. 7B-1602(a), (iii) until the juvenile reaches the age of 21 years if the juvenile has been adjudicated delinquent and committed for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree forcible rape pursuant to G.S. ~~14-27.2,~~14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, ~~or~~ first-degree forcible sexual offense pursuant to G.S. ~~14-27.4~~14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult, or (iv) until terminated by order of the court."

SECTION 31. G.S. 8-53.12(a)(7) reads as rewritten:

"(7) Sexual assault. – Any alleged violation of ~~G.S. 14-27.2, 14-27.3, 14-27.4, 14-27.5, 14-27.7, 14-27.7A,~~ G.S. 14-27.21, 14-27.22, 14-27.24, 14-27.25, 14-27.26, 14-27.27, 14-27.29, 14-27.30, 14-27.31, 14-27.32, or 14-202.1, whether or not a civil or criminal action arises as a result of the alleged violation."

SECTION 32. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of ~~G.S. 14-27.2 (first-degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first-degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second-degree sexual~~

~~offense), G.S. 14-27.5A (sexual battery),~~ former G.S. 14-27.6 (attempted rape or sexual offense), ~~G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older),~~ G.S. 14-27.21 (first-degree forcible rape), G.S. 14-27.22 (second-degree forcible rape), G.S. 14-27.23 (statutory rape of a child by an adult), G.S. 14-27.25(a) (statutory rape of a person who is 15 years of age or younger where the defendant is at least six years older), 14-27.26 (first-degree forcible sexual offense), G.S. 14-27.27 (second-degree forcible sexual offense), G.S. 14-27.28 (statutory sexual offense with a child by an adult), G.S. 14-27.29 (first-degree statutory sexual offense), G.S. 14-27.30(a) (statutory sexual offense with a person who is 15 years of age or younger where the defendant is at least six years older), G.S. 14-27.31 (sexual activity by a substitute parent or custodian), G.S. 14-27.32 (sexual activity with a student), G.S. 14-27.33 (sexual battery), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled person), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 33. G.S. 14-208.26(a) reads as rewritten:

"Part 4. Registration of Certain Juveniles Adjudicated for Committing Certain Offenses.

"**§ 14-208.26. Registration of certain juveniles adjudicated delinquent for committing certain offenses.**

"(a) When a juvenile is adjudicated delinquent for a violation of ~~G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first-degree sexual offense), G.S. 14-27.5 (second-degree sexual offense), or~~ former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree forcible rape), G.S. 14-27.22 (second-degree forcible rape), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.26 (first-degree forcible sexual offense), G.S. 14-27.27 (second-degree forcible sexual offense), or G.S. 14-27.29 (first-degree statutory sexual offense), and the juvenile was at least eleven years of age at the time of the commission of the offense, the court shall consider whether the juvenile is a danger to the community. If the court finds that the juvenile is a danger to the community, then the court shall consider whether the juvenile should be required to register with the county sheriff in accordance with this Part. The determination as to whether the juvenile is a danger to the community and whether the juvenile shall be ordered to register shall be made by the presiding

judge at the dispositional hearing. If the judge rules that the juvenile is a danger to the community and that the juvenile shall register, then an order shall be entered requiring the juvenile to register. The court's findings regarding whether the juvenile is a danger to the community and whether the juvenile shall register shall be entered into the court record. No juvenile may be required to register under this Part unless the court first finds that the juvenile is a danger to the community.

A juvenile ordered to register under this Part shall register and maintain that registration as provided by this Part."

SECTION 34. G.S. 48-3-603(a)(9) reads as rewritten:

"(9) An individual whose actions resulted in a conviction under ~~G.S. 14-27.2, G.S. 14-27.2A, or G.S. 14-27.3~~ G.S. 14-27.21, G.S. 14-27.22, G.S. 14-27.23, or G.S. 14-27.24 and the conception of the minor to be adopted."

SECTION 35. G.S. 50-13.1(a) reads as rewritten:

"(a) Any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as hereinafter provided. Any person whose actions resulted in a conviction under ~~G.S. 14-27.2, G.S. 14-27.2A, or G.S. 14-27.3~~ G.S. 14-27.21, G.S. 14-27.22, G.S. 14-27.23, or G.S. 14-27.24 and the conception of the minor child may not claim the right to custody of that minor child. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both."

SECTION 36. G.S. 50B-1(a)(3) reads as rewritten:

"(3) Committing any act defined in G.S. ~~14-27.2~~14-27.21 through G.S. ~~14-27.7.~~14-27.33."

SECTION 37. G.S. 90-171.38(b) reads as rewritten:

"(b) Any individual, organization, association, corporation, or institution may establish a program for the purpose of training or educating any registered nurse licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to conduct examinations for the purpose of collecting evidence from the victims of ~~first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, statutory rape as defined in G.S. 14-27.7A, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5 or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense.~~ first-degree forcible rape as defined in G.S. 14-27.21, second-degree forcible rape as defined in G.S. 14-27.22, statutory rape of a child by an adult as defined in G.S. 14-27.23, first-degree statutory rape as defined in G.S. 14-27.24, statutory rape of a person who is 15 years of age or younger as defined in G.S. 14-27.25, first-degree forcible sexual offense as defined in G.S. 14-27.26, second-degree forcible sexual offense as defined in G.S. 14-27.27, statutory sexual offense with a child by an adult as defined in G.S. 14-27.28, first-degree statutory sexual offense as defined in G.S. 14-27.29, statutory sexual offense with a person who is 15 years of age or younger as defined in G.S. 14-27.30, attempted first-degree or second-degree forcible rape, attempted first-degree statutory rape, attempted first-degree or second-degree forcible sexual offense, or attempted first-degree statutory sexual offense. The Board, pursuant to G.S. 90-171.23(b)(14), shall establish, revise, or repeal standards for any such program. Any individual, organization, association, corporation, or institution which desires to establish a program under this subsection shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board."

SECTION 38. G.S. 143B-1200(i)(3) reads as rewritten:

"(3) Sexual assault. – Any of the following crimes:

~~a. First-degree rape as defined in G.S. 14-27.2.~~

~~b. Second-degree rape as defined in G.S. 14-27.3.~~

~~c. First-degree sexual offense as defined in G.S. 14-27.4.~~

~~d. Second degree sexual offense as defined in G.S. 14-27.5.~~
~~e. Statutory rape as defined in G.S. 14-27.7A.~~
a. First-degree forcible rape as defined in G.S. 14-27.21.
b. Second-degree forcible rape as defined in G.S. 14-27.22.
c. First-degree statutory rape as defined in G.S. 14-27.24.
d. Statutory rape of a person who is 15 years of age or younger as defined in G.S. 14-27.25.
e. First-degree forcible sexual offense as defined in G.S. 14-27.26.
f. Second-degree forcible sexual offense as defined in G.S. 14-27.27.
g. First-degree statutory sexual offense as defined in G.S. 14-27.29.
h. Statutory sexual offense with a person who is 15 years of age or younger as defined in G.S. 14-27.30."

SECTION 39. G.S. 14-401.16(c) reads as rewritten:

"(c) A violation of this section is a Class H felony. However, if a person violates this section with the intent of committing an offense under G.S. ~~14-27.3~~14-27.22 or G.S. ~~14-27.5,~~14-27.27, the violation is a Class G felony."

SECTION 40. G.S. 14-208.40(a)(3) reads as rewritten:

"(3) Any offender who is convicted of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, who shall be enrolled in the satellite-based monitoring program for the offender's natural life upon termination of the offender's active punishment."

SECTION 41. G.S. 14-208.40A reads as rewritten:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, (iv) the conviction offense was a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, or (v) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, (iv) the conviction offense was a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, or (v) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, has committed an aggravated offense, or was convicted of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A~~14-27.28 and the offender is not a recidivist, the court shall order that the Division of Adult Correction do a risk assessment of the offender. The Division of Adult Correction shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Division of Adult Correction pursuant to subsection (d) of this section, the court shall determine whether, based on the Division of Adult Correction's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 42. G.S. 14-208.40B(c) reads as rewritten:

"(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the conviction offense was a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A.~~14-27.4A, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A.~~14-27.28, and the offender is not a recidivist, the court shall order that the Division of Adult Correction do a risk assessment of the offender. The Division of Adult Correction shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Division of Adult Correction may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Division of Adult Correction, the court shall determine whether, based on the Division of Adult Correction's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 43. G.S. 15A-145.5(a)(4) reads as rewritten:

"(4) Any of the following sex-related or stalking offenses: G.S. ~~14-27.7A(b).~~14-27.25(b), 14-27.30(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."

SECTION 44. G.S. 15A-145.4(5) reads as rewritten:

"(5) Any felony offense under the following sex-related or stalking offenses: G.S. ~~14-27.7A(b),~~14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1."

SECTION 45. G.S. 90-210.25B(b) reads as rewritten:

"(b) For purposes of this Article, the term "sexual offense against a minor" means a conviction of any of the following offenses: ~~G.S. 14-27.4A(a) (sex offense with a child; adult offender), G.S. 14-27.7A (statutory rape or sexual offense of person who is 13, 14, or 15 years old where the defendant is at least six years older).~~G.S. 14-27.23 (statutory rape of a child by an adult), G.S. 14-27.25(a) (statutory rape of a person who is 15 years of age or younger where the defendant is at least six years older), G.S. 14-27.28 (statutory sexual offense with a child by an adult), G.S. 14-27.30 (statutory sexual offense with a person who is 15 years of age or younger where the defendant is at least six years older), G.S. 14-190.16 (first-degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking

indecent liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term shall also include a conviction of the following: any attempt, solicitation, or conspiracy to commit any of these offenses or any aiding and abetting any of these offenses. The term shall also include a conviction in another jurisdiction for an offense which if committed in this State has the same or substantially similar elements to an offense against a minor as defined by this section."

SECTION 46. G.S. 15A-290(c)(1) reads as rewritten:

"(1) Any felony offense against a minor, including any violation of ~~G.S. 14-27.7 (Intercourse and sexual offenses with certain victims; consent no defense),~~ G.S. 14-27.31 (Sexual activity by a substitute parent or custodian), G.S. 14-27.32 (Sexual activity with a student), G.S. 14-41 (Abduction of children), G.S. 14-43.11 (Human trafficking), G.S. 14-43.12 (Involuntary servitude), G.S. 14-43.13 (Sexual servitude), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), G.S. 14-202.1 (Taking indecent liberties with children), G.S. 14-205.2(c) or (d) (Patronizing a prostitute who is a minor or a mentally disabled person), or G.S. 14-205.3(b) (Promoting prostitution of a minor or a mentally disabled person)."

SECTION 47. The Revisor of Statutes may correct statutory references as required by this act, throughout the General Statutes. In making the changes authorized by this act, the Revisor may also adjust the order of lists of multiple statutes to maintain statutory order, correct terms, make conforming changes to catchlines and references to catchlines, and adjust subject and verb agreement and the placement of conjunctions.

SECTION 48. This act becomes effective December 1, 2015, 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 383:
Clarify Statutory Scheme/Sex Offenses

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 15, 2015
Introduced by:	Reps. Glazier, Stam, Jordan, Faircloth	**Prepared by:**	Janice Paul Committee Counsel Susan Sitze Staff Attorney
Analysis of:	PCS to Second Edition H383-CSSA-77		

SUMMARY: ***House Bill 383 would reorganize, rename, and renumber various sexual offenses to make them more easily distinguishable from one another, as recommended by the North Carolina Court of Appeals in a published opinion. The Proposed Committee Substitute (PCS) would (1) provide that to be guilty of statutory rape or statutory sexual offense with a person who is 15 years of age or younger, the defendant must be at least 12 years old, and (2) make various technical and conforming changes to the bill.***

[As introduced, this bill was identical to S651, as introduced by Sen. Stein, which is currently in Rules and Operations of the Senate.]

CURRENT LAW: In February 2015, as part of its opinion in *State of North Carolina v. Slade Weston Hicks, Jr.*, the North Carolina Court of Appeals stated the following:

> "Given the frequency with which these errors arise, we strongly urge the General Assembly to consider reorganizing, renaming, and renumbering the various sexual offenses to make them more easily distinguishable from one another. Currently, there is no uniformity in how the various offenses are referenced, and efforts to distinguish the offenses only lead to more confusion. For example, because "first degree sexual offense" encompasses two different offenses, a violation of N.C. Gen.Stat. § 14–27.4(a)(1) is often referred to as "first degree sexual offense with a child" or "first degree statutory sexual offense" to distinguish the offense from "first degree sexual offense by force" under N.C. Gen.Stat. § 14–27.4(a)(2). "First degree sexual offense with a child," in turn, is easily confused with "statutory sexual offense" which could be a reference to a violation of either N.C. Gen.Stat. § 14–27.4A (officially titled "[s]exual offense with a child; adult offender") or N.C. Gen.Stat. § 14–27.7A (2013) (officially titled "[s]tatutory rape or sexual offense of person who is 13, 14, or 15 years old"). Further adding to the confusion is the similarity in the statute numbers of N.C. Gen.Stat. § 14–27.4(a)(1) and N.C. Gen.Stat. § 14–27.4A. We do not foresee an end to this confusion until the General Assembly amends the statutory scheme for sexual offenses."

BILL ANALYSIS: House Bill 383 would reorganize, rename, and renumber various sexual offenses to make them more easily distinguishable from one another.

Sections 1 through 15 would recodify statutes currently in Article 7A of Chapter 14 of the General Statutes to a new Article 7B, assigning new statute numbers and separating differing conduct into separate statutes.

- **Sections 7.(b) and 12** of the PCS would provide that to be guilty of the offenses of "Statutory rape of person who is 15 years of age or younger" (new G.S. 14-27.25) and "Statutory sexual offense with a person who is 15 years of age or younger" (new G.S. 14-27.30), the defendant must be at least 12 years old.

Sections 16 through 46 would make corresponding changes to other statutes to reference the new statute numbers.

EFFECTIVE DATE: This act becomes effective October 1, 2015.

O. Walker Reagan
Director



Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 721
Committee Substitute Favorable 4/22/15

Short Title: Subdivision Ordinance/Land Develop. Changes. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATED TO LAND DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 160A-372 reads as rewritten:

"**§ 160A-372. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required ~~improvements.~~ improvements at the time the plat is recorded as provided in subsection (b) of this section. ~~If a performance guarantee is required, the city shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose.~~ For any specific development, the type of performance guarantee ~~from the range specified by the city~~ shall be at the election of the developer.

(d) The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning board. In order for this authorization to become effective, before approving such plans the council or planning board and the board of education with jurisdiction over the area shall jointly determine the specific

location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning board shall immediately notify the board of education and the board of education shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning board and no site shall be reserved. If the board of education does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

(e) The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

(f) The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served.

(g) For purposes of this section, all of the following shall apply with respect to performance guarantees:

(1) The term "performance guarantee" shall mean any of the following forms of guarantee:

a. Surety bond issued by any company authorized to do business in this State.

b. Letter of credit issued by any financial institution licensed to do business in this State.

c. Other form of guarantee of equivalent security than a surety bond or letter of credit.

(2) The performance guarantee shall be returned upon the completion of the improvements for which the performance guarantee is being required. If the improvements are not complete, the performance guarantee shall be extended, and the form of such guarantee shall remain at the election of the developer.

(3) The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued.

(4) The performance guarantee shall only be used for completion of the required improvements shown on the plat and not for repairs or maintenance after completion."

SECTION 1.(b) G.S. 153A-331 reads as rewritten:

"**§ 153A-331. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area.

(d) The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

(e) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required ~~improvements.~~ improvements at the time the plat is recorded as provided in subsection (b) of this section. ~~If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose.~~ For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer.

(f) The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning board. For the authorization to reserve school sites to be effective, the board of commissioners or planning board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning board shall immediately notify the board of education. The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation.

(g) Any performance guarantee shall comply with G.S. 160A-372(g)."

SECTION 1.(c) G.S. 160A-400.25 is amended by adding a new subsection to read:

"(e) Any performance guarantees under the development agreement shall comply with G.S. 160A-372(g)."

SECTION 1.(d) G.S. 153A-349.6 is amended by adding a new subsection to read:

"(e) Any performance guarantees under the development agreement shall comply with G.S. 160A-372(g)."

SECTION 2.(a) G.S. 160A-417 is amended by adding a new subsection to read:

"(e) No city may withhold issuing a building permit or certificate of occupancy under this section to compel, with respect to another property or parcel, completion of work for a separate permit or compliance with land use regulations under this Article."

SECTION 2.(b) G.S. 153A-357 is amended by adding a new subsection to read:

"(f) No county may withhold issuing a building permit or certificate of occupancy under this section to compel, with respect to another property or parcel, completion of work for a separate permit or compliance with land use regulations under this Article."

SECTION 3. This act becomes effective October 1, 2015, and applies to performance guarantees issued on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 721

Committee Substitute Favorable 4/22/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H721-CSTG-37 [v.3]
7/13/2015 4:43:04 PM

Short Title: Subdivision Ordinance/Land Develop. Changes. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATED TO LAND DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 160A-372 reads as rewritten:

"**§ 160A-372. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required ~~improvements.~~ improvements at the time the plat is recorded as provided in subsection (b) of this section. ~~If a performance guarantee is required, the city shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose.~~ For any specific development, the type of performance guarantee ~~from the range specified by the city~~ shall be at the election of the developer.

(d) The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning board. In order for this authorization to become effective, before approving such plans the council or planning board

and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning board shall immediately notify the board of education and the board of education shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning board and no site shall be reserved. If the board of education does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

(e) The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

(f) The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served.

(g) For purposes of this section, all of the following shall apply with respect to performance guarantees:

(1) The term "performance guarantee" shall mean any of the following forms of guarantee:

a. Surety bond issued by any company authorized to do business in this State.

b. Letter of credit issued by any financial institution licensed to do business in this State.

c. Other form of guarantee of equivalent security than a surety bond or letter of credit.

(2) The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the city that the improvements for which the performance guarantee is being required are complete. If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new

performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.

(3) The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

(4) The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion."

SECTION 1.(b) G.S. 153A-331 reads as rewritten:

"**§ 153A-331. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

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(d) The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

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ordinance may provide for performance guarantees to assure successful completion of required ~~improvements.~~ improvements at the time the plat is recorded as provided in subsection (b) of this section. ~~If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose.~~ For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer.

(f) The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning board. For the authorization to reserve school sites to be effective, the board of commissioners or planning board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning board shall immediately notify the board of education. The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation.

(g) Any performance guarantee shall comply with G.S. 160A-372(g)."

SECTION 1.(c) G.S. 160A-400.25 is amended by adding a new subsection to read:

"(e) Any performance guarantees under the development agreement shall comply with G.S. 160A-372(g)."

SECTION 1.(d) G.S. 153A-349.6 is amended by adding a new subsection to read:

"(e) Any performance guarantees under the development agreement shall comply with G.S. 160A-372(g)."

SECTION 2.(a) G.S. 160A-417 is amended by adding a new subsection to read:

"(e) No city may withhold issuing a building permit or certificate of occupancy that otherwise would be eligible to be issued under this section to compel, with respect to another property or parcel, completion of work for a separate permit or compliance with land use regulations under this Article."

SECTION 2.(b) G.S. 153A-357 is amended by adding a new subsection to read:

"(f) No county may withhold issuing a building permit or certificate of occupancy that otherwise would be eligible to be issued under this section to compel, with respect to another property or parcel, completion of work for a separate permit or compliance with land use regulations under this Article."

SECTION 3. This act becomes effective October 1, 2015, and applies to performance guarantees or extensions of performance guarantees issued on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 721

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

H721-ATG-60 [v.1]

Amends Title [NO]
H721-CSTG-37

Date 7/16 ,2015

Senator Barringer

moves to amend the bill on page 4, line 35, by rewriting the line to read:

"regulations under this Article unless otherwise authorized by law or unless the city reasonably determines the existence of a public safety issue directly related to the issuance of a building permit or certificate of occupancy.""; and

on page 4, line 40, by rewriting the line to read:

"regulations under this Article unless otherwise authorized by law or unless the county reasonably determines the existence of a public safety issue directly related to the issuance of a building permit or certificate of occupancy."".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

HOUSE BILL 721:
Subdivision Ordinance/Land Develop. Changes

2015-2016 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to State and Local Government	**Date:**	July 13, 2015
Introduced by:	Reps. Bryan, Stam, Bishop, Bradford	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Second Edition H721-CSTG-37		

SUMMARY: ***The PCS for House Bill 721 would amend and clarify the law regarding performance guarantees developers are required to provide to cities and counties to assure completion of required improvements to subdivided land. The PCS requires the developer to demonstrate reasonable good faith progress toward completion of any improvements that are the subject of a performance guarantee or any extension thereof, caps the amount of any extension of a performance guarantee at 125% of the reasonably estimated cost of completing the improvements that remain outstanding at the time the extension is obtained, and makes other technical and clarifying changes.***

CURRENT LAW: Cities (Part 2 of Article 19 of Chapter 160A) and counties (Part 2 of Article 18 of Chapter 153A) are authorized to adopt ordinances to regulate the subdivision of land within their territorial jurisdiction. These statutes authorize subdivision ordinances to require the construction of "community service facilities". To assure compliance with these and other ordinance requirements, cities and counties are authorized to provide for performance guarantees to assure successful completion of required improvements. Performance guarantees are financial assurances that guarantee funds if the developer fails to complete the agreed-to improvements. If a guarantee is required, the developer can choose from a range of different types of assurance.

BILL ANALYSIS: **Section 1** of the PCS for House Bill 721 would provide that a performance guarantee is required at the time the plat is recorded and that the type of performance guarantee would be at the election of the developer.

Section 1 would also create a new subsection, G.S.160A-372(g), that applies to performance guarantees for both cities and counties. The new subsection would:

- Define "performance guarantee" as any of the following: a surety bond issued by any company authorized to do business in the state, a letter of credit issued by any financial institution licensed to do business in the state, or any other form of guarantee of equivalent security than a surety bond or letter of credit
- Require a performance guarantee to be returned at the time the city or county acknowledges that the improvements for which the guarantee is being required are complete
- Would require extension of the performance guarantee or issuance of a new performance guarantee if the improvements are not complete at the time the current performance guarantee is expiring
- Require the developer to demonstrate reasonable, good faith progress toward completion of the improvements that are the subject of the performance guarantee or any extension

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- Cap the amount of a performance guarantee or extension thereof at 125% of the reasonably estimated cost of completion at the time the performance guarantee or extension is issued
- Clarify that the performance guarantee must only be used for completion of the required improvements and not for repairs or maintenance after completion

Section 2 of the PCS would prohibit cities and counties from withholding issuance of a building permit or certificate of occupancy that otherwise would be eligible to be issued in order to compel completion of work for a separate permit or to compel compliance with land use regulations with respect to another property or parcel.

EFFECTIVE DATE: This act becomes effective October 1, 2015, and applies to performance guarantees or extensions of performance guarantees issued on or after that date.

Kelly Tornow, counsel to House Judiciary IV, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, July 16, 2015

Senator Randleman,
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 **383** **(CS#1)** Clarify Statutory Scheme/Sex Offenses.

Draft Number:	H383-PCS30404-SA-77
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Jeff Jackson will handle HB 383



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, July 16, 2015

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

FAVORABLE

HB **814** **(SCS#1)** The William C. Lindley, Jr. SUDEP Law.

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 **721** **(CS#1)** Subdivision Ordinance/Land Develop. Changes.

Draft Number:	H721-PCS40483-TG-37
Sequential Referral:	State and Local Government
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Richard Gunn will handle HB 814
Senator W. Wells will handle HB 721



DATE 7-16-15

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Genesis Drake	Wayne Middle	
Lad Russell	OYPC	
Annaliese Dolph	DL	
Dan d'Ambrosi	Staff	
Jamie Lassiter	Staff	
John Madler	NC Sentencing Commission	
Charissa P. Drake	Currituck Co.	
Mildred Spearman	NCAOC	
Natalie Hobson	NCIHFP	
Skye David	KLG	

DATE 7-16-15

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Joe Maynard	GFM & Assoc.	

Senate Committee on Judiciary II
July 21, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:04 AM on July 21, 2015 in Room 1124/1224 of the Legislative Building. 13 members were present.

Senator Tamara Barringer, Chair, presided.

Sergeant at Arms: Hal Roach, Larry Hancock and Steve McCaig.

HB 397 Clarify Protections/ Exploitations of Elders
Senator Cook moved to have the PCS brought up for consideration rather than discussing the original bill. The motion was seconded by Senator Alexander. The motion carried.

Representative Glazier presented the bill to the committee.

After discussion, Senator Cook moved for finding the original bill unfavorable but favorable as to the PCS. The motion was seconded by Senator Alexander and the bill was carried. The bill was reported out by the clerk as "Unfavorable as to bill, but favorable as to committee substitute bill." Senator Randleman will be the floor Chair.

S 671 DL Restoration/DWI Treatment Court

Senator Apodaca presented the PCS. After discussion, Senator Bingham moved for favorable report to the PCS, unfavorable to the original. Senator Alexander seconded the motion. Senator Apodaca will be the floor manager.

H 529 NC Drivers License Restoration Act

Senator Bingham moved to have the PCS brought up for consideration rather than discussing the original bill. The motion was seconded by Senator Alexander. Senator Jeff Jackson presented the PCS. Senator Bingham moved for favorable report to the PCS, unfavorable to the original. The motion carried. Senator Jeff Jackson will carry the bill on the floor.

The meeting adjourned at 10:23 am.

Senator Tamara Barringer, Chair
Presiding

Gloria Whitehead, Committee Clerk

Senate Committee on Judiciary II
Tuesday, July 21, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 397	Clarify Protections/Exploitation of Elders.	Representative Glazier Representative Reives Representative Stam Representative Faircloth
HB 529	NC Drivers License Restoration Act.	Representative Baskerville Representative Bryan
SB 671	DL Restoration/DWI Treatment Court.	Senator Apodaca Senator Van Duyn Senator J. Davis

Presentations

Other Business

Adjournment

HOUSE BILL 397
Committee Substitute Favorable 4/21/15

Short Title: Clarify Protections/Exploitation of Elders. (Public)

Sponsors:

Referred to:

March 31, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT UPON CONVICTION FOR EXPLOITATION OF AN OLDER ADULT OR DISABLED ADULT, ANY SEIZED ASSETS SHALL BE USED TO SATISFY THE DEFENDANT'S RESTITUTION OBLIGATION AS ORDERED BY THE COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-112.3 reads as rewritten:

"**§ 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.

(b1) An order to freeze or seize assets shall direct the appropriate State or local law enforcement agency with territorial jurisdiction over the assets to serve the order as follows:

(1) Personal property or financial assets in the defendant's possession that are not held by a financial institution shall be seized and held until final disposition as directed by the order.

(2) If the asset is an account, intangible, or other financial asset held by a financial institution, the State or local law enforcement agency shall serve the order on the entity or institution in possession of the asset with return of service to the clerk of superior court.

(3) If the asset is real property, then a lis pendens shall be filed as directed by the court with the clerk in the county where the property is located in accordance with Article 11 of Chapter 1 of the General Statutes.

(b2) Any personal property seized by a law enforcement agency pursuant to this section shall be recorded and retained as provided in Article 2 of Chapter 15 of the General Statutes, except that the property shall not be disposed of other than pursuant to an order of the court entered pursuant to this section. Property frozen or seized pursuant to this section shall be deemed to be in the custody of the law enforcement agency seizing it and shall be removed and stored in the discretion of that law enforcement agency, which may do any of the following:

(1) Place the property under seal.
(2) Remove the property to a place designated by the law enforcement agency.
(3) Request that the North Carolina Department of Justice take custody of the property and remove it to an appropriate location for disposition in accordance with the court order.

(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.~~deny the motion.

(e) If the prosecution of the charge under G.S. 14-112.2 is terminated by voluntary dismissal without leave by the State or the court, or if a judgment of acquittal is entered, the court shall vacate the order to freeze or seize the assets. If assets are released pursuant to this subsection, accrued costs incident to the seizure, freeze, or storage of the assets shall not be charged against the defendant and shall be assumed by the agency incurring those costs.

(e1) Upon conviction of the defendant, or entry of a plea of no contest, any frozen or seized assets shall be used to satisfy the defendant's restitution obligation as ordered by the court, accounting for costs incident to seizure, including costs of sale. However, if the defendant can satisfy the restitution order at the time of entry of the order, the court may accept an alternate form of restitution satisfaction. Any excess assets shall be returned to the defendant.

In order to satisfy an order of restitution, frozen or seized assets shall be handled as follows:

(1) Assets shall be sold, transferred, paid out, or otherwise applied to the defendant's restitution obligation as follows:
  a. If the asset is personal property, the property shall be recorded pursuant to G.S. 15-11 and the seizing agency shall store the personal property in accordance with the court order.
  b. If the asset is a liquid asset, the court shall enter an order directing the payment of those funds to the victim in an amount equal to the restitution order or, if the amount is less than the full restitution award, the court shall order the full amount paid to the victim.
  c. If the asset is real property, the court shall enter an order directing the sale of the property. The sale shall be conducted pursuant to Article 29A of Chapter 1 of the General Statutes. A private sale may be conducted pursuant to G.S. 1-339.33 through G.S. 1-339.40, if, upon receipt of petition and satisfactory proof, it appears to the person directed to oversee the sale that a private sale is in the best interest of the victim.
(2) The proceeds of any sale, transfer, or conversion shall be disbursed as follows:
  a. The law enforcement agency shall pay all proceeds to the clerk of superior court.
  b. All proceeds received by the clerk shall be distributed according to the following priority:
    1. Payment to the victim in the full amount of the restitution order.

2. The costs and expenses of the sale.
3. All other necessary expenses incident to compliance with this section.
4. Any remaining balance to the defendant within 30 days of the sale, unless the defendant directs the clerk to apply any excess to the defendant's other monetary obligations contained in the judgment of conviction.

In the event proceeds from the sale of assets are not sufficient to cover the restitution order and the costs and expenses of the sale, any unpaid amounts shall be charged against the defendant and a criminal judgment shall be placed against the defendant for those amounts. Any amount included in a criminal judgment for costs and expenses of the sale shall be owed to the agency or entity which incurred the expense.

(f) Any person holding any interest in the frozen or seized assets may commence a separate civil proceeding in the manner provided by law.

(g) Any filing fees, service fees, or other monies due to any State or county agency for the administration or use of this Chapter shall not be waived and shall only be recoverable if charged against the defendant in the final disposition of the criminal action."

SECTION 2. G.S. 1-116(a) is amended by adding a new subdivision to read as follows:

"(5) Actions for asset freezing or seizure under G.S. 14-112.3."

SECTION 3. G.S. 1-119 reads as rewritten:

"**§ 1-119. Notice void unless action prosecuted.**

(a) The notice of lis pendens is of no avail unless it is followed by the first publication of notice of the summons or by an affidavit therefor pursuant to Rule 4 (j)(1)c of the Rules of Civil Procedure or by personal service on the defendant within 60 days after the cross-indexing.

(b) When an action is commenced by the issuance of summons and permission is granted to file the complaint within 20 days, pursuant to Rule 3 of the Rules of Civil Procedure, if the complaint is not filed within the time fixed by the order of the clerk, the notice of lis pendens shall become inoperative and of no effect. The clerk may on his own motion and shall on the ex parte application of any interested party cancel such notice of lis pendens by appropriate entry on the records, which entry shall recite the failure of the plaintiff to file his complaint within the time allowed. Such applications for cancellation, when made in a county other than that in which the action was instituted, shall include a certificate over the hand and seal of the clerk of the county in which the action was instituted that the plaintiff did not file his complaint within the time allowed. The fees of the clerk may be recovered against the plaintiff and his surety.

(c) Notwithstanding subsections (a) and (b) of this section, a notice of lis pendens filed pursuant to G.S. 1-116(a)(5) shall remain effective until the order to freeze or seize assets under G.S. 14-112.3(b1)(3) is terminated or an order directing the sale of real property under G.S. 14-112.3(e1)(1)c. is entered. Notice of lis pendens filed pursuant to G.S. 1-116(5) shall be exempt from filing fees."

SECTION 3.5. G.S. 7A-308 is amended by adding a new subsection to read:

"(b2) The fees set forth in subdivision (11) of subsection (a) of this section are not chargeable when service is performed or documents are filed pursuant to the provisions of G.S. 14-112.3."

SECTION 4. This act becomes effective October 1, 2015, and applies to orders to freeze or seize assets issued on or after that date.

HOUSE BILL 529
Committee Substitute Favorable 4/15/15

Short Title: NC Drivers License Restoration Act. (Public)

Sponsors:

Referred to:

April 2, 2015

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. This act shall be known as the "North Carolina Drivers License Restoration Act."

SECTION 2. 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~~ subsections (a1) or (a2) 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 3 ~~misdemeanor unless the person's license was originally revoked for an impaired driving revocation, in which case the person is guilty of a Class 1 misdemeanor.~~ misdemeanor.

(a1) Aggravated Driving While License Revoked. – A person convicted under subsection (a) of this section is guilty of a Class 1 misdemeanor if the person's license was originally revoked for any of the following:

(1) Except as provided in subsection (a2) of this section, an impaired driving license revocation, as defined in G.S. 20-28.2.

(2) An accumulation of drivers license points in violation of G.S. 20-16(a)(5).

(3) A violation of any restriction of G.S. 20-179.3.

(4) A violation of any restriction of G.S. 20-17.8.

(5) A violation of a limited driving privilege issued under G.S. 20-20.1.

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.

If the person's license was originally revoked for an impaired driving license 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.~~license and punished in accordance with the provisions of this subsection.

~~(a1)~~(a2) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

~~(a2)~~(a3) Driving After Notification or Failure to Appear. – A person shall be guilty of a Class 1 misdemeanor if:

(1) The person operates a motor vehicle upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

(2) The person fails to appear for two years from the date of the charge after being charged with an implied-consent offense.

Upon conviction, the person's drivers 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. 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)~~ (a1) of this section for one year, the person may apply for a license after 90 days.

(2) If punished under subsection ~~(a1)~~ (a2) 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)~~ (a3) 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 shall not be considered a moving violation.

...

(c3) A person whose license is revoked for violation of subsection ~~(a)~~ (a1) of this section where the person's license was originally revoked for an impaired driving revocation, or a person whose license is revoked for a violation of subsection ~~(a2)~~ (a3) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

...."

SECTION 3. 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. 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).
(2) A violation of G.S. 20-28(a2).
(3) A violation of G.S. 20-7 for driving a motor vehicle without a regular drivers license."

SECTION 4. G.S. 20-20.1 reads as rewritten:

"**§ 20-20.1. Limited driving privilege for certain revocations.**

(a) Definitions. – The following definitions apply in this section:

(1) Limited driving privilege. – A judgment issued by a court authorizing a person with a revoked drivers license to drive under specified terms and conditions.
(2) Nonstandard working hours. – Anytime other than 6:00 A.M. until 8:00 P.M. on Monday through Friday.
(3) Standard working hours. – Anytime from 6:00 A.M. until 8:00 P.M. on Monday through Friday.
(4) Underlying offense. – The offense for which a person's drivers license was revoked when the person was charged under G.S. 20-28(a), driving with a revoked license, or under G.S. 20-28.1, committing a motor vehicle moving offense while driving with a revoked license.

(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)~~ G.S. 20-28(a1) 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 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)~~ G.S. 20-28(a1) 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.

(c) Compliance Period. – The following table sets out the period during which a person must comply with a revocation under ~~G.S. 20-28(a)~~ G.S. 20-28(a1) or G.S. 20-28.1 to be eligible for a limited driving privilege under this section:

Revocation Period	Compliance Period
1 Year	90 Days
2 Years	1 Year
Permanent	2 Years

...

(j) Term and Reinstatement. – The term of a limited driving privilege issued under this section is the shorter of one year or the length of time remaining in the revocation period imposed under ~~G.S. 20-28(a)~~ G.S. 20-28(a1) or G.S. 20-28.1. When the term of the limited driving privilege expires, the Division must reinstate the person's license if the person meets all of the conditions listed in this subsection. The Division may impose restrictions or conditions on the new license in accordance with G.S. 20-7(e). The conditions are:

(1) Payment of the restoration fee as required under G.S. 20-7(i1).

(2) Providing proof of financial responsibility as required under G.S. 20-7(c1).

(3) Providing the proof required for reinstatement of a license under G.S. 20-28(c1).

(k) Modification. – A court may modify or revoke a person's limited driving privilege issued under this section upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke the privilege. The judge must indicate in the order of modification or revocation the reasons for the order or make specific findings indicating the reason for the order and enter those findings in the record of the case. When a court issues an order of modification or revocation, the clerk of court must send a copy of the order to the Division.

(l) Effect of Violation. – A violation of a limited driving privilege issued under this section constitutes the offense of driving while license revoked under G.S. 20-28. When a person is charged with operating a motor vehicle in violation of the limited driving privilege, the limited driving privilege is suspended pending the final disposition of the charge."

SECTION 5. G.S. 20-17.8(f) reads as rewritten:

"(f) Effect of Violation of Restriction. – A person subject to this section who violates any of the restrictions of this section commits the offense of aggravated driving while license revoked under ~~G.S. 20-28(c)~~ G.S. 20-28(a1) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while

license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subdivision (b)(3) of this section."

SECTION 6. G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. – A holder of a limited driving privilege who violates any of its restrictions commits the offense of ~~driving while his license is revoked~~ aggravated driving while license revoked under ~~G.S. 20-28(a)~~G.S. 20-28(a1) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the Department as to the manner of its use."

SECTION 7. G.S. 20-179(c) reads as rewritten:

"(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection, or whether a conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Aggravated Level One punishment under subsection (f3) of this section if it is determined that three or more grossly aggravating factors apply. The judge must impose the Level One punishment under subsection (g) of this section if it is determined that the grossly aggravating factor in subdivision (4) of this subsection applies or two of the other grossly aggravating factors apply. If the judge does not find that the aggravating factor at subdivision (4) of this subsection applies, then the judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the other grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:
a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or
c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under ~~G.S. 20-28,~~ G.S. 20-28{a1}, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

...

In imposing an Aggravated Level One, a Level One, or a Level Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f)."

SECTION 8. This act becomes effective December 1, 2015, and applies to convictions on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note
REVISED

BILL NUMBER: House Bill 529 (Second Edition)

SHORT TITLE: NC Drivers License Restoration Act.

SPONSOR(S): Representatives Baskerville and Bryan

FISCAL IMPACT
($ in thousands)

☑ Yes ☐ No ☐ No Estimate Available

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
General Fund Revenues:					
General Fund Expenditures:	$148.2	$364.6	$691.7	$711.3	$730.2
Special Fund Revenues:					
Special Fund Expenditures:	$59.0	$4.5	$4.5	$4.5	$4.5
State Positions:					
NET STATE IMPACT	**($207.2)**	**($369.1)**	**($696.2)**	**($715.8)**	**($734.7)**

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

EFFECTIVE DATE: December 1, 2015

TECHNICAL CONSIDERATIONS:
Yes - See Technical Considerations Section

Revision Note: ***This note has been revised to correct an error in the computation of costs to the Office of Indigent Defense Services by the following amounts per year.***

FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
($12,297)	($21,655)	($22,279)	($22,894)	($23,453)

FISCAL IMPACT SUMMARY:
This bill is estimated to have a fiscal impact. The following costs are estimated:

Costs by Agency Adjusted for Inflation

	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
AOC	$114,643	$201,876	$207,690	$213,423	$218,631
IDS	$20,511	$36,119	$37,159	$38,184	$39,115
DPS - Community Corrections	$13,034	$126,588	$446,880	$459,648	$472,416
DMV	$59,020	$4,500	$4,500	$4,500	$4,500
Total	**$207,208**	**$369,083**	**$696,229**	**$715,755**	**$734,662**

Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill creates one new offense by moving existing misdemeanor offenses into a new subsection, thereby reclassifying some of the offenses.

Under subsection (a) of G.S. 20-28, it is a Class 3 misdemeanor for a person whose drivers license has been revoked to drive any motor vehicle upon the highways of the State while the license is revoked. It is a Class 1 misdemeanor for a person whose drivers license has been revoked for an impaired driving revocation to drive any motor vehicle upon the highways of the State while the license is revoked.

This bill creates a new offense under subsection (a1), Aggravated Driving While License Revoked (DWLR) (the existing subsection (a1) is recodified as subsection (a2)). Under this offense, it is a Class 1 misdemeanor for a person whose drivers license has been revoked for any of the listed reasons to drive any motor vehicle upon the highways of the State while the license is revoked. The license may have been revoked for any of the following reasons:

(1) Except as provided in subsection (a2) of this section, an impaired driving license revocation, as defined in G.S. 20-28.2;
(2) An accumulation of drivers license points in violation of G.S. 20-16(a)(5);
(3) A violation of any restriction of G.S. 20-179.3;
(4) A violation of any restriction of G.S. 20-17.8; or
(5) A violation of a limited driving privilege issued under G.S. 20-20.1.

Subsection (a1)(1) covers the current Class 1 misdemeanor offense under subsection (a). Subsections (a1)(3) and (a1)(4) are also currently Class 1 misdemeanor offenses. Moving existing Class 1 misdemeanor offenses into a new subsection is not expected to have an impact on the prison population or on local jail populations since there is no change in offense class or punishment. Subsections (a1)(2) and (5) are currently punished as Class 3 misdemeanors under subsection (a). Under this bill they would be reclassified as Class 1 misdemeanors.

The bill is effective December 1, 2015, and applies to convictions 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) created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

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.

Section (a1)(2) of the bill increases the penalty for violation of G.S. 20-16(a)(5) from a Class 3 misdemeanor to a Class 1 misdemeanor. Section (a1)(5) of the bill increases the penalty for violation of G.S. 20-20.1 from a Class 3 misdemeanor to a Class 1 misdemeanor. AOC provides estimates of the average cost to the court for a charge by offense class. For every person who would have been charged with a Class 3 misdemeanor who is instead charged with a Class 1 misdemeanor, the average cost to the court will be $134 ($165 for a Class 1 misdemeanor minus $31 for a Class 3 misdemeanor).

AOC does not have an offense code specific to violations of G.S. 20-28 that occurred on a license revoked under G.S. 20-16(a)(5) (an accumulation of too many drivers license points). The North Carolina Department of Motor Vehicles (DMV) reports that there were a total of 2,108 license holders who were revoked under G.S. 20-16(a)(5) in calendar year 2014. For each of these revoked individuals who drives a motor vehicles upon the highways of the State while the license is revoked, that action would be punished as a Class 1 misdemeanor under new G.S. 20-28(a1) and the net cost to the court system would be $134 per case. It is possible for any of the 2,108 individuals to receive multiple charges of Driving While License Revoked (DWLR) during the time period in which the license is revoked. Unless these charges occur within a short period of time and are consolidated for trial or disposition, the additional cost to the courts for moving this offense from a Class 3 misdemeanor to a Class 1 misdemeanor will remain $134 per case. If, for instance, there were 1,054 cases (50% of the total 2,108 revocations) of offenders violating G.S. 20-28(a1) per year, the cost to the courts would be $141,236 annually. AOC additionally reports that 386 defendants were charged with a violation of a limited driving privilege under G.S. 20-20.1. The additional cost to the courts for moving this offense from a Class 3 misdemeanor to a Class 1 misdemeanor for each of those cases will be $134, leading to total additional costs to the courts of $51,724.

The annualized cost to the courts is estimated to be $192,960.[1] The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2015 effective date.

	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Total AOC Cost	$114,643	$201,876	$207,690	$213,423	$218,631

IDS has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The weighted average cost of a traffic-related Class 1 misdemeanor is $180 per case for a private appointed counsel (PAC) attorney while the weighted average cost of a traffic-related Class 3 misdemeanor is $162 per case. In FY 2011-12, 16% of traffic-related Class 1 misdemeanor defendants used IDS services while 3% of traffic-related Class 3 misdemeanor defendants used IDS Services. Using the number of charges provided by AOC, under the Class 1 misdemeanor offense for Sections (a1)(2) and

[1] $134 difference in court cost between the old offense and the new offense times 1,440 defendants (1,054 for (a1)(2) and 386 for (a1)(5)).

(a1)(5), 231 defendants would have used IDS in FY 2013-14 for a total cost of $41,580.[2] Under the previous Class 3 misdemeanor offense category, 44 defendants would have used IDS in FY 2013-14 for a total cost of $7,128.[3] Therefore, the annualized cost of this criminal penalty increase to IDS will be $34,452.[4]

The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2015 effective date. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Total IDS Cost	$20,511	$36,119	$37,159	$38,184	$39,115

Department of Public Safety –Prison Section

This bill increases the penalty for violation of G.S. 20-16(a)(5) or a violation of G.S. 20-20.1 from a Class 3 misdemeanor to a Class 1 misdemeanor. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections.

Department of Public Safety – Community Correction Section

All misdemeanor 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.

JRA essentially eliminated the distinction between "community" and "intermediate" supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs $130.50 per offender, per month; 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 and supervised probations. The table below shows the monthly cost for each year of the five year projection, adjusted for inflation.

[2] 1,440 defendants times 16% using IDS equals 231 indigent defendants times $180 average cost per case equals $41,580.
[3] 1,440 defendants times 3% using IDS equals 44 indigent defendants times $162 average cost per case equals $7,128.
[4] $41,580 Class 1 expense minus $7,128 existing Class 3 expense equals $34,452.

Monthly Supervision Cost Adjusted for Inflation Five Year Projection						
	FY 2014-15	**FY 2015-16**	**FY 2016-17**	**FY 2017-18**	**FY 2018-19**	**FY 2019-20**
Inflation Rate		1.85%	2.72%	2.88%	2.76%	2.44%
Monthly Cost	$130.50	$132.90	$136.52	$140.45	$144.32	$147.85

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)

In FY 2013-14, 30% of Class 1 misdemeanor offenders received active sentences; 70% received probation. The average length of probation imposed for this offense class was 15 months. For the same time period, 31% of Class 3 misdemeanor offenders received active sentences; 69% received probation. The average length of probation imposed for this offense class was 12 months. Therefore, for every one conviction under the new Class 1 misdemeanor offense class that is sentenced to probation, this bill will require at least 3 additional months of probation. The cost of 3 additional months of probation is $391.50 per offender ($130.50 per month times 3 months).[5]

In 2014, approximately 1,054 defendants were charged with an accumulation of drivers license points in violation of G.S. 20-16(a)(5) and 386 defendants were charged with a violation of a limited driving privilege under G.S. 20-20.1. Under the previous Class 3 misdemeanor offense category, 994 offenders would have been sentenced to 12 months of probation.[6] Under the new Class 1 misdemeanor offense category, 1,008 offenders will be sentenced to 15 months of probation.[7] Therefore, the cost to the CCS for additional probation is estimated to be $389,151[8] and the cost to CCS for 15 months of probation for 14 additional offenders (1,008 offenders under the new offense minus 994 offenders under the old offense equals 14 offenders) is $27,405.[9] Therefore, the total additional annualized cost to the CCS is $416,556. The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2015 effective date.

	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Cost of Current Offense	$925,414	$1,634,136	$1,669,920	$1,717,632	$1,765,344
Cost of Proposed Offense	$938,448	$1,760,724	$2,116,800	$2,177,280	$2,237,760
Total CCS Cost	**$13,034**	**$126,588**	**$446,880**	**$459,648**	**$472,416**

Department of Transportation – Information Technology (DOT-IT)

According to DOT-IT, the following changes to the State Automated Driver License System (SADLS) are required to automate the business processes supporting the proposed changes:

- Develop and receive new charge codes in conjunction with the Administrative Office of the Courts.
- Create new conviction and suspension rules, and new action module.

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[5] Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.

[6] 1,440 (1,054 plus 386) times 69% probation equals 994 probationers.

[7] 1,440 (1,054 plus 386) times 70% probation equals 1,008 probationers.

[8] $391.50 difference in probation costs between the old offense and the new offense times 994 defendants.

[9] $130.50 monthly cost times 15 months equals $1,957.50 times 14 additional offenders equals $27,405.

- Modify current adjudication processes to determine the underlying reason for suspension which resulted in the Driving While License Revoked (DWLR) charge. Check for a limited privilege, blood alcohol content restriction and ignition interlock restriction.
- Add new convictions to the existing moving violation process, if the conviction is considered a moving violation.
- Add new suspensions for Aggravated Driving While License Revoked offenses to the existing hearing process.
- Remove convictions of DWLR under G.S. 20-28(s), 20-28(a2), and 20-7, as these can no longer be considered moving violations.
- Modify the limited privilege processes to include the DWLR conviction and suspension event identifiers, and to determine what was in effect at the time the DWLR offense occurred.
- Determine and assign a proper ACD (AAMVA Code Dictionary) Code to the new conviction rule for transmission out-of-state through the Commercial Driver License Interface System (CDLIS).
- Modify the codes table to link the new AOC charge code to the new conviction code in SADLS.

A total of 648 development labor hours at the standard rates of $90-$95/hr. is assumed for completion of these enumerated tasks. Recurring support costs are estimated at $4,500/year (65 hrs. at $70 labor rate).

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

TECHNICAL CONSIDERATIONS: Due to the sequencing of existing projects and deadlines, the Department of Transportation recommends an alternate effective date of July 1, 2016 to accommodate the required system modifications.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: William Childs and Bryce Ball

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division



DATE: April 29, 2015

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 671

Short Title:	DL Restoration/DWI Treatment Court.	(Public)
Sponsors:	Senators Apodaca, Van Duyn, J. Davis (Primary Sponsors); and Hartsell.	
Referred to:	Rules and Operations of the Senate.	

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO CONDITIONALLY RESTORE THE DRIVERS LICENSE OF PERSONS WHO HAVE SUCCESSFULLY COMPLETED A DRUG TREATMENT OR DWI TREATMENT COURT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19 is amended by adding a new subsection to read:

"(d1) Notwithstanding any other provision of law, when a person's license is revoked for an impaired driving offense and sentenced pursuant to G.S. 20-179, the Division may conditionally restore the person's license after it has been revoked for at least one year if the person provides the Division with (i) a certificate of graduation from a Drug Treatment or Driving While Impaired (DWI) Treatment Court Program established pursuant to Article 62 of Chapter 7A of the General Statutes and (ii) a letter of recommendation from the presiding judge of the Drug Treatment or DWI Treatment Court. If the Division restores the person's license, it shall place all of the following restrictions, requirements, and conditions on the person for the duration of the original revocation period:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

In addition, the Division may place other reasonable restrictions, requirements, and conditions on the person for the duration of the original revocation period."

SECTION 2. This act becomes effective December 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 671
PROPOSED COMMITTEE SUBSTITUTE S671-CSML-12 [v.4]

7/20/2015 11:59:44 AM

Short Title: DL Restoration/DWI Treatment Court. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO CONDITIONALLY RESTORE THE DRIVERS LICENSE OF PERSONS WHO HAVE SUCCESSFULLY COMPLETED A DRUG TREATMENT OR DWI TREATMENT COURT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19 is amended by adding a new subsection to read:

"(d1) Notwithstanding any other provision of law, when a person's license is revoked for an impaired driving offense and the person is sentenced pursuant to G.S. 20-179, the Division may conditionally restore the person's license after it has been revoked for at least one year if the person (i) provides the Division with a certificate of graduation from a Drug Treatment or Driving While Impaired (DWI) Treatment Court Program established pursuant to Article 62 of Chapter 7A of the General Statutes, (ii) provides the Division with a letter of recommendation from the presiding judge of the Drug Treatment or DWI Treatment Court, and (iii) pays, in addition to any other applicable fees, a fee of twenty-five dollars ($25.00). The twenty-five-dollar ($25.00) fee shall be deposited in the Highway Fund. If the Division restores the person's license, it shall place all of the following restrictions, requirements, and conditions on the person for the duration of the original revocation period:

(1) A restriction that the person may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.02.

(3) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

In addition, the Division may place other reasonable restrictions, requirements, and conditions on the person for the duration of the original revocation period."

SECTION 2. This act becomes effective December 1, 2015.

SENATE BILL 671:
DL Restoration/DWI Treatment Court

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 20, 2015
Introduced by:	Sens. Apodaca, Van Duyn, J. Davis	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S671-CSML-12		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 671 would allow the Division of Motor Vehicles (DMV) to conditionally restore a drivers license revoked for a conviction of Driving While Impaired (DWI) after at least a one-year revocation period if the person has graduated from a Drug Treatment or a DWI Treatment Court Program.

CURRENT LAW: Under G.S. 20-19, a person convicted of impaired driving is subject to a license revocation for a period of a minimum of one year; the revocation period can be permanent, depending on the number of prior DWI convictions.

If a person's license was revoked for DWI based on an alcohol concentration of 0.15 or more, the person may obtain a limited driving privilege or license restoration only with an ignition interlock restriction. G.S. 20-17.8(f); G.S. 20-179.3(g5).

The DMV may conditionally restore a license that has been revoked for at least 24 months. For a first restoration of a license revoked for DWI, restoration is conditioned upon the person's not operating a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving. G.S. 20-19(c3)(1). A second or subsequent restoration is conditioned upon the person's not operating a vehicle with an alcohol concentration greater than 0.00. G.S. 20-19(c3)(2).

A court may authorize a limited driving privilege for employment and other essential purposes. To be eligible for a limited driving privilege after a DWI conviction, the following conditions must be met:

- At the time of the offense, the license was valid or had been expired for less than one year.
- The person had no prior convictions for impaired driving within the preceding seven years.
- A Punishment Level Three, Four, or Five was imposed for the DWI offense.
- The person has had no convictions or unresolved charges for impaired driving since the offense.
- A substance abuse assessment has been obtained.

G.S. 20-179.3

BILL ANALYSIS:

The PCS to Senate Bill 671 would amend G.S. 20-19 to do the following:

- Allow the DMV to conditionally restore a drivers license after a revocation for DWI if the following requirements are met:
  - The drivers license has been revoked for at least one year.
  - The person provides a certificate of graduation from a Drug Treatment or DWI Treatment Court Program.
  - The person provides a letter of recommendation from the treatment court's presiding judge.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- The person pays a $25.00 fee, to be deposited in the Highway Fund.

- Require the DMV to impose the following conditions upon the restoration of the license, in addition to any other reasonable restrictions, requirements, and conditions imposed by the Division, for the duration of the original revocation period:
  - The person must operate only a designated motor vehicle.
  - The designated vehicle must be equipped with an approved ignition interlock system set to prevent driving the vehicle by someone with an alcohol concentration greater than 0.02.
  - The person must personally activate the ignition interlock system before driving the motor vehicle.

EFFECTIVE DATE: This act would become effective December 1, 2015.

Bill Patterson and Jennifer Bedford, counsel to Senate Judiciary II, contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, July 21, 2015

Senator Barringer,
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 **397** **(CS#1)** Clarify Protections/Exploitation of Elders.

Draft Number:	H397-PCS40485-TJ-48
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Warren Daniel will handle HB 397



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Tuesday, July 21, 2015

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

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

SB **671** DL Restoration/DWI Treatment Court.

Draft Number:	S671-PCS35299-ML-12
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 **529** **(CS#1)** NC Drivers License Restoration Act.

Draft Number:	H529-PCS20381-TT-11
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Tom Apodaca will handle SB 671
Senator Jeff Jackson will handle HB 529



SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

NAME	ORGANIZATION	BILL NO.
~~Austin Price~~		
Leanne Winner	NC Council of Sch Attys	SJC
Jonathan Brubaker	Brubaker + Assoc	
Bill Rowe	NC Justice Center	

DATE_____

SENATE JUDICIARY II VISITOR SIGN-IN

NAME	ORGANIZATION	BILL NO.
Dana Fenton	City of Charlotte	
Mike Carpenter	NCHBA	
Steven Webb	NCHBA	
[illegible]	[illegible]	
Rachel Larson	Conf. of District Attorneys	
Jackson Cocuzzi	NSS	
Jack Cozart	NSS	
Erica Nelson	NCHA	
Brian Merwald	NSM	
Cara Tomaso	Gov. Office	

Senate Committee on Judiciary II
Thursday, July 23, 2015 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:00 AM on July 23, 2015 in Room 1124/1224 of the Legislative Building. 17 members were present.

Senator Warren Daniel, Chair, presided. Attending Sergeants-At-Arms: Donna Blake, Steve Wilson, and Jim Hamilton. Attending pages: Maddie Cashion of High Point (Sen. Brock); Travis Thorpe of Raleigh (Sen. Barefoot); Anita Hallberg of Raleigh (Sen. Stein); Joe Rodri of Raleigh (Sen. Newton); and, Alexandria Dublin of Raleigh (Sen. Blue).

HB 134 Soliciting Prostitution/Immunity for Minors. (Representatives Glazier, Davis, Hamilton, McGrady) Rep. Glazier presented the bill. There was no committee discussion or public comment. Sen. J. Davis moved for a favorable report. The motion carried and the bill was reported to the Senate Principal Clerk (SPC) as Favorable. No referrals. Sen. Lee agreed to handle the bill on the floor.

HB 173 Omnibus Criminal Law Bill. (Representatives Stam, Faircloth, Glazier, R. Turner) Rep. Stam presented this bill as a proposed committee substitute bill, upon the motion of Sen. Alexander. There were a couple of questions from the committee regarding registered sex offenders. There wasn't much discussion over that topic, however. There wasn't any public comment given on the bill. Sen. J. Jackson motioned to give the bill a favorable report. The motion carried and the bill was reported to the SPC as Unfavorable as to the Committee Substitute Bill No.1, but Favorable as to the Senate Committee Substitute Bill. No referrals were on the report. Sen. Jeff Jackson agreed to handle the bill on the floor.

HB 174 Landlord/Tenant-Foreclosure & Evict. Changes. (Representatives Bradford, Stam) Rep. Bradford and Stam presented this bill. There was no committee discussion or public comment. Sen. Woodard motioned for a favorable report. The motion carried and the bill was reported to the SPC as Favorable, no referrals. Sen. Wells agreed to handle the bill on the floor.

HB 446 Amend Statutes Governing Bail Bondsmen. (Representatives Jordan, Wray, R. Turner, Schaffer) Rep. Jordan presented this bill. After no committee comment, Sen. Bingham motioned for a favorable report. There was no public comment. The Bingham motion carried and the bill was reported to the SPC as Favorable, no referrals. Sen. Randleman agreed to handle the bill on the floor.

HB 607 Allow Protected Consumer Security Freezes. (Representatives Meyer, Hardister) Rep. Meyer presented this bill to the committee. There was no committee discussion on the bill or public comment. Sen. Cook motioned that the bill before the committee be given a favorable report. The motion carried and the bill was reported to the SPC as Unfavorable as to the Committee Substitute Bill No. 1, but Favorable as to the Senate Committee Substitute Bill. Sen. Barringer agreed to handle the bill on the floor.

HB 584 Use of Position/Letters of Reference. (Representatives Glazier, Faircloth, Daughtry, Harrison) Rep. Glazier presented this bill. There was no committee discussion or public comment. Sen. Bryant motioned for the bill to receive a favorable report. The motion carried and the bill was reported to the SPC as Unfavorable as to Bill, but Favorable as to the Senate Committee Substitute Bill. No referrals. Sen. Daniel agreed to handle the bill on the floor.

HB 774 Restoring Proper Justice Act. (Representative Daughtry) Rep. Daughtry presented the bill and immediately asked the committee to consider a technical amendment changing the reference to the "Department of Corrections" to read "Department of Public Safety." The committee agreed to consider the amendment based on Sen. Woodard's motion. The amendment was adopted and would be ordered engrossed into the bill. Committee discussion: The initial discussion centered on the required role of a physician in the process of executions. Another topic of discussion was whether or not the execution process would be public record, including the details of the drugs used in executions. Sen. Bryant offered an amendment (H774-ATJ-22 v.1) that stipulated that carved out executions from being protected from normal public oversight and the rulemaking process. Rep. Daughtry spoke against the amendment. Andy Brandon of the Department of Corrections was asked the Departments position on the Bryant amendment. Mr. Brandon said the Department already voluntarily made the process public on the DOC website and was opposed to the amendment. The amendment was voted down by the committee. Sen. Bryant also wanted to run an amendment to make the Department disclose the manufacturer of the execution drugs. The bill sponsor spoke against the amendment, as did Mr. Brandon from the Department. After a member expressed the desire for the drug manufacturer identity be public record and after a member asked about monitoring the manufacturer for quality control, Rep. Daughtry assured that the Department does verify the contents of the drugs. The amendment did not pass. During public comment, Mr. David Weiss from the Center for Death Penalty Litigation spoke against the bill. Ballard Everett of Conservatives against the Death Penalty spoke against the bill. Tim Nelson of the NC Association of Broadcasters spoke against the so-called secrecy provisions in the bill. Following public discussion, Sen. Bingham motioned that the bill- as amended- be given a favorable report. The motion carried and voice vote was taken on the bill. A request for division was not granted. The bill passed and the amendment engrossed and reported to the SPC as Unfavorable as to the Committee Substitute Bill No.1, but Favorable as to the Senate Committee Substitute Bill. Sen. Newton agreed to handle the bill on the floor.

SB 205 WC/Truck Drivers' Status. (Senators B. Jackson, Brown)
HB 532 WC/Truck Driver Status. (Representatives McGrady, Jeter, West, Fisher)
Sen. Daniel relinquished the chair to Sen. Randleman for this bill. This bill actually came to the committee as HB 532 in the form of a propose committee substitute. Sen. Cook motioned that the PCS be considered and the committee granted that motion. Sen. B. Jackson presented and committee staff, Bill Patterson, explained the bill. During committee discussion, Sen. Daniel spoke against the bill, saying that it violates a moratorium that interests groups agreed to in order to see if recent WC reforms were working and that the trucking industry should be bound to the 'number of employee' rules other industries are bound to. Committee discussion also hit on what the bill requires regarding who does pay worker's compensation for truck drivers. Sen. Jackson says the bill would use the 'common law' test to truck drivers. Mr. Richard Harper, an attorney dealing in worker compensation and former Industrial Commission member, gave the opinion that the bill would be detrimental to workers. Other committee questions dealt with the idea that a truck driver works under the direction of the one that hires or contracts with him. Sen. Jackson answered every question. There was no public comment on the bill, other than Mr. Harper. Sen. Alexander motioned for a favorable report. The motion carried and a voice vote was taken. Sen. Smith-Ingram requested a division, so the Chair asked the clerk to call the roll and record the Ayes and Nays. The roll being called and the responses tallied, the bill passed 10 Ayes to 7 Nays. The HB 532 was reported to the SPC as Unfavorable as to the Committee Substitute Bill No.1, but Favorable as to the Senate Committee Substitute Bill. Sen. B. Jackson agreed to handle the bill on the Senate floor.

HB 562 Amend Firearm Laws. (Representatives Schaffer, Burr, Cleveland, Faircloth) Sen. Tarte presented and explained the bill. Research Susan Sitze assisted in the explanation. Committee discussion centered on: mental health and doctor interviews, the proposed study on how to do background checks on private gun transactions, the definition of 'rifle', the policy of carrying a weapon the state fairgrounds, and the elimination of the local sheriffs' background checks and relying on the federal NICS system. Sen. Tarte addressed each of these issues using the language of the bill and the underlying statutes. The chair opened up the public comment portion by calling on Kim Yaman of Mom's Demand Action. Ms. Yaman spoke against the bill. The next speaker was Anthony Roulette of the National Rifle Association and spoke in favor of the bill. Becky Ceartas of North Carolinians Against Gun Violence spoke against the bill. Sen. Bingham motioned for a favorable report. The motion carried and the bill was reported to the SPC as Favorable. No referrals. Sen. Tarte agreed to handle the bill on the floor.

The meeting adjourned at 11:40.

Senator Warren Daniel, Chair
Presiding

Andy Perrigo, Committee Clerk

Senator Shirley Randleman
Chair presiding over H532

Senate Committee on Judiciary II
Thursday, July 23, 2015, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 134	Soliciting Prostitution/Immunity for Minors.	Representative Glazier Representative Davis Representative Hamilton Representative McGrady
HB 173	Omnibus Criminal Law Bill.	Representative Stam Representative Faircloth Representative Glazier Representative R. Turner
HB 174	Landlord/Tenant-Foreclosure & Evict. Changes.	Representative Bradford Representative Stam
HB 446	Amend Statutes Governing Bail Bondsmen.	Representative Jordan Representative Wray Representative R. Turner Representative Schaffer
HB 607	Allow Protected Consumer Security Freezes.	Representative Meyer Representative Hardister
HB 584	Use of Position/Letters of Reference.	Representative Glazier Representative Faircloth Representative Daughtry Representative Harrison
HB 774	Restoring Proper Justice Act.	Representative Daughtry
SB 205	WC/Truck Drivers' Status.	Senator B. Jackson Senator Brown
HB 532	WC/Truck Driver Status.	Representative McGrady Representative Jeter Representative West Representative Fisher
HB 562	Amend Firearm Laws.	Representative Schaffer Representative Burr Representative Cleveland Representative Faircloth

Presentations

Other Business

Adjournment

H 2

HOUSE BILL 134
Committee Substitute Favorable 3/11/15

Short Title: Soliciting Prostitution/Immunity for Minors. (Public)

Sponsors:

Referred to:

March 4, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MINOR WHO IS SOLICITING AS A PROSTITUTE IS IMMUNE FROM PROSECUTION FOR THE OFFENSE OF SOLICITATION OF PROSTITUTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-205.1 reads as rewritten:

"**§ 14-205.1. Solicitation of prostitution.**

(a) Except as otherwise provided in this section, any person who solicits another for the purpose of prostitution is guilty of a Class 1 misdemeanor for a first offense and a Class H felony for a second or subsequent offense. Any person 18 years of age or older who willfully solicits a minor for the purpose of prostitution is guilty of a Class G felony. Any person who willfully solicits a person who is severely or profoundly mentally disabled for the purpose of prostitution is guilty of a Class E felony. Punishment under this section may include participation in a program devised for the education and prevention of sexual exploitation (i.e. "John School"), where available. A person who violates this subsection shall not be eligible for a disposition of prayer for judgment continued under any circumstances.

(b) Immunity From Prosecution for Minors. – Notwithstanding any other provision of this section, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is a minor who is soliciting as a prostitute, that person shall be immune from prosecution under this section and instead shall be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19 of Chapter 7B of the General Statutes. Pursuant to the provisions of G.S. 7B-301, a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 and G.S. 14-43.13 to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 and G.S. 7B-302."

SECTION 2. This act is effective when it becomes law and applies to violations occurring on or after that date.

HOUSE BILL 134:
Soliciting Prostitution/Immunity for Minors

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 22, 2015
Introduced by:	Reps. Glazier, Davis, Hamilton, McGrady	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 134 would provide that a minor who is soliciting as a prostitute is immune from prosecution for the offense of solicitation of prostitution.

CURRENT LAW: A minor charged with prostitution under G.S. 14-204 is exempt from prosecution and is treated as an undisciplined juvenile.

BILL ANALYSIS: House Bill 134 would exempt minors from prosecution for solicitation of prostitution under G.S. 14-205.1 in the same manner that they are currently exempt from the charge of prostitution.

EFFECTIVE DATE: This act is effective when it becomes law and applies to violations occurring on or after that date.

Susan Sitze, counsel to House Judiciary II, substantially contributed to this summary.

HOUSE BILL 173
Committee Substitute Favorable 3/17/15
Third Edition Engrossed 3/24/15

Short Title: Omnibus Criminal Law Bill. (Public)

Sponsors:

Referred to:

March 10, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS CRIMINAL LAWS FOR THE PURPOSE OF IMPROVING TRIAL COURT EFFICIENCY.

The General Assembly of North Carolina enacts:

PART I. EXTEND THE PERIOD OF TIME TO AVOID THE COURT COSTS FOR FAILURE TO PAY

SECTION 1.(a) G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected. No costs may be assessed when a case is dismissed. Only upon entry of a written order, supported by findings of fact and conclusions of law, determining that there is just cause, the court may (i) waive costs assessed under this section or (ii) waive or reduce costs assessed under subdivision (7), (8), (8a), (11), (12), or (13) of this section.

...

(6) For support of the General Court of Justice, the sum of two hundred dollars ($200.00) is payable by a defendant who fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, the person either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146, and the sum of fifty dollars ($50.00) is payable by a defendant who fails to pay a fine, penalty, or costs within ~~20 days~~ 40 days of the date specified in the court's judgment. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive the fee for failure to appear. These fees shall be remitted to the State Treasurer.

...."

SECTION 1.(b) G.S. 20-24.2(a) reads as rewritten:

"(a) The court must report to the Division the name of any person charged with a motor vehicle offense under this Chapter who:

(1) Fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, he either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146; or

(2) Fails to pay a fine, penalty, or costs within ~~20 days~~ 40 days of the date specified in the court's judgment."

SECTION 1.(c) This section becomes effective July 1, 2015, and applies to fees assessed on or after that date.

PART II. DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO REPORT ON CERTAIN ORDERS OF REMAND FROM SUPERIOR COURT

SECTION 2. The Administrative Office of the Courts, in consultation with the Conference of Clerks of Superior Court, shall make any necessary modifications to its information systems to maintain records of all cases in which the defendant in a criminal case withdraws an appeal for trial de novo in superior court and the superior court judge has signed an order remanding the case to the district court and shall report on those remanded cases to the Chairs of the Senate Appropriations Committee on Justice and Public Safety, the Chairs of the House Appropriations Committee on Justice and Public Safety, and the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by February 1 of each year. The report shall (i) include the total number of remanded cases and also the total number of those cases for which the court has remitted costs and (ii) aggregate those totals by the district in which they were granted and by the name of each judge ordering remand. The Administrative Office of the Courts may obtain any information that may be needed from individual clerks of superior court in order to make the modifications necessary to maintain the records required under this section.

PART III. REVISE THE LAW AUTHORIZING A CHIEF DISTRICT COURT JUDGE TO DESIGNATE CERTAIN MAGISTRATES TO APPOINT COUNSEL/AUTHORIZE MAGISTRATES TO ACCEPT GUILTY PLEAS AND ENTER JUDGMENT FOR OFFENSE OF INTOXICATED AND DISRUPTIVE IN PUBLIC

SECTION 3.(a) G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

...

(11) Designating certain magistrates to appoint counsel and accept waivers of counsel pursuant to Article 36 of this Chapter. This designation ~~may only be given to magistrates who are duly licensed attorneys and~~ does not give any magistrate the authority ~~to: (i)~~ to appoint counsel or accept waivers of counsel for potentially capital offenses, as defined by rules adopted by the Office of Indigent Defense ~~Services; or (ii) accept a waiver of counsel.~~Services.

...."

SECTION 3.(b) G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

...

(15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel and acceptance of waivers of counsel pursuant to Article 36 of this Chapter.

...."

SECTION 3.(c) G.S. 14-444 reads as rewritten:

"**§ 14-444. Intoxicated and disruptive in public.**

(a) It shall be unlawful for any person in a public place to be intoxicated and disruptive in any of the following ways:

(1) Blocking or otherwise interfering with traffic on a highway or public vehicular area, or

(2) Blocking or lying across or otherwise preventing or interfering with access to or passage across a sidewalk or entrance to a building, or

(3) Grabbing, shoving, pushing or fighting others or challenging others to fight, or

(4) Cursing or shouting at or otherwise rudely insulting others, or

(5) Begging for money or other property.

(b) Any person who violates this section shall be guilty of a Class 3 misdemeanor.~~Notwithstanding the provisions of G.S. 7A-273(1), a magistrate is not empowered to accept a guilty plea and enter judgment for this offense.~~"

PART IV. MODIFY WHEN A NEW SENTENCING HEARING MUST BE HELD IN DISTRICT COURT ON AN IMPLIED CONSENT CONVICTION FOR WHICH THE APPEAL TO SUPERIOR COURT HAS BEEN WITHDRAWN

SECTION 4.(a) G.S. 20-38.7(c) reads as rewritten:

"(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, ~~the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When~~ when an appeal is withdrawn or a case is remanded back to district court, the sentence imposed by the district court is vacated and the district court shall hold ~~a~~ new sentencing hearing and shall consider any new ~~convictions.~~convictions unless one of the following conditions is met:

(1) If the appeal is withdrawn pursuant to G.S. 15A-1431(c), the prosecutor has certified to the clerk, in writing, that the prosecutor has no new sentencing factors to offer the court.

(2) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1431(g), the prosecutor has certified to the clerk, in writing, that the prosecutor has no new sentencing factors to offer the court.

(3) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1341(h), the prosecutor has certified to the clerk, in writing, that the prosecutor consents to the withdrawal and remand and has no new sentencing factors to offer the court."

SECTION 4.(b) This section becomes effective October 1, 2015, and applies to appeals filed on or after that date.

PART V. CONFORM STATE LAW WITH THE UNITED STATES SUPREME COURT DECISION IN HALL V. FLORIDA

SECTION 5. G.S. 15A-2005 reads as rewritten:

"**§ 15A-2005. ~~Mentally retarded defendants;~~ Intellectual disability; death sentence prohibited.**

(a) (1) The following definitions apply in this section:

a. ~~Mentally retarded.~~ Intellectual disability. – A condition marked by ~~Significantly~~ significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, both of which were manifested before the age of 18.

b. Significant limitations in adaptive functioning. – Significant limitations in two or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure skills and work skills.

c. Significantly subaverage general intellectual functioning. – An intelligence quotient of 70 or below.

(2) The defendant has the burden of proving significantly subaverage general intellectual functioning, significant limitations in adaptive functioning, and that ~~mental retardation~~ intellectual disability was manifested before the age of 18. An intelligence quotient of 70 or below on an individually administered, scientifically recognized standardized intelligence quotient test administered by a licensed psychiatrist or psychologist is evidence of significantly subaverage general intellectual functioning; however, it is not sufficient, without evidence of significant limitations in adaptive functioning and without evidence of manifestation before the age of 18, to establish that the defendant ~~is mentally retarded.~~has an intellectual disability. An intelligence quotient of 70, as described in this subdivision, is approximate and a higher score resulting from the application of the standard error of measurement to an intelligence quotient of 70 shall not preclude the defendant from being able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits. Accepted clinical standards for diagnosing significant limitations in intellectual functioning and adaptive behavior shall be applied in the determination of intellectual disability.

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

(c) Upon motion of the defendant, supported by appropriate affidavits, the court may order a pretrial hearing to determine if the defendant ~~is mentally retarded.~~ has an intellectual disability. The court shall order such a hearing with the consent of the State. The defendant has the burden of production and persuasion to demonstrate ~~mental retardation~~ intellectual disability by clear and convincing evidence. If the court determines that the defendant ~~to be mentally retarded,~~ has an intellectual disability, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

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

(e) If the court does not find that the defendant ~~to be mentally retarded~~ has an intellectual disability in the pretrial proceeding, upon the introduction of evidence ~~of the defendant's mental retardation~~ raising the issue of intellectual disability during the sentencing hearing, the court shall submit a special issue to the jury as to whether the defendant ~~is mentally retarded~~ has an intellectual disability as defined in this section. This special issue shall be considered and answered by the jury prior to the consideration of aggravating or mitigating factors and the determination of sentence. If the jury determines that the defendant ~~to be mentally retarded,~~ has an intellectual disability, the court shall declare the case noncapital and the defendant shall be sentenced to life imprisonment.

(f) The defendant has the burden of production and persuasion to demonstrate ~~mental retardation~~ intellectual disability to the jury by a preponderance of the evidence.

(g) If the jury determines that the defendant ~~is not mentally retarded~~ does not have an intellectual disability as defined by this section, the jury may consider any evidence of ~~mental retardation~~ intellectual disability presented during the sentencing hearing when determining aggravating or mitigating factors and the defendant's sentence.

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

PART VI. PROVIDE THAT THE REQUIREMENT FOR A PERSON CONVICTED OF SEXUAL BATTERY TO REGISTER AS A SEX OFFENDER IS DISCRETIONARY WITH THE COURT

SECTION 6.(a) G.S. 14-27.5A is amended by adding a new subsection to read:

"(c) When a person is convicted of a violation of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court finds that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register."

SECTION 6.(b) G.S. 14-208.6(4) reads as rewritten:

"(4) "Reportable conviction" means:

...

f. A final conviction for a violation of G.S. 14-27.5A, only if the court sentencing the individual issues an order pursuant to G.S. 14-27.5A(c) requiring the individual to register."

SECTION 6.(c) G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), ~~G.S. 14-27.5A (sexual battery),~~ former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled person), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 6.(d) G.S. 50-13.1(a1) reads as rewritten:

"(a1) Notwithstanding any other provision of law, any person instituting an action or proceeding for custody ex parte who has been convicted of a sexually violent offense as defined in G.S. 14-208.6(5) or who has been convicted of an offense under G.S. 14-27.5A and ordered to register under Article 27A of Chapter 14 of the General Statutes shall disclose the conviction in the pleadings."

SECTION 6.(e) This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

PART VII. AMENDMENTS TO CERTAIN LAWS REGARDING TRANSPORTATION OF AND CUSTODY ORDERS FOR PERSONS BEING INVOLUNTARILY COMMITTED

SECTION 7.(a) G.S. 122C-251(d) reads as rewritten:

"(d) ~~In~~ To the extent feasible, 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."

SECTION 7.(b) Part 1 of Article 5 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"**§ 122C-210.3. Electronic and facsimile transmission of custody orders.**

A custody order entered by the clerk or magistrate pursuant to this Chapter may be delivered to the law enforcement officer by electronic or facsimile transmission."

PART VIII. EXPUNCTION INFORMATION MAY BE TRANSMITTED ELECTRONICALLY OR BY FACSIMILE

SECTION 8. G.S. 15A-150 reads as rewritten:

"**§ 15A-150. Notification requirements.**

(a) Notification to AOC. – The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court, file with the Administrative Office of the Courts the names of the following:

(1) Persons granted an expunction under this Article.
(2) Persons granted a conditional discharge under G.S. 14-50.29.
(3) Persons granted a conditional discharge under G.S. 90-96 or G.S. 90-113.14.
(4) Repealed by Session Laws 2010-174, s. 7, effective October 1, 2010.
(5) Persons granted a conditional discharge under G.S. 14-204.

(b) Notification to Other State and Local Agencies. – ~~The~~ Unless otherwise instructed by the Administrative Office of the Courts pursuant to an agreement entered into under subsection (e) of this section for the electronic or facsimile transmission of information, the clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to all of the agencies listed in this subsection. An agency receiving an order under this subsection shall expunge from its records all entries made as a result of the charge or conviction ordered expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:

(1) The sheriff, chief of police, or other arresting agency.
(2) When applicable, the Division of Motor Vehicles and the Division of Adult Correction of the Department of Public Safety.
(3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.
(4) The Department of Public Safety.

(c) Notification to FBI. – The Department of Public Safety shall forward the order received under this section to the Federal Bureau of Investigation.

(d) Notification to Private Entities. – A State agency that receives a certified copy of an order under this section shall notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency criminal record database to delete the record in question. The private entity shall notify any other entity to which it subsequently provides in a bulk extract data from the agency criminal database to delete the record in question from its database.

(e) The Director of the Administrative Office of the Courts may enter into an agreement with any of the State agencies listed in subsection (b) of this section for electronic or facsimile transmission of any information that must be provided under this section."

PART IX. DOUBLING OF BOND IS PERMISSIVE RATHER THAN MANDATORY FOR CERTAIN DEFENDANTS

SECTION 9.(a) G.S. 15A-534(d3) reads as rewritten:

"(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~~ may 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)."

SECTION 9.(b) This section becomes effective July 1, 2015, and applies to conditions of pretrial release imposed on or after that date.

PART X. DISPOSITION OF CERTAIN PHYSICAL EVIDENCE THAT MAY CONTAIN BIOLOGICAL EVIDENCE

SECTION 10.(a) G.S. 15A-268(a5) reads as rewritten:

"(a5) The duty to preserve may not be waived knowingly and voluntarily by a defendant, without a court ~~proceeding.~~ hearing, which may include any other hearing associated with the disposition of the case."

SECTION 10.(b) G.S. 15A-268(a6) reads as rewritten:

"(a6) The evidence described by subsection (a1) of this section shall be preserved for the following period:

(1) For conviction resulting in a sentence of death, until execution.

(2) For conviction resulting in a sentence of life without parole, until the death of the convicted person.

(3) For conviction of any homicide, sex offense, assault, kidnapping, burglary, robbery, arson or burning, for which a Class B1-E felony punishment is imposed, the evidence shall be preserved during the period of incarceration and mandatory supervised release, including sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for the earlier of three years from the date of conviction or until released.

(4) Biological evidence collected as part of a criminal investigation of any homicide or rape, in which no charges are filed, shall be preserved for the period of time that the crime remains unsolved.

(5) A custodial agency in custody of biological evidence unrelated to a criminal investigation or prosecution referenced by subdivision (1), (2), (3), or (4) of this subsection may dispose of the evidence in accordance with the rules of the agency.

(6) Notwithstanding the retention requirements in subdivisions (1) through (5) of this subsection, at any time after collection and prior to or at the time of

disposition of the case at the trial court level, if the evidence collected as part of the criminal investigation is of a size, bulk, or physical character as to render retention impracticable or should be returned to its rightful owner, the State may petition the court for retention of samples of the biological evidence in lieu of the actual physical evidence. After giving any defendant charged in connection with the case an opportunity to be heard, the court may order that the collecting agency take reasonable measures to remove or preserve for retention portions of evidence likely to contain biological evidence related to the offense through cuttings, swabs, or other means consistent with Crime Laboratory minimum guidelines in a quantity sufficient to permit DNA testing before returning or disposing of the evidence."

SECTION 10.(c) This section becomes effective October 1, 2015.

PART XI. AMEND THE RULES OF EVIDENCE TO ALLOW A CERTIFICATION BY THE CUSTODIAN OF A BUSINESS RECORD TO SHOW THE AUTHENTICITY OF THE RECORD IN LIEU OF OFFERING THE CUSTODIAN'S IN-PERSON TESTIMONY

SECTION 11.(a) Rule 803(6) of the Rules of Evidence, Chapter 8C of the General Statutes, reads as rewritten:

"**Rule 803. Hearsay exceptions; availability of declarant immaterial.**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

...

(6) Records of Regularly Conducted Activity. – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if (i) kept in the course of a regularly conducted business ~~activity,~~ activity and ~~if~~ (ii) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified ~~witness,~~ witness, or by affidavit or by document under seal under Rule 902 of the Rules of Evidence made by the custodian or witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. Authentication of evidence by affidavit shall be confined to the records of non-parties and the proponent of that evidence shall give advance notice to all other parties of intent to offer the evidence with authentication by affidavit. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit."

SECTION 11.(b) This section becomes effective October 1, 2015.

PART XII. CLARIFY ENHANCED PENALTY FOR VIOLATION OF PROTECTIVE ORDER

SECTION 12. G.S. 50B-4.1(d) reads as rewritten:

"(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to ~~a person who is charged with or convicted~~ convictions of a Class A or B1

felony or ~~to a person charged under~~ convictions of the offenses set forth in subsection (f) or subsection (g) of this section."

PART XIII. ALLOW EXTENSION OF ORDER ENTERED IN STREET GANG NUISANCE ABATEMENT CASE AFTER COURT HEARING

SECTION 13. G.S. 14-50.43(d) reads as rewritten:

"(d) An order entered under this section shall expire one year after ~~entry; however, the~~entry unless extended by the court for good cause established by the plaintiff after a hearing. The order may be modified, rescinded, or vacated at any time prior to its expiration date upon the motion of any party if it appears to the court that one or more of the defendants is no longer engaging in criminal street gang activities."

PART XIV. AMEND CERTIFICATE OF RELIEF

SECTION 14.(a) G.S. 15A-173.2(a) reads as rewritten:

"(a) An individual who is convicted of ~~no more than two Class G, H, or I felonies or misdemeanors in one session of court, and who has no other convictions for a felony or misdemeanor other than a traffic violation,~~ criminal offenses no higher than a Class G felony, may petition the court where the individual was convicted of his or her most serious offense for a Certificate of Relief relieving collateral consequences as permitted by this Article. Except as otherwise provided in this subsection, the petition shall be heard by the senior resident superior court judge if the convictions were in superior court, or the chief district court judge if the convictions were in district court. The senior resident superior court judge and chief district court judge in each district may delegate their authority to hold hearings and issue, modify, or revoke Certificates of Relief to judges, clerks, or magistrates in that district."

SECTION 14.(b) This section becomes effective October 1, 2015, and applies to petitions filed on or after that date.

PART XV. EFFECTIVE DATE

SECTION 15. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 1

HOUSE BILL 584

Short Title:	Use of Position/Letters of Reference.	(Public)
Sponsors:	Representatives Glazier, Faircloth, Daughtry, and Harrison (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Ethics.	

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A LEGISLATOR OR PUBLIC SERVANT MAY REFERENCE THEIR PUBLIC POSITION IN A LETTER OF REFERENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 138A-31(b) reads as rewritten:

"(b) A covered person shall not mention or authorize another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to any of the following:

(1) Political advertising.

(2) News stories and articles.

(3) The inclusion of a covered person's public position in a directory or a biographical listing.

(4) The inclusion of a covered person's public position in an agenda or other document related to a meeting, conference, or similar event when the disclosure could reasonably be considered material by an individual attending the meeting, conference, or similar event.

(5) The inclusion of a covered person's public position in a charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3).

(6) The disclosure of a covered person's position to an existing or prospective customer, supplier, or client when the disclosure could reasonably be considered material by the customer, supplier, or client.

(7) A letter of character reference for any of the following:

a. A student seeking admittance to a school or institution of higher education.

b. An individual seeking an academic scholarship.

c. An individual seeking leniency upon sentencing by the courts, or other matters related to probation or parole.

(8) A response to the inquiry of a potential employer as to the qualifications and character of an individual seeking employment."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Fiscal Note

BILL NUMBER: House Bill 173 (Second Edition)

SHORT TITLE: Omnibus Criminal Law Bill.

SPONSOR(S): Representatives Stam, Faircloth, Glazier, and R. Turner

FISCAL IMPACT
($ in thousands)

☑ Yes ☐ No ☐ No Estimate Available

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
General Fund Revenues:					
General Fund Expenditures:	$0.0	$0.0	$0.0	$0.0	$0.0
State Positions:					
NET STATE IMPACT	**($0.0)**	**($0.0)**	**($0.0)**	**($0.0)**	**($0.0)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
The Administrative Office of the Courts

EFFECTIVE DATE: Section 1 is July 1, 2015. Sections 4, 9, 10, 11, and 14 are October 1, 2015. Section 6 is December 1, 2015.

TECHNICAL CONSIDERATIONS:
Yes - See Technical Considerations Section

FISCAL SUMMARY:

Fiscal Research Division estimates the first-year costs of House Bill 173 to be $23,064. Sections 1 and 2 will require the Administrative Office of the Courts (AOC) to modify existing computer systems. Because AOC's Technology Services Division staff is fully engaged with current projects, any additional projects will require additional resources through contracted services. The changes in Section 1 and 2 would require one-time additional funds of $23,064 for AOC in the first year.

BILL SUMMARY:

Section 1 amends the grace period for two offenses before certain penalties would apply. Section 1.(a) amends G.S. 7A-304 to allow defendants 40 days rather than 20 days before being charged a $50 late fee in a case where a defendant fails to appear to answer the charge as scheduled. Section 1.(b) amends G.S. 20-24.2 to give a person charged with a motor vehicle offense 40 days rather than 20 days before his or her name is reported to the Division of Motor Vehicles for failure to pay a fine, penalty, or court cost. This section applies to fees assessed on or after July 1, 2015.

Section 2 requires the Administrative Office of the Courts (AOC) to consult with the Conference of Clerks of Superior Court (Conference of Clerks) and make any necessary modifications to its information systems in order to maintain records of all cases in which the defendant in a criminal case withdraws an appeal for trial de novo in superior court and the superior court judge has signed an order remanding the case to the district court. Section 2 requires AOC to report on remanded cases.

Section 3 addresses additional powers of magistrates. Section 3.(a) amends the powers of chief district court judges in G.S. 7A-146 to allow designation of certain magistrates to accept waivers of counsel in addition to appointing counsel and removes the restriction that this designation only fall to magistrates who are duly licensed attorneys. Section 3.(a) clarifies that this authority does not apply for potentially capital offenses. Section 3.(c) removes a restriction in G.S. 14-444 that prohibits a magistrate from accepting a guilty plea and entering judgment for the office of intoxicated and disruptive in public.

Section 4 amends existing G.S. 20-38.7 in subsection (c) to require that if certain appeals to superior court for implied-consent offenses are withdrawn or a case is remanded back to the district court, the sentence imposed by the district court is vacated and the district court shall hold a new sentencing hearing and consider any new convictions unless certain conditions are met. New subdivisions (1) through (3) are created that outline these conditions. This section becomes effective October 1, 2015, and applies to appeals filed on or after that date.

Section 5 amends G.S. 15A-2005 to conform State law with the United States Supreme Court decision in *Hall v. Florida* replace the term "mentally retarded" with "intellectual disability" and to provide that an intelligence quotient of 70 is approximate and a higher score resulting from the application of the standard error of measure to a quotient of 70 does not preclude the defendant from being able to present additional evidence of intellectual disability.

Section 6 amends G.S. 14-27.5A to provide that when a person is convicted of sexual battery under the statute, the sentencing court must consider whether the person is a danger to the community and whether requiring the person to register as a sex offender would further the purposes of Article 27A, Sex Offender and Public Protection Registration Programs. The section further addresses the registration process. Section 6 also amends G.S. 14-208.6(5) to remove sexual battery from those violations that meet the definition of sexually violent offense. This section applies to sentences imposed on or after December 1, 2015.

Section 7 amends G.S. 122C-251 to require a city or county to remove a requirement that transportation of a respondent in involuntary commitment proceedings be by a driver or attendant who is the same sex as the respondent, and allows the city or county to provide the service to the extent feasible. Section 7 further enacts new G.S. 122C-295 to allow a custody order entered by the clerk or magistrate under the Chapter to be delivered to the law enforcement officer by electronic or facsimile transmission.

Section 8 amends G.S. 15A-150 to allow AOC to notify State and local authorities about expunction of records by electronic and facsimile transmission and allows AOC to enter into an agreement with State agencies to notify this way afterwards.

Section 9 would amend the conditions of pretrial release statute, G.S. 15A-534. Section 9(a) would change the current requirement that bond be doubled for anyone charged with a new crime while on pretrial release for pending charge from a mandatory requirement to a permissive authorization. Section 9(b) would add a new provision prohibiting the requirement of an appearance bond for anyone charged with only a Class 3 misdemeanor for which judgment for that person could consist

of only a fine. This section becomes effective July 1, 2015, and applies to conditions of pretrial release imposed on or after that date.

Section 10 would amend the provisions regarding retention of biological evidence to require a hearing before a defendant may waive the duty to preserve evidence and to provide a procedure to allow cumbersome evidence to be disposed of or returned to a rightful owner with only the preservation of certain portions likely to contain biological evidence. This section becomes effective October 1, 2015.

Section 11 amends Rule 803(6) of the Rules of Evidence found in G.S. Chapter 8C to allow a custodian of business records to certify the authenticity of such records in lieu of requiring an in-person testimony by the custodian under certain restrictions. This section is effective October 1, 2015.

Section 12 amends G.S. 50B-4.1(d) to provide that the provisions of this subsection regarding the enhanced penalties for violation of protective orders do not apply to convictions of a Class A or B1 felony or conviction of the offenses as found in G.S. 50B-4.1(f) or (g)

Section 13 amends G.S. 14-50.43(d) to provide that orders entered concerning street gang nuisance abatement cases will expire one year after entry unless extended by the court for good cause as established by the plaintiff after a hearing.

Section 14 amends G.S. 15A-173.2(a) to provide that an individual convicted of criminal offenses no higher than a Class G felony can petition the court where the individual was convicted of his or her most serious offence for a certificate of relief, relieving the specified collateral consequences This section is effective October 1, 2015 and applies to certificates issued on or after that date.

ASSUMPTIONS AND METHODOLOGY:
Sections 1 and 2 will require corresponding changes to certain fields and screens in AOC's computer criminal indexing systems ACIS and CCIS-CC. Section 1 changes will require additional modifications to the payNCticket application and the standard Criminal Bill of Costs form. Because AOC's Technology Services Division staff is fully engaged with existing projects, any additional projects will require additional resources through contracted services. The changes in Section 1 will require $18,104 in additional funds for AOC. The changes in Section 2 will require $4,960 in additional funds for AOC. The changes in Section 2 may also require additional deputy clerk personnel necessary to record additional data in the index, but that cost cannot be estimated at the current time.

Section 3 is not expected to have any fiscal impact on the State.

Section 4 may require a programming adjustment to AOC's criminal computer indexes to account for the new set of variations. Fiscal Research Division does not estimate that these costs will be significant.

Sections 5 through 14 are not expected to have any fiscal impact on the State.

SOURCES OF DATA: Administrative Office of the Court.

TECHNICAL CONSIDERATIONS:
Section 1 becomes effective July 1, 2015. Because AOC will need to make changes to two major court technology systems, the agency may need a later effective date in order to have time to implement changes.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: William Childs

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: March 18, 2015



Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 173:
Omnibus Criminal Law Bill

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 22, 2015
Introduced by:	Reps. Stam, Faircloth, Glazier, R. Turner	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to Third Edition H173-CSTJ-49		

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 173 would amend various criminal laws.

BILL ANALYSIS:

Section 1 of the PCS would extend from 20 days to 40 days the period of time allowed beyond the court-established due date to pay a fine, penalty, or costs. This section becomes effective December 1, 2015, except that a failure to pay after 20 days occurring before the effective date of this act is not abated or affected by this act and the statutes that would be applicable but for this act remain applicable to that failure to pay.

Section 2 would require the Administrative Office of the Courts (AOC) to maintain records of all criminal cases when a defendant in a criminal case withdraws an appeal for trial de novo in superior court and the superior court judge has signed an order remanding the case to the district court. AOC would be required to report that information, including the number of cases for which costs were remitted by district and judge, to the Chairs of the House and Senate Appropriations Committees on Justice and Public Safety, and the Joint Legislative Oversight Committee on Justice and Public Safety by February 1 of each year.

Section 3 would allow a chief district court judge to authorize any magistrate to appoint counsel and accept waivers of counsel for non-capital offenses. *(Currently, only magistrates who are attorneys may be designated to appoint counsel and no magistrates may accept waivers of counsel.)*

This section would also remove the restriction that prohibits magistrates from accepting guilty pleas and entering judgment for offenses of Intoxicated and Disruptive in Public pursuant to G.S. 14-444.

Section 4 would create a new G.S. 15A-1347(c) to provide that if a defendant appeals an activation of a sentence based on a probation violation, probation supervision will continue under the same conditions until the specified time.

Section 5 would conform State law to the U.S. Supreme Court decisions in *Hall v. Florida*. And *Brumfield v. Cain.* Specifically, this section would change the term "mental retardation" to "intellectual disability" and would clarify that an IQ of 70 is approximate and a higher score resulting from the application of the standard error of measurement does not prevent the defendant from being able to present additional evidence of intellectual disability.

Section 6 would remove sexual battery under G.S. 14-27.5A, a Class A1 misdemeanor, from the list of offenses that automatically require registration as a sex offender under Article 27A of Chapter 14, and instead require the sentencing court to consider whether the person is a danger to the community and should be required to register as a sex offender. This section would become effective December 1, 2015, and applies to offenses committed on or after that date.

Section 7 of the PCS amends G.S. 7B-323(f) to make a conforming change to a provision in the Juvenile Code relating to judicial review.

Section 8 would authorize AOC to send expunction orders by electronic or facsimile transmission to the State and local agencies required by statute to receive notice.

Section 9 would amend the conditions of pretrial release statute, G.S. 15A-534. Section 9(a) would change the current requirement that bond be doubled for anyone charged with a new crime while on pretrial release for pending charge from a mandatory requirement to a permissive authorization. This section becomes effective October 1, 2015, and applies to conditions of pretrial release imposed on or after that date.

Section 10 of the PCS for HB173 would amend the provisions regarding retention of biological evidence to require a hearing before a defendant may waive the duty to preserve evidence and to provide a procedure to allow cumbersome evidence to be disposed of or returned to a rightful owner with only the preservation of certain portions likely to contain biological evidence. This section would become effective October 1, 2015.

Section 11 would amend the rules of evidence to allow a certification by the custodian of a business record to show the authenticity of the record in lieu of offering the custodian's in-person testimony. This section would become effective October 1, 2015.

Section 12 would make clarifying changes to the Certificate of Relief statute concerning who may petition and where the petition should be made. This section would become effective October 1, 2015, and applies to petitions filed on or after that date.

EFFECTIVE DATE: Except as otherwise noted, this act is effective when it becomes law.

HOUSE BILL 174
Committee Substitute Favorable 4/1/15
Third Edition Engrossed 4/1/15

Short Title: Landlord/Tenant-Foreclosure & Evict. Changes. (Public)

Sponsors:

Referred to:

March 10, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND AND ENHANCE CERTAIN NOTICE REQUIREMENTS AND PROTECTIONS FOR TENANTS OF REAL PROPERTIES IN FORECLOSURE AND TO ALLOW FOR PURCHASERS OF REAL PROPERTY UNDER OPTION CONTRACTS TO PURSUE MONETARY DAMAGES SEPARATELY FROM SUMMARY EJECTMENT PROCEEDINGS AND OTHER AMENDMENTS TO THE HOMEBUYER PROTECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 45-21.17 reads as rewritten:

"**§ 45-21.17. Posting and publishing notice of sale of real property.**

...

(4) The notice of sale shall be mailed by first-class mail at least 20 days prior to the date of sale to each party entitled to notice of the hearing provided by G.S. 45-21.16 whose address is known to the trustee or mortgagee and in addition shall also be mailed by first-class mail to any party desiring a copy of the notice of sale who has complied with G.S. 45-21.17A. If the property is residential and contains less than 15 rental units, including single-family residential real property, the notice of sale shall also be mailed to any person who occupies the property pursuant to a residential rental agreement by name, if known, at the address of the property to be sold. If the name of the person who occupies the property is not known, the notice shall be sent to "occupant" at the address of the property to be sold. Notice of the hearing required by G.S. 45-21.16 shall be sufficient to satisfy the requirement of notice under this section provided such notice contains the information required by G.S. 45-21.16A.

...."

SECTION 1.(b) G.S. 42-45.2 reads as rewritten:

"**§ 42-45.2. Early termination of rental agreement by military and tenants residing in certain foreclosed property.**

Any tenant who resides in residential real property containing less than 15 rental units that is being sold in a foreclosure proceeding under Article 2A of Chapter 45 of the General Statutes may terminate the rental agreement for the dwelling unit after receiving notice pursuant to G.S. 45-21.17(4) by providing the landlord with a written notice of termination to be effective on a date stated in the notice of termination that is at least 10 ~~days~~ days, but no more than 90 days, after the sale date ~~of~~ contained in the notice of ~~sale.~~ sale, provided that the mortgagor has

not cured the default at the time the tenant provides the notice of termination. Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due only to the early termination of the tenancy."

SECTION 1.(c) G.S. 45-21.16A(b) reads as rewritten:

"**§ 45-21.16A. Contents of notice of sale.**

...

(b) In addition to the requirements contained in subsection (a) of this section, the notice of sale of residential real property with less than 15 rental units shall also state all of the following:

(1) That an order for possession of the property may be issued pursuant to G.S. 45-21.29 in favor of the purchaser and against the party or parties in possession by the clerk of superior court of the county in which the property is sold.

(2) Any person who occupies the property pursuant to a rental agreement entered into or renewed on or after October 1, 2007, may, after receiving the notice of sale, terminate the rental agreement ~~upon 10 days'~~ by providing written notice of termination to the ~~landlord~~ landlord, to be effective on a date stated in the notice that is at least 10 days, but no more than 90 days, after the sale date contained in the notice of sale, provided that the mortgagor has not cured the default at the time the tenant provides the notice of termination. The notice shall also state that upon termination of a rental agreement, the tenant is liable for rent due under the rental agreement prorated to the effective date of the termination."

SECTION 2.(a) G.S. 45-21.29(k) reads as rewritten:

"**§ 45-21.29. Orders for possession.**

...

(k) Orders for possession of real property sold pursuant to this Article, in favor of the purchaser and against any party or parties in possession at the time of application therefor, may be issued by the clerk of the superior court of the county in which the property is sold if all of the following apply:

(1) The property has been sold in the exercise of the power of sale contained in any mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, or a power of sale authorized by any other statutory provisions.

(2) Repealed by Session Laws 1993, c. 305, s. 18.

(2a) The provisions of this Article have been complied with.

(3) The sale has been consummated, and the purchase price has been paid.

(4) The purchaser has acquired title to and is entitled to possession of the real property sold.

(5) Ten days' notice has been given to the party or parties who remain in possession at the time application is made, or, in the case of residential property containing 15 or more rental units, 30 days' notice has been given to the party or parties who remain in possession at the time the application is made.

(5a) If the property is single-family residential and occupied pursuant to a lease, written or oral, the provisions of G.S. 45-21.33A have been satisfied. Any occupant subject to the provisions of G.S. 45-21.33A must additionally receive notice as required by subdivision (5) of this subsection.

(6) Application is made by petition to the clerk by the mortgagee, the trustee, the purchaser of the property, or any authorized representative of the mortgagee, trustee, or purchaser of the property."

SECTION 2.(b) Part 2 of Article 2A of Chapter 45 of the General Statutes is amended by adding a new section to read:

"**§ 45-21.33A. Effect of foreclosure on preexisting tenancy.**

(a) For the purposes of this section, "purchaser" means any purchaser or successor in interest who has acquired title to single-family residential real property pursuant to this Article.

(b) Unless a purchaser will occupy the premises as a primary residence, the purchaser shall assume title subject to the rights of any tenant to occupy the premises until the end of the remaining term of the lease or one calendar year from the date the purchaser acquires title, whichever is shorter. In no event shall the purchaser be required to renew the existing lease.

(c) Subsection (b) of this section shall apply only to a lease that meets all of the following criteria:

(1) The tenant is not the debtor under the security instrument foreclosed or the child, spouse, or parent of the debtor.

(2) The lease is in writing, is not terminable at will, and requires the receipt of rent that is not substantially less than fair market rent for the property, provided that the rent has not been reduced or subsidized due to a federal or State subsidy.

(d) A purchaser shall provide a tenant in possession of the single-family residential real property notice to vacate at least 90 days before making an application for possession pursuant to G.S. 45-21.29(k) in any of the following circumstances:

(1) The tenant has an oral lease or the lease is terminable at will.

(2) The purchaser will occupy the premises as a primary residence.

(e) This section shall not apply to the following:

(1) The option to purchase terms of an option contract as defined in G.S. 47G-1(4).

(2) A lease of residential real property where there is an "imminently dangerous condition" as defined in G.S. 42-42(a)(8) on the premises as of the date of acquisition of title by the purchaser.

(f) Nothing in this section shall be construed to limit the remedies available to the purchaser for breaches of the lease terms by the tenant."

SECTION 3. Chapter 47G of the General Statutes reads as rewritten:

"Chapter 47G.

"Option to Purchase Contracts Executed With Lease Agreements.

"§ 47G-1. Definitions.

The following definitions apply in this Chapter:

...

(4) Option contract or contract. – An option contract for the purchase of single-family residential real property that includes or is combined with, or is executed in conjunction with, a covered lease agreement.

...

"§ 47G-2. Minimum contents of option contracts; recordation.

...

(f) Instrument Ineffective. – No instrument purporting to extinguish the equity of redemption that is executed as a condition of the transaction or prior to a default will be effective.

"§ 47G-3. Application of Landlord Tenant Law.

~~The~~ Unless otherwise provided for by this Chapter, the provisions of Chapter 42 of the General Statutes apply to covered lease agreements.

...

"**§ 47G-5. Notice of default and intent to forfeit.**

(a) A notice of default and intent to forfeit shall specify the nature of the default, the amount of the default if the default is in the payment terms, the date after which the contract will be forfeited if the purchaser does not cure the default, and the name and address of the seller or the attorney for the seller. The period specified in the notice after which the contract will be forfeited may not be less than 30 days after the notice of default and intent to forfeit is served, or before judgment is given in any action brought to recover the possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes, whichever is earlier. A judgment rendered in an action to recover possession of the premises shall not prejudice either party in a subsequent action to recover monetary damages or other remedies.

...

"**§ 47G-7. Remedies.**

(a) ~~A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1.~~ An option purchaser may bring an action for the recovery of damages, to void a transaction executed in violation of this Chapter, as well as for declaratory or equitable relief for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to an option purchaser to liability under G.S. 75-1.1.

(b) In the event of default by the option purchaser under the terms of the lease agreement, the option seller may initiate a summary ejectment action to recover damages and possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes. The magistrate shall retain jurisdiction over the summary ejectment proceeding.

(c) The option purchaser may counterclaim for damages in any summary ejectment proceeding. In accordance with G.S. 7A-219 of the General Statutes, no counterclaim which would make the amount in controversy exceed the jurisdictional limits shall be permitted. If a counterclaim in a summary ejectment proceeding is barred pursuant to G.S. 7A-219, the option purchaser shall not be estopped from asserting that claim in a separate action."

SECTION 4.(a) G.S. 47H-2(b) reads as rewritten:

"**§ 47H-2. Minimum contents for contracts for deed; recordation.**

...

(b) Contents. – A contract for deed ~~contract~~ shall contain at least all of the following:

...

~~(14) A description of conditions of the property that includes whether the property, including any structures thereon, has water, sewer, septic, and electricity service, whether the property is in a floodplain, whether anyone else has a legal interest in the property, and whether restrictive covenants prevent building or installing a dwelling. If restrictive covenants are in place that affect the property, a copy of the restrictive covenants shall be made available to the purchaser at or before the execution of the contract.~~

(14a) A completed residential property disclosure statement that complies with Chapter 47E of the General Statutes, provided that the seller does not choose the option of making "No Representation" as to any characteristic or condition of the property.

...

~~(16) If the property being sold is encumbered by a deed of trust, mortgage, or other encumbrance evidencing or securing a monetary obligation which constitutes a lien on the property, and the seller is not a licensed general contractor within the meaning of Chapter 87 of the General Statutes, or a licensed manufactured home dealer within the meaning of Article 9A of~~

~~Chapter 143 of the General Statutes, a statement of the amount of the lien, and the amount and due date, if any, of any periodic payments.~~

...."

SECTION 4.(b) G.S. 47H-8 reads as rewritten:

"**§ 47H-8. Remedies.**

~~A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1.~~ A purchaser may bring an action for the recovery of damages, to rescind a transaction, as well as for declaratory or equitable relief, for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to a buyer to liability under G.S. 75-1.1."

SECTION 5.(a) G.S. 75-120 reads as rewritten:

"**§ 75-120. Definitions.**

The following definitions shall apply in this Article:

~~(1) Default. Whenever a property owner is more than 60 days delinquent on any loan or debt that is secured by the property, including real estate taxes.~~

...

(3) Foreclosure rescue transaction. – A transfer of residential real property, including a manufactured home that is permanently attached to the real property, which includes all of the following features:

a. The real property is the principal residence of the transferor.

~~b. The transferor is in default or legal proceedings have been initiated to foreclose on the transferor's property.~~

c. The transferee, an agent of the transferee, or others acting in concert with the transferee make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence.

d. The transferor retains ~~an interest in the property conveyed, including~~ a tenancy interest, an interest under a ~~lease-purchase agreement,~~ lease with option to purchase agreement, or an option to reacquire the ~~property, or any other legal, equitable, or possessory interest in the property conveyed.~~property.

...."

SECTION 5.(b) G.S. 75-121 reads as rewritten:

"**§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.**

(a) It is unlawful for a person or entity other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain, unless prior to or at the time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market value of the property as determined by a ~~licensed~~ certified appraiser. An appraisal to determine the fair market value of the property must be performed no more than ~~90~~ 120 days prior to the transfer. The appraisal shall be delivered to the transferor ~~no more than three days after the appraisal is performed and~~ no less than seven days prior to the ~~transfer of the property.~~ time the transferor becomes obligated to perform the agreement. This section does not apply to exempt transactions.

(b) Every contract to effectuate a foreclosure rescue transaction in which the transferee pays at least 50% of the fair market value of the property, shall be in writing, shall be signed and acknowledged by all parties to it, and shall contain all the terms to which the parties have agreed. The contract shall contain at least all of the following:

...

(5) The fair market value of the property as determined by a ~~licensed~~ certified appraiser.

...."

SECTION 6. This act becomes effective October 1, 2015. Section 1 applies to notice of sale issued on or after that date. Section 2 applies to orders for possession entered on or after that date. Sections 3, 4, and 5 apply to transactions entered into on or after that date.

HOUSE BILL 174:
Landlord/Tenant-Foreclosure & Evict. Changes

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 20, 2015
Introduced by:	Reps. Bradford, Stam	**Prepared by:**	Bill Patterson
Analysis of:	Third Edition		Committee Counsel

SUMMARY: House Bill 174 would amend and enhance certain notice requirements and protections for tenants of real properties in foreclosure, allow for purchasers of real property under option contracts to pursue monetary damages separately from summary ejectment proceedings, and make other changes to the Homeowner and Homebuyer Protection Act.

Section 1: Notice for Termination of Rental Agreements in Foreclosure

CURRENT LAW: Tenants of residential real property with fewer than 15 rental units may terminate the lease early if the residence is in foreclosure, by providing notice of termination effective at least 10 days after the notice of sale. An occupant will receive the notice of sale 20 days in advance of a foreclosure sale.

BILL ANALYSIS: Section 1(a) would clarify that the required notice of sale by foreclosure must go to any person occupying single-family residential real property pursuant to a residential rental agreement. **Section 1(b)** would require tenants of residential real property containing fewer than 15 rental units wishing to terminate the rental agreement after receiving a notice of sale to provide the landlord with a written notice of termination not more than 90 days after the sale date contained in the notice of sale, and would provide that the termination would not be effective if the mortgagor has cured the default at the time the tenant provides notice of termination. **Section 1(c)** would make a conforming change to the statute governing the contents of a notice of sale.

Section 2: Effect of Foreclosure on Preexisting Tenancy

CURRENT LAW: The federal Protecting Tenants at Foreclosure Act of 2009 allowed a tenant in a residence sold at foreclosure to remain in the residence until the end of the lease if the purchaser of the property did not use the property as his or her primary residence. A tenant without a lease or with a lease terminable at will under State law was entitled to a 90 day notice before the purchaser could seek possession. The federal law expired on December 31, 2014.

BILL ANALYSIS: Section 2 would enact the following provisions applicable to foreclosures on preexisting tenancies in single-family residences:

- Allow a tenant with a lease meeting certain conditions to remain in the residence unless the purchaser will use the residence as his or her primary residence.
    - The tenant may remain until the end of the term of the lease or one year, whichever is shorter.
    - The lease must meet the following conditions: (1) the tenant is not the debtor or the child, spouse or parent of the debtor; and (2) the lease is in writing and requires the receipt of rent that is not substantially below fair market value if the rent has not been reduced by a federal or state subsidy.

- Requires the tenant be provided with a 90-day notice before the purchaser can apply for an order of possession if the tenant does not have a lease that conforms to the criteria above or if the purchaser will occupy the property as his or her primary residence.
- This section does not apply to the option to purchase terms of a lease or to a lease of a residence with "imminently dangerous conditions" that would make the home uninhabitable at the time of purchase as defined by G.S. 42-42(a)(8).

Section 3: Leases with Option to Purchase

CURRENT LAW: Option contracts are regulated by Chapter 47G of the General Statutes and are defined as contracts containing an option to purchase real property that includes, is combined with, or is executed in conjunction with a residential lease agreement. Every option contract must be in writing and contain all the terms agreed to by the parties.

BILL ANALYSIS: Section 3 would amend various provisions of Chapter 47G regarding option to purchase contracts executed with lease agreements to do the following:

- Limit the application of Chapter 47G to option contracts for the purchase of single-family residential real property.
- Clarify that provisions of Chapter 42 (Landlord and Tenant Law) apply to covered lease agreements except as otherwise provided for by Chapter 47G.
- Provide that the judgment in an action to recover possession of the property does not prejudice either party in a subsequent action for monetary damages or other remedies related to default and forfeit of an option contract.
- Provide that an option seller may initiate an action for summary ejectment if an option purchaser defaults on the lease and the option purchaser may counterclaim for damages in the summary ejectment proceeding.
- Eliminate the provision that a violation of Chapter 47G constitutes an unfair trade practice under G.S. 75-1.1.

Section 4: Contracts for Deed

CURRENT LAW: A contract for deed is an agreement in which the seller agrees to sell an interest in property to the purchaser, the purchaser agrees to pay the purchase price in five or more payments exclusive of the down payment, and the seller retains title to the property as security for the purchaser's obligation under the agreement. Chapter 47H specifies the minimum required contents of a contract for deed and requires that the contract be recorded with the register of deeds in the county in which the property is located.

BILL ANALYSIS: Section 4(a) would amend G.S. 47H-2 regarding the minimum contents for a contract for deed as follows:

- Eliminate the requirement that a contract for deed contain a description of conditions of property by replacing it with a new requirement that a contract for deed include a completed residential property disclosure statement.
- Eliminate the requirement that a contract for deed include a statement of the amount of the lien, and the amount and due date of periodic payments if the property being sold is encumbered by a lien.

Section 4(b) would amend G.S. 47H-8 to eliminate the provision that a violation of this Chapter constitutes an unfair trade practice under G.S. 75-1.1.

Section 5: Foreclosure Rescue Transactions

CURRENT LAW: G.S. 75-120 prohibits foreclosure rescue transactions by anyone other than the transferor for financial gain or with the expectation of financial gain. A foreclosure rescue transaction is a transfer of residential real property, including a manufactured home, which includes all of the following:

- The real property is the principal residence of the transferor.
- The transferor is in default or legal proceedings have been initiated on a mortgage loan obligation secured by the transferor's principal residence.
- The transferor follows the representations of the transferee that the transfer of the residential property will allow the transferor to prevent, postpone, or reverse the effect of foreclosure.
- The transferor retains an interest in the property conveyed by written or oral agreement, including any legal, equitable, or possessory interest.

The prohibition against foreclosure rescue transactions does not apply to (i) a member of the transferor's family; (ii) a state, federal or local government agency or organization; (iii) a bank, savings institution, or credit union; or a (iv) a licensed mortgage lender or mortgage servicer.

BILL ANALYSIS: Section 5(a) would amend G.S. 75-120 to do the following:

- Modify the definition of "foreclosure rescue transaction" to eliminate the requirement that the transferor must be in default or that legal proceedings must have been initiated to foreclose on transferor's property.
- Make a conforming change to delete the definition of "default."
- Clarify the definition of "foreclosure rescue transaction" so that it applies expressly in instances in which the transferor retains a tenancy interest, lease with option to purchase agreement, or an option to reacquire the property.

Section 5(b) would amend G.S. 75-121 as follows:

- Provide that a certified appraiser must determine the fair market value of the property.
- Extend the time within which the appraisal must be performed from 90 days to 120 days prior to the transfer.
- Change the delivery requirement for the appraisal to no less than 7 days prior to the time the transferor becomes obligated to perform the agreement.

EFFECTIVE DATE: This act becomes effective October 1, 2015. Section 1 applies to a notice of sale issued on or after that date, Section 2 applies to orders for possession entered on or after that date, and Sections 3, 4, and 5 apply to transactions entered into on or after that date.

Layla Cummings, counsel to House Judiciary IV, substantially contributed to this summary.

H 2

HOUSE BILL 446
Committee Substitute Favorable 4/22/15

Short Title: Amend Statutes Governing Bail Bondsmen. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES GOVERNING BAIL BONDSMEN TO INCREASE THE AGE OF QUALIFICATION FOR LICENSURE AS A BAIL BONDSMAN OR RUNNER, TO LENGTHEN THE TIME LIMIT FOR THE RETURN OF SECURITY TO INCLUDE THE TIME PERIOD IN WHICH AN APPEAL FROM DISTRICT COURT MAY BE FILED, TO REQUIRE THE COMMISSIONER OF INSURANCE TO RETURN THE AMOUNT OF A BONDSMAN'S SECURITY DEPOSIT ABOVE OUTSTANDING BOND LIABILITY IN EVENT THE BONDSMAN IS KILLED OR CEASES WRITING BONDS, AND TO ALLOW A BONDSMAN TO HAVE ACCESS TO THE ADMINISTRATIVE OFFICE OF THE COURTS' CIVIL INFORMATION SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-50(b)(1) reads as rewritten:

"(1) Be ~~18~~ 21 years of age or over."

SECTION 2. G.S. 58-71-95(5) reads as rewritten:

"(5) Accept anything of value from a principal or from anyone on behalf of a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond; provided that the bondsman shall be permitted to accept collateral security or other indemnity from a principal or from anyone on behalf of a principal. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond and shall be returned within ~~72 hours~~15 days after final termination of liability on the bond. Any bail bondsman who knowingly and willfully fails to return any collateral security, the value of which exceeds one thousand five hundred dollars ($1,500), is guilty of a Class I felony. All collateral security, such as personal and real property, subject to be returned must be done so under the same conditions as requested and received by the bail bondsman."

SECTION 3. G.S. 58-71-151 reads as rewritten:

"**§ 58-71-151. Securities held in trust by Commissioner; authority to dispose of same.**

The securities deposited by a professional bondsman with the Commissioner shall be held in trust for the protection and benefit of the holder of bail bonds executed by or on behalf of the undersigned bondsman in this State. Notwithstanding any other provision of law, the Commissioner is authorized to select a bank or trust company as master trustee to hold cash securities to be pledged to the State when deposited with the Commissioner pursuant to statute. Securities may be held by the master trustee in any form that in fact perfects the security interest of the State in the securities. The Commissioner shall by rule establish the manner in

which the master trust shall operate. The master trustee may charge the person making the deposit reasonable fees for services rendered in connection with the operation of the trust, and the assets of the account may be used to pay such charges.

A pro rata portion of the securities shall be returned to the bondsman when the Commissioner is satisfied that the deposit of securities is in excess of the amount required to be maintained with the Commissioner by said bondsman; and all the securities shall be returned if the Commissioner is satisfied that the bondsman has satisfied, or satisfactory arrangements have been made to satisfy, the obligations of the bondsman on all the bondsman's bail bonds written in the State.

If a bondsman discontinues writing bonds due to death, permanent incapacitation, or some other circumstance that results in the bondsman returning the license issued under this Article to the Commissioner and the Commissioner is satisfied that no more bonds can be written against the bondsman's security deposit, the Commissioner shall return the portion of the security deposit in excess of that required to secure the bondsman's outstanding bond liability.

The Commissioner may sell or transfer any and all of said securities or utilize the proceeds thereof for the purpose of satisfying the liabilities of the professional bondsman on bail bonds given in this State on which the bondsman is liable."

SECTION 4. G.S. 58-71-200 reads as rewritten:

"**§ 58-71-200. Bondsman access to criminal ~~court~~and civil records.**

(a) In order to assist licensed sureties and their agents in evaluating potential and current clients for the purposes of bail, the Administrative Office of the Courts shall provide any individual with a current license to act as professional bondsman, surety bondsman, or runner with access to search criminal records in the Administrative Office of the Courts' real-time criminal and civil information systems.

(b) Access granted under subsection (a) of this section shall be limited to information systems containing general criminal and civil case information, as maintained by the clerks of superior court. Access shall not include systems for the production of criminal process by law enforcement officials and judicial officials under G.S. 15A-301.1 or other information not subject to public disclosure.

(c) Access provided pursuant to subsection (a) of this section shall be without charge for individual searches of the Administrative Office of the Courts' criminal and civil information systems. In order to defray the costs of establishing access, the Administrative Office of the Courts shall charge initial setup fees equivalent to its fees for governmental agencies granted access to its systems to each individual granted access pursuant to subsection (a) of this section.

...."

SECTION 5. Section 1 of this act is effective when it becomes law and applies to applications for licenses filed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 446:
Amend Statutes Governing Bail Bondsmen

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 23, 2015
Introduced by:	Reps. Jordan, Wray, R. Turner, Schaffer	**Prepared by:**	Bill Patterson and Jennifer Bedford Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 446 amends the law governing bail bondsmen.

CURRENT LAW:

G.S. 58-71-50 outlines the qualifications to be a licensed bail bondsman and runner. In addition to knowledge, residency, education, and other requirements, an applicant must be 18 years or older.

G.S. 58-71-95 outlines prohibited practices for licensed bail bondsmen and runners. A bondsman can accept collateral security or other indemnity from a principal, but the collateral must be reasonable in relation to the amount of the bond and must be returned within 72 hours after final termination of liability on the bond.

G.S. 58-71-151 outlines the authority of the Commissioner of Insurance to hold securities deposited by a bondsman in trust and to return the securities if the Commissioner is satisfied that the bondsman's obligations have been met.

G.S. 58-71-200 authorizes limited access by licensed professional bondsmen, surety bondsmen, and runners to search criminal records maintained by the Administrative Office of the Courts (AOC).

BILL ANALYSIS:

Section 1 amends G.S. 58-71-50 to increase the minimum age to qualify for licensure as a bail bondsman or a runner from 18 to 21 years of age.

Section 2 amends G.S. 58-71-95 to lengthen the time within which a bondsman is required to return collateral after termination of liability on the bond from 72 hours to 15 days.

Section 3 amends G.S. 58-71-151 to provide that in the event of death, permanent incapacitation, or other circumstance resulting in the return of a bondsman's license, the Commissioner would return the portion of the security deposit in excess of that required to secure outstanding bond liability.

Section 4 amends G.S. 58-71-200 to grant bondsmen access to AOC's civil records.

EFFECTIVE DATE: Section 1 is effective when the bill becomes law and applies to applications for licenses filed on or after that date. The remainder of the act is effective when it becomes law.

Brad Krehely, Counsel to the House Judiciary II Committee, contributed substantially to this summary.

O. Walker Reagan
Director

Research Division
(919) 733-2578

* H 4 4 6 - S M T T - 3 4 E 2 - V 2 *

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 774
Committee Substitute Favorable 4/28/15
Third Edition Engrossed 4/29/15

Short Title: Restoring Proper Justice Act. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REQUIRING THE PRESENCE OF A LICENSED PHYSICIAN AT THE EXECUTION OF A DEATH SENTENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-190 reads as rewritten:

"(a) Some guard or guards or other reliable person or persons to be named and designated by the warden from time to time shall cause the person, convict or felon against whom the death sentence has been so pronounced to be executed as provided by this Article and all amendments thereto. The execution shall be under the general supervision and control of the warden of the penitentiary, who shall from time to time, in writing, name and designate the guard or guards or other reliable person or persons who shall cause the person, convict or felon against whom the death sentence has been pronounced to be executed as provided by this Article and all amendments thereto. At such execution there shall be present the warden or deputy warden or some person designated by the warden in the warden's place, and a licensed ~~physician.~~physician, or a medical professional other than a physician, to monitor the injection of the required lethal substances and certify the fact of the execution. If a licensed physician is not present at the execution, then a licensed physician shall be present on the premises and available to examine the body after the execution and pronounce the person dead. Four respectable citizens, two members of the victim's family, the counsel and any relatives of such person, convict or felon and a minister or member of the clergy or religious leader of the person's choosing may be present if they so desire. The identities, including the names, residential addresses, residential telephone numbers, and social security numbers, of witnesses or persons designated to carry out the execution shall be confidential and exempted from Chapter 132 of the General Statutes and are not subject to discovery or introduction as evidence in any proceeding. The Senior Resident Superior Court Judge for Wake County may order disclosure of names made confidential by this section after making findings that support a conclusion that disclosure is necessary to a proper administration of justice.

For purposes of this section, a "medical professional other than a physician" means a physician assistant, nurse practitioner, registered nurse, emergency medical technician, or emergency medical technician-paramedic who is licensed or credentialed by the licensing board, agency, or organization responsible for licensing or credentialing that profession."

SECTION 2. G.S. 15-192 reads as rewritten:

"**§ 15-192. Certificate filed with clerk.**

The warden, together with the ~~surgeon or physician of the penitentiary,~~licensed physician who was present on the premises to pronounce death as required by G.S. 15-190, shall certify

the fact of the execution of the condemned person, convict or felon to the clerk of the superior court in which such sentence was pronounced, and the clerk shall file such certificate with the papers of the case and enter the same upon the records thereof."

SECTION 3. G.S. 150B-1(d)(6) reads as rewritten:

"(6) The Division of Adult Correction of the Department of Public Safety, with respect to matters relating to executions under Article 19 of Chapter 15 of the General Statutes and matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees."

SECTION 4. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(22) The Division of Adult Correction of the Department of Public Safety, with respect to matters relating to executions under Article 19 of Chapter 15 of the General Statutes."

SECTION 5. G.S. 15-187 reads as rewritten:

"**§ 15-187. Death by administration of lethal drugs.**

Death by electrocution under sentence of law and death by the administration of lethal gas under sentence of law are abolished. Any person convicted of a criminal offense and sentenced to death shall be executed ~~only by the administration of a lethal quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent.~~ in accordance with G.S. 15-188 and the remainder of this Article. The warden of Central Prison may obtain and employ the drugs necessary to carry out the provisions of this Article, regardless of contrary provisions in Chapter 90 of the General Statutes."

SECTION 6. G.S. 132-1.2 is amended by adding a new subdivision to read:

"(7) Reveals name, address, qualifications, and other identifying information of any person or entity that manufactures, compounds, prepares, prescribes, dispenses, supplies, or administers the drugs or supplies obtained for any purpose authorized by Article 19 of Chapter 15 of the General Statutes."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3

H. B. No. 774 DATE 7/23/15

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

COMMITTEE SUBSTITUTE _____

(Rep.)) DAUGHTRY
Sen.)

moves to amend the bill on page 2, line 5

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"'(6) ~~The Division of Adult Correction of the~~ The Department of Public Safety, with' ; and

On page 2, line 10, by rewriting the line to read:

"(22) ~~The Department of Public Safety, with~~".

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

774

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 774

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

H774-ATJ-22 [v.1]

Amends Title [NO]
Third Edition

Date _____,2015

Senator Bryant

moves to amend the bill on page 2, lines 4 – 8, by rewriting the lines to read:

"**SECTION 3.** G.S. 150B-1(d)(6) reads as rewritten:

'(6) The Division of Adult Correction of the Department of Public Safety, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and ~~parolees.~~parolees, except that executions under Article 19 of Chapter 15 of the General Statutes shall not be exempt from public oversight and rule making and shall be subject to Article 2A of Chapter 150B of the General Statutes.'".

SIGNED Angela R Bryant
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

H774-ATJ-22-V-1

HOUSE BILL 774:
Restoring Proper Justice Act

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 22, 2015
Introduced by:	Rep. Daughtry	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 774 would authorize a medical professional other than a physician to monitor lethal injection for death penalty executions and clarify that matters relating to executions are not subject to rulemaking.

CURRENT LAW: Currently, a licensed physician must be present at an execution. Together, the warden and the surgeon or physician of the penitentiary are to certify the fact of the execution. G.S. 15-190. Any licensed health care professional who renders assistance in an execution is not subject to discipline by his or her licensing or regulatory board, commission or authority, and the administration of the legal substances is not considered "the practice of medicine." G.S. 15-188.1.

With respect to rulemaking, G.S. 150B-1 grants an exemption from all rulemaking to the Department of Public Safety for matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.

BILL ANALYSIS:

Sections 1 and 2 of House Bill 774 would allow a medical professional other than a physician to monitor an execution. "Medical professional other than a physician" would be defined for purposes of the statute to include a licensed or credentialed physician assistant, nurse practitioner, registered nurse, emergency medical technician or emergency medical technician-paramedic.

The bill would provide that if a physician is not present at the execution, a physician must be present on the premises and available to examine the body after execution in order to pronounce the person dead, and must certify the fact of the execution to the clerk of superior court in the jurisdiction where the sentence of death was pronounced.

Sections 3 and 4 of HB 774 would clarify that execution procedures are exempt from the rulemaking and contested case requirements of the Administrative Procedure Act.

Section 5 of the bill would eliminate the provision that execution shall be "only by the administration of a lethal quantity of an ultrashort acting barbiturate in combination with a chemical paralytic agent," and provide that the manner of execution shall be in accordance with the provisions of G.S. 15-188 and the remainder of Article 19 of Chapter 15.

Section 6 would amend G.S. 132-1.2 to add that nothing in the Public Records Law is to be construed to require or authorize a public agency to disclose specified identifying information relating to the drugs or supplies obtained for executions.

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

BACKGROUND: The American Medical Association Code of Medical Ethics Opinion 2.06 states that a physician should not participate in a legally authorized execution but that certifying death, provided that the condemned has been declared dead by another person, does not constitute physician participation in an execution.

Erika Churchill and Jennifer Bedford, counsel to House Judiciary I, contributed to this summary.

O. Walker Reagan
Director

H774-SMTJ-102 E3 -V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 607
Committee Substitute Favorable 4/29/15

Short Title: Allow Protected Consumer Security Freezes. (Public)

Sponsors:

Referred to:

April 13, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PLACEMENT OF A PROTECTED CONSUMER SECURITY FREEZE ON A PROTECTED CONSUMER'S CREDIT REPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-61 reads as rewritten:

"**§ 75-61. Definitions.**

The following definitions apply in this Article:

...

(11a) "Protected consumer". – An individual (i) who is under the age of 16 at the time a request for the placement of a security freeze is made pursuant to G.S. 75-63.1 or (ii) who is incapacitated or for whom a guardian or guardian ad litem has been appointed.

(11b) "Protected consumer security freeze". – A security freeze placed on a protected consumer's credit report or on a protected consumer's file pursuant to G.S. 75-63.1.

(11c) "Protected consumer's file". – A record that (i) identifies a protected consumer; (ii) is created by a consumer reporting agency solely for the purpose of complying with the requirements of G.S. 75-63.1; and (iii) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

...

(13a) "Representative". – A person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

...

(16) "Sufficient proof of authority". – Either of the following:

a. A certified or official copy of the protected consumer's birth certificate, if the representative is a parent of the protected consumer.

b. Documentation that shows that a representative has authority to act on behalf of a protected consumer, including:

1. An order issued by a court of law.
2. A valid power of attorney.
3. A written, notarized statement signed by the person that expressly describes the authority of the representative to act on behalf of a protected consumer.

(17) "Sufficient proof of identification". – Information or documentation that identifies a protected consumer or representative, including:

a. A Social Security number or a copy of a Social Security card issued by the Social Security Administration.

b. A certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate.

c. A copy of a drivers license, an identification card issued by the Division of Motor Vehicles, or any other government-issued identification.

d. A copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address."

SECTION 2. Article 2A of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-63.1. Security freeze for protected consumers.**

(a) Obligation to Place Security Freeze. – A consumer reporting agency shall place a protected consumer security freeze on the protected consumer's credit report or on the protected consumer's file in accordance with subsection (b) of this section within 30 days of all of the following conditions being satisfied:

(1) The consumer reporting agency receives a request under this section from the protected consumer's representative for the placement of the protected consumer security freeze by any of the following methods:

a. First-class mail.

b. Telephone call.

c. Secure Web site or secure electronic mail connection.

(2) The protected consumer's representative does all of the following:

a. Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency.

b. Provides to the consumer reporting agency sufficient proof of identification for both the protected consumer and the representative.

c. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer.

d. Pays to the consumer reporting agency a fee as provided in subsection (d) of this section.

(b) Action Required. – If the placement of a protected consumer security freeze is required under subsection (a) of this section, a consumer reporting agency shall do one of the following, as applicable:

(1) If no consumer report exists. – If the consumer reporting agency does not have a consumer report pertaining to the protected consumer, the consumer reporting agency shall create a protected consumer's file and place a restriction in the protected consumer's file that prohibits the release of the protected consumer's file, any consumer report subsequently created for the consumer, and any information contained in either document except as provided in this section.

(2) If a consumer report exists. – If the consumer reporting agency has a consumer report pertaining to the protected consumer, the consumer reporting agency shall place a restriction on the report that prohibits the release of the consumer report and any information contained in the report except as provided in this section.

(c) Duration of Freeze. – A protected consumer security freeze shall remain in effect until one of the following occurs, in which case the protected consumer security freeze shall be removed within 30 days:

(1) The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the protected consumer security freeze by doing all of the following:

a. Submitting a request for the removal of the protected consumer security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency.

b. If the request is being made by the protected consumer, providing to the consumer reporting agency (i) proof that the sufficient proof of authority for the protected consumer's representative is no longer valid and (ii) sufficient proof of identification for the protected consumer.

c. If the request is being made by the representative of a protected consumer, providing to the consumer reporting agency (i) sufficient proof of identification of the protected consumer and the representative and (ii) sufficient proof of authority to act on behalf of the protected consumer.

d. Providing to the consumer reporting agency a fee as provided in subsection (d) of this section.

(2) The consumer reporting agency determines that the protected consumer security freeze was placed based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

(d) Fees. – A consumer reporting agency may charge a reasonable fee for each placement or removal of a protected consumer security freeze in accordance with the following:

(1) Fee allowed in certain cases. – Except as provided in subdivision (2) of this subsection, a consumer reporting agency may charge a fee to a consumer not to exceed five dollars ($5.00) for placement or removal of a protected consumer security freeze.

(2) No fee allowed in certain cases. – A fee may not be charged for the placement or removal of a protected consumer security freeze under this section if any of the following conditions are satisfied:

a. The protected consumer's representative has obtained a report of alleged identity theft or identity fraud against the protected consumer and provides a copy of the report to the consumer reporting agency.

b. A request for placement or removal of a protected consumer security freeze is for a protected consumer who is under the age of 16 at the time of the request and the consumer reporting agency has a consumer report pertaining to the protected consumer.

c. The protected consumer is over the age of 62.

(3) No other fees allowed. – No fee other than those authorized under this subsection may be charged for placement or removal of a protected consumer security freeze.

(e) Exceptions. – Notwithstanding subsection (b) of this section, the placement of a protected consumer security freeze shall not prohibit the release of a protected consumer's consumer report, protected consumer's file, or any information contained in these documents to any of the following:

(1) The protected consumer when the protected consumer has subscribed to a credit reporting service, as that term is defined in G.S. 75-134.

(2) A representative of the protected consumer when the representative has subscribed on behalf of the consumer to a credit reporting service, as that term is defined in G.S. 75-134.

(3) A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report or protected consumer's file at the request of the protected consumer or the protected consumer's representative.

(4) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the protected consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.

(5) Any person acting pursuant to a court order, warrant, or subpoena.

(6) A state or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.

(7) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities.

(8) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.

(9) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

(10) Any depository financial institution for checking, savings, and investment accounts.

(11) Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for property and casualty insurance purposes.

(12) A person for the purpose of furnishing or using credit reports for employment purposes pursuant to 15 U.S.C. § 1681b(b) or tenant screening pursuant to 15 U.S.C. § 1681b(a)(3)(F).

(13) A person for the purpose of criminal background record information.

(f) Violation. – A violation of this section is a violation of G.S. 75-1.1."

SECTION 3. G.S. 130A-101 is amended by adding a new subsection to read:

"(h) When a birth occurs, the person responsible for preparing the birth certificate under this section shall provide the mother with information about how to request a protected consumer security freeze for the child under G.S. 75-63.1 and the potential benefits of doing so."

SECTION 4. This act becomes effective January 1, 2016.

HOUSE BILL 607
Committee Substitute Favorable 4/29/15

Short Title: Allow Protected Consumer Security Freezes. (Public)

Sponsors:

Referred to:

April 13, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PLACEMENT OF A PROTECTED CONSUMER SECURITY FREEZE ON A PROTECTED CONSUMER'S CREDIT REPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-61 reads as rewritten:

"**§ 75-61. Definitions.**

The following definitions apply in this Article:

...

(11a) "Protected consumer". – An individual (i) who is under the age of 16 at the time a request for the placement of a security freeze is made pursuant to G.S. 75-63.1 or (ii) who is incapacitated or for whom a guardian or guardian ad litem has been appointed.

(11b) "Protected consumer security freeze". – A security freeze placed on a protected consumer's credit report or on a protected consumer's file pursuant to G.S. 75-63.1.

(11c) "Protected consumer's file". – A record that (i) identifies a protected consumer; (ii) is created by a consumer reporting agency solely for the purpose of complying with the requirements of G.S. 75-63.1; and (iii) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

...

(13a) "Representative". – A person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

...

(16) "Sufficient proof of authority". – Either of the following:

a. A certified or official copy of the protected consumer's birth certificate, if the representative is a parent of the protected consumer.

b. Documentation that shows that a representative has authority to act on behalf of a protected consumer, including:

1. An order issued by a court of law.
2. A valid power of attorney.
3. A written, notarized statement signed by the person that expressly describes the authority of the representative to act on behalf of a protected consumer.

(17) "Sufficient proof of identification". – Information or documentation that identifies a protected consumer or representative, including:

a. A Social Security number or a copy of a Social Security card issued by the Social Security Administration.

b. A certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate.

c. A copy of a drivers license, an identification card issued by the Division of Motor Vehicles, or any other government-issued identification.

d. A copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address."

SECTION 2. Article 2A of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-63.1. Security freeze for protected consumers.**

(a) Obligation to Place Security Freeze. – A consumer reporting agency shall place a protected consumer security freeze on the protected consumer's credit report or on the protected consumer's file in accordance with subsection (b) of this section within 30 days of all of the following conditions being satisfied:

(1) The consumer reporting agency receives a request under this section from the protected consumer's representative for the placement of the protected consumer security freeze by any of the following methods:

a. First-class mail.

b. Telephone call.

c. Secure Web site or secure electronic mail connection.

(2) The protected consumer's representative does all of the following:

a. Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency.

b. Provides to the consumer reporting agency sufficient proof of identification for both the protected consumer and the representative.

c. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer.

d. Pays to the consumer reporting agency a fee as provided in subsection (d) of this section.

(b) Action Required. – If the placement of a protected consumer security freeze is required under subsection (a) of this section, a consumer reporting agency shall do one of the following, as applicable:

(1) If no consumer report exists. – If the consumer reporting agency does not have a consumer report pertaining to the protected consumer, the consumer reporting agency shall create a protected consumer's file and place a restriction in the protected consumer's file that prohibits the release of the protected consumer's file, any consumer report subsequently created for the consumer, and any information contained in either document except as provided in this section.

(2) If a consumer report exists. – If the consumer reporting agency has a consumer report pertaining to the protected consumer, the consumer reporting agency shall place a restriction on the report that prohibits the release of the consumer report and any information contained in the report except as provided in this section.

(c) Duration of Freeze. – A protected consumer security freeze shall remain in effect until one of the following occurs, in which case the protected consumer security freeze shall be removed within 30 days:

(1) The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the protected consumer security freeze by doing all of the following:

a. Submitting a request for the removal of the protected consumer security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency.

b. If the request is being made by the protected consumer, providing to the consumer reporting agency (i) proof that the sufficient proof of authority for the protected consumer's representative is no longer valid and (ii) sufficient proof of identification for the protected consumer.

c. If the request is being made by the representative of a protected consumer, providing to the consumer reporting agency (i) sufficient proof of identification of the protected consumer and the representative and (ii) sufficient proof of authority to act on behalf of the protected consumer.

d. Providing to the consumer reporting agency a fee as provided in subsection (d) of this section.

(2) The consumer reporting agency determines that the protected consumer security freeze was placed based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

(d) Fees. – A consumer reporting agency may charge a reasonable fee for each placement or removal of a protected consumer security freeze in accordance with the following:

(1) Fee allowed in certain cases. – Except as provided in subdivision (2) of this subsection, a consumer reporting agency may charge a fee to a consumer not to exceed five dollars ($5.00) for placement or removal of a protected consumer security freeze.

(2) No fee allowed in certain cases. – A fee may not be charged for the placement or removal of a protected consumer security freeze under this section if any of the following conditions are satisfied:

a. The protected consumer's representative has obtained a report of alleged identity theft or identity fraud against the protected consumer and provides a copy of the report to the consumer reporting agency.

b. A request for placement or removal of a protected consumer security freeze is for a protected consumer who is under the age of 16 at the time of the request and the consumer reporting agency has a consumer report pertaining to the protected consumer.

c. The protected consumer is over the age of 62.

(3) No other fees allowed. – No fee other than those authorized under this subsection may be charged for placement or removal of a protected consumer security freeze.

(e) Exceptions. – Notwithstanding subsection (b) of this section, the placement of a protected consumer security freeze shall not prohibit the release of a protected consumer's consumer report, protected consumer's file, or any information contained in these documents to any of the following:

(1) The protected consumer when the protected consumer has subscribed to a credit reporting service, as that term is defined in G.S. 75-134.

(2) A representative of the protected consumer when the representative has subscribed on behalf of the consumer to a credit reporting service, as that term is defined in G.S. 75-134.

(3) A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report or protected consumer's file at the request of the protected consumer or the protected consumer's representative.

(4) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the protected consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.

(5) Any person acting pursuant to a court order, warrant, or subpoena.

(6) A state or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.

(7) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities.

(8) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.

(9) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

(10) Any depository financial institution for checking, savings, and investment accounts.

(11) Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for property and casualty insurance purposes.

(12) A person for the purpose of furnishing or using credit reports for employment purposes pursuant to 15 U.S.C. § 1681b(b) or tenant screening pursuant to 15 U.S.C. § 1681b(a)(3)(F).

(13) A person for the purpose of criminal background record information.

(f) Violation. – A violation of this section is a violation of G.S. 75-1.1."

SECTION 3. G.S. 130A-101 is amended by adding a new subsection to read:

"(h) When a birth occurs, the person responsible for preparing the birth certificate under this section shall provide the mother with information about how to request a protected consumer security freeze for the child under G.S. 75-63.1 and the potential benefits of doing so."

SECTION 4. This act becomes effective January 1, 2016.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 607
Committee Substitute Favorable 4/29/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H607-CSTG-43 [v.4]
7/22/2015 1:30:36 PM

Short Title: Allow Protected Consumer Security Freezes. (Public)

Sponsors:

Referred to:

April 13, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PLACEMENT OF A PROTECTED CONSUMER SECURITY FREEZE ON A PROTECTED CONSUMER'S CREDIT REPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-61 reads as rewritten:

"**§ 75-61. Definitions.**

The following definitions apply in this Article:

...

(11a) "Protected consumer". – An individual (i) who is under the age of 16 at the time a request for the placement of a security freeze is made pursuant to G.S. 75-63.1 or (ii) who is incapacitated or for whom a guardian or guardian ad litem has been appointed.

(11b) "Protected consumer security freeze". – A security freeze placed on a protected consumer's credit report or on a protected consumer's file pursuant to G.S. 75-63.1.

(11c) "Protected consumer's file". – A record that (i) identifies a protected consumer; (ii) is created by a consumer reporting agency solely for the purpose of complying with the requirements of G.S. 75-63.1; and (iii) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

...

(13a) "Representative". – A person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

...

(16) "Sufficient proof of authority". – Either of the following:

a. A certified or official copy of the protected consumer's birth certificate, if the representative is a parent of the protected consumer.

b. Documentation that shows that a representative has authority to act on behalf of a protected consumer, including:

1. An order issued by a court of law.
2. A valid power of attorney.
3. A written, notarized statement signed by the person that expressly describes the authority of the representative to act on behalf of a protected consumer.

(17) "Sufficient proof of identification". – Information or documentation that identifies a protected consumer or representative, including:

a. A Social Security number or a copy of a Social Security card issued by the Social Security Administration.

b. A certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate.

c. A copy of a drivers license, an identification card issued by the Division of Motor Vehicles, or any other government-issued identification.

d. A copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas service, that shows a name and home address."

SECTION 2. G.S. 75-63(o1) is repealed.

SECTION 3. Article 2A of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-63.1. Security freeze for protected consumers.**

(a) Obligation to Place Security Freeze. – A consumer reporting agency shall place a protected consumer security freeze on the protected consumer's credit report or on the protected consumer's file in accordance with subsection (b) of this section within 30 days of all of the following conditions being satisfied:

(1) The consumer reporting agency receives a request under this section from the protected consumer's representative for the placement of the protected consumer security freeze by any of the following methods:

a. First-class mail.

b. Telephone call.

c. Secure Web site or secure electronic mail connection.

(2) The protected consumer's representative does all of the following:

a. Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency.

b. Provides to the consumer reporting agency sufficient proof of identification for both the protected consumer and the representative.

c. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer.

d. Pays to the consumer reporting agency a fee as provided in subsection (d) of this section.

(b) Action Required. – If the placement of a protected consumer security freeze is required under subsection (a) of this section, a consumer reporting agency shall do one of the following, as applicable:

(1) If no consumer report exists. – If the consumer reporting agency does not have a consumer report pertaining to the protected consumer, the consumer reporting agency shall create a protected consumer's file and place a restriction in the protected consumer's file that prohibits the release of the protected consumer's file, any consumer report subsequently created for the consumer, and any information contained in either document except as provided in this section.

(2) If a consumer report exists. – If the consumer reporting agency has a consumer report pertaining to the protected consumer, the consumer reporting agency shall place a restriction on the report that prohibits the release of the consumer report and any information contained in the report except as provided in this section.

(c) Duration of Freeze. – A protected consumer security freeze shall remain in effect until one of the following occurs, in which case the protected consumer security freeze shall be removed within 30 days:

(1) The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the protected consumer security freeze by doing all of the following:

a. Submitting a request for the removal of the protected consumer security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency.

b. If the request is being made by the protected consumer, providing to the consumer reporting agency (i) proof that the sufficient proof of authority for the protected consumer's representative is no longer valid and (ii) sufficient proof of identification for the protected consumer.

c. If the request is being made by the representative of a protected consumer, providing to the consumer reporting agency (i) sufficient proof of identification of the protected consumer and the representative and (ii) sufficient proof of authority to act on behalf of the protected consumer.

d. Providing to the consumer reporting agency a fee as provided in subsection (d) of this section.

(2) The consumer reporting agency determines that the protected consumer security freeze was placed based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

(d) Fees. – A consumer reporting agency may charge a reasonable fee for each placement or removal of a protected consumer security freeze in accordance with the following:

(1) Fee allowed in certain cases. – Except as provided in subdivision (2) of this subsection, a consumer reporting agency may charge a fee to a consumer not to exceed five dollars ($5.00) for placement or removal of a protected consumer security freeze.

(2) No fee allowed in certain cases. – A fee may not be charged for the placement or removal of a protected consumer security freeze under this section if any of the following conditions are satisfied:

a. The protected consumer's representative has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the protected consumer's identifying information by another person.

b. A request for placement or removal of a protected consumer security freeze is for a protected consumer who is under the age of 16 at the time of the request and the consumer reporting agency has a consumer report pertaining to the protected consumer.

c. The protected consumer is over the age of 62.

(3) No other fees allowed. – No fee other than those authorized under this subsection may be charged for placement or removal of a protected consumer security freeze.

(e) Exceptions. – This section does not apply to the use of a consumer credit report by any of the following:

(1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of

reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.

(2) Any person acting pursuant to a court order, warrant, or subpoena.

(3) A State or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.

(4) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities.

(5) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.

(6) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

(7) Any person for the sole purpose of providing for a credit file monitoring subscription service to which the protected consumer has subscribed or the representative of the protected consumer has subscribed on behalf of the protected consumer.

(8) A consumer reporting agency for the purpose of providing a protected consumer or representative of a protected consumer with a copy of the protected consumer's credit report upon the request of the protected consumer or the protected consumer's representative.

(9) Any depository financial institution for checking, savings, and investment accounts.

(10) Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for property and casualty insurance purposes.

(11) A person for the purpose of furnishing or using credit reports for employment purposes pursuant to 15 U.S.C. § 1681b(b) or tenant screening pursuant to 15 U.S.C. § 1681b(a)(3)(F).

(12) A person for the purpose of criminal background record information.

(f) The following persons are not required to place a security freeze on a credit report pursuant to this section provided, however, that any person that is not required to place a security freeze on a credit report under the provisions of subdivision (3) of this subsection shall be subject to any security freeze placed on a credit report by another consumer reporting agency from which it obtains information:

(1) A check services or fraud prevention services company, which reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.

(2) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or other similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(3) A consumer reporting agency that does all of the following:

a. Acts only to resell credit information by assembling and merging information contained in a database of one or more credit reporting agencies.

b. Does not maintain a permanent database of credit information from which new credit reports are produced.

(4) A consumer reporting agency that maintains a database or file that consists of information used for any of the following purposes but that is not used for credit granting purposes:

a. Reporting of criminal record information.

b. Fraud prevention or detection.

c. Reporting personal loss history information.

d. Employment, tenant, or other individual background screening.

(g) Violation. – A violation of this section is a violation of G.S. 75-1.1."

SECTION 4. G.S. 130A-101 is amended by adding a new subsection to read:

"(h) When a birth occurs, the person responsible for preparing the birth certificate under this section shall provide the mother, father, or legal guardian of the child with information about how to request a protected consumer security freeze for the child under G.S. 75-63.1 and the potential benefits of doing so."

SECTION 5. This act becomes effective January 1, 2016.

HOUSE BILL 607:
Allow Protected Consumer Security Freezes

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 22, 2015
Introduced by:	Reps. Meyer, Hardister	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Second Edition H607-CSTG-43		

SUMMARY: The PCS for House Bill 607 would require a credit reporting agency to place a security freeze on a protected consumer's consumer report upon request of the protected consumer's authorized representative. The PCS adds subsection (f) to new G.S. 75-63.1 and makes other technical, clarifying and conforming changes to the bill.

CURRENT LAW: G.S 75-63 allows a consumer to freeze access to a protected consumer's consumer report[1] held by a consumer reporting agency. G.S. 75-63(o1) allows a parent or guardian of a minor to make inquiries concerning the existence of a credit report for the minor, and requires the consumer reporting agency to make reasonable efforts to prevent providing a credit report on the minor. These provisions are part of the Identity Theft Protection Act, Article 2A of Chapter 75 of the General Statutes.

BILL ANALYSIS: **Section 1** of PCS would amend G.S. 75-61 to add definitions of the following terms as used in the Identity Theft Protection Act: "protected consumer," "protected consumer security freeze," protected consumer's file," "representative," "sufficient proof of authority," and "sufficient proof of identity." "Protected consumer" is defined as a person who is under the age of 16, is incapacitated, or for whom a guardian or guardian ad litem has been appointed.

Section 2 would repeal G.S. 75-63(o1).

Section 3 would enact new G.S. 75-63.1, "Security freeze for protected consumers," which would permit a protected consumer's representative to request a consumer reporting agency to place a security freeze on a protected consumer's credit report or file.

The request would have to be submitted in the manner and to the address specified by the agency, provide sufficient identification of the representative and of the protected consumer, provide sufficient proof of the representative's authority to act for the protected consumer, and the requester would have to pay the agency a fee not to exceed $5.00.

Within 30 days of its receipt of a valid request for a security freeze, the consumer reporting agency would be required to do one of the following things, depending on whether the agency already has a consumer report for the protected consumer:

- If the agency has no consumer report it must create a protected consumer's file and restrict it so as to prohibit release of the file or the creation of any credit report.

[1] A "consumer report" is defined as any communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living used or expected to be used or collected for the purpose of serving as a factor in establishing a consumer's eligibility for credit, for employment purposes or any other purpose permitted under federal law. G.S. 75-61(3).

O. Walker Reagan
Director

H607-SMTG-114 CSTG-43 -V4

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(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- If the agency has a consumer report it must prohibit the release of the report any information contained in it.

The security freeze would remain in effect until either the protected consumer or his or her representative requests its removal, with payment of a fee not to exceed $5.00, or until the agency determines that the freeze was placed based on a material misrepresentation of fact, and would be removed within 30 days of the occurrence of either event.

No fee would be payable for placing or removing a security freeze if the representative submits documentation showing that the protected consumer's identifying information has been unlawfully used by another person, or if the request is for a protected consumer under the age of 16 for whom the agency has a consumer report.

The provisions of new G.S. 75-63.1 would be subject to the exceptions currently permitting the use of a consumer credit report by certain entities under G.S. 75-63. In addition, a consumer reporting agency would not be required to place a security freeze on a credit report pursuant to this section if it maintains a database or file with information that is used solely for one or more of the following purposes but not for credit granting purposes:

- Reporting of criminal record information.
- Fraud prevention or detection.
- Reporting personal loss history information.
- Employment, tenant, or other individual background screening.

As is the case presently for violations of G.S. 75-63, a violation of new G.S. 75-63.1 would be an unfair and deceptive trade practice in violation of G.S. 75-1.1.

Section 4 would amend G.S. 130A-101 to add a new subsection (h) requiring the person responsible for preparing a birth certificate to provide the child's mother, father, or legal guardian with information about how to request a protected consumer security freeze for the child under G.S. 75-63.1 and the potential benefits of doing so.

EFFECTIVE DATE: This act becomes effective January 1, 2016.

HOUSE BILL 584

Short Title:	Use of Position/Letters of Reference.	(Public)
Sponsors:	Representatives Glazier, Faircloth, Daughtry, and Harrison (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Ethics.	

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A LEGISLATOR OR PUBLIC SERVANT MAY REFERENCE THEIR PUBLIC POSITION IN A LETTER OF REFERENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 138A-31(b) reads as rewritten:

"(b) A covered person shall not mention or authorize another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to any of the following:

(1) Political advertising.
(2) News stories and articles.
(3) The inclusion of a covered person's public position in a directory or a biographical listing.
(4) The inclusion of a covered person's public position in an agenda or other document related to a meeting, conference, or similar event when the disclosure could reasonably be considered material by an individual attending the meeting, conference, or similar event.
(5) The inclusion of a covered person's public position in a charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3).
(6) The disclosure of a covered person's position to an existing or prospective customer, supplier, or client when the disclosure could reasonably be considered material by the customer, supplier, or client.
(7) A letter of character reference for any of the following:
  a. A student seeking admittance to a school or institution of higher education.
  b. An individual seeking an academic scholarship.
  c. An individual seeking leniency upon sentencing by the courts, or other matters related to probation or parole.
(8) A response to the inquiry of a potential employer as to the qualifications and character of an individual seeking employment."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 584
PROPOSED SENATE COMMITTEE SUBSTITUTE H584-CSST-81 [v.2]

7/22/2015 5:12:28 PM

Short Title: Use of Position/Letters of Reference. (Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A LEGISLATOR OR PUBLIC SERVANT MAY REFERENCE THEIR PUBLIC POSITION IN A LETTER OF REFERENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 138A-31(b) reads as rewritten:

"(b) A covered person shall not mention or authorize another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to any of the following:

(1) Political advertising.
(2) News stories and articles.
(3) The inclusion of a covered person's public position in a directory or a biographical listing.
(4) The inclusion of a covered person's public position in an agenda or other document related to a meeting, conference, or similar event when the disclosure could reasonably be considered material by an individual attending the meeting, conference, or similar event.
(5) The inclusion of a covered person's public position in a charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3).
(6) The disclosure of a covered person's position to an existing or prospective customer, supplier, or client when the disclosure could reasonably be considered material by the customer, supplier, or client.
(7) A letter of character reference for any of the following:
  a. A student seeking admittance to a school or institution of higher education.
  b. An individual seeking an academic scholarship.
  c. An individual seeking leniency upon sentencing by the courts, or other matters related to probation or parole.
  d. An individual seeking employment, at the request of that individual or in response to the inquiry of a potential employer as to the qualifications and character of that individual."

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

HOUSE BILL 584:
Use of Position/Letters of Reference

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 22, 2015
Introduced by:	Reps. Glazier, Faircloth, Daughtry, Harrison	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition H584-CSST-81		

SUMMARY: The PCS for House Bill 584 would amend the State Government Ethics Act to permit a covered person to mention their public position in (i) certain letters of reference and (ii) responses to inquiries of potential employers. The PCS would permit such mention of the covered person's public position in a letter written at the request of a person seeking employment.

CURRENT LAW: In the absence of a statutory exception, the State Government Ethics Act provides in G.S. 138A-31(b) that a "covered person"[1] shall not mention or authorize another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. There are currently six exceptions to this prohibition:

1. Political advertising.
2. News stories and articles.
3. The inclusion of a covered person's public position in a directory or a biographical listing.
4. The inclusion of a covered person's public position in an agenda or other document related to a meeting, conference, or similar event when the disclosure could reasonably be considered material by an individual attending the meeting, conference, or similar event.
5. The inclusion of a covered person's public position in a charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3).
6. The disclosure of a covered person's position to an existing or prospective customer, supplier, or client when the disclosure could reasonably be considered material by the customer, supplier, or client.

BILL ANALYSIS: House Bill 584 would amend G.S. 138A-31(b) to permit covered persons to mention or authorize others to mention the covered person's public position in a letter of character reference for individuals:

- seeking admission to a school or institute of higher education
- seeking an academic scholarship
- seeking leniency in sentencing or other matters related to probation or parole; and
- seeking employment, at the request of that individual or in response to an inquiry of a potential employer

EFFECTIVE DATE: This bill would be effective when it becomes law.

[1] A covered person is "a legislator, public servant, or judicial officer, as identified by the [State Ethics] Commission." G.S. 138A-3(10).

O. Walker Reagan
Director

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Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Denise Huntley Adams, counsel to House Ethics, substantially contributed to this summary.

HOUSE BILL 532
Committee Substitute Favorable 4/29/15

Short Title: Malt Bvg Tech Changes/Sell Cider in Growlers. (Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES TO THE SALE OF MALT BEVERAGES IN GROWLERS AND ALLOW CERTAIN ABC PERMITTEES TO SELL CIDER IN CERTAIN CONTAINERS FOR CONSUMPTION OFF THE PERMITTED PREMISES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 reads as rewritten:

"**§ 18B-1001. Kinds of ABC permits; places eligible.**

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

(1) On-Premises Malt Beverage Permit. – An on-premises malt beverage permit authorizes (i) the retail sale of malt beverages for consumption on the premises, (ii) the retail sale of malt beverages in the manufacturer's original container for consumption off the premises, and (iii) the retail sale of malt beverages in a cleaned, sanitized, resealable container ~~as defined in 4 NCAC 2T.0308(a)~~ that is filled or refilled and sealed for consumption off the ~~premises, complies with 4 NCAC 2T.0303, 4 NCAC 2T.0305, and 4 NCAC 2T.0308(d)-(e),~~ premises and ~~the container~~ that identifies the permittee and the date the container was filled or refilled. It also authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Food businesses;
   e. Retail businesses;
   f. Private clubs;
   g. Convention centers;
   h. Community theatres;
   i. Breweries as authorized by G.S. 18B-1104(7) and (8).

(2) Off-Premises Malt Beverage Permit. – An off-premises malt beverage permit authorizes (i) the retail sale of malt beverages in the manufacturer's original container for consumption off the premises, (ii) the retail sale of malt beverages in a cleaned, sanitized, resealable container ~~as defined in 4 NCAC 2T.0308(a)~~ that is filled or refilled and sealed for consumption off the ~~premises, complies with 4 NCAC 2T.0303, 4 NCAC 2T.0305, and 4~~

~~NCAC 2T.0308(d) (e),~~premises and ~~the container~~that identifies the permittee and the date the container was filled or refilled, and (iii) the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:

a. Restaurants.
b. Hotels.
c. Eating establishments.
d. Food businesses.
e. Retail businesses.
f. The holder of a brewing, distillation, and fermentation course authorization under G.S. 18B-1114.6. A school obtaining a permit under this subdivision is authorized to sell malt beverages manufactured during its brewing, distillation, and fermentation program at one noncampus location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee.

(3) On-Premises Unfortified Wine Permit. – An on-premises unfortified wine permit authorizes (i) the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, ~~and~~ (ii) the retail sale of unfortified wine in the manufacturer's original container for consumption off the ~~premises.~~premises, and (iii) the retail sale of unfortified wine dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas into a cleaned, sanitized, resealable container that is filled or refilled and sealed for consumption off the premises and that identifies the permittee and the date the container was filled or refilled. The permit also authorizes the permittee to transfer unfortified wine, not more than four times per calendar year, to another on-premises unfortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by on-premises unfortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred. The holder of the permit is authorized to ship unfortified wine in closed containers to individual purchasers inside and outside the State. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit may be issued for any of the following:

a. Restaurants;
b. Hotels;
c. Eating establishments;
d. Private clubs;
e. Convention centers;

f. Cooking schools;
g. Community theatres;
h. Wineries;
i. Wine producers.

(4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified wine permit authorizes (i) the retail sale of unfortified wine in the manufacturer's original container for consumption off the ~~premises and~~ premises, (ii) the retail sale of unfortified wine dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas into a cleaned, sanitized, resealable container that is filled or refilled and sealed for consumption off the premises and that identifies the permittee and the date the container was filled or refilled, and (iii) ~~it authorizes~~ the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses. The permit also authorizes the permittee to transfer unfortified wine, not more than four times per calendar year, to another off-premises unfortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by off-premises unfortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred. The permit may also be issued to the holder of a viticulture/enology course authorization under G.S. 18B-1114.4. A school obtaining a permit under this subdivision is authorized to sell wines manufactured during its viticulture/enology program at one non-campus location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee. The permit may also be issued for a winery or a wine producer for sale of its own unfortified wine during hours when the winery or wine producer's premises is open to the public, subject to any local ordinance adopted pursuant to G.S. 18B-1004(d) concerning hours for the retail sale of unfortified wine. A winery obtaining a permit under this subdivision is authorized to sell wine manufactured by the winery at one additional location in the county under the same conditions specified in G.S. 18B-1101(5) for the sale of wine at the winery; provided, however, that no other alcohol sales shall be authorized at the additional location. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision.

...

(16) Wine Shop Permit. – A wine shop permit authorizes (i) the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the premises, (ii) the retail sale of malt beverages or unfortified wine dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas in a cleaned,

sanitized, resealable container ~~as defined in 4 NCAC 2T.0308(a)~~ that is filled or refilled and sealed for consumption off the ~~premises, complies with 4 NCAC 2T.0303, 4 NCAC 2T.0305, and 4 NCAC 2T.0308(d)-(e).~~premises and ~~the container~~ that identifies the permittee and the date the container was filled or refilled, and (iii) wine tastings on the premises conducted and supervised by the permittee in accordance with subdivision (15) of this section. It also authorizes the holder of the permit to ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings, classes, and seminars about the selection, serving, and storing of wine. The holder of the permit is authorized to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period. The holder of a wine-tasting permit not engaged in the preparation or sale of food on the premises is not subject to Part 6 of Article 8 of Chapter 130A of the General Statutes.

...."

SECTION 2. The North Carolina Alcoholic Beverage Control Commission rules regulating the retail sale of malt beverages in growlers shall apply to the retail sale of unfortified wine in growlers until such time as the Commission shall adopt administrative rules implementing this act.

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

HOUSE BILL 532
Committee Substitute Favorable 4/29/15

Short Title: Malt Bvg Tech Changes/Sell Cider in Growlers. (Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES TO THE SALE OF MALT BEVERAGES IN GROWLERS AND ALLOW CERTAIN ABC PERMITTEES TO SELL CIDER IN CERTAIN CONTAINERS FOR CONSUMPTION OFF THE PERMITTED PREMISES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 reads as rewritten:

"**§ 18B-1001. Kinds of ABC permits; places eligible.**

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

(1) On-Premises Malt Beverage Permit. – An on-premises malt beverage permit authorizes (i) the retail sale of malt beverages for consumption on the premises, (ii) the retail sale of malt beverages in the manufacturer's original container for consumption off the premises, and (iii) the retail sale of malt beverages in a cleaned, sanitized, resealable container ~~as defined in 4 NCAC 2T.0308(a)~~ that is filled or refilled and sealed for consumption off the ~~premises, complies with 4 NCAC 2T.0303, 4 NCAC 2T.0305, and 4 NCAC 2T.0308(d)-(e),~~ premises and ~~the container~~ that identifies the permittee and the date the container was filled or refilled. It also authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Food businesses;
   e. Retail businesses;
   f. Private clubs;
   g. Convention centers;
   h. Community theatres;
   i. Breweries as authorized by G.S. 18B-1104(7) and (8).

(2) Off-Premises Malt Beverage Permit. – An off-premises malt beverage permit authorizes (i) the retail sale of malt beverages in the manufacturer's original container for consumption off the premises, (ii) the retail sale of malt beverages in a cleaned, sanitized, resealable container ~~as defined in 4 NCAC 2T.0308(a)~~ that is filled or refilled and sealed for consumption off the ~~premises, complies with 4 NCAC 2T.0303, 4 NCAC 2T.0305, and 4~~

~~NCAC 2T.0308(d) (e),~~premises and ~~the containerthat~~ identifies the permittee and the date the container was filled or refilled, and (iii) the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:

a. Restaurants.
b. Hotels.
c. Eating establishments.
d. Food businesses.
e. Retail businesses.
f. The holder of a brewing, distillation, and fermentation course authorization under G.S. 18B-1114.6. A school obtaining a permit under this subdivision is authorized to sell malt beverages manufactured during its brewing, distillation, and fermentation program at one noncampus location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee.

(3) On-Premises Unfortified Wine Permit. – An on-premises unfortified wine permit authorizes (i) the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, ~~and~~ (ii) the retail sale of unfortified wine in the manufacturer's original container for consumption off the ~~premises.~~premises, and (iii) the retail sale of unfortified wine dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas into a cleaned, sanitized, resealable container that is filled or refilled and sealed for consumption off the premises and that identifies the permittee and the date the container was filled or refilled. The permit also authorizes the permittee to transfer unfortified wine, not more than four times per calendar year, to another on-premises unfortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by on-premises unfortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred. The holder of the permit is authorized to ship unfortified wine in closed containers to individual purchasers inside and outside the State. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit may be issued for any of the following:

a. Restaurants;
b. Hotels;
c. Eating establishments;
d. Private clubs;
e. Convention centers;

f. Cooking schools;
g. Community theatres;
h. Wineries;
i. Wine producers.

(4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified wine permit authorizes (i) the retail sale of unfortified wine in the manufacturer's original container for consumption off the ~~premises and~~ premises, (ii) the retail sale of unfortified wine dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas into a cleaned, sanitized, resealable container that is filled or refilled and sealed for consumption off the premises and that identifies the permittee and the date the container was filled or refilled, and (iii) ~~it authorizes~~ the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses. The permit also authorizes the permittee to transfer unfortified wine, not more than four times per calendar year, to another off-premises unfortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by off-premises unfortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred. The permit may also be issued to the holder of a viticulture/enology course authorization under G.S. 18B-1114.4. A school obtaining a permit under this subdivision is authorized to sell wines manufactured during its viticulture/enology program at one non-campus location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee. The permit may also be issued for a winery or a wine producer for sale of its own unfortified wine during hours when the winery or wine producer's premises is open to the public, subject to any local ordinance adopted pursuant to G.S. 18B-1004(d) concerning hours for the retail sale of unfortified wine. A winery obtaining a permit under this subdivision is authorized to sell wine manufactured by the winery at one additional location in the county under the same conditions specified in G.S. 18B-1101(5) for the sale of wine at the winery; provided, however, that no other alcohol sales shall be authorized at the additional location. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision.

...

(16) Wine Shop Permit. – A wine shop permit authorizes (i) the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the premises, (ii) the retail sale of malt beverages or unfortified wine dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas in a cleaned,

sanitized, resealable container ~~as defined in 4 NCAC 2T.0308(a)~~ that is filled or refilled and sealed for consumption off the ~~premises, complies with 4 NCAC 2T.0303, 4 NCAC 2T.0305, and 4 NCAC 2T.0308(d)-(e),~~premises and ~~the container~~ that identifies the permittee and the date the container was filled or refilled, and (iii) wine tastings on the premises conducted and supervised by the permittee in accordance with subdivision (15) of this section. It also authorizes the holder of the permit to ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings, classes, and seminars about the selection, serving, and storing of wine. The holder of the permit is authorized to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period. The holder of a wine-tasting permit not engaged in the preparation or sale of food on the premises is not subject to Part 6 of Article 8 of Chapter 130A of the General Statutes.

...."

SECTION 2. The North Carolina Alcoholic Beverage Control Commission rules regulating the retail sale of malt beverages in growlers shall apply to the retail sale of unfortified wine in growlers until such time as the Commission shall adopt administrative rules implementing this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 532
PROPOSED SENATE COMMITTEE SUBSTITUTE H532-CSTG-46 [v.3]

7/22/2015 4:04:52 PM

Short Title: WC/Truck Driver Status. (Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO REPEAL G.S. 97-19.1 CONCERNING THE STATUS OF TRUCK DRIVERS AS EMPLOYEES OR INDEPENDENT CONTRACTORS FOR PURPOSES OF THE WORKERS COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-19.1 is repealed.

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

HOUSE BILL 532:
WC/Truck Driver Status

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 22, 2015
Introduced by:	Reps. McGrady, Jeter, West, Fisher	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Second Edition H532-CSTG-46		

SUMMARY: The PCS for House Bill 532 would repeal G.S. 97-19.1, which imposes liability for workers compensation benefits upon a principal contractor, intermediate contractor, or subcontractor who contracts with an independent contractor, its employees or subcontractors operating trucks, tractors, or tractor trailers, for injury or death arising out of and in the course of doing the work required under the contract, if the independent contractor has not secured payment of workers compensation benefits for the independent contractor personally or for its employees or subcontractors. The PCS entirely rewrites the original bill.

CURRENT LAW: Under current law, an employer of three or more employees must provide workers compensation coverage for injuries or death to the employees that arise out of and in the course of the performance of work performed by the employees. If the person is not an employee, but is an independent contractor, the employer is not responsible for providing coverage in most situations. In determining whether a workers compensation claimant is an employee or an independent contractor, the Industrial Commission and the courts apply the established common law test[1] to the facts of each case.

However, G.S.97-19.1 provides that in the case of a person who operates trucks, tractors, or tractor trailers licensed by the United States Department of Transportation and who has not secured the payment of workers compensation for himself or for his employees and subcontractors, any principal contractor, intermediate contractor, or subcontractor who contracts with that person must pay workers compensation benefits for injury to or death of that person or that person's employees or subcontractors that arose out of and in the course of the performance of the work covered by the contract. Under these circumstances the statute relieves the claimant of the burden of proving the existence of

The principal contractor, intermediate contractor, or subcontractor is permitted to include the independent contractor, its employees and subcontractors under a blanket workers compensation policy and to be reimbursed by the independent contractor for the cost of that coverage. In addition, liability is not imposed under this section for injury or death arising under a contract with an independent

[1] Facts supporting a finding of independent contractor status include: "[t]he person employed (a) is engaged in an independent business, calling, or occupation; (b) is to have the independent use of his special skill, knowledge, or training in the execution of the work; (c) is doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis; (d) is not subject to discharge because he adopts one method of doing the work rather than another; (e) is not in the regular employ of the other contracting party; (f) is free to use such assistants as he may think proper; (g) has full control over such assistants; and (h) selects his own time." Hayes v. Elon College, 224 N.C. 11, 16, 29 S.E.2d 137, 140 (1944). No one of these indicia is controlling, nor are all required to be found. Rather, they are considered with all of the other circumstances "to determine whether the one employed has that degree of independence necessary to require his classification as independent contractor rather than employee." Denton v. South Mountain Pulpwood Co., 69 N.C.App. 366, 377, 317 S.E.2d 433, 440 (1984).

O. Walker Reagan
Director

H532-SMTG-116 CSTG-46 -V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

contractor who is personally operating the vehicle solely pursuant to a license issued by the United States Department of Transportation.

BILL ANALYSIS: The PCS for House Bill 532 would repeal G.S. 97-19.1 in its entirety. As a consequence, a principal contractor, intermediate contractor, or subcontractor would not be liable for workers compensation benefits in the event of injury of or death to an independent contractor, its employees or subcontractors arising out of and in the course of performing work under the contract with the principal contractor, intermediate contractor, or subcontractor. In order to recover benefits, the workers compensation claimant would be required to prove that the claimant was an employee of the defendant principal contractor, intermediate contractor, or subcontractor under the common law test.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

HOUSE BILL 562

Committee Substitute Favorable 4/28/15
Committee Substitute #2 Favorable 4/30/15
Committee Substitute #3 Favorable 6/3/15
Fifth Edition Engrossed 6/16/15
Corrected Copy 6/16/15
Seventh Edition Engrossed 6/17/15

Short Title: Amend Firearm Laws. (Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS FIREARM LAWS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

...

(4a) Any person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while in a courtroom or while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The district attorney, assistant district attorney, or investigator shall secure the weapon in a locked compartment when the weapon is not on the person of the district attorney, assistant district attorney, or ~~investigator;~~investigator. Notwithstanding the provisions of this subsection, a district attorney may carry a concealed weapon while in a courtroom;

...

(7) A person employed by the Department of Public Safety who has been designated in writing by the Secretary of the Department, who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, and has in the person's possession written proof of the designation by the Secretary of the Department, provided that the person shall not carry a concealed weapon at any time while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body.

(8) Any person who is an administrative law judge described in Article 60 of Chapter 7A of the General Statutes and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid

under G.S. 14-415.24, provided that the person shall not carry a concealed weapon at any time while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body."

SECTION 1.(b) G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on certain State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to any of the following:

...

(7) Any person who carries or possesses an ordinary pocket knife, as defined in G.S. 14-269(d), carried in a closed position into the State Capitol Building or on the grounds of the State Capitol Building.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 1.(c) G.S. 14-415.27 reads as rewritten:

"**§ 14-415.27. Expanded permit scope for certain persons.**

Notwithstanding G.S. 14-415.11(c), any of the following persons who has a concealed handgun permit issued pursuant to this Article or that is considered valid under G.S. 14-415.24 is not subject to the area prohibitions set out in G.S. 14-415.11(c) and may carry a concealed handgun in the areas listed in G.S. 14-415.11(c) unless otherwise prohibited by federal law:

(1) A district attorney.
(2) An assistant district attorney.
(3) An investigator employed by the office of a district attorney.
(4) A North Carolina district or superior court judge.
(5) A magistrate.
(6) A person who is elected and serving as a clerk of court.
(7) A person who is elected and serving as a register of deeds.
(8) A person employed by the Department of Public Safety who has been designated in writing by the Secretary of the Department and who has in the person's possession written proof of the designation.
(9) A North Carolina administrative law judge."

SECTION 2. G.S. 14-269.2(k) reads as rewritten:

"(k) The provisions of this section shall not apply to a person who has a concealed handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, ~~who~~ if any of the following conditions are met:

(1) The person has a handgun in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's ~~vehicle. A person may unlock~~ vehicle and only unlocks the vehicle to enter or exit the vehicle ~~provided~~ while the firearm remains in the closed compartment at all times and immediately locks the vehicle ~~is locked immediately~~ following the entrance or exit.
(2) The person has a handgun concealed on the person and the person remains in the locked vehicle and only unlocks the vehicle to allow the entrance or exit of another person.

(3) The person is within a locked vehicle and removes the handgun from concealment only for the amount of time reasonably necessary to do either of the following:

a. Move the handgun from concealment on the person to a closed compartment or container within the vehicle.

b. Move the handgun from within a closed compartment or container within the vehicle to concealment on the person."

SECTION 3. G.S. 14-269.2 is amended by adding a new subsection to read:

"(l) It is an affirmative defense to a prosecution under subsection (b) or (f) of this section that the person was authorized to have a concealed handgun in a locked vehicle pursuant to subsection (k) of this section and removed the handgun from the vehicle only in response to a threatening situation in which deadly force was justified pursuant to G.S. 14-51.3."

SECTION 4.(a) Article 45 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-503.2. Regulation of firearms at State Fair.**

(a) Except as otherwise provided in this section, the Commissioner of Agriculture is authorized to prohibit the carrying of firearms in any manner on the State Fairgrounds during the period of time each year that the State Fair is conducted.

(b) Notwithstanding subsection (a) of this section, any prohibition under this section shall not apply to the following persons:

(1) Any person exempted by G.S. 14-269(b)(1), (2), (3), (4), or (5).

(2) Any person who has a concealed handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, who has a handgun in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock the vehicle to enter or exit the vehicle provided the firearm remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit."

SECTION 4.(b) The Department of Agriculture, in consultation with the Department of Public Safety and the North Carolina Sheriffs' Association, shall study the best method to allow persons with concealed handgun permits to carry a concealed handgun on their person from a parking lot to the entrance of the State Fairgrounds, and a secure method of storage for and retrieval of those handguns at or near the entrance. The Department of Agriculture shall report to the Joint Legislative Oversight Committee on Justice and Public Safety by April 1, 2016, with recommendations, including any necessary legislation.

SECTION 5.(a) G.S. 14-409.46 reads as rewritten:

"**§ 14-409.46. Sport shooting range protection.**

(a) Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range ~~was in existence at least three years prior to the effective date of this Article and the range was~~ is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.

(b) A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance on the basis of noise or noise pollution, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range ~~was in existence at least three years prior to the effective date of this Article and the range was~~ is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.

(c) Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range ~~exempted from liability under this Article.~~that was in operation prior to the adoption of the rule.

(d) A person who acquires title to real property adversely affected by the use of property with a permanently located and improved sport shooting range constructed and initially operated prior to the time the person acquires title shall not maintain a nuisance action on the basis of noise or noise pollution against the person who owns the range to restrain, enjoin, or impede the use of the range. If there is a substantial change in use of the range after the person acquires title, the person may maintain a nuisance action if the action is brought within one year of the date of a substantial change in use. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.

(e) A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance ~~and was in existence at least three years prior to the effective date of this Article,~~ shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance, provided there has been no substantial change in use."

SECTION 5.(b) G.S. 14-409.47 reads as rewritten:

"**§ 14-409.47. Application of Article.**

Except as otherwise provided in this Article, this Article does not prohibit a local government from regulating the location and construction of a sport shooting range after ~~the effective date of this Article.~~September 1, 1997."

SECTION 6. G.S. 14-415.4(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

(1) Firearms rights. – The legal right in this State of a person to purchase, own, possess, or have in the person's custody, care, or control any firearm or any weapon of mass death and destruction as those terms are defined in G.S. 14-415.1 and G.S. 14-288.8(c). ~~The term does not include any weapon defined in G.S. 14-409(a).~~

(2) Nonviolent felony. – The term nonviolent felony does not include any felony that is a Class A, Class B1, or Class B2 felony. Also, the term nonviolent felony does not include any Class C through Class I felony that is one of the following:

a. An offense that includes assault as an essential element of the offense.

b. An offense that includes the possession or use of a firearm or other deadly weapon as an essential or nonessential element of the offense, or the offender was in possession of a firearm or other deadly weapon at the time of the commission of the offense.

c. An offense for which the offender was armed with or used a firearm or other deadly weapon.

d. An offense for which the offender must register under Article 27A of Chapter 14 of the General Statutes."

SECTION 7. G.S. 14-415.12(b) reads as rewritten:

"(b) The sheriff shall deny a permit to an applicant who:

(1) Is ineligible to own, possess, or receive a firearm under the provisions of State or federal law.

(2) Is under indictment or against whom a finding of probable cause exists for a felony.

(3) Has been adjudicated guilty in any court of a felony, unless: (i) the felony is an offense that pertains to antitrust violations, unfair trade practices, or

restraints of trade, or (ii) the person's firearms rights have been restored pursuant to G.S. 14-415.4.

(4) Is a fugitive from justice.

(5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.

(6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision.

(7) Is or has been discharged from the Armed Forces of the United States under conditions other than honorable.

(8) ~~Is~~ Except as provided in subdivision (8a), (8b), or (8c) of this section, is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General ~~Statutes,~~Statutes except for a violation of G.S. 14-33(a), or a violation of a misdemeanor under ~~G.S. 14-225.2, 14-226.1,~~ G.S. 14-226.1, 4-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, ~~14-276.1,~~ 14-277, 14-277.1, 14-277.2, ~~14-277.3A, 14-281.1, 14-283,~~ 14-283 except for a violation involving fireworks exempted under G.S. 14-414, 14-288.2, ~~14-288.4(a)(1) or (2),~~ 14-288.4(a)(1), 14-288.6, 14-288.9, former 14-288.12, former 14-288.13, former 14-288.14, ~~14-288.20A, 14-318.2,~~ 14-415.21(b), ~~14-415.26(d), or former G.S. 14-277.3.~~ or 14-415.26(d) within three years prior to the date on which the application is submitted.

(8a) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor under G.S. 14-33(c)(1), 14-33(c)(2), 14-33(c)(3), 14-33(d), 14-277.3A, 14-318.2, 14-134.3, 50B-4.1, or former G.S. 14-277.3.

(8b) Is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g) as a result of a conviction of a misdemeanor crime of domestic violence.

(8c) Has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes involving an assault or a threat to assault a law enforcement officer, probation or parole officer, person employed at a State or local detention facility, firefighter, emergency medical technician, medical responder, or emergency department personnel.

(9) Has had entry of a prayer for judgment continued for a criminal offense which would disqualify the person from obtaining a concealed handgun permit.

(10) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify him from obtaining a concealed handgun permit.

(11) Has been convicted of an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 within three years prior to the date on which the application is submitted."

SECTION 8. G.S. 113-291.1(c) reads as rewritten:

"(c) It is a Class 1 misdemeanor for any person taking wildlife to have in his possession any:

(1) Repealed by Session Laws 2013-369, s. 23, effective October 1, 2013.
(2) Weapon of mass death and destruction as defined in G.S. 14-288.8, other than a suppressor or other device designed to muffle or minimize the report of a firearm or short-barreled rifle that is lawfully possessed by a person in compliance with 26 U.S.C. Chapter 53 §§ 5801-5871.

The Wildlife Resources Commission may prohibit individuals training dogs or taking particular species from carrying axes, saws, tree-climbing equipment, and other implements that may facilitate the unlawful taking of wildlife, except tree-climbing equipment may be carried and used by persons lawfully taking raccoons and opossums during open season."

SECTION 9. G.S. 14-415.21 reads as rewritten:

"**§ 14-415.21. Violations of this Article punishable as an infraction.**

(a) A person who has been issued a valid permit who is found to be carrying a concealed handgun without the permit in the person's possession or who fails to disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, shall be guilty of an infraction and shall be punished in accordance with G.S. 14-3.1. Any person who has been issued a valid permit who is found to be carrying a concealed handgun in violation of G.S. 14-415.11(c)(8) shall be guilty of an infraction and may be required to pay a fine of up to five hundred dollars ($500.00). In lieu of paying a fine the person may surrender the permit.

(a1) A person who has been issued a valid permit who is found to be carrying a concealed handgun in violation of ~~subdivision (c)(8) or~~ subsection (c2) of G.S. 14-415.11 shall be guilty of a Class 1 misdemeanor.

(b) A person who violates the provisions of this Article other than as set forth in subsection (a) or (a1) of this section is guilty of a Class 2 misdemeanor."

SECTION 10.(a) G.S. 14-403 reads as rewritten:

"**§ 14-403. Permit issued by sheriff; form of permit; expiration of permit.**

The sheriffs of any and all counties of this State shall issue to any person, firm, or corporation in any county a permit to purchase or receive any weapon mentioned in this Article from any person, firm, or corporation offering to sell or dispose of the weapon. The permit shall expire five years from the date of issuance. The permit shall ~~be in the following form:~~be a standard form created by the State Bureau of Investigation in consultation with the North Carolina Sheriffs' Association, shall be of a uniform size and material, and shall be designed with security features intended to minimize the ability to counterfeit or replicate the permit and shall be set forth as follows:

North Carolina,

_____ County.

I, _____, Sheriff of said County, do hereby certify that I have conducted a criminal background check of the applicant, _____ whose place of residence is_____ in _____ (or) in _____ Township, _____ County, North Carolina, and have received no information to indicate that it would be a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The applicant has further satisfied me as to his, her (or) their good moral character. Therefore, a permit is issued to _____ to purchase one pistol from any person, firm or corporation authorized to dispose of the same.

This permit expires five years from its date of issuance.

This __ day of _____, ____.

_____

Sheriff.

The standard permit created by this section shall be used statewide by the sheriffs of any and all counties and, when issued by a sheriff, shall also contain an embossed seal unique to the office of the issuing sheriff."

SECTION 10.(b) Permits issued pursuant to Article 52A of Chapter 14 of the General Statutes prior to the effective date of subsection (a) of this section shall remain valid until expiration. Any person possessing a valid permit issued prior to the effective date of subsection (a) of this section may exchange that permit for an updated permit from the sheriff that issued the original permit with no further application required. Any permit issued in exchange shall expire on the same date as the original permit for which it was exchanged.

SECTION 10.(c) The State Bureau of Investigation shall make reasonable efforts to notify federally licensed firearm dealers in this State of the new permit appearance and requirements implemented by subsection (a) of this section.

SECTION 10.(d) G.S. 14-404 reads as rewritten:

"**§ 14-404. Issuance or refusal of permit; appeal from refusal; grounds for refusal; sheriff's fee.**

(a) Upon application, the sheriff shall issue the permit to a resident of that county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a nonresident, when the sheriff has done all of the following:

(1) Verified, before the issuance of a permit, by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The sheriff shall determine the criminal and background history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, by conducting a check through the National Instant Criminal Background Check System (NICS), and by conducting a criminal history check through the Administrative Office of the Courts.

(2) Fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant. For purposes of determining an applicant's good moral character to receive a permit, the sheriff shall only consider an applicant's conduct and criminal history for the five-year period immediately preceding the date of the application.

(3) Fully satisfied himself or herself that the applicant desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting.

(b) If the sheriff is not fully satisfied, the sheriff may, for good cause shown, decline to issue the permit and shall provide to the applicant within seven days of the refusal a written statement of the reason(s) for the refusal. The statement shall cite the specific facts upon which the sheriff concluded that the applicant was not qualified for the issuance of a permit and list, by statute number, the applicable law upon which the denial is based. An appeal from the refusal shall lie by way of petition to the ~~chief judge of the district court for~~superior court in the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal, and shall be final.

...

(e) The sheriff shall charge for the sheriff's services upon receipt of an application a fee of five dollars ($5.00) for each permit requested. There shall be no limit as to the number or frequency of permit applications and no other costs or fees other than provided in this subsection shall be charged for the permit, including, but not limited to, any costs for investigation, processing, or medical background checks by the sheriff or others providing records to the sheriff.

(e1) The application for a permit shall be on a form created by the State Bureau of Investigation in consultation with the North Carolina Sheriffs' Association. This application

shall be used by all sheriffs and must be provided by the sheriff both electronically and in paper form. Only the following shall be required to be submitted by an applicant for a permit:

(1) The permit application developed pursuant to this subsection.

(2) Five dollars for each permit requested pursuant to subsection (e) of this section.

(3) A government issued identification confirming the identity of the applicant.

(4) Proof of residency.

(5) A signed release, in a form to be prescribed by the Administrative Office of the Court, that authorizes and requires disclosure to the sheriff of any court orders concerning the mental health or capacity of the applicant to be used for the sole purpose of determining whether the applicant is disqualified to receive a permit pursuant to this section.

No additional document or evidence shall be required from any applicant.

...

(i) A person or entity shall promptly disclose to the sheriff, upon presentation by the applicant or sheriff of an original or photocopied release form described in subdivision (5) of subsection (e1) of this section, any court orders concerning the mental health or capacity of the applicant who signed the release form."

SECTION 10.5. The Department of Public Safety, in consultation with the Office of Information Technology Services and the Federal Bureau of Investigation, shall study the development of a system to allow a background check to be conducted in private transfers of firearms. The study shall consider methods that would allow the seller or transferor to access the Criminal Justice Law Enforcement Automated Data Services (CJLEADS), the National Instant Criminal Background Check System (NICS), or another similar system that would provide information to the seller or transferor regarding the purchaser or transferee's eligibility to purchase a pistol.

The Department shall report its findings and any recommended legislation to the Joint Legislative Oversight Committee on Justice and Public Safety on or before January 1, 2019.

SECTION 11.(a) G.S. 122C-54(d1) is repealed.

SECTION 11.(b) G.S. 122C-54.1 is recodified as G.S. 14-409.42.

SECTION 11.(c) G.S. 14-404(c1) is repealed.

SECTION 11.(d) Article 53B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-409.43. Reporting of certain disqualifiers to the National Instant Criminal Background Check System (NICS).**

(a) Excluding Saturdays, Sundays, and holidays, not later than 48 hours after receiving notice of any of the following judicial determinations or findings, the clerk of superior court in the county where the determination or finding was made shall work through the Administrative Office of the Courts to cause a record of the determination or finding to be transmitted to the National Instant Criminal Background Check System (NICS):

(1) A determination that an individual shall be involuntarily committed to a facility for inpatient mental health treatment upon a finding that the individual is mentally ill and a danger to self or others.

(2) A determination that an individual shall be involuntarily committed to a facility for outpatient mental health treatment upon a finding that the individual is mentally ill and, based on the individual's treatment history, in need of treatment in order to prevent further disability or deterioration that would predictably result in a danger to self or others.

(3) A determination that an individual shall be involuntarily committed to a facility for substance abuse treatment upon a finding that the individual is a substance abuser and a danger to self or others.

(4) A finding that an individual is not guilty by reason of insanity.

(5) A finding that an individual is mentally incompetent to proceed to criminal trial.

(6) A finding that an individual lacks the capacity to manage the individual's own affairs due to marked subnormal intelligence or mental illness, incompetency, condition, or disease.

(7) A determination to grant a petition to an individual for the removal of disabilities pursuant to G.S. 14-409.42 or any applicable federal law.

The 48-hour period for transmitting a record of a judicial determination or finding to the NICS under subsection (a) of this section begins upon receipt by the clerk of a copy of the judicial determination or finding. The Administrative Office of the Courts shall adopt rules to require clerks of court to transmit information to the NICS in a uniform manner.

(b) Excluding Saturdays, Sundays, and holidays, not later than 48 hours after receiving notice of the issuance of a felony warrant, indictment, criminal summons, or order for arrest, the Administrative Office of the Courts shall transmit any unserved felony warrants, indictments, criminal summons, or order for arrests to the NCIC (or National Instant Criminal Background Check System (NICS)).

(c) Excluding Saturdays, Sundays, and holidays, not later than 48 hours after service by the sheriff of an order issued by a judge pursuant to Chapter 50B of the General Statutes and pursuant to G.S. 50B-3(d) the sheriff shall cause a record of the order to be transmitted to the National Instant Criminal Information System."

SECTION 11.(e) G.S. 122C-54(d2) reads as rewritten:

"(d2) The record of involuntary commitment for inpatient or outpatient mental health treatment or for substance abuse treatment required ~~by subsection (d1) of this section~~ to be reported to the National Instant Criminal Background Check System (NICS) by G.S. 14-409.43 shall be accessible only by ~~an entity having proper access to NICS~~ the sheriff or the sheriff's designee for the purposes of conducting background checks under G.S. 14-404 and shall remain otherwise confidential as provided by this Article. ~~The Administrative Office of the Courts shall adopt rules to require clerks of court to transmit information to the NICS as required by subsection (d1) of this section in a uniform manner.~~"

SECTION 11.(f) G.S. 14-404(a) reads as rewritten:

"(a) Upon application, and such application must be provided by the sheriff electronically, the sheriff shall issue the permit to a resident of that county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a nonresident, when the sheriff has done all of the following:

…."

SECTION 11.(g) G.S. 14-415.13(a) reads as rewritten:

"(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

(1) An application, completed under oath, on a form provided by the ~~sheriff.~~sheriff, and such application form must be provided by the sheriff electronically. The sheriff shall not request employment information, character affidavits, additional background checks, photographs, or other information unless specifically permitted by this Article.

…."

SECTION 11.(h) G.S. 15A-502 reads as rewritten:

"**§ 15A-502. Photographs and fingerprints.**

(a) A person charged with the commission of a felony or a misdemeanor may be photographed and his fingerprints may be taken for law-enforcement records only when he has been:

(1) Arrested or committed to a detention facility, or
(2) Committed to imprisonment upon conviction of a crime, or
(3) Convicted of a felony.

(a1) It shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of a felony to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation.

(a2) It shall be the duty of the arresting law enforcement agency to cause a person charged with the commission of any of the following misdemeanors to be fingerprinted, for the purposes of reporting these offenses to the National Criminal Instant Background Check System (NICS), and to forward those fingerprints to the State Bureau of Investigation:

(1) G.S. 14-134.3 (Domestic criminal trespass), G.S. 15A-1382.1 (Offense that involved domestic violence), or G.S. 50B-4.1 (Violation of a valid protective order).
(2) G.S. 20-138.1 (Impaired driving), G.S. 20-138.2 (Impaired driving in commercial vehicle), G.S. 20-138.2A (Operating a commercial vehicle after consuming alcohol), and G.S. 20-138.2B (Operating various school, child care, EMS, firefighting, or law enforcement vehicles after consuming alcohol).
(3) G.S. 90-95(a)(3) (Possession of a controlled substance).

(a3) It shall be the duty of the arresting law enforcement agency to cause a person charged with a crime to provide to the magistrate as much of the following information as possible for the person arrested:

(1) Name including first, last, middle, maiden, and nickname or alias.
(2) Address including street, city, and state.
(3) Drivers license number and state of issuance.
(4) Date of birth.
(5) Sex.
(6) Race.
(7) Social Security number.
(8) Relationship to the alleged victim and whether it is a "personal relationship" as defined by G.S. 50B-1(b).

(a4) It shall be the duty of the arresting law enforcement agency to cause a person who has been charged with a misdemeanor offense of assault, stalking, or communicating a threat and held under G.S. 15A-534.1 to be fingerprinted for the purposes of reporting these offenses to the National Criminal Instant Background Check System (NICS) and to forward those fingerprints to the State Bureau of Investigation.

(a5) It shall be the duty of the magistrate to enter into the court information system all information provided by the arresting law enforcement agency on the person arrested.

~~(a2)~~(a6) If the person cannot be identified by a valid form of identification, it shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of:

(1) Any offense involving impaired driving, as defined in G.S. 20-4.01(24a), or
(2) Driving while license revoked if the revocation is for an Impaired Driving License Revocation as defined in G.S. 20-28.2

to be fingerprinted and photographed.

(b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes,

"Motor Vehicles." Notwithstanding the prohibition in this subsection, a photograph may be taken of a person who operates a motor vehicle on a street or highway if:

(1) The person is cited by a law enforcement officer for a motor vehicle moving violation, and

(2) The person does not produce a valid drivers license upon the request of a law enforcement officer, and

(3) The law enforcement officer has a reasonable suspicion concerning the true identity of the person.

As used in this subsection, the phrase "motor vehicle moving violation" does not include the offenses listed in the third paragraph of G.S. 20-16(c) for which no points are assessed, nor does it include equipment violations specified in Part 9 of Article 3 of Chapter 20 of the General Statutes.

(b1) Any photograph authorized by subsection (b) of this section and taken by a law enforcement officer or agency:

(1) Shall only be taken of the operator of the motor vehicle, and only from the neck up.

(2) Shall be taken at either the location where the citation is issued, or at the jail if an arrest is made.

(3) Shall be retained by the law enforcement officer or agency until the final disposition of the case.

(4) Shall not be used for any purpose other than to confirm the identity of the alleged offender.

(5) Shall be destroyed by the law enforcement officer or agency upon a final disposition of the charge.

(c) This section does not authorize the taking of photographs or fingerprints of a juvenile alleged to be delinquent except under Article 21 of Chapter 7B of the General Statutes.

(d) This section does not prevent the taking of photographs, moving pictures, video or sound recordings, fingerprints, or the like to show a condition of intoxication or for other evidentiary use.

(e) Fingerprints or photographs taken pursuant to subsection (a), (a1), or (a2) of this section may be forwarded to the State Bureau of Investigation, the Federal Bureau of Investigation, or other law-enforcement agencies."

SECTION 11.(i) The Administrative Office of the Courts shall use the sum of up to twenty thousand dollars ($20,000) available to it for the 2014-2015 fiscal year from the Court Information Technology Fund to comply with the portions of subsection (d) of this section applicable to the Administrative Office of the Courts and to provide all of the following historical records to the National Instant Criminal Background Check System (NICS) by May 31, 2019:

(1) Involuntary commitments for inpatient and outpatient mental health and substance abuse treatment from all counties.

(2) Findings of not guilty by reason of insanity or mentally incompetent to stand trial from all counties.

(3) Findings that an individual lacks the capacity to manage the individual's own affairs due to marked subnormal intelligence or mental illness, incompetency, condition, or disease from all counties.

(4) Convictions for misdemeanor possession of controlled substances under G.S. 90-95(a)(3) from all counties from January 1, 2009.

(5) Convictions for all misdemeanors as identified in G.S. 14-134.3, 15A-1382.1, or 50B-4.1 from all counties.

(6) Convictions for all misdemeanors as identified in G.S. 20-138.1, 20-138.2, 20-138.2A, and 20-138.2B or convicted and sentenced under G.S. 20-179(f3) for more than two years from all counties.

(7) Active and unserved felony warrants, indictments, criminal summons, and orders for arrest from all counties.

No later than January 1, 2018, the Administrative Office of the Courts shall report to the Joint Legislative Oversight Committee on Justice and Public Safety and the Joint Legislative Oversight Committee on Information Technology on the progress made towards providing the information required by subsection (d) of this section and providing the historical records to NICS.

SECTION 11.(j) G.S. 14-404(g) reads as rewritten:

"(g) An applicant shall not be ineligible to receive a permit under subdivision (c)(4) of this section because of involuntary commitment to mental health services if the individual's rights have been restored under ~~G.S. 122C-54.1.~~G.S. 14-409.42."

SECTION 11.(k) G.S. 14-415.3(c) reads as rewritten:

"(c) The provisions of this section shall not apply to a person whose rights have been restored pursuant to ~~G.S. 122C-54.1.~~G.S. 14-409.42."

SECTION 11.(l) G.S. 14-415.12(c) reads as rewritten:

"(c) An applicant shall not be ineligible to receive a concealed carry permit under subdivision (6) of subsection (b) of this section because of an adjudication of mental incapacity or illness or an involuntary commitment to mental health services if the individual's rights have been restored under ~~G.S. 122C-54.1.~~G.S. 14-409.42."

SECTION 11.(m) G.S. 122C-54.1(a), recodified as G.S. 14-409.42(a) by subsection (b) of this section, reads as rewritten:

"(a) Any individual over the age of 18 may petition for the removal of the disabilities pursuant to 18 U.S.C. § 922(d)(4) and (g)(4), G.S. 14-415.3, and G.S. 14-415.12 arising out of a determination or finding required to be transmitted to the National Instant Criminal Background Check System by subdivisions (1) through (6) ~~of subsection (d1) of G.S. 122C-54.~~ of subsection (a) of G.S. 14-409.43. The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment."

SECTION 11.(n) G.S. 15A-534(a) reads as rewritten:

"(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) House arrest with electronic monitoring.

If condition (5) is imposed, the defendant must execute a secured appearance bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If the defendant is required to provide fingerprints pursuant to ~~G.S. 15A-502(a1) or (a2),~~ G.S. 15A-502(a1), (a2), (a4), or (a6), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial

release. The judicial official may include as a condition of pretrial release that the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney."

SECTION 11.(o) Subsections (f) and (g) of this section become effective October 1, 2015, and apply to applications submitted on or after that date. Subsections (h) and (n) of this section become effective on October 1, 2015. Subsections (a), (d), and (m) of this section become effective on January 1, 2016. The remaining subsections of this section are effective when this act becomes law.

SECTION 12. G.S. 14-409.40 reads as rewritten:

"**§ 14-409.40. Statewide uniformity of local regulation.**

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.

(a1) The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.

(b) Unless otherwise permitted by statute, no county or municipality, by ordinance, resolution, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, taxation, manufacture, transportation, or registration of firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

(c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.

(d) No county or municipality, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.

(e) A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.

(f) Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, including prohibiting the possession of firearms in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in states of emergency declared under Article 1A of Chapter 166A of the General Statutes.

(g) The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or any other remedy resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Any action brought by the State pursuant to this section shall be brought by the Attorney General on behalf of the State. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against a firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit.

(h) A person adversely affected by any ordinance, rule, or regulation promulgated or caused to be enforced by any county or municipality in violation of this section may bring an action for declaratory and injunctive relief and for actual damages arising from the violation. The court shall award the prevailing party in an action brought under this subsection reasonable attorneys' fees and court costs as authorized by law."

SECTION 13. Article 53B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-409.41. Chief law enforcement officer certification; certain firearms.**

(a) Definitions. – The following definitions apply in this section:

(1) Certification. – The participation and assent of the chief law enforcement officer necessary under federal law for the approval of the application to transfer or make a firearm.

(2) Chief law enforcement officer. – Any official that the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives, or any successor agency, has identified by regulation or otherwise as eligible to provide any required certification for the transfer or making of a firearm.

(3) Firearm. – Any firearm that meets the definition of firearm in 26 U.S.C. § 5845.

(b) When a chief law enforcement officer's certification is required by federal law or regulation for the transfer or making of a firearm, the chief law enforcement officer shall, within 15 days of receipt of a request for certification, provide the certification if the applicant is not prohibited by State or federal law from receiving or possessing the firearm and is not the subject of a proceeding that could result in the applicant being prohibited by State or federal law from receiving or possessing the firearm. If the chief law enforcement officer is unable to make a certification as required by this section, the chief law enforcement officer shall provide the applicant with a written notification of the denial and the reason for the denial.

Nothing in this section shall require a chief law enforcement officer to make a certification the chief law enforcement officer knows to be untrue, but the chief law enforcement officer may not refuse to provide certification based on a generalized objection to private persons or entities making, possessing, or receiving firearms or any certain type of firearm the possession of which is not prohibited by law.

(c) An applicant whose request for certification is denied may appeal the decision of the chief law enforcement officer to the district court of the district in which the request for certification was made. The court shall make a de novo review of the chief law enforcement officer's decision to deny the certification. If the court finds that the applicant is not prohibited by State or federal law from receiving or possessing the firearm, is not the subject of a proceeding that could result in the applicant being prohibited by State or federal law from receiving or possessing the firearm, and that no substantial evidence supports the chief law enforcement officer's determination that the chief law enforcement officer cannot truthfully

make the certification, the court shall order the chief law enforcement officer to issue the certification and award court costs and reasonable attorneys' fees to the applicant.

(d) Chief law enforcement officers and their employees who act in good faith are immune from liability arising from any act or omission in making a certification as required by this section."

SECTION 14. G.S. 14-415.15(a) reads as rewritten:

"(a) Except as permitted under subsection (b) of this section, within 45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, and receipt of the required records concerning the mental health or capacity of the applicant, the sheriff shall either issue or deny the permit. The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks. The sheriff shall make the request for any records concerning the mental health or capacity of the applicant within 10 days of receipt of the items listed in G.S. 14-415.13. No person, company, mental health provider, or governmental entity may charge additional fees to the applicant for background checks conducted under this subsection. A permit shall not be denied unless the applicant is determined to be ineligible pursuant to G.S. 14-415.12."

SECTION 15. G.S. 14-415.23 is amended by adding a new subsection to read:

"(e) A person adversely affected by any ordinance, rule, or regulation promulgated or caused to be enforced by any unit of local government in violation of this section may bring an action for declaratory and injunctive relief and for actual damages arising from the violation. The court shall award the prevailing party in an action brought under this subsection reasonable attorneys' fees and court costs as authorized by law."

SECTION 17. G.S. 14-415.12(a) reads as rewritten:

"(a) The sheriff shall issue a permit to an applicant if the applicant qualifies under the following criteria:

(1) The applicant is a citizen of the United States or has been lawfully admitted for permanent residence as defined in 8 U.S.C. § 1101(a)(20), and has been a resident of the State 30 days or longer immediately preceding the filing of the application.

(2) The applicant is 21 years of age or older.

(3) The applicant does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun.

(4) The applicant has successfully completed an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force. The North Carolina Criminal Justice Education and Training Standards Commission shall prepare and publish general guidelines for courses and qualifications of instructors which would satisfy the requirements of this subdivision. An approved course shall be any course which satisfies the requirements of this subdivision and is certified or sponsored by:

a. The North Carolina Criminal Justice Education and Training Standards Commission,

b. The National Rifle Association, or

c. A law enforcement agency, college, private or public institution or organization, or firearms training school, taught by instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission or the National Rifle Association.

Every instructor of an approved course shall file a copy of the firearms course description, outline, and proof of certification annually, or upon

modification of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission.

(5) The applicant is not disqualified under subsection (b) of this section."

SECTION 18. Subsections (a), (b), and (c) of Section 1, and Sections 2, 3, and 8 of this act become effective July 1, 2015, and apply to offenses committed on or after that date. Section 5 of this act becomes effective July 1, 2015, but shall not apply to pending litigation. Section 6 of this act is effective when it becomes law and applies to restorations granted before, on, or after that date. Section 7 of this act becomes effective July 1, 2015, and applies to permit applications submitted on or after that date. Section 9 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. Section 10 of this act becomes effective December 1, 2015, and applies to permits issued on or after that date. Sections 12 and 15 of this act become effective December 1, 2015, and apply to violations occurring on or after that date. Section 13 of this act becomes effective July 1, 2015. Section 14 becomes effective October 1, 2015, and applies to applications submitted on or after that date. The remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Fiscal Note

BILL NUMBER: House Bill 562 (Fourth Edition)

SHORT TITLE: Amend Firearm Laws.

SPONSOR(S): Representatives Schaffer, Burr, Cleveland, and Faircloth

FISCAL IMPACT

☑ Yes ☐ No ☐ No Estimate Available

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
General Fund Revenues:					
General Fund Expenditures:	$898,088	($54,787)	($67,808)	($69,736)	($71,642)
State Positions:					
NET STATE IMPACT	**($898,088)**	**$54,787**	**$67,808**	**$69,736**	**$71,642**

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

EFFECTIVE DATE: See Bill Summary

TECHNICAL CONSIDERATIONS:
Yes - See Technical Considerations Section

FISCAL IMPACT SUMMARY:

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

Net Costs/(Savings) by Agency Adjusted for Inflation

	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Administrative Office of the Courts (AOC)[1]	$945,840	($5,608)	($5,770)	($5,929)	($6,074)
Office of Indigent Defense Services (IDS)	($3,064)	($3,147)	($3,238)	($3,327)	($3,408)
Department of Public Safety (DPS) - Community Corrections	($44,688)	($46,032)	($58,800)	($60,480)	($62,160)
Total	**$898,088**	**($54,787)**	**($67,808)**	**($69,736)**	**($71,642)**

Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)

Please see the Assumptions and Methodology section for additional information.

[1] AOC estimates for FY 2015-16 include savings of $5,360 from the changes in Section 9, costs of $215,700 from the changes in Section 11.(d), costs of $289,620 from the changes in Section 11.(h), and costs of $428,700 from the changes in Section 11.(i), all adjusted for inflation. $215,700 plus $289,620 plus $428,700 equals $934,020 minus $5,360 equals $928,660. $928,660 times 1.0185 equals $945,840.

BILL SUMMARY:

The proposed bill makes various changes to laws regarding firearm offenses, firearm possession, firearms permits, and reporting requirements to the National Instant Criminal Background Check System (NICS). Most sections become effective on October 1, 2015 with some variation. See Assumptions and Methodology for specific information about each section of the proposed bill.

ASSUMPTIONS AND METHODOLOGY:

Sections 1.(a), 1.(b), and 1.(c)

The proposed bill amends G.S. 14-269(b) to exempt employees of the Department of Public Safety (DPS) from certain firearm offenses if they have been designated in writing and have in their possession written proof of the designation. The bill also exempts any person who is an administrative law judge. Both exempt parties must have a concealed handgun permit in accordance with Article 54B of Chapter 14 and are prohibited from carrying a concealed weapon at any time while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. In addition, subdivision (4a) is amended to allow a district attorney to carry a concealed weapon while in a courtroom. The bill amends G.S. 14-269.4 to exempt a pocket knife in the closed position from the prohibited weapons in the State Capitol Building and grounds. The bill amends G.S. 14-415.27 to make a conforming change. These sections have an effective date of July 1, 2015 and apply to offenses committed on or after that date.

The Fiscal Research Division (FRD) estimates no significant fiscal impact due to these changes. The Administrative Office of the Courts (AOC) states that the exceptions to the firearm offenses in G.S. 14-269(b) generally arise as affirmative defenses for pending charges and do not necessarily reduce the number of charges filed. Because the pool of individuals now included under this exemption is so small, the number of charges or cases affected by this change will be relatively minor.

Sections 1.(d) and 1.(e)

The proposed bill amends G.S. 120-32.1 to permit legislators and legislative employees who have concealed handgun permits to carry concealed handguns in State legislative buildings and grounds upon providing notice to the Chief of the General Assembly Special Police or a designee. The bill amends G.S. 14-415.11(c)(3) to make a conforming change. These sections are effective when they become law.

FRD estimates no significant fiscal impact to the General Assembly Special Police or to the courts due to these changes.

Section 2

The proposed bill amends G.S. 14-269.2(k) to expand the list of conditions under which the provisions of the section shall not apply by adding a person who remains in a locked vehicle and only unlocks the vehicle to allows the entrance or exit of another person and a person who remains in a locked vehicle and moves the handgun to or from concealment on his or her person to move it

to or from a closed compartment or container within the vehicle. This section has an effective date of July 1, 2015 and applies to offenses committed on or after that date.

FRD estimates no measurable fiscal impact due to these changes. These exemptions are more likely to arise as affirmative defenses for pending charges, rather than to defer initial charges.

Section 3

The proposed bill amends G.S. 14-269.2 by adding new subsection (l) which provides an affirmative defense to prosecution under subsection (b) or (f) of the section, stating that a person was authorized to have a concealed handgun in a locked vehicle pursuant to subsection (k) and removed it from the vehicle only in response to a threatening situation in which deadly force was justified pursuant to G.S. 14-51.3. This section has an effective date of July 1, 2015 and applies to offenses committed on or after that date.

FRD estimates no measurable fiscal impact due to these changes. This new affirmative defense would only apply during the point of verdict in a pending case and would not defray any existing or future charges.

Sections 4.(a) and 4.(b)

The proposed bill adds new G.S. 106-503.2, Regulation of firearms at State Fair, to Article 45 of Chapter 106, which authorizes the Commissioner of Agriculture to prohibit firearms at the State Fair. Exempted from this prohibition are certain military and law enforcement personnel listed under G.S. 14-269(b) and any individual with a valid concealed handgun permit who leaves their firearm in a locked vehicle on the State Fairgrounds. The proposed bill also directs the Department of Agriculture and Consumer Services, in consultation with the DPS and the North Carolina Sheriffs' Association to study the best method to allow persons with concealed handgun permits to carry a concealed handgun from a parking lot to the entrance of the State Fairgrounds and a secure method for storage and retrieval of the handguns. This section is effective when it becomes law.

FRD estimates no fiscal impact due to Section 4 of the bill. The Department of Agriculture and Consumer Services currently does not allow firearms on the State Fairgrounds and there is no new criminal penalty directly attached to a violation of the prohibition. The Department has indicated that the new study requirement under Section 4 of the bill can be conducted with existing resources available to the Department. This analysis concurs with the Department's assessment.

Sections 5.(a) and 5.(b)

The bill amends G.S. 14-409.46 and G.S. 14-409.47 to change the effective/application dates of multiple provisions governing sport shooting ranges. These sections have an effective date of July 1, 2015. This change does not apply to pending litigation.

FRD estimates no measurable fiscal impact due to these changes. It is possible that by changing these dates there may be fewer instances in which an aggrieved party can bring a civil nuisance suit against a sport shooting range. It is unknown whether there would be an accompanying decrease in civil filings.

Section 6

The proposed bill amends G.S. 14-415.4(a) in subdivision (1) to remove machine guns (as defined in G.S. 14-409(a)) from the limit on firearm rights restoration. This section becomes effective when it becomes law and applies to restorations granted before, on, or after that date.

FRD estimates no measurable fiscal impact due to these changes. Current AOC forms and procedures used in the restoration of firearm rights do not explicitly account for the exception for machine guns.

Section 7

The proposed bill amends G.S. 14-415.12(b) in subdivision (8) and creates new subdivisions (8a), (8b), and (8c) to provide new grounds for denial of a concealed weapon permit: (i) a prior conviction of a misdemeanor crime of domestic violence in State or federal court or (ii) an adjudication of guilty, prayer for judgment continued, or suspended sentence for assaulting or threatening a law enforcement officer, probation or parole officer, etc. This section has an effective date of July 1, 2015 and applies to permit applications submitted on or after that date.

FRD estimates that Section 7 will likely lead to an increase in appeals under G.S. 14-415.15 from denials of concealed weapon permits under the new disqualifiers. These appeals are civil proceedings in district court. AOC does not have an issue code for these matters, so it is not possible to count how many are currently filed or to predict the potential increase. For these appeals in district court there will be workload impact for district court staff for an estimated average cost of $395 per case.

Section 8

The proposed bill amends G.S. 113-291.1(c) in subdivision (2) to add a "short-barreled rifle" to the list of exemptions from the definition of a weapon of mass death and destruction as defined in G.S. 14-288.8. Weapons of mass death and destruction are items that an individual is prohibited from possessing while taking wildlife. This section has an effective date of July 1, 2015 and applies to offenses committed on or after that date.

FRD estimates no measurable fiscal impact due to this new exemption. This exemption may result in a reduction in Class 1 misdemeanor charges under G.S. 113-291.1. However, AOC does not currently have an offense code for possessing a weapon of mass death and destruction while taking wildlife, which is some indication that it is infrequently charged under current law. Cases involving a short-barreled rifle would be a subset of these charges.

Section 9

The proposed bill amends G.S. 14-415.21 in subsection (a) to reduce a Class 1 misdemeanor to an infraction for carrying a concealed handgun in violation of G.S. 14-415.11(c)(8) while holding a valid permit. Violators may be required to pay a fine up to $500, or in lieu of paying a fine the person may surrender the permit. Subsection (b) is amended to make a conforming change. This section has an effective date of July 1, 2015 and applies to offenses committed on or after that date.

Judicial Branch

Section 9 of the bill decreases the penalty for violation of G.S. 14-415.11(c)(8) from a Class 1 misdemeanor to an infraction. AOC provides estimates of the average cost to the court for a charge by offense class. For every person who would have been charged with a Class 1 misdemeanor who is instead charged with an infraction, the average savings to the court will be $134 ($165 for a Class 1 minus $31 for an infraction).

In 2014, approximately 40 defendants were charged with violation of G.S. 14-415.11(c)(8). Therefore, the savings to the courts is estimated to be $5,360 ($134 difference in court cost between the old offense and the new offense times 40 defendants). The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year reflects the July 1, 2015 effective date.

	FY 15-16	**FY 16-17**	**FY 17-18**	**FY 18-19**	**FY 19-20**
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Total AOC Cost	($5,459)	($5,608)	($5,770)	($5,929)	($6,074)

The Office of Indigent Defense Services (IDS) has provided FRD with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The weighted average cost of a Class 1 misdemeanor is $187.56 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, 39% of Class 1 defendants used IDS services. Using the number of charges provided by AOC, 16 defendants would have used IDS in FY 2013-14 for a total cost of $3,008 (40 defendants times 39% using IDS equals 16 indigent defendants. (16 defendants times $187.56 equals $3,008.) Because IDS does not appoint counsel for infractions, FRD estimates that the annualized savings to IDS from shifting this offense from a Class 1 misdemeanor to an infraction would be $3,008.

The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, these costs may not be incurred.

	FY 15-16	**FY 16-17**	**FY 17-18**	**FY 18-19**	**FY 19-20**
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Total IDS Cost	($3,064)	($3,147)	($3,238)	($3,327)	($3,408)

Department of Public Safety – Community Correction Section

All misdemeanor 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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), essentially eliminated the distinction between "community" and "intermediate" supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs, or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety (DPS).

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs $130.50 per offender, per month; 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 and supervised probations. The table below shows the monthly cost for each year of the five year projection, adjusted for inflation.

Monthly Supervision Cost Adjusted for Inflation
Five Year Projection

	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Inflation Rate		1.85%	2.72%	2.88%	2.76%	2.44%
Monthly Cost	$130.50	$132.90	$136.52	$140.45	$144.32	$147.85

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)

In FY 2013-14, 30% of Class 1 offenders received active sentences. All Class 1 offenders with active sentences are housed in county jails. JRA created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

In FY 2013-14, 70% of Class 1 offenders received probation. The average length of probation imposed for this offense class was 15 months. Offenders charged with an infraction receive neither active sentences nor probation. Therefore, Section 9 of this bill will save the cost of 15 months of probation for 70% of the offenders for this violation who would have been sentenced to probation under the Class 1 misdemeanor charge. The cost of 15 months of probation is $1,958 per offender ($130.50 per month times 15 months).

Sections 10.(a) and 10.(b)

Section 10.(a) of the proposed bill repeals the following statutes related to firearm purchase permits: G.S. 14-402, 14-403, 14-404, 14-405, and 14-407.1. Section 10.(b) makes conforming

changes to G.S. 14-315(b1). These sections have an effective date of October 1, 2021 and apply to offenses committed on or after that date.

FRD anticipates that the repeal of the firearm purchase permit statutes will result in a decline and eventual elimination of appeals of denials filed in district court starting in late 2021. AOC does not have historical indexed data upon which to estimate how many appeals are currently filed in an average year and the corresponding level of future diminution.

Section 10.(c)

This section amends G.S. 14-402(a) to exempt from the criminal offense of violating G.S. 14-402, which addresses transferring a pistol to a person without a permit, any person who transfers a pistol after performing a background check via the National Instant Criminal Background Check System (NICS). This section is effective October 1, 2018 and applies to offenses committed on or after that date.

FRD cannot estimate how many, if any, of the current Class 2 misdemeanor charges for violating G.S. 14-402 would be abated by this change. On average, the monetary value of court personnel time to process a misdemeanor is estimated at $88. There may be a decrease in the number of appeals of denied purchase permits filed in district court if more pistol purchasers would now rely on licensed firearms dealers to use this new exemption and conduct a background check through NICS to qualify the purchase or transfer of a gun, instead of the individual having to apply for a pistol permit. With a decrease in permit applications there would likely be a corresponding decrease in denials and resulting appeals. Pistol purchase permits would still be required for the transfer of firearms between private parties. A decrease in civil district filings would affect the workload for deputy clerk and district court judge time for an estimated average savings of $395 per case.

Section 10.(d)

Section 10.(d) stipulates that a sheriff shall only consider an applicant's conduct and criminal history for the five-year period immediately preceding the application for purposes of determining an applicant's good moral character to receive a handgun permit and provides that the avenue of appeal lies with the superior court rather than the district court. Section 10.(d) further states that DPS will create a permit application form in consultation with the North Carolina Sheriffs' Association and that DPS may request no additional document or evidence for such a permit other than the application form, five dollars, a government-issued identification, proof of residency, and a signed release that authorizes and requires disclosure to the sheriff of any court orders concerning the mental health or capacity of the applicant. Section 10.(d) finally requires an applicant to promptly disclose any accompanying court orders concerning mental health or capacity of the applicant. This section has an effective date of December 1, 2015 and applies to offenses committed on or after that date.

Because these cases will be heard in superior court, there will be workload impact for superior court staff for an estimated cost of $1,042 per case. The estimated workload for the prior venue of district court is $395 per case, so the net cost to the courts for each case would be the difference of $647 per case. AOC does not have cost estimates for cases handled in the North Carolina Court of Appeals. Depending on the volume of appeals to the appellate bench, the corresponding workload

impact could be significant. Also, AOC would need to create a new form for use throughout the Judicial Branch to meet the requirements of new G.S. 14-404(e1)(5), which would lead to some cost to update and circulate the modified form. FRD cannot estimate that cost.

Sections 11.(a), 11.(b), and 11.(c)
Section 11.(a) repeals G.S. 122C-54(d1). Section 11.(b) recodifies G.S. 122C-54.1 as G.S. 14-409.42. Section 11.(c) repeals G.S. 14-404(c1). Subsection (a) becomes effective January 1, 2016; the remaining subsections become effective when this bill becomes law.

FRD does not estimate any costs related to these subsections.

Section 11.(d)
Section 11.(d) creates new G.S. 13-409.43, which requires clerks of superior court to continue to report certain judicial findings and determinations leading to involuntary commitment to the NICS system. New subsection (b) requires that AOC transmit any unserved felony warrants, indictments, criminal summons, or orders to arrest to NCIC or NICS not later than 48 hours, excluding Saturdays, Sundays, and holidays, after receiving notice of such an action. This subsection has an effective date of January 1, 2016.

FRD expects that the recodification of an existing statute into new subsection (a) will not have a net fiscal impact on the State. Clerks of superior court are already reporting the imposition and lifting of NICS bars for mental health commitments listed in subdivisions (1) through (7) of subsection (a). The requirement in subsection (b) that AOC transmit information on unserved felony warrants, indictments, criminal summons, or orders for arrest to the NCIC or NICS within 48 hours, excluding weekends and holidays, will require AOC to develop an interface between the existing warrant repository and the SBI/DCI to automate reporting this information to NICS. AOC's estimate for these changes is 2,876 hours of technology personnel time, equating to a cost of $215,700. Technology Services Division staff is assigned to technology projects based on priorities identified by Judicial Branch needs. Because technology staff is fully engaged, any additional projects will require additional resources or will require a reassignment from current Judicial Branch priorities.

Sections 11.(e), 11.(f), and 11.(g)
Section 11.(e) amends G.S.122C-54(d2) to limit the record of involuntary commitment as reported to NICS to be accessible only by the sheriff or sheriff's designee for the purpose of conducting background checks under G.S. 14-404. Section 11.(f) directs that certain handgun applications must be provided electronically, and Section 11.(g) makes conforming changes. Section 11.(e) becomes effective when this bill becomes law, and Sections 11.(f) and 11.(g) become effective on October 1, 2015 and apply to applications on or after that date.

FRD expects Section 11.(e) to require clerks of superior court to provide the sheriff or the sheriff's designee with access to involuntary commitment records in the clerk's office as an exception to the usual confidentially of such records, for which access normally requires a court order under G.S. 122C-54(d). If sheriffs query the clerks about involuntary commitments for all applications for handgun purchase permits under G.S. 14-404, the workload on clerk staff may be significant. AOC does not have data on how many applications under G.S. 14-404 are submitted to sheriffs

statewide or how many of those applications will cause the sheriff to request access to records at the clerk's office. Therefore, FRD cannot estimate a cost for Section 11.(e) at this time. FRD does not expect that Sections 11.(f) and 11.(g) will have any fiscal impact on the State.

Section 11.(h)

Section 11.(h) creates new subsections (a2) through (a5) in G.S. 15A-502 and recodifies the existing (a2) as (a6). New subsection (a2) requires arresting law enforcement agencies to fingerprint individuals charged with offenses listed in subdivisions (1) through (3), to report these offenses to NICS, and to forward the fingerprints to the SBI. New subsection (a5) requires magistrates to enter all information provided by the arresting law enforcement agency on the person arrested into the court information system. Section 11.(h) has an effective date of October 1, 2015.

FRD does not expect new subsections (a3), (a4), and (a6) to have any fiscal impact on the State. New subsection (a2), regarding the expansion of fingerprinting to numerous misdemeanors, will increase the workload for clerk of superior court staff to resolve errors in the automated interfaces between the AOC and SBI computer systems. SBI staff has indicated that this provision will result in a net increase of fingerprinted defendants. AOC anticipates a corresponding increase in error-reconciliation demands. The implementation of this provision will require AOC to report domestic violence convictions to the criminal history systems under (a2)(1) and report charges and convictions to NICS under (a2)(3). FRD estimates that these changes will take 3,862 hours of technology personnel time for AOC, equating to a cost of $289,620. The DWI-related reporting under (a2)(2) will remain unchanged. AOC's Technology Services Division staff is assigned to technology projects based on priorities identified by Judicial Branch needs. Because technology staff is fully engaged, any additional projects will require additional resources or will require a reassignment from current Judicial Branch priorities.

FRD estimates that new subsection (a5), which requires magistrates to enter all information provided by the arresting law enforcement agency on the person arrested into the court information system, will increase workload demands on magistrates statewide. There are currently instances in which law enforcement officers draft processes, such as warrants, for judicial approval. The section transfers that responsibility to magistrates, which could lead to an increase in workload need for magistrates Statewide. FRD cannot estimate the scope of this increase at the current time.

Section 11.(i)

Section 11.(i) directs AOC to use up to $20,000 available for the 2014-2015 fiscal year from the "Court Information Technology Fund" to comply with subsection 11.(d) of this bill and to enter certain historical records, listed as subsections (1) through (7) in the section, into NICS by May 31, 2019. AOC is also required to report on the progress made towards providing the information requested in Section 11.(d) by January 1, 2018 to the Joint Legislative Oversight Committee on Justice and Public Safety and the Joint Legislative Oversight Committee on Information Technology. This section becomes effective when it becomes law.

FRD estimates that Section 11.(i) has costs of $428,700 to AOC, including technology costs and costs related to personnel time. This estimate also includes a $20,000 transfer from the Court Information Technology Fund.

Compliance with subsection (1) will require all 100 clerks of superior court to conduct a manual record search of the historical mental health commitment files for cases meeting the criteria, which are involuntary commitments for mental health and substance abuse treatment. AOC does not have a computer index for confidential files in special proceedings. The workload impact for this requirement could be significant because there is no limit on the look-back time period.

Compliance with subsection (2) will similarly require all 100 clerks of superior court to conduct a manual record search of paper case files. AOC's computer index systems do not distinguish between a verdict of "not guilty by reason of insanity" from other "not guilty" verdicts. To accurately report each instance will require a manual search of all criminal files in the State. For those defendants who were found to be incompetent to proceed, computer data may be available for offenses committed on or after December 1, 2013, when AOC implemented automated codes to identify those cases. For offenses committed prior to that date a manual record search will be required.

Compliance with subsection (3) will be less intensive, as AOC's civil case computer index system does record some of the necessary data. However, cases identified in the index that have a finding that "an individual lacks the capacity to manage the individual's own affairs" would not include the necessary substantive data on the findings required by subsection (3), which are "marked subnormal intelligence or mental illness, incompetency, condition, or disease." A manual review of flagged case files would be necessary to determine which cases meet the full reporting criteria of subsection (3).

Compliance with subsections (4) through (7) can be achieved through technology enhancements and modifications to existing AOC systems. FRD estimates that these changes will require 2,520 hours of AOC technology personnel time, equating to a cost of $189,000. AOC Technology Services Division staff is assigned to technology projects based on priorities identified by Judicial Branch needs. Because technology staff is fully engaged, any additional projects will require additional resources or will require a reassignment from current Judicial Branch priorities.

FRD estimates that the cost to the State will be $259,700 for the manual review of paper case files required by this section, assuming that the look-back period covers calendar years 1998 to 2008. This total amount is estimated by multiplying the approximately 245,000 files to be reviewed by $1.06, which is the estimated cost in clerk staff personnel time to manually review each file and enter information into the computer systems when applicable.

Sections 11.(j), 11.(k), 11.(l), 11.(m), 11.(n), and 11.(o)

Sections 11.(j), (k), (l), (m), and (n) make conforming changes. Section 11.(o) establishes effective dates for all of the subsections in Section 11.

FRD estimates that Sections 11.(j), (k), (l), (m) will have no fiscal impact for the State. Subsection (n) amends G.S. 15A-534(a), which addresses pretrial release conditions, to cite the fingerprinting requirements set out in Section 11.(h), which amends G.S. 15A-502. FRD estimates that this change will have some workload impact for AOC in situations where the required fingerprints have not yet been collected and the judicial official has to make the collection of fingerprints a

condition of pretrial release. Certain offenses that require DNA or fingerprints to be taken upon arrest are flagged in the AOC offense code table used by the AOC computer systems so that the judicial official setting the conditions of release would know to which defendants these requirements apply. AOC would have to edit its computer systems to include the new fingerprinting requirements proposed in this bill. FRD cannot estimate the cost of this change at this time.

Section 12

Section 12 amends G.S. 14-409.40 in subsection (b) to include taxation, manufacture, and transportation to the list of actions that, unless otherwise permitted by statute, counties and municipalities are prohibited from regulating in regards to firearms, firearm ammunition, components of firearms, dealers in firearms, and dealers in handgun components or parts. New subsection (h) allows any person who has been adversely affected by any ordinance, rule, or regulation of a county or municipality in violation of this section to bring a civil action for declaratory and injunctive relief and for actual damages arising from the violation. This new provision also requires the court to award to the prevailing party reasonable attorneys' fees and court costs as authorized by law. This section has an effective date of December 1, 2015 and applies to violations occurring on or after that date.

FRD estimates no measurable fiscal impact on the State due to the amendment of subsection (b). The expansion of restrictions on local governments to adopt regulatory ordinances may result in a decline of charges for the Class 3 misdemeanor offense under G.S. 14-4, violation of a local ordinance, if there are any such ordinances currently enacted that regulate the taxation, manufacture, and transportation of firearms or firearm ammunitions, and if there were individuals charged with violating those now-impermissible ordinances. AOC does not have data on the nature of any charges of G.S. 14-4 that would indicate how many future charges, if any, may be abated due to the change to G.S. 14-409.40(b).

FRD anticipates an increase in the number of civil superior filings due to new subsection (h). However, there is no data upon which to estimate how many may be filed in an average year. Since these cases will be heard in superior court, there will be workload impact for superior court staff for an estimated cost of $1,042 per case. Each petition for declaratory and injunctive relief would be accompanied with a $200 civil superior court filing fee.

Section 13

The proposed bill creates new G.S. 14-409.41 to provide a process for chief law enforcement officers (who are federal agents) to provide necessary certification for the transfer or making of a firearm. In subsection (c), an applicant whose request for certification is denied may appeal the decision to the district court of the district in which the request for certification was made. This section has an effective date of July 1, 2015.

Subsection (c) of new G.S. 14-409.41 provides for appeals to the district court of the district in which the request for certification was made. It is unclear whether this is meant to refer to federal district court or State district court. If these appeals are heard in State district court, there will be workload impact on deputy clerk and district court judge time for an estimated average cost of $395 per case. FRD cannot estimate how many of these appeals would be filed annually.

Section 14

The proposed bill amends G.S. 14-415.15(a) to require the sheriff to issue or deny a concealed handgun permit within 90 calendar days from the date on which the application was submitted, regardless of the receipt of required records concerning the mental health or capacity of the applicant. Only if the applicant is determined to be ineligible under G.S. 14-415.12 shall the sheriff deny the application. This section has an effective date of October 1, 2015 and applies to applications submitted on or after that date.

FRD estimates no measurable fiscal impact due to these changes.

Section 15

The proposed bill amends G.S. 14-415.23 by adding new subsection (e) which allows any person who has been adversely affected by any ordinance, rule, or regulation of a local government in violation of this section to bring a civil action for declaratory and injunctive relief and for actual damages arising from the violation. This new provision also requires the court to award to the prevailing party reasonable attorneys' fees and court costs as authorized by law. This section has an effective date of December 1, 2015 and applies to violations occurring on or after that date.

Section 15 will likely increase the number of civil superior court filings. FRD has no data upon which to estimate how many may be filed in an average year. Since these cases will be heard in superior court there will be workload impact for superior court personnel for an estimated cost of $1,042 per case.

Section 16

The proposed bill creates new Article 11, Preserving Firearms Privacy for Patients, in Chapter 90. This section lays out:

(i) the General Assembly's findings and intent of this section;
(ii) definitions of terms applicable to this section;
(iii) questions that health care providers are prohibited from asking in writing of a patient, patient's parent, guardian, or custodian;
(iv) prohibitions against the disclosure of certain information obtained verbally; and
(v) fines and disciplinary actions for violations of this section.

This section has an effective date of October 1, 2016.

FRD estimates no measurable fiscal impact due to these changes.

Section 17

The proposed bill amends G.S. 14-415.12(a) to add as a qualified applicant for a handgun permit a person who has been lawfully admitted for permanent residence as defined in 8 U.S.C. 1101(a)(20).

FRD estimates no measurable fiscal impact due to these changes.

Section 18

Besides the effective dates mentioned above, Section 18 provides that prosecutions for offenses committed before the effective date of this bill are not abated or affected by this bill and the statutes that would be applicable but for this bill remain applicable to those prosecutions.

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

TECHNICAL CONSIDERATIONS:

Section 7

- AOC is concerned about a disconnect in citations between amended subdivision (8) and new subdivision (8a). It appears that the intention was to strike the reference to "former G.S. 14-277.3" that appears on page 5, line 43 of the PCS. The drafting accounts for G.S. 14-277.3 in the immediately-following subdivision (8a). Note that the drafting struck the reference to G.S. 14-277.3 on line 38, which suggests that the intent was to address both stalking offenses in the new subdivision (8a). If the reference to G.S. 14-277.3 remains in subdivision (8), it is a nullity, because (8) begins with "except as provided in subdivision (8a)," so the longer lookback period in subdivision (8a) would appear to control for convictions under that statute.
- AOC is concerned that proposed subdivision (8c) presents the question of whether the disqualifiers must be inherent to the elements of the conviction or just appear in the underlying facts, independent of the codified elements. Given the (presumed) limited number of applicants for concealed carry permits to whom this disqualifier would apply, fixing this issue may have little change in impact, but it may reduce some appeals if it was written to specify certain offense statutes, as is the case in subdivision (8). In addition, if this approach is taken, it is not clear how the sheriffs or the courts are supposed to know what prior offenses may be disqualifiers. It is highly unlikely that the face of a court record from many years ago showing assault on a female by her husband would contain any indicator that the female in question also was a law enforcement officer, probation officer, firefighter, or so forth. The basis for this technical concern is the case law surrounding the categorization of "aggravated" sex offenses for the purposes of GPS monitoring under G.S. 14-208.40A. If the courts follow the same line of reasoning for the proposed (8c), the appellate division likely would take the position that only offenses for which the codified elements inherently involve one of the protected victim grounds would constitute a disqualifier. The costs of appellate casework could be avoided by listing the specific disqualifying assault statutes to which this disqualifier will apply (as is the case in subdivision (8)).

Section 9

AOC is concerned that the effective date of July 1, 2015 will not provide enough time for the agency to change its technology system to conform to the changes or to educate court officials on the changes at the fall conferences and via a comprehensive memo that covers all of the recent

changes to criminal statutes and procedures. AOC points out that an effective date of December 1, 2015 will provide adequate time to make conforming changes and provide information to judicial officials.

Section 10.(d)

AOC is concerned that G.S. 14-404(b) is amended to change the venue of appeal of a denial of a permit to superior court in the district in which the application was filed and to allow a decision by the superior court upholding the sheriff's denial to be appealed to the North Carolina Court of Appeals. However, appeals from actions on concealed carry permits would still be to the district court division under G.S. 14-415.15(c), with no right of further appeal. It is not clear why the two appeal provisions would operate differently.

Section 11.(h)

- AOC is concerned in Subsection (a2)(3) that G.S. 90-95(d) is a sentencing provision, not a substantive offense. By basing the fingerprinting rule in a sentencing provision, implementation may be inconsistent based on individual agency determinations. Actual possession of controlled substances is prohibited in G.S. 90-95(a)(3). Because the proposed (a2) already is limited to "misdemeanor" arrests, the citation should be to G.S. 90-95(a)(3) to avoid errors in interpretation about which offenses are covered.
- AOC is concerned in Subsection (a3) that it is not clear if the information-gathering requirement is applicable to all offenses. By use of the phrase "charged with a crime" it seems to include every felony and misdemeanor. It is not obvious if AOC has to record all conceivable relationships between defendants and victims or if the interest is solely in "personal relationships" under G.S. 50B-1.
- AOC is concerned in Subsection (a5) that the reference to "maiden" name in proposed (a3)(1) and which the courts would have to record under (a5) is archaic and therefore ambiguous. AOC suggests the contrast of G.S. 50-12(a) and (a1), which draw distinction between "maiden" names (women) and "premarriage surname" (men).

Section 11.(i)

- AOC is concerned that the language proposed in Section 11.(d) does not address how AOC is to resolve the incompatibility of State records and NICS disqualifiers, the conflation of "NICS" and "NCIC," or the lack of compatibility with existing North Carolina criminal procedure.
- AOC is concerned that the commitment of the Court Information Technology Fund should specify that it is to be expended to cover the courts' reporting duties under subsection 11.(d). As written, it obligates the Judicial Branch's fund to pay for the sheriffs' reporting of Domestic Violence Protective Orders (DVPOs) to NCIC under the proposed G.S. 14-409.43(c).
- AOC is concerned in Subsection (4) that the reference to G.S. 90-05(d) should instead be to G.S. 90-95(a)(3). As discussed above, G.S. 90-95(d) is a sentencing provision, not a substantive offense. By basing the reference in a sentencing provision, implementation may be inconsistent based on individual agency determinations. Actual possession of controlled substances is prohibited in G.S. 90-95(a)(3). This should be the citation in order to avoid errors in interpretation about which offenses are covered.

Section 13

AOC is concerned that the reference to appeals to "the district court of the district in which the request for certification was made" in new subsection (c) may intend to refer to civil actions in the North Carolina District Courts, but given the other provisions regarding federal agencies, it is not clear. The proposed G.S. 14-409.41 appears to attempt to regulate a federal agency and its functions locally, which runs afoul of the Supremacy Clause of the U.S. Constitution (Art. VI, CL. 2) to the extent that any portion runs contrary to federal statute or regulation adopted thereunder.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: William Childs , Timothy Dale

APPROVED BY

Richard Bostic
on behalf of Mark Trogdon, Director
Fiscal Research Division



DATE: June 8, 2015

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 562:
Amend Firearm Laws

2015-2016 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 23, 2015
Introduced by:	Reps. Schaffer, Burr, Cleveland, Faircloth	**Prepared by:**	Susan Sitze
Analysis of:	Seventh Edition		Staff Attorney

SUMMARY: House Bill 562 would amend various firearms laws.

BILL ANALYSIS:

Section 1 would amend the exemptions to carrying a concealed weapon to allow DAs with a concealed handgun permit to carry a concealed handgun in a courtroom. This section would also add certain DPS employees (8) and Administrative Law Judges (9) who have concealed handgun permits to the list of exemptions, which would allow them to carry concealed handguns in some places the average person cannot, including courtrooms, assemblies where a fee is charged, etc. Additionally, this section would allow a person to carry a pocket knife in a closed position into the State Capitol Building.

Section 2 would allow a person with a concealed handgun permit to carry concealed on their person within a locked vehicle on educational property and would allow a person within a locked vehicle on educational property to move a handgun from concealment on their person to a closed compartment and vice versa even if momentarily it is not concealed.

Section 3 would provide an affirmative defense to possession of handgun on educational property if the person was authorized to have a handgun in a locked vehicle and removed the handgun from the vehicle only in response to a threatening situation in which deadly force was justified to defend self or others pursuant to G.S. 14-51.3.

Section 4 would authorize the Commissioner of Agriculture to prohibit the carrying of firearms on the State Fairgrounds during the State Fair. Law enforcement officers would be exempted, and persons with concealed handgun permits would still be authorized to have a handgun in their locked vehicle. This section also directs the Department of Agriculture, in consultation with the Department of Public Safety and the North Carolina Sheriffs' Association to study a method to allow persons to store handguns at the entrance to the State Fairgrounds.

Section 5 would expand the shooting range protection act to provide that shooting ranges are only subject to noise ordinances that were in effect at the time the shooting range began operation and do not have to comply ordinances adopted later if there has been no substantial change in use.

Section 6 would modify the firearm rights restoration statute to ensure recognition of the restoration by federal law.

Section 7 would eliminate some misdemeanors from the list of misdemeanor convictions that prohibit a person from obtaining a concealed handgun permit. This section would also make most misdemeanor convictions only count against a person for 3 years in relation to prohibiting them from obtaining a

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

concealed handgun permit. Certain specified assault convictions, stalking convictions, domestic violence convictions and convictions for assault on a law enforcement officer would remain a prohibiting conviction permanently.

Section 8 would authorize the use of short-barreled rifles for hunting.

Section 9 would reduce the offense of carrying a concealed handgun on private posted property from a Class 1 misdemeanor to an infraction and authorize a fine of up to $500.

Section 10 would make the following changes to the pistol purchase permit statutes:

- Require the SBI, in consultation with the North Carolina Sheriffs' Association, to create a statewide form for the permit, which shall be designed with security features to minimize counterfeiting and require each sheriff to have a raised seal to place on the permit.
- Specify the sheriff may only consider an applicant's conduct or criminal history for the past five years when determining "good moral character".
- Change the appeal of a denial of a permit from a singular appeal to the chief district court judge in that district to an appeal to the superior court.
- Require the SBI, in consultation with the North Carolina Sheriffs' Association, to develop a permit application form and require all sheriffs to use that form. The specific things an applicant can be require to provide would be set forth and specifically states that the applicant cannot be required to provide any additional document or evidence.
- Require a person or entity presented with a mental health release form to promptly provide court orders concerning the mental health or capacity of the applicant.

Section 10.5 would require the Department of Public Safety, in consultation with the Office of Information Technology Services and the FBI, to study the development of a system to allow background checks in private transactions.

Section 11 would make the following changes:

- Specify the information to be collected and reported to NICS for background checks and would require certain information to be transmitted to NICS by the clerk no later than 48 hours after receiving notice.
- Require pistol permit applications and concealed handgun permit applications to be provided electronically.
- Prohibit the sheriff from requesting additional information for concealed handgun permit applications unless specifically authorized by statute.
- Require arresting law enforcement agencies to fingerprint persons charged with certain misdemeanors and forward those fingerprints to NICS
- Direct AOC to use Court Technology Funds to comply with the NICS reporting requirements.

Section 12 would expand statewide uniformity of firearm regulation to specifically prohibit local governments from adopting any regulation relating to taxation, manufacture, or transportation of firearms. This section would also allow a person to bring an action for declaratory and injunctive relief against a local government that violates the section by adopting a regulation in violation of the law.

Section 13 would require certain State officials authorized by federal law to complete certifications required by federal law for transfer of certain weapons to complete those certifications within 15 days of request.

Section 14 would require a sheriff to make the request for any records concerning the mental health of an applicant for a concealed handgun permit within 10 days of receipt of the permit application and prohibit denial of the permit unless the applicant is determined to be ineligible pursuant to statute. This section prohibits additional fees being charged to the applicant for the background checks under this statute.

Section 15 would amend G.S. 14-415.23, which limits local government regulation of carrying concealed handguns to allow a person to bring an action for declaratory and injunctive relief against the local government for violation of the statute.

Section 17 would authorize a permanent resident of the United States to obtain a North Carolina concealed handgun permit.

EFFECTIVE DATE: Subsections (a), (b), and (c) of Section 1, and Sections 2, 3, 8, and 9 of this act become effective July 1, 2015, and apply to offenses committed on or after that date. Section 5 of this act becomes effective July 1, 2015, but shall not apply to pending litigation. Section 6 of this act is effective when it becomes law and applies to restorations granted before, on, or after that date. Section 7 of this act becomes effective July 1, 2015, and applies to permit applications submitted on or after that date. Section 9 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. Section 10 of this act becomes effective December 1, 2015, and applies to permits issued on or after that date. Sections 12 and 15 of this act become effective December 1, 2015, and apply to violations occurring on or after that date. Section 13 of this act becomes effective July 1, 2015. Section 14 becomes effective October 1, 2015, and applies to applications submitted on or after that date. The remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, July 23, 2015

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

FAVORABLE

HB **134** **(CS#1)** Soliciting Prostitution/Immunity for Minors.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **174** **(CS#1)** Landlord/Tenant-Foreclosure & Evict. Changes.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **446** **(CS#1)** Amend Statutes Governing Bail Bondsmen.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **562** **(CS#3)** Amend Firearm Laws.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Senator Michael Lee will handle HB 134
Senator W. Wells will handle HB 174
Senator Shirley Randleman will handle HB 446
Senator Jeffery Tarte will handle HB 562



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, July 23, 2015

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 **173** **(CS#1)** Omnibus Criminal Law Bill.

Draft Number:	H173-PCS20389-TJ-49
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

HB **774** **(CS#1)** Restoring Proper Justice Act.

Draft Number:	H774-PCS40495-TJ-50
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

This should be Report 3 of 3 from Senate J2 July 23rd

Senator Jeff Jackson will handle HB 173
Senator E.S. Newton will handle HB 774



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, July 23, 2015

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

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

HB **584** Use of Position/Letters of Reference.

Draft Number:	H584-PCS30409-ST-81
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 **607 (CS#1)** Allow Protected Consumer Security Freezes.

Draft Number:	H607-PCS10422-TG-43
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Warren Daniel will handle HB 584
Senator Tamara Barringer will handle HB 607



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Barringer, Co-Chair
Senator Daniel, Co-Chair
Senator Randleman, Co-Chair

Thursday, July 23, 2015

Senator Randleman,
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 **532** **(CS#1)** Malt Bvg Tech Changes/Sell Cider in Growlers.

Draft Number:	H532-PCS20386-TG-46
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator W. Jackson will handle HB 532



SENATE JUDICIARY II PROSPECTIVE SPEAKER SIGN-IN

DATE 07-23-15

NAME	ORGANIZATION	BILL NO.
Kim Yaman	Moms Demand Action	H562
Richard Harper	Harper Law	S205
Ballard Everett	~~Restore Justice~~ NC Conservatives concerned about the Death Penalty	HB774
David Weiss	~~Center for~~ Death Penalty Lit.	HB774
ANTHONY MONLITE	NRA	FOR H562
Becky Courtas	NCGV	ACW H562
DENNIS HILEY	NCWF	CON Parks H562
Beth Messersmith	Momsrising	CON H562
Tina Sherman	Momsrising	CON H562
Timothy Nilson	Brady Center	H774

SAME

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE 07-23-15

NAME	ORGANIZATION
Mike Carpenter	NCHSA
Andy Ellen	NCRMA
Tom West	NCICU
Bill Edwards	Triangle Shooting Academy
[illegible]	KLG
[illegible]	KLG
Julia Sirns	WRAL-TV
Paul West	DPS
Hunter Clary	DPS
Beth Messersmith	MomsRising
[illegible]	NCMS

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE 07-23-15

NAME	ORGANIZATION
Jennifer Casperini	NCMS
Beth Lunsford	MDA
Nina Hughlett	NCMMC
Cady Thomas	Focus Carolina
Tanya Callahan	NCCHPD
Ballard Everett	NCCCADP
David Weiss	Center for Death Penalty Litigation
[illegible]	[illegible]
Susan Phillips	Rep Jay Adams office
Chris Agner	DOJ

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE 07-23-15

NAME	ORGANIZATION
Crystal Collins	NC Trucking Assn
Mark Tucker	Smith Moore Leatherwood
David Ferrell	VB
Josue Bordeo	Intern

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE 07-23-15

NAME	ORGANIZATION
David Denney	Moms Demand Action
Lynn Shapiro	Moms Demand Action
Jen Ferrell	Moms Demand Action
Paul Sherman	NCFB
Helen Kroskamp	NCGV
Wyatt Pettengill	SBI
Will Parry-Hill	NCHFA
Natalie Hodson	NCHFA
ROD CHANEY	ME
Susanna Davis	NCFA

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE 07-23-15

NAME	ORGANIZATION
[illegible]	[illegible]
Bubba White	New Frame
José Cisneros	New Frame
Erica Nelson	NCHA
Elizabeth Tor	Moms Demand Action for Gun Sense in America
[illegible]	Moms Demand Action
Bill Rowe	NC Justice Center
Daniel Bowes	NC Justice Center
Annaliese Dolph	DL
Sandy Irving	NC Council of Churches

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE 07-23-15

NAME	ORGANIZATION
Joanna Spruill	NCAFP
Sarah Preston	ACLU-NC
Kim D'Arruda	NCDOT
Erin Brown	NCDOJ
Rebecca Shigley	NCDOI
Mark Blue	NCBAA
Courtney Lockamy	Randolph Cloud & Assoc.
DEAN BOSTIC	GRNC
Alexia Arthur	NCFMA
	Misc

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE 07-23-15

NAME	ORGANIZATION
Nikki McDougald	Carolina Justice Policy Ctr
J. Grayen Shortlock	NC FJ
Lao Tabor	CJR
JAKE PARKER	NCFB
BRIAN LEWIS	NEW FRAME
[illegible]	NHRS

SENATE JUDICIARY II *VISITOR SIGN-IN*

DATE 07-23-15

NAME	ORGANIZATION
ANTHONY ROLLETTE	NRA
Josette C.	GRNZ
JGOODMAN	NC CHAMBER
Alex Bowen	CCS
Kara Weisbar	SA
Patrick Lambert	RFNC
Araca Wadsworth	GA
Doug Mistelow	PSG
Henri McClees	McClees Consulting
Tim Nelson	Brooks Pierce

See other side

Henry Patterson, Patterson Heskin LLP
Attorneys at Law, ICLG