

2017-2018

**HOUSE
JUDICIARY II**

MINUTES

HOUSE COMMITTEE ON JUDICIARY II

2017 – 2018 SESSION

<u>MEMBER</u>	<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
John M. Blust Chair	Gennie Thurlow Committee Assistant	733-5781	2208 LB	49
John Faircloth Vice Chair	Becky Bauerband	733-5877	613 LOB	28
Pat Hurley Vice Chair	Debbie Holder	733-5865	532 LOB	10
Chuck McGrady Vice Chair	Kimberly Neptune	733-5956	304 LOB	15
Henry Michaux, Jr. Vice Chair	Anita Wilder	715-2528	1227 LB	11
Dana Bumgardner	Margie Penven	733-5809	2119 LB	40
Susan Fisher	Cindy Garrison	715-2013	504 LOB	69
Destin Hall	Katelyn Garlow	733-5931	306C LOB	87
Pricey Harrison	Sue Osborne	733-5771	1218 LB	70
Joe John	Dustin Ingalls	733-5530	1013 LB	117
Brenden Jones	Andrew Bailey	733-5821	2217 LB	88
John Sauls	Karen Rosser	715-3026	610 LOB	37

Susan L. Sitze
Howard Marsilio
Jessica Sammons
Committee Counsel
Legislative Analysis Division
545 LOB
Phone: 733-2578

4-20-2017



HOUSE COMMITTEE ON JUDICIARY !!

2017-2018 SESSION



**John Blust
Chair**



**John Faircloth
Vice Chair**



**Pat Hurley
Vice Chair**



**Chuck McGrady
Vice Chair**



**Henry Michaux, Jr.
Vice Chair**



Dana Bumgardner



Susan Fisher



Destin Hall



Pricey Harrison



Joe John



Brenden Jones



John Sauls



ATTENDANCE
House Committee on Judiciary II
2017 – 2018 SESSION

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ATTENDANCE
House Committee on Judiciary II
2017 – 2018 SESSION

[illegible]



North Carolina General Assembly
Pending House Committee on
Judiciary II

2017-2018 Biennium
Leg. Day: H-93/S-93

Date: 07/06/2017
Time: 9:46:18 AM

Bill	Introducer	Short Title		Date	Latest Action
<u>H 122</u>	Stevens	Discovery Not Disseminated to Defendant.	H	02-20-2017	Ref To Com On Judiciary II
<u>H 123</u>	Stevens	Registration Discretionary for Sexual Battery.	H	02-20-2017	Ref To Com On Judiciary II
<u>H 249</u>	Torbett	Economic Terrorism.	H	04-05-2017	Re-ref Com On Judiciary II
<u>H 336</u>	Butler	Ltd. License/Drive to School Event Past 9:00.	*H	04-06-2017	Re-ref Com On Judiciary II
<u>H 364</u> =	Turner	Tolling of Misdemeanor Statutes.	H	03-16-2017	Ref To Com On Judiciary II
<u>H 664</u>	Willingham	Retroactive Sex Offender Registration.	H	04-11-2017	Ref to the Com on Judiciary II, if favorable, Rules, Calendar, and Operations of the House
<u>H 785</u>	Iler	Duty to Call 911/Violation Misdemeanor.	H	04-13-2017	Ref To Com On Judiciary II
<u>S 162</u>	Daniel	LEO Assistance and Protection Act of 2017.	*H	06-08-2017	Re-ref Com On Judiciary II

'\$' indicates the bill is an appropriations bill.

A bold line indicates that the bill is an appropriations bill.

'*' indicates that the text of the original bill was changed by some action.

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



**House Committee on Judiciary II
Tuesday, February 21, 2017 at 1:00 PM
421 Legislative Office Building**

MINUTES

The House Committee on Judiciary II met at 1:00 PM on Tuesday, February 21, 2017 in 421 Legislative Office Building. Representatives Blust, Faircloth, Fisher, Hall, Harrison, Hurley, John, Jones, Michaux, and Sauls attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:46 PM, and he recognized the Sergeants-at-Arms. Chairman Blust asked the committee members to introduce themselves and briefly share a little about themselves.

The following bill was taken up for discussion only:

HB 63 Citizens Protection Act of 2017. (Representatives Warren, Collins, Jordan, and Adams)

Representative Warren was recognized to speak on the bill. Representatives Collins, Jordan, and Adams were recognized to explain parts of the bill. There were questions from the members, and the sponsors of the bill responded.

Chairman Blust recognized the following individuals who spoke against the bill:

Sarah M. Gillooly, Policy Director, American Civil Liberties Union of North Carolina (ACLU)

Aaron Sanchez, associated with MI FAMILIA, North Carolina State University Latino student organization

Carl Hintz, associated with Students for Immigration Rights, North Carolina State University

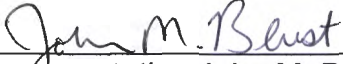
Cristina Gouzalez, El Pueblo


Mercedes Rastucha, Attorney

Evelyn Smallwood, Attorney

There being no further business, Chairman Blust adjourned the meeting at 2:34 PM.

Respectfully submitted,


Representative John M. Blust, Chairman
Presiding


Jennie L. Thurlow, Committee Clerk



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, February 21, 2017

TIME: 1:00 PM

LOCATION: 421 LOB

COMMENTS: Introduction of House Judiciary II committee members will be taken up first.
HB 63 Citizens Protection Act of 2017 will be for discussion only.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 63	Citizens Protection Act of 2017. FOR DISCUSSION ONLY	Representative Warren Representative Collins Representative Jordan Representative Adams

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 11:09 AM on Thursday, February 16, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Tuesday, February 21, 2017, 1:00 PM
421 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms and Pages

Introduction of House Judiciary II Committee Members

Bill

BILL NO.	SHORT TITLE	SPONSOR
HB 63	Citizens Protection Act of 2017. FOR DISCUSSION ONLY	Representative Warren Representative Collins Representative Jordan Representative Adams

Other Business

Adjournment



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 63

Short Title: Citizens Protection Act of 2017. (Public)

Sponsors: Representatives Warren, Collins, Jordan, and Adams (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II, if favorable, Appropriations

February 9, 2017

A BILL TO BE ENTITLED
AN ACT TO REDUCE IDENTITY THEFT BY INCREASING PENALTIES FOR THE
MANUFACTURE OR SALE OF COUNTERFEIT DOCUMENTS; TO CREATE A
REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN
UNDOCUMENTED ALIENS; AND TO ENACT A PENALTY FOR CITIES AND
COUNTIES THAT VIOLATE STATE LAWS RELATED TO SANCTUARY CITIES.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1. This act shall be known and may be cited as "The Citizens Protection Act of 2017."

PART II. INCREASE PENALTIES FOR MANUFACTURE OR SALE OF FALSE IDENTIFICATION DOCUMENTS

SECTION 2.(a) G.S. 14-100.1 reads as rewritten:

"§ 14-100.1. ~~Possession or manufacture~~ Possession, manufacture, or sale of certain fraudulent forms of identification.

(a) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any person to knowingly ~~possess or manufacture~~ possess, manufacture, or sell a false or fraudulent form of identification as defined in this section for the purpose of deception, fraud, or other criminal conduct.

(b) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any person to knowingly obtain a form of identification by the use of false, fictitious, or fraudulent information.

(c) Possession of a form of identification obtained in violation of subsection (b) of this section ~~shall constitute~~ is a violation of subsection (a) of this section.

(d) For purposes of this section, a "form of identification" means any of the following or any replica thereof:

- (1) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina, the federal government, or any other state.
- (2) A military identification card containing a picture.
- (3) A passport.
- (4) An alien registration card containing a picture.



(e) A violation of this section ~~shall be punished as is~~ a Class 1 ~~misdemeanor~~-misdemeanor, except that a violation of subsection (a) of this section with respect to the manufacture or sale of a false or fraudulent form of identification is a Class G felony."

SECTION 2.(b) G.S. 20-30 reads as rewritten:

"§ 20-30. Violations of license, learner's permit, or special identification card provisions.

It ~~shall be~~ is unlawful for any person to commit any of the following acts:

- (1) To display or cause to be displayed or to have in possession a driver's license, learner's permit, or special identification card, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.
- (2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license, learner's permit, or special identification card. A violation of this subdivision by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor. A violation of this subdivision by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers shall be punished as a Class 2 misdemeanor. A person who otherwise violates the provisions of this subdivision is guilty of a Class G felony.
- (3) To display or to represent as one's own a drivers license, learner's permit, or special identification card not issued to the person so displaying same.
- (4) To fail or refuse to surrender to the Division upon demand any driver's license, learner's permit, or special identification card that has been suspended, canceled or revoked as provided by law.
- (5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license, learner's permit, or special identification card, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license, learner's permit, or special identification card procured as aforesaid ~~shall be is~~ void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State. ~~Any A~~ person ~~violating who violates~~ the provisions of this subdivision ~~shall be is~~ guilty of a Class 1 misdemeanor.
- (6) To make a color photocopy or otherwise make a color reproduction of a drivers license, learner's permit, or special identification card ~~which that~~ has been color-photocopied or otherwise reproduced in color, unless ~~such the~~ color photocopy or other color reproduction was authorized by the Commissioner. It ~~shall be is~~ lawful to make a black and white photocopy of a drivers license, learner's permit, or special identification card or otherwise make a black and white reproduction of a drivers license, learner's permit, or special identification card.
- (7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license, learner's permit, or special identification card. The provisions of this subdivision ~~shall do~~ not apply to agents or employees of the Division while acting in the course and scope of their employment. ~~Any A~~ person, firm or corporation ~~violating that violates~~ the provisions of this subsection ~~shall be is~~ guilty of a Class ~~I-G~~ felony.
- (8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers

- 1 license possessed at the same time as a commercial drivers license is subject to
2 immediate seizure by any law enforcement officer or judicial official.
- 3 (9) To present, display, or use a drivers license, learner's permit, or special
4 identification card that contains a false or fictitious name in the commission or
5 attempted commission of a felony. ~~Any A person violating who violates~~ the
6 provisions of this subdivision ~~shall be is~~ guilty of a Class I felony.

7 (10) To possess more than one special identification card for a fraudulent purpose."

8 SECTION 2.(c) G.S. 20-37.8 is repealed.
9

10 **PART III. CREATION OF REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL**
11 **RELEASE OF CERTAIN UNDOCUMENTED ALIENS**

12 SECTION 3.(a) G.S. 15A-533 reads as rewritten:

13 "**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

14 (a) A defendant charged with any crime, whether capital or noncapital, who is alleged to
15 have committed this crime while still residing in or subsequent to his escape or during an
16 unauthorized absence from involuntary commitment in a mental health facility designated or
17 licensed by the Department of Health and Human Services, and whose commitment is determined
18 to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid,
19 has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned
20 to the treatment facility in which he was residing at the time of the alleged crime or from which he
21 escaped or absented himself for continuation of his treatment pending the additional proceedings
22 on the criminal offense.

23 (b) A defendant charged with a noncapital offense must have conditions of pretrial release
24 determined, in accordance with G.S. 15A-534.

25 (c) A judge may determine in ~~his the~~ judge's discretion whether a defendant charged with a
26 capital offense may be released before trial. If ~~he the~~ judge determines release is warranted, the
27 judge must authorize release of the defendant in accordance with G.S. 15A-534.

28 (d) There ~~shall be is~~ a rebuttable presumption that no condition of release will reasonably
29 assure the appearance of the person as required and the safety of the community if a judicial
30 official finds the following:

- 31 (1) There is reasonable cause to believe that the person committed an offense
32 involving trafficking in a controlled substance;
33 (2) The drug trafficking offense was committed while the person was on pretrial
34 release for another offense; and
35 (3) The person has been previously convicted of a Class A through E felony or an
36 offense involving trafficking in a controlled substance and not more than five
37 years has elapsed since the date of conviction or the person's release from
38 prison for the offense, whichever is later.

39 (e) There ~~shall be is~~ a rebuttable presumption that no condition of release will reasonably
40 assure the appearance of the person as required and the safety of the community, if a judicial
41 official finds the following:

- 42 (1) There is reasonable cause to believe that the person committed an offense for
43 the benefit of, at the direction of, or in association with, any criminal street
44 gang, as defined in G.S. 14-50.16;
45 (2) The offense described in subdivision (1) of this subsection was committed
46 while the person was on pretrial release for another offense; and
47 (3) The person has been previously convicted of an offense described in
48 G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed
49 since the date of conviction or the person's release for the offense, whichever is
50 later.

1 (f) There ~~shall be~~ is a rebuttable presumption that no condition of release will reasonably
2 assure the appearance of the person as required and the safety of the community, if a judicial
3 official finds there is reasonable cause to believe that the person committed a felony or Class A1
4 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the
5 judicial official also finds any of the following:

- 6 (1) The offense was committed while the person was on pretrial release for another
7 felony or Class A1 misdemeanor offense involving the illegal use, possession,
8 or discharge of a firearm.
9 (2) The person has previously been convicted of a felony or Class A1 misdemeanor
10 offense involving the illegal use, possession, or discharge of a firearm and not
11 more than five years have elapsed since the date of conviction or the person's
12 release for the offense, whichever is later.

13 (f1) There is a rebuttable presumption that no condition of release will reasonably assure
14 the appearance of the person as required and the safety of the community if the person is
15 unlawfully present in the United States and a judicial official finds either of the following:

- 16 (1) There is probable cause to believe that the person committed one or more of the
17 following offenses:

- 18 a. A sex offense. As used in this sub-subdivision, a "sex offense" is any
19 offense upon conviction of which the offense becomes a reportable
20 conviction, as that term is defined in G.S. 14-208.6.
21 b. A violent felony, as that term is defined in G.S. 14-7.7(b), or any
22 criminal offense other than a violation described in G.S. 14-33(a) that
23 includes assault as an essential element of the offense or as an
24 aggravating factor in sentencing.
25 c. A driving offense. As used in this sub-subdivision, the term "driving
26 offense" means any violation that requires a mandatory drivers license
27 revocation upon a first conviction.
28 d. A drug offense. As used in this sub-subdivision, the term "drug offense"
29 means a violation of G.S. 90-95, other than a violation for mere
30 possession of a controlled substance.
31 e. A gang offense. As used in this sub-subdivision, the term "gang
32 offense" means any violation of Article 13A of Chapter 14 of the
33 General Statutes.

- 34 (2) There is probable cause to believe that the person committed an offense not
35 listed in subdivision (1) of this subsection, and United States Immigration and
36 Customs Enforcement has issued a detainer for the initiation of removal
37 proceedings against the person or has indicated that it will do so.

38 (g) Persons who are considered for bond under the provisions of subsections (d), (e), ~~and~~
39 ~~(f)-(f), and (f1)~~ of this section may only be released by a district or superior court judge upon a
40 finding that there is a reasonable assurance that the person will appear and release does not pose
41 an unreasonable risk of harm to the community."

42 **SECTION 3.(b)** Article 26 of Chapter 15A of the General Statutes is amended by
43 adding a new section to read:

44 **"§ 15A-534.7. Pretrial release of certain undocumented aliens.**

45 In all cases in which the defendant is an alien who (i) is not lawfully present in the United
46 States and (ii) is charged with a felony or a Class A1 misdemeanor, the judicial official shall
47 require the defendant to execute a secured appearance bond as a condition of pretrial release, as
48 described in G.S. 15A-534(a)(4)."

49
50 **PART IV. MISCELLANEOUS PROVISIONS**

SECTION 4.(a) Article 1 of Chapter 64 of the General Statutes is amended by adding the following new sections to read:

"§ 64-6. Permissible methods of verifying immigration status.

Verification of a person's immigration status pursuant to this Chapter or any other provision of State law shall be made consistent with federal law and may be made by any of the following methods, as applicable:

- (1) Pursuant to 8 U.S.C. §§ 1373(c) and 1644 or any other provision of federal law.
- (2) By a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.
- (3) In any other manner authorized by the federal government.

"§ 64-7. Admissibility of immigration status records in courts of this State.

(a) A verification of an alien's immigration status received from the federal government pursuant to G.S. 64-6 is proof of that alien's status. A court of this State shall consider only a verification of immigration status made pursuant to G.S. 64-6 in determining whether an alien is lawfully present in the United States.

(b) Any record that relates to the immigration status of a person is admissible in any court of this State without further foundation or testimony from a custodian of records if all of the following apply:

- (1) The record is certified as authentic by the federal government agency that is responsible for maintaining the record.
- (2) The State notifies the person at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the record into evidence under this section and provides a copy of the record to the person.
- (3) The person fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the record would be used, that the person objects to the introduction of the record into evidence.

If the person's attorney of record, or that person if the person is not represented by an attorney, fails to file a written objection as provided in this subsection, then the record may be admitted into evidence without the testimony of the custodian of records. Upon filing a timely objection, the admissibility of the record is determined and governed by the appropriate rules of evidence.

"§ 64-8. Law enforcement transport of certain unlawfully present aliens.

Notwithstanding any other provision of law, a State or local law enforcement agency may securely transport an alien who is in the agency's custody and who the agency has verified is unlawfully present in the United States to a federal facility in this State or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial or executive authorization from the Governor before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside this State.

"§ 64-9. Construction and severability.

(a) Construction. – This Chapter shall be construed in a manner consistent with federal law.

(b) Severability. – The provisions of this Chapter are severable. If any part of this Chapter is declared invalid or unconstitutional, the declaration shall not affect the remainder of this Chapter. If any particular interpretation or application of the provisions of this Chapter is declared invalid or unconstitutional, the declaration shall not affect other interpretations or applications of this Chapter."

SECTION 4.(b) G.S. 153A-145.5 is amended by adding a new subsection to read:

"(c) The Secretary of Revenue shall withhold any distributions otherwise due under G.S. 105-113.82, 105-164.44F, 105-164.44I, and 105-164.44L for any period during which a county is in violation of subsection (a) or (b) of this section. The Attorney General shall be

1 responsible for administering this subsection and shall adopt rules governing its implementation.
2 The Secretary of Revenue, the Office of State Budget and Management, the State Controller, and
3 all other State agencies and officials shall cooperate fully with the implementation of this section
4 and the rules adopted pursuant thereto."

5 **SECTION 4.(c)** G.S. 160A-499.4 is amended by adding a new subsection to read:

6 "(d) The Secretary of Revenue shall withhold any distributions otherwise due under
7 G.S. 105-113.82, 105-164.44F, 105-164.44I, and 105-164.44L for any period during which a city
8 is in violation of subsection (a) or (b) of this section. The Attorney General shall be responsible
9 for administering this subsection and shall adopt rules governing its implementation. The
10 Secretary of Revenue, the Office of State Budget and Management, the State Controller, and all
11 other State agencies and officials shall cooperate fully with the implementation of this section and
12 the rules adopted pursuant thereto."

13 **SECTION 4.(d)** Subsections (b) and (c) of this section become effective October 1,
14 2017.

15
16 **PART V. EFFECTIVE DATE AND SEVERABILITY CLAUSE**

17 **SECTION 5.(a)** Sections 2 and 3 of this act become effective December 1, 2017, and
18 apply to offenses committed on or after that date. Except as otherwise provided, the remainder of
19 this act is effective when it becomes law.

20 **SECTION 5.(b)** The provisions of this act are severable. If any part of this act is
21 declared invalid or unconstitutional, the declaration shall not affect the remainder of this act. If
22 any particular interpretation or application of the provisions of this act is declared invalid or
23 unconstitutional, the declaration shall not affect other interpretations or applications of this act.



HOUSE BILL 63: Citizens Protection Act of 2017.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Appropriations	Date:	February 20, 2017
Introduced by:	Reps. Warren, Collins, Jordan, Adams	Prepared by:	Susan Sitze
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House Bill 63 would reduce identity theft by increasing penalties for the manufacture or sale of counterfeit documents, would create a rebuttable presumption against the pretrial release of certain undocumented aliens, and would enact a penalty for cities and counties that violate State laws related to sanctuary cities.*

BILL ANALYSIS:

Section 1 of the bill would provide that this act be known as "The Citizens Protection Act of 2017."

Section 2 of the bill would amend various statutes related to the fraudulent use of identification.

Section 2(a) of the bill would make the following changes to the prohibition on false or fraudulent forms of identification pursuant to G.S. 14-100.1:

- ❖ Create a new Class G felony for the sale of a false or fraudulent form of identification for the purpose of deception, fraud, or other criminal conduct.
- ❖ Increase the penalty for manufacturing such identification from a Class 1 misdemeanor to a Class G felony. Possession of such identification would remain a Class 1 misdemeanor.

Section 2(b) of the bill would modify G.S. 20-30 as follows:

- ❖ Counterfeiting, selling, lending, or knowingly permitting the use of a driver's license, learner's permit, or special identification card would have the following penalties:
 - A violation by a person under 21 for the purpose of the underage purchase of alcohol would be increased to a Class 1 misdemeanor (currently a Class 2 misdemeanor).
 - A violation by a person under 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers would be a Class 2 misdemeanor (same as current law).
 - Any other violation would be a Class G felony.
- ❖ Selling or offering for sale any reproduction, facsimile, or simulation of a driver's license, learner's permit, or special identification card would be increased to a Class G felony (currently a Class I felony).
- ❖ Create a new Class 2 misdemeanor for possession of more than one special identification card for fraudulent purpose.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 63

Page 2

Section 3 of the bill would make modifications to the process of pretrial release for persons unlawfully present in the United States. **Section 3(a)** would create a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if the person is unlawfully present in the United States and a judicial officer finds either of the following:

- ❖ There is probable cause to believe that the person committed one or more of the following offenses:
 - An offense which would require sex offender registration.
 - An A through E felony or any offense, except simple assault, with assault as an essential element or as an aggravating factor in sentencing.
 - An offense that requires a mandatory driver's license revocation upon a first conviction.
 - A violation of G.S. 90-95 other than mere possession.
 - A gang offense included in Article 13A of Chapter 14.
- ❖ There is probable cause to believe the person committed an offense not listed above and United States Immigration and Customs Enforcement has issued a detainer for the initiation of removal proceedings against the person or has indicated that it will do so.

Section 3(b) would require any judicial official who releases an alien who is not lawfully present in the US and who has been charged with a felony or a Class A1 misdemeanor to require the defendant to execute a secured appearance bond as a condition of pretrial release.

Section 4 of the bill would make various statutory changes regarding aliens.

Section 4(a) would enact several new statutes in Article 1 of Chapter 64, Various Provisions Related to Aliens, as follows:

- ❖ G.S. 64-6 would provide how verification of immigration status should be conducted.
- ❖ G.S. 64-7 would provide for the introduction of verification of immigration status in court proceedings.
- ❖ G.S. 64-8 would authorize a State or local law enforcement agency to transport an alien in the agency's custody to a federal facility in this State or outside the State. Judicial or executive authorization must be obtained before transporting an alien outside the State.
- ❖ G.S. 64-9 provides for severability of any statute in this Chapter found invalid or unconstitutional.

Sections 4(b) and 4(c) would direct the Secretary of Revenue to withhold certain distributions otherwise due a city or county for any period the city or county is in violation of the statute prohibiting sanctuary ordinances. The distributions withheld would be those provided under the beer and wine excise tax, the telecommunications tax, the video programming services and telecommunications services tax, and the tax on piped natural gas.

EFFECTIVE DATE: Sections 2 and 3 of this act become effective December 1, 2017, and apply to offenses committed on or after that date. Subsections (b) and (c) of Section 4 become effective October 1, 2017. The remainder of this act is effective when it becomes law. This bill contains a severability clause.

Committee Sergeants at Arms

NAME OF COMMITTEE House Comm. on Judiciary II

DATE: 2/21/2017

Room: 421

House Sgt-At Arms:

1. Name: Bill Bass

2. Name: Jonas Cherry

3. Name: Mark Cone

4. Name: _____

5. Name: _____

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____



Speaker Registration Sheet

House Committee on Judiciary II

2-21-2017

Date

Bill: HB 63 Citizens Protection Act of 2017

NAME - Please PRINT

FIRM OR AGENCY

Sarah M. Gillooly Policy Director, ACLU of NC

AARON SANCHEZ

①

NC STATE STUDENT

CARL HINTZ

②

NC STATE STUDENT

Cristina Gonzalez

El Pueblo

Mercedes Rastucha

Attorney

Es

Evelyn Smallwood

Attorney

① Associated with Mi

FAMILIA, NC SU Latino Students Organization

② Associated with

Students for Immigration Rights

Brian Lewis



VISITOR REGISTRATION SHEET

House Comm. on Judiciary II

2/21/2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Dana Fenton	City of Charlotte
Sarah Collins	NCLM
Carlye Wittek	Perkinson Law Firm
Tonya Horton	TSS
Kim Siames	NCLRA
Kim Couch	NCLA
Renuka Goqusethi	15304 Bragaw Res., Raleigh 27607
Carl Hintz	Students for Immigrant Rights Raleigh 27606
Jessica Engler	Office of Guenier Cooper
Chris Broughton	NWC
Sarah Pendue	NC SPAC



VISITOR REGISTRATION SHEET

House Comm. on Judiciary II

2/21/2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

AARON SANCHEZ	NC STATE MI FAMILIA
Liana Santillan	El Pueblo
Cristina Gonzalez	El pueblo
Griselda Alonso	El Pueblo
Belen Vazquez	El Pueblo
A. Mercedes Restucha-Riley, JD	El Pueblo
Will Saenz	El Pueblo
Brian Lewis	New France
Lori Khamala	American Friends Service Committee
Kelley Baker	UNC School of Law
Kris Parks	DRNC



VISITOR REGISTRATION SHEET

House Comm. on Judiciary II

2/21/2017

Name of Committee

Date

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FIRM OR AGENCY AND ADDRESS

Molly Rivera	ACLU of North Carolina - Raleigh, NC
Mike Menu	ACLU-NC
Emily Walter	Intern Rep. Fisher
PAOLA JARAMILA	LA NOTICIA NEWSPAPER
Caroline Miller	AMGA
Natalie Herr	Citizen - Cary, NC
Jennifer Bremer	Neighbors on Call
Betsy Bailey	CACC
Johanna Reese	NCACC
David Ferrall	VB
Doug Miskew	PS



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

2-21-2017

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Evelyn Smallwood

Hatch Rockers Immigration

Lexi Arthur

NCRMA

Susan Vin

Duke

Josh Cant

Smith Andrew



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

2-21-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Angeline Echeverría

El Pueblo, Inc.

Leslie Rudd

Staff, Sen. Dan Blue

JAKE PARKER

NCFB

Susanna Bieborg

ACLU-NC

Sarah Gillooly

ACLU-NC

Cristina Becker

ACLU-NC

Dawn Blagrove

Carolina Justice Policy Center

Jenny Doyle

Attorney exclusively practicing federal law



House Committee on Judiciary II
Tuesday, February 28, 2017 at 1:00 PM
421 Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on February 28, 2017 in 421 Legislative Office Building. Representatives Blust, Faircloth, Fisher, Hall, Harrison, Hurley, John, Jones, McGrady, and Michaux attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:00 PM. The Chairman recognized the Sergeants-at-Arms and Pages.

The following bills were considered:

HB 98 Crim. Offense/Vandalize Fire & EMS Equipment. (Representatives Dollar, Malone, Wray, Clampitt)

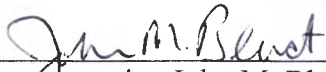
Representative Dollar was recognized to present the bill. Representative Clampitt was also recognized to make comments. Representative Dollar had one handout: a letter co-signed by Executive Director Tim Bradley, NC State Firefighters' Association, and Executive Director Jake Whisnant, NC Association of Fire Chiefs, stating that their combined legislative committee and the Boards are in support of the passage of HB 98. After a brief discussion, Representative Michaux made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 65 Reg Active Time Felony Death MV/Boat. (Representatives Pittman, Speciale, C. Graham, Jackson)

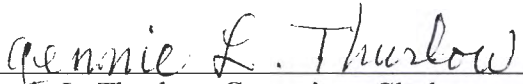
Representative Pittman was recognized to explain the bill. Representative Speciale also spoke on the bill. There were questions from committee members, and Susan Sitze, committee counsel, responded to the questions. Representative Faircloth made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

There being no further business, Chairman Blust adjourned the meeting at 1:25 PM.

Respectfully submitted,



Representative John M. Blust, Chairman
Presiding



Gennie L. Thurlow, Committee Clerk



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair**

FAVORABLE

HB 65

Req Active Time Felony Death MV/Boat.

Draft Number: None

Serial Referral: None

Recommended Referral: None

Long Title Amended: No

Floor Manager: Pittman

HB 98

Crim. Offense/Vandalize Fire & EMS Equipment.

Draft Number: None

Serial Referral: None

Recommended Referral: None

Long Title Amended: No

Floor Manager: Dollar

TOTAL REPORTED: 2



* C M R 2 9 - V - 1 *



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, February 28, 2017

TIME: 1:00 PM

LOCATION: 421 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 65	Req Active Time Felony Death MV/Boat.	Representative Pittman Representative Speciale Representative C. Graham Representative Jackson
HB 98	Crim. Offense/Vandalize Fire & EMS Equipment.	Representative Dollar Representative Malone Representative Wray Representative Clampitt

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 11:46 AM on Thursday, February 23, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Tuesday, February 28, 2017, 1:00 PM
421 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 65	Req Active Time Felony Death MV/Boat.	Representative Pittman Representative Speciale Representative C. Graham Representative Jackson
HB 98	Crim. Offense/Vandalize Fire & EMS Equipment.	Representative Dollar Representative Malone Representative Wray Representative Clampitt

Other Business

Adjournment



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 65

Short Title: Req Active Time Felony Death MV/Boat. (Public)

Sponsors: Representatives Pittman, Speciale, C. Graham, and Jackson (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

February 9, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE ACTIVE TIME FOR A CONVICTION OF FELONY DEATH BY
3 VEHICLE OR FELONY DEATH BY IMPAIRED BOATING.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 20-141.4(b) reads as rewritten:

6 "(b) Punishments. – Unless the conduct is covered under some other provision of law
7 providing greater punishment, the following classifications apply to the offenses set forth in this
8 section:

- 9 (1) Repeat felony death by vehicle is a Class B2 felony.
10 (1a) Aggravated felony death by vehicle is a Class D felony. Notwithstanding the
11 provisions of G.S. 15A-1340.17, the court shall sentence the defendant in the
12 aggravated range of the appropriate Prior Record Level.
13 (2) Felony death by vehicle is a Class D felony. Notwithstanding the provisions of
14 G.S. 15A-1340.17, intermediate punishment is authorized for a defendant who
15 is a Prior Record Level I offender. Any intermediate punishment issued
16 pursuant to this subdivision shall include special probation with a continuous
17 period of confinement of one-fourth the maximum sentence of imprisonment
18 imposed for the offense. Notwithstanding G.S. 15A-1351, the continuous
19 period of confinement imposed may be for a period of up to 27 months.
20 (3) Aggravated felony serious injury by vehicle is a Class E felony.
21 (4) Felony serious injury by vehicle is a Class F felony.
22 (5) Misdemeanor death by vehicle is a Class A1 misdemeanor."

23 SECTION 2. G.S. 75A-10.3(f) reads as rewritten:

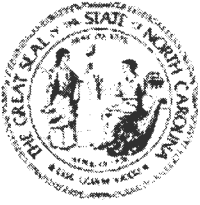
24 "(f) Punishments. – Unless the conduct is covered under some other provision of law
25 providing greater punishment, the following classifications apply to the offenses set forth in this
26 section:

- 27 (1) Repeat death by impaired boating is a Class B2 felony.
28 (2) Aggravated death by impaired boating is a Class D felony. Notwithstanding the
29 provisions of G.S. 15A-1340.17, the court shall sentence the defendant in the
30 aggravated range of the appropriate Prior Record Level.
31 (3) Death by impaired boating is a Class D felony. Notwithstanding the provisions
32 of G.S. 15A-1340.17, intermediate punishment is authorized for a defendant
33 who is a Prior Record Level I offender. Any intermediate punishment issued
34 pursuant to this subdivision shall include special probation with a continuous
35 period of confinement of one-fourth the maximum sentence of imprisonment



* H 6 5 - V - 1 *

- 1 imposed for the offense. Notwithstanding G.S. 15A-1351, the continuous
2 period of confinement imposed may be for a period of up to 27 months.
3 (4) Aggravated serious injury by impaired boating is a Class E felony.
4 (5) Serious injury by impaired boating is a Class F felony."
5 **SECTION 3.** This act becomes effective December 1, 2017, and applies to offenses
6 committed on or after that date.



HOUSE BILL 65: Req Active Time Felony Death MV/Boat.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	February 28, 2017
Introduced by:	Reps. Pittman, Speciale, C. Graham, Jackson	Prepared by:	Susan Sitze
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House Bill 65 would require active time for a conviction of felony death by vehicle or felony death by impaired boating.*

CURRENT LAW: Felony death by vehicle under G.S. 20-141.4 and felony death by impaired boating under G.S. 75A-10.3 are both Class D felonies. Punishment for a Class D felony normally requires an active sentence at all prior record levels, however, both felony death by vehicle and felony death by impaired boating allow the court discretion to give a first offender an intermediate punishment.

BILL ANALYSIS: House Bill 65 would amend G.S. 20-141.4(b)(2) and G.S. 75A-10.3(f)(3) to provide that if a person is convicted of felony death by vehicle or felony death by impaired boating and receives an intermediate punishment, that intermediate punishment must include special probation with a period of continuous confinement of one-fourth of the maximum sentence imposed.

EFFECTIVE DATE: This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 65 (First Edition)

SHORT TITLE: Req Active Time Felony Death MV/Boat.

SPONSOR(S): Representatives Pittman, Speciale, C. Graham, and Jackson

FISCAL IMPACT

(\$ in millions)

☒ Yes

☐ No

☐ No Estimate Available

	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
State Impact					
General Fund Revenues:	to	to	to	to	to
General Fund Expenditures	0.0 to 0.0	0.1 to 0.2	0.1 to 0.2	0.1 to 0.2	0.1 to 0.2
State Positions:	to	to	to	to	to
NET STATE IMPACT	(\$0.0) to (\$0.0)	(\$0.1) to (\$0.2)	(\$0.1) to (\$0.2)	(\$0.1) to (\$0.2)	(\$0.1) to (\$0.2)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety

EFFECTIVE DATE: December 1, 2017

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

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

- Administrative Office of the Courts: No cost
- Indigent Defense Services: No cost
- Department of Public Safety (DPS) - Prisons: Between \$115,920 and \$185,472 in FY 2018-19
- DPS - Community Corrections: No cost

Please see the Assumptions and Methodology section for additional information.

(Note: Although this bill may result in additional expenditures, no additional General Fund appropriation is required. Costs can be absorbed within the existing Department of Public Safety budget. The net effect of the bill may be to reduce the amount of unspent funds the Department reverts at the end of the fiscal year.)

BILL SUMMARY:

This bill amends existing G.S. 20-141.4(b) (felony death by vehicle) in subdivision (2) and existing G.S. 75A-10.3(f) (death by impaired boating) in subdivision (3) to require that any intermediate punishment

imposed for these offenses include special probation with a period of confinement of one-fourth the maximum sentence imposed for the offense, up to 27 months.

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 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.

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.

Judicial Branch

Because this bill only changes the implementation of the sentence imposed, no impact is expected on either the Administrative Office of the Courts or Indigent Defense Services.

Department of Public Safety – Prisons

G.S. 20-141.4(b)(2) makes it a Class D felony if a person commits the offense of felony death by vehicle. An intermediate punishment is authorized if the offender is in Prior Record Level I. This bill requires that the intermediate punishment include special probation with a continuous period of confinement of one-fourth of the maximum sentence imposed, up to 27 months. (Currently, special probation may be for up to one-fourth of the maximum imposed.)

There were 54 Class D convictions for felony death by vehicle under G.S. 20-141.4(b)(2) in FY 2015-16. Of those, 69% (n=37) were in Prior Record Level I. The majority of the 37 Class D convictions in Prior Record Level I received an intermediate punishment (n=24 or 65%), while 35% (n=13) received an active punishment. Offenders receiving an intermediate punishment had a lower average maximum sentence imposed than those receiving an active sentence (71 months and 76 months respectively).

Of the 24 offenders sentenced under G.S. 20-141.4(b)(2) in Prior Record Level I with an intermediate punishment, 22 received special probation. The average special probation length was 9 months, or 12.7% of the average maximum sentence imposed (71 months). As such, the proposed change to require special probation with a continuous period of confinement of one-fourth of the maximum sentence imposed, up to 27 months, is expected to have an impact on the prison population due to the special probation requirement and the longer special probation sentence length.

The Sentencing and Policy Advisory Commission provided the following table showing the estimated impact of changing the allowable special probation sentence length with scenarios provided for 18 months (one-fourth of the maximum sentence imposed) or 27 months (the maximum allowable under the proposed sentencing change). The current average special probation length (9 months) was used as the baseline for estimating impact. The estimate does not include any changes in judicial or prosecutorial practices with the imposition of special probation for this offense.

Estimated Impact of Changing Allowable Special Probation Sentence Length on Prison Beds					
Sentence Length	Year 1	Year 2	Year 3	Year 4	Year 5
Minimum 18 Months	7	20	20	20	20
Maximum 27 Months	7	32	38	39	38

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 2015.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will add between 20 and 32 inmates to the prison system by the end of FY 2018-19.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2018	June 30 2019	June 30 2020	June 30 2021	June 30 2022
1. Inmates ²	36,906	37,116	36,814	36,821	37,010
2. Prison Beds (Expanded Capacity)	37,617	37,617	37,617	37,617	37,617
3. Beds Over/(Under) Inmate Population	711	501	803	796	607
4. Additional Inmates Due to this Bill³	7	20-32	20-38	20-39	20-38
5. Additional Beds Required	0	0	0	0	0

Although no additional beds will be required for this bill, additional spending will be required to house new prisoners or to house prisoners longer as a result of the required sentencing change. Per diem expenditures

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 2016.

³ Criminal penalty bills effective December 1, 2016 should not affect prison population and bed needs until FY 2017-18 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

for each inmate are approximately \$15.02, or \$5,482 per year. The table below shows the annual cost for each year of the five year projection, adjusted for inflation.

Annual Incarceration Cost Adjusted for Inflation Five Year Projection						
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Inflation Rate		2.76%	2.90%	2.98%	2.65%	1.89%
Annual Cost	\$5,482	\$5,633	\$5,796	\$5,969	\$6,127	\$6,243
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (February 2017)</i>						

The table below provides the range of expenditures that may be required as a result of this bill. In the first full year of implementation (FY 2018-19), costs will range from a minimum of \$115,920 (if all intermediate sentences receive the minimum 18 months required) to a maximum of \$185,472 (if all intermediate sentences receive the maximum 27 months allowed).

Additional Per Diem Costs Resulting from Increased Penalty Five Year Projection					
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Minimum 18 Months	7	20	20	20	20
Annual Cost	\$39,431	\$115,920	\$119,380	\$122,540	\$124,860
Maximum 27 Months	7	32	38	39	38
Annual Cost	\$39,431	\$185,472	\$226,822	\$238,953	\$237,234

The bill also changes G.S. 75A-10.3(f)(3) to require that the intermediate punishment for death by impaired boating include special probation with a continuous period of confinement of one-fourth of the maximum sentence imposed, up to 27 months. Since death by impaired boating is a new offense (effective December 1, 2016), it is not known how many convictions may occur and may be affected by the proposed change requiring the offender to receive special probation and to serve one-fourth of the maximum sentence imposed. The proposed change could result in an impact on the prison population. However, because no data are currently available, the impact of this change cannot be determined.

Department of Public Safety – Community Corrections

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.

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 (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 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.

Because the bill only changes the required minimum period of confinement, no cost is anticipated for CCS.

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: February 27, 2017



Signed Copy Located in the NCGA Principal Clerk's Offices



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 98

Short Title: Crim. Offense/Vandalize Fire & EMS Equipment. (Public)

Sponsors: Representatives Dollar, Malone, Wray, and Clampitt (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

February 15, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE CRIMINAL OFFENSE OF INJURING, DESTROYING,
3 REMOVING, VANDALIZING, OR TAMPERING WITH ANY OF THE FOLLOWING:
4 FIREFIGHTING MACHINERY, FIREFIGHTING EQUIPMENT, AN AMBULANCE, A
5 RESCUE SQUAD EMERGENCY MEDICAL SERVICES VEHICLE, OR EMERGENCY
6 MEDICAL SERVICES EQUIPMENT.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Article 23 of Chapter 14 of the General Statutes is amended by adding a
9 new section to read:

10 "**§ 14-160.3. Injuring, destroying, removing, vandalizing, or tampering with firefighting or**
11 **emergency medical services machinery or equipment.**

12 A person is guilty of a Class 1 misdemeanor if the person injures, destroys, removes,
13 vandalizes, or tampers with or otherwise interferes with the operation of any of the following with
14 the intent to temporarily or permanently prevent their useful operation:

15 (1) Any machinery, apparatus, or equipment used by a fire department or the North
16 Carolina Forest Services for fighting fires, protecting property, or protecting
17 human life.

18 (2) Any ambulance as defined in G.S. 131E-155 or rescue squad emergency
19 medical services vehicle or any equipment or apparatus used for emergency
20 medical services as defined in G.S. 131E-155."

21 SECTION 2. This act becomes effective December 1, 2017, and applies to offenses
22 committed on or after that date.







HOUSE BILL 98: Crim. Offense/Vandalize Fire & EMS Equipment.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Reps. Dollar, Malone, Wray, Clampitt
Analysis of: First Edition

Date: February 28, 2017
Prepared by: Susan Sitze
Howard Marsilio
Committee Counsel

OVERVIEW: *House Bill 98 would make it a criminal offense to injure, destroy, remove, vandalize, tamper, or interfere with machinery, equipment, or vehicles with the intent to temporarily or permanently prevent their useful operation by fire department, North Carolina Forest Service, and emergency medical service personnel.*

CURRENT LAW: G.S. 14-160, Willful and wanton injury to personal property, currently makes it unlawful to willfully and wantonly injure the personal property of another. Conviction of this offense is a Class 2 misdemeanor, or a Class 1 misdemeanor if the damage is in excess of two hundred dollars (\$200.00).

BILL ANALYSIS: House Bill 98 would make it unlawful to injure, destroy, remove, vandalize, tamper, or interfere with machinery, equipment, or vehicles with the intent to temporarily or permanently prevent their useful operation by fire department, North Carolina Forest Service, and emergency medical service personnel.

A person convicted of that offense would be guilty of a Class 1 misdemeanor.

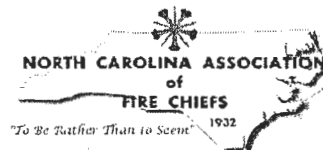
EFFECTIVE DATE: This act would become effective December 1, 2017, and would apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578





February 27, 2017

Members of the North Carolina General Assembly:

Re: House Bill 98

As Executive Directors of the North Carolina State Firefighters' Association and the NC Association of Fire Chiefs, Associations of more than 54,000 career and volunteer firefighters and chief officers, we would like to advise you that our combined legislative committee and our Boards are in support of the passage of House Bill 98, Crim. Offense/Vandalize Fire & EMS Equipment.

During emergencies the lives of citizens, and our members as well, depend on properly functioning equipment that is available and ready for use. Vandalizing such equipment puts people's lives and homes at risk. We would respectfully ask you to pass HB 98 and make it a criminal offense to take such action intentionally.

If we can answer any questions please do not hesitate to contact us.

Sincerely,

Sincerely,

Tim Bradley
Executive Director
NC State Firefighters' Association
323 West Jones Street, Suite 401
Raleigh, NC 27603
919 821 2132

Jake Whisnant
Executive Director
NC Association of Fire Chiefs
Post Office Box 1416
Shelby, NC 28151
980 522 6129



Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 2-28-2017 Room: 421

House Sgt-At Arms:

1. Name: Joe Austin

2. Name: Bill Bass

3. Name: Barry Moore

4. Name: _____

5. Name: _____

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____



**House Pages
Assignments
Tuesday, February 28, 2017
Session: 3:30 PM**

Committee	Room	Time	Staff	Comments	Member
Education - Community Colleges	1228/1327	1:00 PM	Kelsey Peterson		Rep. John Ager
✓ Judiciary II	421	1:00 PM	Sheridan Charles		Rep. Speaker Tim Moore
			Brion Rogers		Rep. Speaker Tim Moore



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

2-28-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Brian Lewis	NEW FRAME
Phil Dan	MHC
Bill Mac Rae	NC PPSB
Len Arthur	NORMA
Dore Galt	S/A
Kris Park	NCAJ
Dub Cling	NCSP
Perry Huffer	SDG
JASON JOYNER	NEW FRAME
Megan Cook	DOI
George Robinson	DOI
Joe Rayall	NCFPC



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

2-28-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Joshua Smith

PFFPNC

Rebecca Murdock

NC SPAC



**House Committee on Judiciary II
Tuesday, March 7, 2017 at 1:00 PM
421 Legislative Office Building**

MINUTES

The House Committee on Judiciary II met at 1:00 PM on Tuesday, March 7, 2017 in 421 Legislative Office Building. Representatives Blust, Bumgardner, Faircloth, Fisher, Hall, Harrison, Hurley, John, Jones, McGrady, and Michaux attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:05 PM, and he recognized the Sergeants-at-Arms and the Pages.

The following bill was considered:

HB 63 Citizens Protection Act of 2017. (Representatives Warren, Collins, Jordan, and Adams)

Representative Hall made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed.

Chairman Blust recognized the following individuals who spoke on the bill:

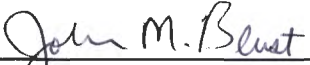
Ms. Dana Mangum, NC Coalition Against Domestic Violence
Ms. Alison Stuebe, El Pueblo
Ms. Chris Storie, NC Resident, Caldwell County
Ms. Rebekah Grafton, Raleigh Attorney
Mr. Matt Gross, NC Child
Mr. Hans Linnartz, Raleigh Attorney

Representative Warren was recognized to speak on the bill. Representatives Jordan and Adams were recognized. There were questions from the members, and the sponsors of the bill responded. Ms. Susan Sitze, Committee Counsel, clarified sections of the bill and responded to questions from the members. Mr. Robert Pascal, Legislative Liaison, NC Department of Justice, responded to questions from the members of the committee.

Chairman Blust announced his decision to delay the vote on HB 63 until the committee members had more committee time for discussion.

There being no further business, Chairman Blust adjourned the meeting at 1:50 PM.

Respectfully submitted,



Representative John M. Blust, Chairman
Presiding



Gennie L. Thurlow, Committee Clerk



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, March 7, 2017

TIME: 1:00 PM

LOCATION: 421 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 63	Citizens Protection Act of 2017.	Representative Warren Representative Collins Representative Jordan Representative Adams

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 12:49 PM on Thursday, March 02, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Tuesday, March 7, 2017, 1:00 PM
421 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
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HB 63	Citizens Protection Act of 2017.	Representative Warren Representative Collins Representative Jordan Representative Adams
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Other Business

Adjournment



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 63
PROPOSED COMMITTEE SUBSTITUTE H63-CSSA-2 [v.3]

03/01/2017 01:57:00 PM

Short Title: Citizens Protection Act of 2017.

(Public)

Sponsors:

Referred to:

February 9, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE IDENTITY THEFT BY INCREASING PENALTIES FOR THE
3 MANUFACTURE OR SALE OF COUNTERFEIT DOCUMENTS; TO CREATE A
4 REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN
5 UNDOCUMENTED ALIENS; TO MAKE PROVISIONS REGARDING IMMIGRATION
6 STATUS RECORDS AND LAW ENFORCEMENT TRANSPORT OF ILLEGAL ALIENS;
7 AND TO CREATE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO
8 COMPLY WITH STATE LAWS RELATED TO IMMIGRATION.
9 The General Assembly of North Carolina enacts:

10

11 PART I. SHORT TITLE

12 SECTION 1. This act shall be known and may be cited as "The Citizens Protection
13 Act of 2017."
14

15

16 PART II. INCREASE PENALTIES FOR MANUFACTURE OR SALE OF FALSE
17 IDENTIFICATION DOCUMENTS

18 SECTION 2.(a) G.S. 14-100.1 reads as rewritten:

19 "§ 14-100.1. ~~Possession or manufacture~~ Possession, manufacture, or sale of certain
20 fraudulent forms of identification.

21 (a) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any
22 person to knowingly ~~possess or manufacture~~ possess, manufacture, or sell a false or fraudulent
23 form of identification as defined in this section for the purpose of deception, fraud, or other
24 criminal conduct.

25 (b) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any
26 person to knowingly obtain a form of identification by the use of false, fictitious, or fraudulent
27 information.

28 (c) Possession of a form of identification obtained in violation of subsection (b) of this
29 section ~~shall constitute~~ is a violation of subsection (a) of this section.

30 (d) For purposes of this section, a "form of identification" means any of the following or
31 any replica thereof:

- 32 (1) An identification card containing a picture, issued by any department, agency,
33 or subdivision of the State of North Carolina, the federal government, or any
34 other state.
35 (2) A military identification card containing a picture.
36 (3) A passport.
(4) An alien registration card containing a picture.



(e) A violation of this section ~~shall be punished as is~~ a Class 1 ~~misdemeanor~~. ~~misdemeanor~~, except that a violation of subsection (a) of this section with respect to the manufacture or sale of a false or fraudulent form of identification is a Class G felony."

SECTION 2.(b) G.S. 20-30 reads as rewritten:

"§ 20-30. Violations of license, learner's permit, or special identification card provisions.

It ~~shall be is~~ unlawful for any person to commit any of the following acts:

- (1) To display or cause to be displayed or to have in possession a driver's license, learner's permit, or special identification card, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.
- (2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license, learner's permit, or special identification card. A violation of this subdivision by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor. A violation of this subdivision by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers shall be punished as a Class 2 misdemeanor. A person who otherwise violates the provisions of this subdivision is guilty of a Class G felony.
- (3) To display or to represent as one's own a drivers license, learner's permit, or special identification card not issued to the person so displaying same.
- (4) To fail or refuse to surrender to the Division upon demand any driver's license, learner's permit, or special identification card that has been suspended, canceled or revoked as provided by law.
- (5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license, learner's permit, or special identification card, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license, learner's permit, or special identification card procured as aforesaid ~~shall be is~~ void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State. ~~Any A~~ person ~~violating who violates~~ the provisions of this subdivision ~~shall be is~~ guilty of a Class 1 misdemeanor.
- (6) To make a color photocopy or otherwise make a color reproduction of a drivers license, learner's permit, or special identification card ~~which that~~ has been color-photocopied or otherwise reproduced in color, unless ~~such the~~ color photocopy or other color reproduction was authorized by the Commissioner. It ~~shall be is~~ lawful to make a black and white photocopy of a drivers license, learner's permit, or special identification card or otherwise make a black and white reproduction of a drivers license, learner's permit, or special identification card.
- (7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license, learner's permit, or special identification card. The provisions of this subdivision ~~shall do~~ not apply to agents or employees of the Division while acting in the course and scope of their employment. ~~Any A~~ person, firm or corporation ~~violating that violates~~ the provisions of this subsection ~~shall be is~~ guilty of a Class ~~I-G~~ felony.
- (8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers

- 1 license possessed at the same time as a commercial drivers license is subject to
2 immediate seizure by any law enforcement officer or judicial official.
- 3 (9) To present, display, or use a drivers license, learner's permit, or special
4 identification card that contains a false or fictitious name in the commission or
5 attempted commission of a felony. ~~Any A person violating who violates~~ the
6 provisions of this subdivision ~~shall be is~~ guilty of a Class I felony.

7 (10) To possess more than one special identification card for a fraudulent purpose."

8 **SECTION 2.(c)** G.S. 20-37.8 is repealed.
9

10 **PART III. CREATION OF REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL**
11 **RELEASE OF CERTAIN UNDOCUMENTED ALIENS**

12 **SECTION 3.(a)** G.S. 15A-533 reads as rewritten:

13 **"§ 15A-533. Right to pretrial release in capital and noncapital cases.**

14 (a) A defendant charged with any crime, whether capital or noncapital, who is alleged to
15 have committed this crime while still residing in or subsequent to his escape or during an
16 unauthorized absence from involuntary commitment in a mental health facility designated or
17 licensed by the Department of Health and Human Services, and whose commitment is determined
18 to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid,
19 has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned
20 to the treatment facility in which he was residing at the time of the alleged crime or from which he
21 escaped or absented himself for continuation of his treatment pending the additional proceedings
22 on the criminal offense.

23 (b) A defendant charged with a noncapital offense must have conditions of pretrial release
24 determined, in accordance with G.S. 15A-534.

25 (c) A judge may determine in ~~his the~~ judge's discretion whether a defendant charged with a
26 capital offense may be released before trial. If ~~he the~~ judge determines release is warranted, the
27 judge must authorize release of the defendant in accordance with G.S. 15A-534.

28 (d) There ~~shall be is~~ a rebuttable presumption that no condition of release will reasonably
29 assure the appearance of the person as required and the safety of the community if a judicial
30 official finds the following:

- 31 (1) There is reasonable cause to believe that the person committed an offense
32 involving trafficking in a controlled substance;
33 (2) The drug trafficking offense was committed while the person was on pretrial
34 release for another offense; and
35 (3) The person has been previously convicted of a Class A through E felony or an
36 offense involving trafficking in a controlled substance and not more than five
37 years has elapsed since the date of conviction or the person's release from
38 prison for the offense, whichever is later.

39 (e) There ~~shall be is~~ a rebuttable presumption that no condition of release will reasonably
40 assure the appearance of the person as required and the safety of the community, if a judicial
41 official finds the following:

- 42 (1) There is reasonable cause to believe that the person committed an offense for
43 the benefit of, at the direction of, or in association with, any criminal street
44 gang, as defined in G.S. 14-50.16;
45 (2) The offense described in subdivision (1) of this subsection was committed
46 while the person was on pretrial release for another offense; and
47 (3) The person has been previously convicted of an offense described in
48 G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed
49 since the date of conviction or the person's release for the offense, whichever is
50 later.

(f) ~~There shall be~~ is a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the judicial official also finds any of the following:

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

(f1) There is a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if the person is unlawfully present in the United States and a judicial official finds either of the following:

- (1) There is probable cause to believe that the person committed one or more of the following offenses:
 - a. A sex offense. As used in this sub-subdivision, a "sex offense" is any offense upon conviction of which the offense becomes a reportable conviction, as that term is defined in G.S. 14-208.6.
 - b. A violent felony, as that term is defined in G.S. 14-7.7(b), or any criminal offense other than a violation described in G.S. 14-33(a) that includes assault as an essential element of the offense.
 - c. A driving offense. As used in this sub-subdivision, the term "driving offense" means any violation that requires a mandatory drivers license revocation upon a first conviction.
 - d. A drug offense. As used in this sub-subdivision, the term "drug offense" means a violation of G.S. 90-95, other than a violation of G.S. 90-95(a)(3) punishable pursuant to G.S. 90-95(d).
 - e. A gang offense. As used in this sub-subdivision, the term "gang offense" means any violation of Article 13A of Chapter 14 of the General Statutes.
- (2) There is probable cause to believe that the person committed an offense not listed in subdivision (1) of this subsection, and United States Immigration and Customs Enforcement has issued a detainer for the initiation of removal proceedings against the person or has indicated that it will do so.

(g) Persons who are considered for bond under the provisions of subsections (d), (e), ~~and (f)-(f), and (f1)~~ of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

SECTION 3.(b) Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-534.7. Pretrial release of certain undocumented aliens.

In all cases in which the defendant is an alien who (i) is not lawfully present in the United States and (ii) is charged with a felony or a Class A1 misdemeanor, the judicial official shall require the defendant to execute a secured appearance bond as a condition of pretrial release, as described in G.S. 15A-534(a)(4)."

PART IV. IMMIGRATION STATUS RECORDS AND TRANSPORT OF ILLEGAL ALIENS

1 **SECTION 4.** Article 1 of Chapter 64 of the General Statutes is amended by adding
2 the following new sections to read:

3 **"§ 64-6. Permissible methods of verifying immigration status.**

4 Verification of a person's immigration status pursuant to this Chapter or any other provision of
5 State law shall be made consistent with federal law and may be made by any of the following
6 methods, as applicable:

- 7 (1) Pursuant to 8 U.S.C. §§ 1373(c) and 1644 or any other provision of federal law.
8 (2) By a law enforcement officer who is authorized by the federal government to
9 verify or ascertain an alien's immigration status.
10 (3) In any other manner authorized by the federal government.

11 **"§ 64-7. Admissibility of immigration status records in courts of this State.**

12 (a) A verification of an alien's immigration status received from the federal government
13 pursuant to G.S. 64-6 is proof of that alien's status. A court of this State shall consider only a
14 verification of immigration status made pursuant to G.S. 64-6 in determining whether an alien is
15 lawfully present in the United States.

16 (b) Any record that relates to the immigration status of a person is admissible in any court
17 of this State without further foundation or testimony from a custodian of records if all of the
18 following apply:

- 19 (1) The record is certified as authentic by the federal government agency that is
20 responsible for maintaining the record.
21 (2) The State notifies the person at least 15 business days before the proceeding at
22 which the evidence would be used of its intention to introduce the record into
23 evidence under this section and provides a copy of the record to the person.
24 (3) The person fails to file a written objection with the court, with a copy to the
25 State, at least five business days before the proceeding at which the record
26 would be used, that the person objects to the introduction of the record into
27 evidence.

28 If the person's attorney of record, or that person if the person is not represented by an attorney,
29 fails to file a written objection as provided in this subsection, then the record may be admitted into
30 evidence without the testimony of the custodian of records. Upon filing a timely objection, the
31 admissibility of the record is determined and governed by the appropriate rules of evidence.

32 **"§ 64-8. Law enforcement transport of certain unlawfully present aliens.**

33 Notwithstanding any other provision of law, a State or local law enforcement agency may
34 securely transport an alien who is in the agency's custody and who the agency has verified is
35 unlawfully present in the United States to a federal facility in this State or to any other point of
36 transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law
37 enforcement agency shall obtain judicial authorization or executive authorization from the
38 Governor before securely transporting an alien who is unlawfully present in the United States to a
39 point of transfer that is outside this State.

40 **"§ 64-9. Construction and severability.**

41 (a) Construction. – This Chapter shall be construed in a manner consistent with federal
42 law.

43 (b) Severability. – The provisions of this Chapter are severable. If any part of this Chapter
44 is declared invalid or unconstitutional, the declaration shall not affect the remainder of this
45 Chapter. If any particular interpretation or application of the provisions of this Chapter is declared
46 invalid or unconstitutional, the declaration shall not affect other interpretations or applications of
47 this Chapter."

48
49 **PART V. CREATION OF ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS**
50 **TO COMPLY WITH STATE LAWS RELATED TO IMMIGRATION**

SECTION 5.(a) Chapter 64 of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Local Government Noncompliance With State Laws Related to Immigration.

"§ 64-49. Findings.

The General Assembly finds the following:

- (1) That the policy objectives it seeks to further by enacting State laws applicable to cities, counties, and law enforcement agencies are frustrated when those entities do not uniformly comply with State law.
- (2) That Section 7(1) of Article V and other sections of the North Carolina Constitution grant the General Assembly supreme power and complete discretion over the appropriation of State funds.
- (3) That the General Assembly's power over the appropriation of State funds can be used to create additional incentives for cities, counties, and law enforcement agencies to comply with duly enacted laws.
- (4) That statutorily setting forth the manner in which the General Assembly elects to exercise its discretion with respect to appropriations provides cities, counties, and law enforcement agencies with a measure of predictability that can be useful to those entities in planning and carrying out their functions and duties.

"§ 64-50. Definitions.

The following definitions apply in this Article:

- (1) Affected local government. – Any of the following:
 - a. A municipality found to be not in compliance with a State law related to immigration.
 - b. A municipality in which a municipal law enforcement agency has been found to be not in compliance with a State law related to immigration.
 - c. A county found to be not in compliance with a State law related to immigration.
 - d. A county in which a county law enforcement agency has been found to be not in compliance with a State law related to immigration.
- (2) Law enforcement agency. – A municipal police department, a county police department, or a sheriff's office.
- (3) State law related to immigration. – G.S. 153A-145.5, or 160A-205.2.

"§ 64-51. Attorney General to prepare form.

(a) Preparation of Form. – The Attorney General shall prescribe a form for a person to allege that a city, county, or law enforcement agency is not in compliance with a State law related to immigration. The form shall clearly state that completed forms shall be sent to the Attorney General, and the form shall be made available to the public on the Attorney General's Web site.

(b) Certain Information Not Required. – A person shall not be required to list the person's Social Security number on the complaint form or to have the form notarized.

"§ 64-52. Filing of statement alleging noncompliance with a State law related to immigration.

Any person with a good-faith belief that a city, county, or law enforcement agency is not in compliance with a State law related to immigration may file a statement with the Attorney General setting forth the basis for that belief. The statement may be on a form prescribed by the Attorney General pursuant to G.S. 64-51 or may be made in any other form that gives the Attorney General information sufficient to proceed with an investigation pursuant to G.S. 64-53. Nothing in this section shall be construed to prohibit the filing of anonymous statements that are not submitted on a prescribed form.

"§ 64-53. Investigation.

(a) Investigation. – Within 45 days of receipt of a statement filed in accordance with G.S. 64-52, the Attorney General shall commence an investigation of whether the city, county, or law enforcement agency is in fact not in compliance with a State law related to immigration. The Attorney General shall make a determination and conclude an investigation commenced pursuant to this subsection within 60 days of the investigation's commencement.

(b) Assistance by Law Enforcement. – The Attorney General may request that the State Bureau of Investigation assist in an investigation under this section, and the State Bureau of Investigation shall assist in the investigation when it receives such a request.

(c) Production of Documents. – A local government shall produce records or documents related to alleged noncompliance with a State law related to immigration within 10 business days of a request by the Attorney General to do so.

(d) Confidentiality. – Statements filed with the Attorney General pursuant to G.S. 64-52 and reports and other investigative documents and records of the Attorney General connected to an investigation under this section shall be confidential and not matters of public record, except when the local government under investigation requests in writing that these documents be made public. Once an investigation under this section is complete, or once 60 days have elapsed since the investigation was commenced, whichever is earlier, the statement and all other reports and other investigative documents and records of the Attorney General connected to an investigation under this section, not otherwise privileged or confidential under law, shall be public records.

"§ 64-54. Consequences of noncompliance with a State law related to immigration.

(a) Consequences of Noncompliance Generally. – If the Attorney General determines that an affected local government is not in compliance with a State law related to immigration, all of the following shall apply:

(1) The affected local government shall be ineligible to receive distributions under G.S. 105-113.82, 105-164.44F, 105-164.44I, 105-164.44L, 105-187.16, and 136-41.1 for the fiscal year following the first date of noncompliance with the State law related to immigration.

(2) If, within 60 days of the Attorney General's determination, the affected local government fails to demonstrate to the Attorney General's satisfaction that it is in compliance with all State laws related to immigration, the period of ineligibility shall be extended for an additional fiscal year.

(3) The Attorney General shall notify the following entities of the determination that the affected local government is not in compliance with a State law related to immigration and of the duration of the period of ineligibility to receive funds determined pursuant to subdivision (1) of this subsection:

a. The affected local government.

b. The chairs of the Appropriations Committees of the Senate and House of Representatives.

c. The chairs of the Joint Legislative Commission on Governmental Operations.

d. The Office of State Budget and Management.

e. The Secretary of Revenue.

(4) The Office of State Budget and Management shall notify the Department of Transportation and the State Controller of an affected local government's ineligibility to receive the funds described in subdivision (1) of this subsection. The Secretary of Revenue shall withhold any distributions otherwise due to the affected local government under subdivision (1) of this subsection.

(5) The Department of Transportation, the State Controller, and the Secretary of Revenue shall ensure that the funds described in subdivision (1) of this subsection are not distributed to an affected local government and that the funds

are instead distributed to other local governments that are eligible for distributions pursuant to the relevant statute.

(b) Consequences of Noncompliance; E-Verify Statutes. – When the Attorney General receives a notification from the Commissioner of Labor pursuant to G.S. 64-33.1(b), the Attorney General, the Office of State Budget and Management, the State Controller, the Secretary of Revenue, and the Department of Transportation shall take all of the actions described in subsection (a) of this section except that those actions shall be taken with respect to only the following entities, as applicable:

(1) A municipality found by the Commissioner of Labor to have violated G.S. 143-133.3.

(2) A municipality in which all or part of a local school administrative unit governed by a local board, as those terms are defined in G.S. 115C-5, found by the Commissioner of Labor to have violated G.S. 143-133.3 is located.

(3) A county found by the Commissioner of Labor to have violated G.S. 143-133.3.

(4) A county in which all or part of a local school administrative unit governed by a local board, as those terms are defined in G.S. 115C-5, found by the Commissioner of Labor to have violated G.S. 143-133.3 is located.

(c) Exceptions. – No enactment by the General Assembly shall be construed as an exception to this section unless it specifically mentions this section.

"§ 64-55. Attorney General to maintain copies of orders; reporting.

(a) Database. – The Attorney General shall maintain a database of the local governments and law enforcement agencies that are ineligible to receive the funds described in G.S. 64-54(a)(1) and shall make the database accessible to the public through the Attorney General's Web site.

(b) Reporting. – The Attorney General shall report quarterly to the Joint Legislative Commission on Governmental Operations on all of the following:

(1) The number of statements received by the Attorney General pursuant to G.S. 64-52.

(2) The number of investigations performed pursuant to G.S. 64-53.

(3) The number of times consequences for noncompliance with a State law related to immigration were imposed pursuant to G.S. 64-54.

(4) The names of cities, counties, and law enforcement agencies found not to be in compliance with a State law related to immigration.

"§ 64-56. Appeal.

A determination made by the Attorney General under this Article may be appealed only to the extent and in the manner required by the United States and North Carolina Constitutions. The imposition of consequences for noncompliance with a State law related to immigration pursuant to G.S. 64-54 shall not occur until an appeal made under this section is complete. However, if an appeal under this section is unsuccessful, the length of the period during which an affected local government shall be ineligible to receive the funds described in G.S. 64-54(a)(1) shall be the same as it would have been had no appeal been made, regardless of which fiscal year or years the resulting period of ineligibility shall occur.

"§ 64-57. Attorney General may designate appointed official to carry out duties.

The Attorney General may designate a person to carry out the Attorney General's duties under this Article. The designee shall be an individual appointed by the Attorney General and shall not be a member of the Council of State or any other elected official.

"§ 64-58. Rules.

The Attorney General shall adopt rules needed to implement this Article.

"§ 64-59. Private enforcement.

In addition to any other remedies at law or in equity, any person who resides within the jurisdiction of a city, county, or law enforcement agency that the person believes is not in compliance with a State law related to immigration may bring an action for declaratory and

1 injunctive relief. Such an action shall be filed in the Superior Court of Wake County. The court
2 shall award the prevailing party in an action brought under this section reasonable attorneys' fees
3 and court costs as authorized by law."

4 **SECTION 5.(b)** G.S. 64-33.1 reads as rewritten:

5 **"§ 64-33.1 Consequences of violation of G.S. 143-133.3.**

6 (a) All Violations. – For any violation of G.S. 143-133.3, the Commissioner shall notify
7 the board or governing body of the State, or of any institution of the State government, or of any
8 political subdivision of the State, found to have committed the violation that the board or
9 governing body of the State, or of any institution of the State government, or of any political
10 subdivision of the State, is in violation of the applicable statute. The Department of Labor shall
11 maintain a list of any boards or governing bodies of the State, or of any institutions of the State
12 government, or of any political subdivisions of the State, issued notices pursuant to this section
13 and shall make that list available on its Web site.

14 (b) Violations by Certain Local Entities. – For a violation of G.S. 143-133.3 by a political
15 subdivision of the State, the Commissioner shall immediately notify the Attorney General of the
16 violation so that the Attorney General can take action in accordance with G.S. 64-54(b).
17 Additionally, the Commissioner shall notify the Attorney General if, within 60 days of the
18 Commissioner's determination that there has been a violation, the political subdivision fails to
19 demonstrate to the Commissioner's satisfaction that the political subdivision is in compliance with
20 G.S. 143-133.3. The Commissioner may hold additional hearings as needed to implement this
21 subsection."

22 **SECTION 5.(c)** The Attorney General's office shall take reasonable steps to notify
23 local governments of the provisions of this act so that the local governments can take appropriate
24 steps to comply with this act's requirements.

25 **SECTION 5.(d)** G.S. 136-41.1 is amended by adding a new subsection to read:

26 "(e) No city or town shall receive any allocation under this section for any period during
27 which it is ineligible to receive those funds under G.S. 64-54."

28 **SECTION 5.(e)** G.S. 105-113.82(a) reads as rewritten:

29 "(a) Amount. – ~~The Subject to G.S. 64-54, the~~ Secretary must distribute annually a
30 percentage of the net amount of excise taxes collected on the sale of malt beverages and wine
31 during the preceding 12-month period ending March 31 to the counties or cities in which the retail
32 sale of these beverages is authorized in the entire county or city. The percentages to be distributed
33 are as follows:

34"

35 **SECTION 5.(f)** G.S. 105-164.44F(a) reads as rewritten:

36 "(a) Amount. – ~~The Subject to G.S. 64-54, the~~ Secretary must distribute part of the taxes
37 imposed by G.S. 105-164.4(a)(4c) on telecommunications service and ancillary service. The
38 Secretary must make the distribution within 75 days after the end of each calendar quarter. The
39 amount the Secretary must distribute is the following percentages of the net proceeds of the taxes
40 collected during the quarter:

41"

42 **SECTION 5.(g)** G.S. 105-164.44I(a) reads as rewritten:

43 "(a) Distribution. – ~~The Subject to G.S. 64-54, the~~ Secretary must distribute to the counties
44 and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and
45 G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution
46 within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is
47 the sum of the revenue listed in this subsection. From this amount, the Secretary must first make
48 the distribution required by subsection (b) of this section and then distribute the remainder in
49 accordance with subsections (c) and (d) of this section. The revenue to be distributed under this
50 section consists of the following:

51"

1 **SECTION 5.(h)** G.S. 105-164.44L(a) reads as rewritten:

2 "(a) Distribution. – ~~The Subject to G.S. 64-54, the~~ Secretary must distribute to cities twenty
3 percent (20%) of the net proceeds of the tax collected under G.S. 105-164.4 on piped natural gas,
4 less the cost to the Department of administering the distribution. Each city's share of the amount to
5 be distributed is its excise tax share calculated under subsection (b) of this section plus its ad
6 valorem share calculated under subsection (c) of this section. A gas city will also receive an
7 amount calculated under subsection (b1) of this section as part of its excise tax share. If the net
8 proceeds of the tax allocated under this section are not sufficient to distribute the excise tax share
9 of each city under subsection (b) of this section and the gas city share under subsection (b1) of this
10 section, the proceeds shall be distributed to each city on a pro rata basis. The Secretary must make
11 the distribution within 75 days after the end of each quarter."

12 **SECTION 5.(i)** G.S. 105-187.19(b) reads as rewritten:

13 "(b) Each quarter, the Secretary shall credit thirty percent (30%) of the net tax proceeds to
14 the General Fund. ~~The Subject to G.S. 64-54, the~~ Secretary shall distribute the remaining seventy
15 percent (70%) of the net tax proceeds among the counties on a per capita basis according to the
16 most recent annual population estimates certified to the Secretary by the State Budget Officer."

17 **SECTION 5.(j)** G.S. 143B-919 is amended by adding a new subsection to read:

18 "(d1) The State Bureau of Investigation is further authorized, upon the request of the
19 Attorney General, to investigate local government noncompliance with State laws related to
20 immigration pursuant to the provisions of Article 3 of Chapter 64 of the General Statutes."

21 22 **PART VI. EFFECTIVE DATE AND SEVERABILITY CLAUSE**

23 **SECTION 6.(a)** Sections 2 and 3 of this act become effective December 1, 2017, and
24 apply to offenses committed on or after that date. Section 5 of this act becomes effective August 1,
25 2017. The remainder of this act is effective when it becomes law.

26 **SECTION 6.(b)** The provisions of this act are severable. If any part of this act is
27 declared invalid or unconstitutional, the declaration shall not affect the remainder of this act. If
28 any particular interpretation or application of the provisions of this act is declared invalid or
29 unconstitutional, the declaration shall not affect other interpretations or applications of this act.



HOUSE BILL 63: Citizens Protection Act of 2017.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Appropriations	Date:	March 7, 2017
Introduced by:	Reps. Warren, Collins, Jordan, Adams	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition H63-CSSA-2		Committee Counsel

OVERVIEW: *House Bill 63 would increase penalties for the manufacture or sale of counterfeit documents, would create a rebuttable presumption against the pretrial release of certain undocumented aliens, would make provisions regarding immigration status records and law enforcement transport of illegal aliens, and would withhold certain funds from local governments that fail to comply with State laws related to immigration.*

The Proposed Committee Substitute creates a process to determine noncompliance with State laws related to immigration.

BILL ANALYSIS:

Section 1 of the bill would provide that this act be known as "The Citizens Protection Act of 2017."

Section 2 of the bill would amend various statutes related to the fraudulent use of identification.

Section 2(a) of the bill would make the following changes to the prohibition on false or fraudulent forms of identification pursuant to G.S. 14-100.1:

- ❖ Create a new Class G felony for the sale of a false or fraudulent form of identification for the purpose of deception, fraud, or other criminal conduct.
- ❖ Increase the penalty for manufacturing such identification from a Class 1 misdemeanor to a Class G felony. Possession of such identification would remain a Class 1 misdemeanor.

Section 2(b) of the bill would modify G.S. 20-30 as follows:

- ❖ Counterfeiting, selling, lending, or knowingly permitting the use of a driver's license, learner's permit, or special identification card would have the following penalties:
 - A violation by a person under 21 for the purpose of the underage purchase of alcohol would be increased to a Class 1 misdemeanor (currently a Class 2 misdemeanor).
 - A violation by a person under 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers would be a Class 2 misdemeanor (same as current law).
 - Any other violation would be a Class G felony.
- ❖ Selling or offering for sale any reproduction, facsimile, or simulation of a driver's license, learner's permit, or special identification card would be increased to a Class G felony (currently a Class 1 felony).

Karen Cochrane-Brown
Director



Legislative Analysis
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- ❖ Create a new Class 2 misdemeanor for possession of more than one special identification card for fraudulent purpose.

Section 3 of the bill would make modifications to the process of pretrial release for persons unlawfully present in the United States. **Section 3(a)** would create a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if the person is unlawfully present in the United States and a judicial officer finds either of the following:

- ❖ There is probable cause to believe that the person committed one or more of the following offenses:
 - An offense which would require sex offender registration.
 - An A through E felony or any offense, except simple assault, with assault as an essential element.
 - An offense that requires a mandatory driver's license revocation upon a first conviction.
 - A violation of G.S. 90-95 other than what is commonly referred to as "simple possession".
 - A gang offense included in Article 13A of Chapter 14.
- ❖ There is probable cause to believe the person committed an offense not listed above and United States Immigration and Customs Enforcement has issued a detainer for the initiation of removal proceedings against the person or has indicated that it will do so.

Section 3(b) would require any judicial official who releases an alien who is not lawfully present in the US and who has been charged with a felony or a Class A1 misdemeanor to require the defendant to execute a secured appearance bond as a condition of pretrial release.

Section 4 of the bill would enact several new statutes in Article 1 of Chapter 64, Various Provisions Related to Aliens, as follows:

- ❖ G.S. 64-6 would provide how verification of immigration status should be conducted.
- ❖ G.S. 64-7 would provide for the introduction of verification of immigration status in court proceedings.
- ❖ G.S. 64-8 would authorize a State or local law enforcement agency to transport an alien in the agency's custody to a federal facility in this State or outside the State. Judicial or executive authorization must be obtained before transporting an alien outside the State.
- ❖ G.S. 64-9 provides for severability of any statute in this Chapter found invalid or unconstitutional.

Section 5 of the bill would provide a process to withhold certain funds from local governments that are not in compliance with certain State laws related to immigration.

Section 5(a) would add a new Article 3 to Chapter 64 entitled "Local Government Noncompliance With State Laws Related to Immigration." These statutes would do the following:

- ❖ Allow a person to file a statement with the Attorney General alleging that a local government or law enforcement agency is not in compliance with a State law related to immigration. A state law related to immigration is defined as G.S. 153A-145.5 or 160A-205.2 (see **Background** for full statutes)

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- ❖ Require the Attorney General to commence an investigation within 45 days and conclude that investigation within 60 days of its commencement. The Attorney General may request the assistance of the State Bureau of Investigation (SBI).
 - During the investigation, reports and other investigative documents and records connected to the investigation are confidential and not public record unless the local government requests they be made public.
 - These documents become public record at the close of the investigation or after 60 days, whichever is first, unless otherwise privileged or confidential under law.
- ❖ Withhold distribution of funds if the Attorney General determines a local government or law enforcement agency is not in compliance with a State law related to immigration. The funds would be withheld from the municipality or county not in compliance, or the municipality or county whose law enforcement agency is not in compliance. The funds disbursed under the following statutes would be withheld:
 - G.S. 105-113.82 (Beer and wine excise tax)
 - G.S. 105-164.44F (Telecommunications tax)
 - G.S. 105-164.44I (Sales tax on video programming service/telecommunication service)
 - G.S. 105-164.44L (Tax on piped natural gas to cities)
 - G.S. 105-187.16 (Tire tax)
 - G.S. 136-41.1 (DOT State aid to municipalities, aka "Powell Bill" funds)
- ❖ Withhold distribution of funds if the Commissioner of Labor finds a municipality, a county, or a local school administrative unit government by a local board to be in violation of the E-Verify statutes. The same statutory funds as listed above would be withheld from the municipality, the county, or any municipality or county in which all or part of the local school administrative unit is located.
- ❖ Allow any person who resides within the jurisdiction of a city, count, or law enforcement agency that the person believes is not in compliance with a State law related to immigration to bring an action for declaratory and injunctive relief.

Sections 5(b) through 5(j) would make conforming changes to other statutes to effectuate the provisions of Section 5(a) of the bill.

EFFECTIVE DATE: Sections 2 and 3 of this act would become effective December 1, 2017, and apply to offenses committed on or after that date. Section 5 of this act would become effective August 1, 2017. The remainder of this act is effective when it becomes law. This bill contains a severability clause.

BACKGROUND:

§ 153A-145.5. Adoption of sanctuary ordinance prohibited.

(a) No county may have in effect any policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law.

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(b) No county shall do any of the following related to information regarding the citizenship or immigration status, lawful or unlawful, of any individual:

- (1) Prohibit law enforcement officials or agencies from gathering such information.
- (2) Direct law enforcement officials or agencies not to gather such information.
- (3) Prohibit the communication of such information to federal law enforcement agencies.

§ 160A-205.2. Adoption of sanctuary ordinances prohibited.

(a) No city may have in effect any policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law.

(b) No city shall do any of the following related to information regarding the citizenship or immigration status, lawful or unlawful, of any individual:

- (1) Prohibit law enforcement officials or agencies from gathering such information.
- (2) Direct law enforcement officials or agencies not to gather such information.
- (3) Prohibit the communication of such information to federal law enforcement agencies.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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1

HOUSE BILL 63

Short Title: Citizens Protection Act of 2017.

(Public)

Sponsors: Representatives Warren, Collins, Jordan, and Adams (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II, if favorable, Appropriations

February 9, 2017

A BILL TO BE ENTITLED
AN ACT TO REDUCE IDENTITY THEFT BY INCREASING PENALTIES FOR THE
MANUFACTURE OR SALE OF COUNTERFEIT DOCUMENTS; TO CREATE A
REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN
UNDOCUMENTED ALIENS; AND TO ENACT A PENALTY FOR CITIES AND
COUNTIES THAT VIOLATE STATE LAWS RELATED TO SANCTUARY CITIES.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1. This act shall be known and may be cited as "The Citizens Protection Act of 2017."

PART II. INCREASE PENALTIES FOR MANUFACTURE OR SALE OF FALSE IDENTIFICATION DOCUMENTS

SECTION 2.(a) G.S. 14-100.1 reads as rewritten:

"§ 14-100.1. ~~Possession or manufacture~~ Possession, manufacture, or sale of certain fraudulent forms of identification.

(a) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any person to knowingly ~~possess or manufacture~~ possess, manufacture, or sell a false or fraudulent form of identification as defined in this section for the purpose of deception, fraud, or other criminal conduct.

(b) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any person to knowingly obtain a form of identification by the use of false, fictitious, or fraudulent information.

(c) Possession of a form of identification obtained in violation of subsection (b) of this section ~~shall constitute~~ is a violation of subsection (a) of this section.

(d) For purposes of this section, a "form of identification" means any of the following or any replica thereof:

- (1) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina, the federal government, or any other state.
- (2) A military identification card containing a picture.
- (3) A passport.
- (4) An alien registration card containing a picture.



(e) A violation of this section ~~shall be punished as is~~ a Class 1 ~~misdemeanor~~ misdemeanor, except that a violation of subsection (a) of this section with respect to the manufacture or sale of a false or fraudulent form of identification is a Class G felony."

SECTION 2.(b) G.S. 20-30 reads as rewritten:

"§ 20-30. Violations of license, learner's permit, or special identification card provisions.

It ~~shall be is~~ unlawful for any person to commit any of the following acts:

- (1) To display or cause to be displayed or to have in possession a driver's license, learner's permit, or special identification card, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.
- (2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license, learner's permit, or special identification card. A violation of this subdivision by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor. A violation of this subdivision by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers shall be punished as a Class 2 misdemeanor. A person who otherwise violates the provisions of this subdivision is guilty of a Class G felony.
- (3) To display or to represent as one's own a drivers license, learner's permit, or special identification card not issued to the person so displaying same.
- (4) To fail or refuse to surrender to the Division upon demand any driver's license, learner's permit, or special identification card that has been suspended, canceled or revoked as provided by law.
- (5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license, learner's permit, or special identification card, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license, learner's permit, or special identification card procured as aforesaid ~~shall be is~~ void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State. ~~Any A~~ person violating who violates the provisions of this subdivision ~~shall be is~~ guilty of a Class 1 misdemeanor.
- (6) To make a color photocopy or otherwise make a color reproduction of a drivers license, learner's permit, or special identification card ~~which that~~ has been color-photocopied or otherwise reproduced in color, unless ~~such the~~ color photocopy or other color reproduction was authorized by the Commissioner. It ~~shall be is~~ lawful to make a black and white photocopy of a drivers license, learner's permit, or special identification card or otherwise make a black and white reproduction of a drivers license, learner's permit, or special identification card.
- (7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license, learner's permit, or special identification card. The provisions of this subdivision ~~shall do not~~ apply to agents or employees of the Division while acting in the course and scope of their employment. ~~Any A~~ person, firm or corporation violating that violates the provisions of this subsection ~~shall be is~~ guilty of a Class ~~F-G~~ felony.
- (8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers

license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.

(9) To present, display, or use a drivers license, learner's permit, or special identification card that contains a false or fictitious name in the commission or attempted commission of a felony. ~~Any A person violating who violates~~ the provisions of this subdivision ~~shall be is~~ guilty of a Class I felony.

(10) To possess more than one special identification card for a fraudulent purpose."

SECTION 2.(c) G.S. 20-37.8 is repealed.

PART III. CREATION OF REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN UNDOCUMENTED ALIENS

SECTION 3.(a) G.S. 15A-533 reads as rewritten:

"§ 15A-533. Right to pretrial release in capital and noncapital cases.

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in ~~his~~ the judge's discretion whether a defendant charged with a capital offense may be released before trial. If ~~he~~ the judge determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) There ~~shall be~~ is a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

- (1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
- (2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There ~~shall be~~ is a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

- (1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;
- (2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

1 (f) There ~~shall be~~ is a rebuttable presumption that no condition of release will reasonably
2 assure the appearance of the person as required and the safety of the community, if a judicial
3 official finds there is reasonable cause to believe that the person committed a felony or Class A1
4 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the
5 judicial official also finds any of the following:

- 6 (1) The offense was committed while the person was on pretrial release for another
7 felony or Class A1 misdemeanor offense involving the illegal use, possession,
8 or discharge of a firearm.
9 (2) The person has previously been convicted of a felony or Class A1 misdemeanor
10 offense involving the illegal use, possession, or discharge of a firearm and not
11 more than five years have elapsed since the date of conviction or the person's
12 release for the offense, whichever is later.

13 (f1) There is a rebuttable presumption that no condition of release will reasonably assure
14 the appearance of the person as required and the safety of the community if the person is
15 unlawfully present in the United States and a judicial official finds either of the following:

- 16 (1) There is probable cause to believe that the person committed one or more of the
17 following offenses:
18 a. A sex offense. As used in this sub-subdivision, a "sex offense" is any
19 offense upon conviction of which the offense becomes a reportable
20 conviction, as that term is defined in G.S. 14-208.6.
21 b. A violent felony, as that term is defined in G.S. 14-7.7(b), or any
22 criminal offense other than a violation described in G.S. 14-33(a) that
23 includes assault as an essential element of the offense or as an
24 aggravating factor in sentencing.
25 c. A driving offense. As used in this sub-subdivision, the term "driving
26 offense" means any violation that requires a mandatory drivers license
27 revocation upon a first conviction.
28 d. A drug offense. As used in this sub-subdivision, the term "drug offense"
29 means a violation of G.S. 90-95, other than a violation for mere
30 possession of a controlled substance.
31 e. A gang offense. As used in this sub-subdivision, the term "gang
32 offense" means any violation of Article 13A of Chapter 14 of the
33 General Statutes.
34 (2) There is probable cause to believe that the person committed an offense not
35 listed in subdivision (1) of this subsection, and United States Immigration and
36 Customs Enforcement has issued a detainer for the initiation of removal
37 proceedings against the person or has indicated that it will do so.

38 (g) Persons who are considered for bond under the provisions of subsections (d), (e), ~~and~~
39 ~~(f)-(f), and (f1)~~ of this section may only be released by a district or superior court judge upon a
40 finding that there is a reasonable assurance that the person will appear and release does not pose
41 an unreasonable risk of harm to the community."

42 **SECTION 3.(b)** Article 26 of Chapter 15A of the General Statutes is amended by
43 adding a new section to read:

44 **"§ 15A-534.7. Pretrial release of certain undocumented aliens.**

45 In all cases in which the defendant is an alien who (i) is not lawfully present in the United
46 States and (ii) is charged with a felony or a Class A1 misdemeanor, the judicial official shall
47 require the defendant to execute a secured appearance bond as a condition of pretrial release, as
48 described in G.S. 15A-534(a)(4)."

49
50 **PART IV. MISCELLANEOUS PROVISIONS**

1 **SECTION 4.(a)** Article 1 of Chapter 64 of the General Statutes is amended by adding
2 the following new sections to read:

3 **"§ 64-6. Permissible methods of verifying immigration status.**

4 Verification of a person's immigration status pursuant to this Chapter or any other provision of
5 State law shall be made consistent with federal law and may be made by any of the following
6 methods, as applicable:

- 7 (1) Pursuant to 8 U.S.C. §§ 1373(c) and 1644 or any other provision of federal law.
- 8 (2) By a law enforcement officer who is authorized by the federal government to
9 verify or ascertain an alien's immigration status.
- 10 (3) In any other manner authorized by the federal government.

11 **"§ 64-7. Admissibility of immigration status records in courts of this State.**

12 (a) A verification of an alien's immigration status received from the federal government
13 pursuant to G.S. 64-6 is proof of that alien's status. A court of this State shall consider only a
14 verification of immigration status made pursuant to G.S. 64-6 in determining whether an alien is
15 lawfully present in the United States.

16 (b) Any record that relates to the immigration status of a person is admissible in any court
17 of this State without further foundation or testimony from a custodian of records if all of the
18 following apply:

- 19 (1) The record is certified as authentic by the federal government agency that is
20 responsible for maintaining the record.
- 21 (2) The State notifies the person at least 15 business days before the proceeding at
22 which the evidence would be used of its intention to introduce the record into
23 evidence under this section and provides a copy of the record to the person.
- 24 (3) The person fails to file a written objection with the court, with a copy to the
25 State, at least five business days before the proceeding at which the record
26 would be used, that the person objects to the introduction of the record into
27 evidence.

28 If the person's attorney of record, or that person if the person is not represented by an attorney,
29 fails to file a written objection as provided in this subsection, then the record may be admitted into
30 evidence without the testimony of the custodian of records. Upon filing a timely objection, the
31 admissibility of the record is determined and governed by the appropriate rules of evidence.

32 **"§ 64-8. Law enforcement transport of certain unlawfully present aliens.**

33 Notwithstanding any other provision of law, a State or local law enforcement agency may
34 securely transport an alien who is in the agency's custody and who the agency has verified is
35 unlawfully present in the United States to a federal facility in this State or to any other point of
36 transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law
37 enforcement agency shall obtain judicial or executive authorization from the Governor before
38 securely transporting an alien who is unlawfully present in the United States to a point of transfer
39 that is outside this State.

40 **"§ 64-9. Construction and severability.**

41 (a) Construction. – This Chapter shall be construed in a manner consistent with federal
42 law.

43 (b) Severability. – The provisions of this Chapter are severable. If any part of this Chapter
44 is declared invalid or unconstitutional, the declaration shall not affect the remainder of this
45 Chapter. If any particular interpretation or application of the provisions of this Chapter is declared
46 invalid or unconstitutional, the declaration shall not affect other interpretations or applications of
47 this Chapter."

48 **SECTION 4.(b)** G.S. 153A-145.5 is amended by adding a new subsection to read:

49 (c) The Secretary of Revenue shall withhold any distributions otherwise due under
50 G.S. 105-113.82, 105-164.44F, 105-164.44I, and 105-164.44L for any period during which a
51 county is in violation of subsection (a) or (b) of this section. The Attorney General shall be

1 responsible for administering this subsection and shall adopt rules governing its implementation.
2 The Secretary of Revenue, the Office of State Budget and Management, the State Controller, and
3 all other State agencies and officials shall cooperate fully with the implementation of this section
4 and the rules adopted pursuant thereto."

5 **SECTION 4.(c)** G.S. 160A-499.4 is amended by adding a new subsection to read:

6 "(d) The Secretary of Revenue shall withhold any distributions otherwise due under
7 G.S. 105-113.82, 105-164.44F, 105-164.44I, and 105-164.44L for any period during which a city
8 is in violation of subsection (a) or (b) of this section. The Attorney General shall be responsible
9 for administering this subsection and shall adopt rules governing its implementation. The
10 Secretary of Revenue, the Office of State Budget and Management, the State Controller, and all
11 other State agencies and officials shall cooperate fully with the implementation of this section and
12 the rules adopted pursuant thereto."

13 **SECTION 4.(d)** Subsections (b) and (c) of this section become effective October 1,
14 2017.

15 16 **PART V. EFFECTIVE DATE AND SEVERABILITY CLAUSE**

17 **SECTION 5.(a)** Sections 2 and 3 of this act become effective December 1, 2017, and
18 apply to offenses committed on or after that date. Except as otherwise provided, the remainder of
19 this act is effective when it becomes law.

20 **SECTION 5.(b)** The provisions of this act are severable. If any part of this act is
21 declared invalid or unconstitutional, the declaration shall not affect the remainder of this act. If
22 any particular interpretation or application of the provisions of this act is declared invalid or
23 unconstitutional, the declaration shall not affect other interpretations or applications of this act.

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 03-07-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Will Crocker
4. Name: Thomas Terry
5. Name: _____

Senate Sgt-At Arms:

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



**House Pages
Assignments
Tuesday, March 07, 2017
Session: 2:00 PM**

Committee	Room	Time	Staff	Comments	Member
Judiciary II	421	1:00 PM	Jacob Harris		Rep. Ted Davis
			Leonardo Tamburro		Rep. Gale Adcock

VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

3-7-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

PAOLA JARAMINO	LA NOTICIA NEWSPAPER
WALTER GOMEZ	HOLA NOTICIAS NEWSPAPER
Caroline Miller	AMGA
Alex Miller	AMGA
Dana Miller	NC Coalition Against Domestic Violence
Sarah Collins	NCLM
Johanna Reese	NCACC
Kay Castillo	NASW-NC
Jessica Erylen	OOTG
ED CHURCH	SELF
Tina Gower	CA
Gene Royall	NCFPC



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

3-7-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Emma Eldridge	North Carolina School of Science and Math
Matt Gross	NC Child
Sarah Jacobsen	AAA
Shanna Birdsong	ACLU-NC
Sarah Gillodly	ACLU-NC
BRIAN LEWIS	NEW FRAME
Alison Stube	Moms Rising
Griselda Monsó	Comite Popular Somos Ralegh
Will Saenz	El Pueblo
Suzanne Trolan	APCANC
Liana Santillan	El Pueblo
Felicia Arriaga	Duke University



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

3-7-2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Rai K. Chittilla	Legislative Intern → Sen. Chandler
Lori Fernald Khamala	American Friends Service Committee Greensboro, NC
Rebekah Grafton	Fay + Grafton, 2626 Saunders St Raleigh NC 27603
Milena Wuertth	American Friends Service Committee Greensboro, NC
JASON JOYNER	NEW FRAME
Skye Dand	NEWFRAME
JAKE YARKER	NCFB
Josh Lauer	SML
Robert PASchal	NC DOJ
Sophia Peña	147 chandeleur Dr.
Jesus Cisneros	6321 Byrd Farm Rd.



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

3-7-2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Lynne Walter	ACLU-NC
Lira Karlsson	Self
Erin McCloskey	Self
Jessica Turner	ACLU-NC
Brent Johnson	NASW-NC
Bill Rowe	NC Justice Center
Mary Orzader	El Pueblo Inc.
Jim Marvin	Am. Observer
Todd Wireback	News & Record
Penny Griffin	SOC



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

3-7-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John Herrero

Self-Help

Gliscenia Vindas

Gutierrez

NMR S

Fred Buzatto

AK Police Chiefs Assn

Chris Parks

DRNK



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

3-7-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Joe Killian

NC Policy Watch

Emily McIntosh

UNCTV

Dan Powers

UNCTV



**House Committee on Judiciary II
Tuesday, March 14, 2017 at 1:00 PM
Room 421 of the Legislative Office Building**

MINUTES

The House Committee on Judiciary II met at 1:00 PM on March 14, 2017 in Room 421 of the Legislative Office Building. Representatives Blust, Faircloth, Hurley, McGrady, Michaux, Bumgardner, Fisher, Hall, Harrison, John, Jones, and Sauls attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:05 PM, and he recognized the Pages and the Sergeants-at-Arms.

The following bills were considered:

HB 63 Citizens Protection Act of 2017. (Representatives Warren, Collins, Jordan, Adams)

Representative Blust made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed.

Representative Warren was recognized to answer questions from the committee members. After a lengthy discussion, Representative Faircloth offered an amendment, and the amendment was adopted. Representative John offered an amendment, and the amendment failed.

Representative John had one handout: a document prepared by Mr. Gerard M. Chapman, Chapman Law Firm, Greensboro, NC. Mr. Chapman was recognized, and he spoke against the bill.

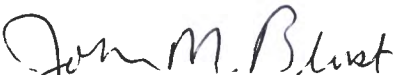
Representative Hall made the motion for a favorable report for the Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report as amended. The bill was re-referred to House Finance.

HB 123 Registration Discretionary for Sexual Battery. (Representatives Stevens, Rogers)


Representative Stevens was recognized to present the bill. Representative Harrison offered an amendment, and the amendment was adopted. After a brief discussion, Chairman Blust announced that the bill would be held over.

There being no further business, Chairman Blust adjourned the meeting at 1:45 PM.

Respectfully submitted,



Representative John M. Blust, Chairman
Presiding



Gennie L. Thurlow, Committee Clerk



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, March 14, 2017

TIME: 1:00 PM

LOCATION: 421 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 63	Citizens Protection Act of 2017.	Representative Warren Representative Collins Representative Jordan Representative Adams
HB 123	Registration Discretionary for Sexual Battery.	Representative Stevens Representative Rogers

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 11:32 AM on Thursday, March 09, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Tuesday, March 14, 2017, 1:00 PM
421 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills:

BILL NO.	SHORT TITLE	SPONSOR
HB 63	Citizens Protection Act of 2017	Representative Warren Representative Collins Representative Jordan Representative Adams
HB 123	Registration Discretionary for Sexual Battery	Representative Stevens Representative Rogers

Other Business

Adjournment



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair**

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 63

Citizens Protection Act of 2017.

Draft Number: H63-PCS40210-SA-2

Serial Referral: FINANCE

Recommended Referral: None

Long Title Amended: Yes

Floor Manager: Warren

TOTAL REPORTED: 1



* C M R 7 6 - V - 1 *





NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 63

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

H63-ASA-4 [v.1]

Page 1 of 1

Amends Title [NO]
H63-CSSA-2

Date _____, 2017

Representative Faircloth

1 moves to amend the bill on page 7, lines 24-31
2 by rewriting those lines to read:

3 "(1) The affected local government shall be ineligible to receive distributions
4 under G.S. 105-113.82, 105-164.44F, 105-164.44I, 105-164.44L, 105-
5 187.16, and 136-41.1 following the first date of noncompliance with the
6 State law related to immigration.

7 (2) If, after the Attorney General's determination, the affected local government
8 demonstrates to the Attorney General's satisfaction that it is in compliance
9 with all State laws related to immigration, the local government regains
10 eligibility to receive distributions described in subdivision (1) of this
11 subsection. The period of ineligibility shall extend for a maximum of two
12 years from the first determination of non-compliance."

SIGNED _____

Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____

✓

FAILED _____

TABLED _____



★ H 6 3 - A S A - 4 - V - 1 ★



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 63

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

H63-ASA-5 [v.1]

Page 1 of 2

Amends Title [YES]
H63-CSSA-2

Date _____, 2017

Representative John

1 moves to amend the bill on page 1, lines 3-4
2 by rewriting those lines to read:

3 "MANUFACTURE OR SALE OF COUNTERFEIT DOCUMENTS; TO ADD ADDITIONAL
4 CRITERIA FOR CONSIDERATION IN DETERMINING PRETRIAL RELEASE; TO MAKE
5 PROVISIONS REGARDING IMMIGRATION";

6
7 And on page 3, line 10 through page 4, line 40 ⁴⁷
8 By rewriting those lines to read:

9 "PART III. ADDITIONAL CRITERIA FOR CONSIDERATION IN DETERMINING
10 PRETRIAL RELEASE.

11
12 **SECTION 3.(a)** G.S. 15A-534(c) reads as rewritten:

13 "**§ 15A-534. Procedure for determining conditions of pretrial release.**

14 ...
15 (c) In determining which conditions of release to impose, the judicial official must, on
16 the basis of available information, take into account the nature and circumstances of the offense
17 charged; the weight of the evidence against the defendant; the defendant's family ties,
18 employment, financial resources, character, and mental condition; whether the defendant is
19 intoxicated to such a degree that he would be endangered by being released without
20 supervision; the length of ~~his-the~~ defendant's residence in the community; ~~his-the~~ defendant's
21 record of convictions; ~~his-the~~ defendant's history of flight to avoid prosecution or failure to
22 appear at court proceedings; the defendant's immigration status; whether the defendant is
23 lawfully present in the United States; whether the United States Immigration and Customs
24 Enforcement has issued a detainer for the initiation of removal proceedings against the
25 defendant; and any other evidence relevant to the issue of pretrial release."



* H 6 3 - A S A - 5 - V - 1 *

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 63

H63-ASA-5 [v.1]

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

Page 2 of 2

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ☒ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 63
PROPOSED COMMITTEE SUBSTITUTE H63-PCS40210-SA-2

Short Title: Citizens Protection Act of 2017.

(Public)

Sponsors:

Referred to:

February 9, 2017

A BILL TO BE ENTITLED

AN ACT TO REDUCE IDENTITY THEFT BY INCREASING PENALTIES FOR THE
MANUFACTURE OR SALE OF COUNTERFEIT DOCUMENTS; TO CREATE A
REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN
UNDOCUMENTED ALIENS; TO MAKE PROVISIONS REGARDING IMMIGRATION
STATUS RECORDS AND LAW ENFORCEMENT TRANSPORT OF ILLEGAL
ALIENS; AND TO CREATE ADDITIONAL INCENTIVES FOR LOCAL
GOVERNMENTS TO COMPLY WITH STATE LAWS RELATED TO IMMIGRATION.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1. This act shall be known and may be cited as "The Citizens Protection Act of 2017."

PART II. INCREASE PENALTIES FOR MANUFACTURE OR SALE OF FALSE IDENTIFICATION DOCUMENTS

SECTION 2.(a) G.S. 14-100.1 reads as rewritten:

"§ 14-100.1. ~~Possession or manufacture~~ Possession, manufacture, or sale of certain fraudulent forms of identification.

(a) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any person to knowingly ~~possess or manufacture~~ possess, manufacture, or sell a false or fraudulent form of identification as defined in this section for the purpose of deception, fraud, or other criminal conduct.

(b) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any person to knowingly obtain a form of identification by the use of false, fictitious, or fraudulent information.

(c) Possession of a form of identification obtained in violation of subsection (b) of this section ~~shall constitute~~ is a violation of subsection (a) of this section.

(d) For purposes of this section, a "form of identification" means any of the following or any replica thereof:

- (1) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina, the federal government, or any other state.
- (2) A military identification card containing a picture.
- (3) A passport.
- (4) An alien registration card containing a picture.



1 (e) A violation of this section ~~shall be punished as is~~ a Class 1
2 ~~misdemeanor~~ misdemeanor, except that a violation of subsection (a) of this section with respect
3 to the manufacture or sale of a false or fraudulent form of identification is a Class G felony."

4 **SECTION 2.(b)** G.S. 20-30 reads as rewritten:

5 **"§ 20-30. Violations of license, learner's permit, or special identification card provisions.**

6 It ~~shall be~~ is unlawful for any person to commit any of the following acts:

- 7 (1) To display or cause to be displayed or to have in possession a driver's
8 license, learner's permit, or special identification card, knowing the same to
9 be fictitious or to have been canceled, revoked, suspended or altered.
- 10 (2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not
11 entitled thereto, a driver's license, learner's permit, or special identification
12 card. A violation of this subdivision by a person under the age of 21 for the
13 purpose of the underage purchase of alcohol shall be punished as a Class 1
14 misdemeanor. A violation of this subdivision by a person under the age of 18
15 for the purpose of the underage purchase of tobacco products or cigarette
16 wrapping papers shall be punished as a Class 2 misdemeanor. A person who
17 otherwise violates the provisions of this subdivision is guilty of a Class G
18 felony.
- 19 (3) To display or to represent as one's own a drivers license, learner's permit, or
20 special identification card not issued to the person so displaying same.
- 21 (4) To fail or refuse to surrender to the Division upon demand any driver's
22 license, learner's permit, or special identification card that has been
23 suspended, canceled or revoked as provided by law.
- 24 (5) To use a false or fictitious name or give a false or fictitious address in any
25 application for a driver's license, learner's permit, or special identification
26 card, or any renewal or duplicate thereof, or knowingly to make a false
27 statement or knowingly conceal a material fact or otherwise commit a fraud
28 in any such application, or for any person to procure, or knowingly permit or
29 allow another to commit any of the foregoing acts. Any license, learner's
30 permit, or special identification card procured as aforesaid ~~shall be~~ is void
31 from the issuance thereof, and any moneys paid therefor shall be forfeited to
32 the State. ~~Any A person violating who violates~~ A person violating who violates the provisions of this
33 subdivision ~~shall be~~ is guilty of a Class 1 misdemeanor.
- 34 (6) To make a color photocopy or otherwise make a color reproduction of a
35 drivers license, learner's permit, or special identification card ~~which that~~ has
36 been color-photocopied or otherwise reproduced in color, unless such the
37 color photocopy or other color reproduction was authorized by the
38 Commissioner. It shall be is lawful to make a black and white photocopy of
39 a drivers license, learner's permit, or special identification card or otherwise
40 make a black and white reproduction of a drivers license, learner's permit, or
41 special identification card.
- 42 (7) To sell or offer for sale any reproduction or facsimile or simulation of a
43 driver's license, learner's permit, or special identification card. The
44 provisions of this subdivision ~~shall do~~ not apply to agents or employees of
45 the Division while acting in the course and scope of their employment. ~~Any~~
46 A person, firm or corporation ~~violating that violates~~ violating that violates the provisions of this
47 subsection ~~shall be~~ is guilty of a Class ~~I~~ G felony.
- 48 (8) To possess more than one commercial drivers license or to possess a
49 commercial drivers license and a regular drivers license. Any commercial
50 drivers license other than the one most recently issued is subject to
51 immediate seizure by any law enforcement officer or judicial official. Any

regular drivers license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.

(9) To present, display, or use a drivers license, learner's permit, or special identification card that contains a false or fictitious name in the commission or attempted commission of a felony. ~~Any A person violating who violates~~ the provisions of this subdivision ~~shall be is~~ guilty of a Class I felony.

(10) To possess more than one special identification card for a fraudulent purpose."

SECTION 2.(c) G.S. 20-37.8 is repealed.

PART III. CREATION OF REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN UNDOCUMENTED ALIENS

SECTION 3.(a) G.S. 15A-533 reads as rewritten:

"§ 15A-533. Right to pretrial release in capital and noncapital cases.

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in ~~his-the judge's~~ discretion whether a defendant charged with a capital offense may be released before trial. If ~~he-the judge~~ determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) There ~~shall be is~~ a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;

(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There ~~shall be is~~ a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;

(2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has

1 elapsed since the date of conviction or the person's release for the offense,
2 whichever is later.

3 (f) There ~~shall be~~ is a rebuttable presumption that no condition of release will
4 reasonably assure the appearance of the person as required and the safety of the community, if
5 a judicial official finds there is reasonable cause to believe that the person committed a felony
6 or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a
7 firearm; and the judicial official also finds any of the following:

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

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

15 (f1) There is a rebuttable presumption that no condition of release will reasonably assure
16 the appearance of the person as required and the safety of the community if the person is
17 unlawfully present in the United States and a judicial official finds either of the following:

18 (1) There is probable cause to believe that the person committed one or more of
19 the following offenses:

20 a. A sex offense. As used in this sub-subdivision, a "sex offense" is any
21 offense upon conviction of which the offense becomes a reportable
22 conviction, as that term is defined in G.S. 14-208.6.

23 b. A violent felony, as that term is defined in G.S. 14-7.7(b), or any
24 criminal offense other than a violation described in G.S. 14-33(a) that
25 includes assault as an essential element of the offense.

26 c. A driving offense. As used in this sub-subdivision, the term "driving
27 offense" means any violation that requires a mandatory drivers
28 license revocation upon a first conviction.

29 d. A drug offense. As used in this sub-subdivision, the term "drug
30 offense" means a violation of G.S. 90-95, other than a violation of
31 G.S. 90-95(a)(3) punishable pursuant to G.S. 90-95(d).

32 e. A gang offense. As used in this sub-subdivision, the term "gang
33 offense" means any violation of Article 13A of Chapter 14 of the
34 General Statutes.

35 (2) There is probable cause to believe that the person committed an offense not
36 listed in subdivision (1) of this subsection, and United States Immigration
37 and Customs Enforcement has issued a detainer for the initiation of removal
38 proceedings against the person or has indicated that it will do so.

39 (g) Persons who are considered for bond under the provisions of subsections (d), (e),
40 ~~and (f)-(f), and (f1)~~ of this section may only be released by a district or superior court judge
41 upon a finding that there is a reasonable assurance that the person will appear and release does
42 not pose an unreasonable risk of harm to the community."

43 **SECTION 3.(b)** Article 26 of Chapter 15A of the General Statutes is amended by
44 adding a new section to read:

45 **"§ 15A-534.7. Pretrial release of certain undocumented aliens.**

46 In all cases in which the defendant is an alien who (i) is not lawfully present in the United
47 States and (ii) is charged with a felony or a Class A1 misdemeanor, the judicial official shall
48 require the defendant to execute a secured appearance bond as a condition of pretrial release, as
49 described in G.S. 15A-534(a)(4)."
50

PART IV. IMMIGRATION STATUS RECORDS AND TRANSPORT OF ILLEGAL ALIENS

SECTION 4. Article 1 of Chapter 64 of the General Statutes is amended by adding the following new sections to read:

"§ 64-6. Permissible methods of verifying immigration status.

Verification of a person's immigration status pursuant to this Chapter or any other provision of State law shall be made consistent with federal law and may be made by any of the following methods, as applicable:

- (1) Pursuant to 8 U.S.C. §§ 1373(c) and 1644 or any other provision of federal law.
- (2) By a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.
- (3) In any other manner authorized by the federal government.

"§ 64-7. Admissibility of immigration status records in courts of this State.

(a) A verification of an alien's immigration status received from the federal government pursuant to G.S. 64-6 is proof of that alien's status. A court of this State shall consider only a verification of immigration status made pursuant to G.S. 64-6 in determining whether an alien is lawfully present in the United States.

(b) Any record that relates to the immigration status of a person is admissible in any court of this State without further foundation or testimony from a custodian of records if all of the following apply:

- (1) The record is certified as authentic by the federal government agency that is responsible for maintaining the record.
- (2) The State notifies the person at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the record into evidence under this section and provides a copy of the record to the person.
- (3) The person fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the record would be used, that the person objects to the introduction of the record into evidence.

If the person's attorney of record, or that person if the person is not represented by an attorney, fails to file a written objection as provided in this subsection, then the record may be admitted into evidence without the testimony of the custodian of records. Upon filing a timely objection, the admissibility of the record is determined and governed by the appropriate rules of evidence.

"§ 64-8. Law enforcement transport of certain unlawfully present aliens.

Notwithstanding any other provision of law, a State or local law enforcement agency may securely transport an alien who is in the agency's custody and who the agency has verified is unlawfully present in the United States to a federal facility in this State or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial authorization or executive authorization from the Governor before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside this State.

"§ 64-9. Construction and severability.

(a) Construction. – This Chapter shall be construed in a manner consistent with federal law.

(b) Severability. – The provisions of this Chapter are severable. If any part of this Chapter is declared invalid or unconstitutional, the declaration shall not affect the remainder of this Chapter. If any particular interpretation or application of the provisions of this Chapter is

declared invalid or unconstitutional, the declaration shall not affect other interpretations or applications of this Chapter."

PART V. CREATION OF ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO COMPLY WITH STATE LAWS RELATED TO IMMIGRATION

SECTION 5.(a) Chapter 64 of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Local Government Noncompliance With State Laws Related to Immigration.

"§ 64-49. Findings.

The General Assembly finds the following:

- (1) That the policy objectives it seeks to further by enacting State laws applicable to cities, counties, and law enforcement agencies are frustrated when those entities do not uniformly comply with State law.
- (2) That Section 7(1) of Article V and other sections of the North Carolina Constitution grant the General Assembly supreme power and complete discretion over the appropriation of State funds.
- (3) That the General Assembly's power over the appropriation of State funds can be used to create additional incentives for cities, counties, and law enforcement agencies to comply with duly enacted laws.
- (4) That statutorily setting forth the manner in which the General Assembly elects to exercise its discretion with respect to appropriations provides cities, counties, and law enforcement agencies with a measure of predictability that can be useful to those entities in planning and carrying out their functions and duties.

"§ 64-50. Definitions.

The following definitions apply in this Article:

- (1) Affected local government. – Any of the following:
 - a. A municipality found to be not in compliance with a State law related to immigration.
 - b. A municipality in which a municipal law enforcement agency has been found to be not in compliance with a State law related to immigration.
 - c. A county found to be not in compliance with a State law related to immigration.
 - d. A county in which a county law enforcement agency has been found to be not in compliance with a State law related to immigration.
- (2) Law enforcement agency. – A municipal police department, a county police department, or a sheriff's office.
- (3) State law related to immigration. – G.S. 153A-145.5 or G.S. 160A-205.2.

"§ 64-51. Attorney General to prepare form.

(a) Preparation of Form. – The Attorney General shall prescribe a form for a person to allege that a city, county, or law enforcement agency is not in compliance with a State law related to immigration. The form shall clearly state that completed forms shall be sent to the Attorney General, and the form shall be made available to the public on the Attorney General's Web site.

(b) Certain Information Not Required. – A person shall not be required to list the person's Social Security number on the complaint form or to have the form notarized.

"§ 64-52. Filing of statement alleging noncompliance with a State law related to immigration.

Any person with a good-faith belief that a city, county, or law enforcement agency is not in compliance with a State law related to immigration may file a statement with the Attorney General setting forth the basis for that belief. The statement may be on a form prescribed by the Attorney General pursuant to G.S. 64-51 or may be made in any other form that gives the Attorney General information sufficient to proceed with an investigation pursuant to G.S. 64-53. Nothing in this section shall be construed to prohibit the filing of anonymous statements that are not submitted on a prescribed form.

"§ 64-53. Investigation.

(a) Investigation. – Within 45 days of receipt of a statement filed in accordance with G.S. 64-52, the Attorney General shall commence an investigation of whether the city, county, or law enforcement agency is in fact not in compliance with a State law related to immigration. The Attorney General shall make a determination and conclude an investigation commenced pursuant to this subsection within 60 days of the investigation's commencement.

(b) Assistance by Law Enforcement. – The Attorney General may request that the State Bureau of Investigation assist in an investigation under this section, and the State Bureau of Investigation shall assist in the investigation when it receives such a request.

(c) Production of Documents. – A local government shall produce records or documents related to alleged noncompliance with a State law related to immigration within 10 business days of a request by the Attorney General to do so.

(d) Confidentiality. – Statements filed with the Attorney General pursuant to G.S. 64-52 and reports and other investigative documents and records of the Attorney General connected to an investigation under this section shall be confidential and not matters of public record, except when the local government under investigation requests in writing that these documents be made public. Once an investigation under this section is complete, or once 60 days have elapsed since the investigation was commenced, whichever is earlier, the statement and all other reports and other investigative documents and records of the Attorney General connected to an investigation under this section, not otherwise privileged or confidential under law, shall be public records.

"§ 64-54. Consequences of noncompliance with a State law related to immigration.

(a) Consequences of Noncompliance Generally. – If the Attorney General determines that an affected local government is not in compliance with a State law related to immigration, all of the following shall apply:

(1) The affected local government shall be ineligible to receive distributions under G.S. 105-113.82, 105-164.44F, 105-164.44I, 105-164.44L, 105-187.16, and 136-41.1 following the first date of noncompliance with the State law related to immigration.

(2) If, after the Attorney General's determination, the affected local government demonstrates to the Attorney General's satisfaction that it is in compliance with all State laws related to immigration, the local government regains eligibility to receive distributions described in subdivision (1) of this subsection. The period of ineligibility shall extend for a maximum of two years from the first determination of noncompliance.

(3) The Attorney General shall notify the following entities of the determination that the affected local government is not in compliance with a State law related to immigration and of the duration of the period of ineligibility to receive funds determined pursuant to subdivision (1) of this subsection:

a. The affected local government.

b. The chairs of the Appropriations Committees of the Senate and House of Representatives.

c. The chairs of the Joint Legislative Commission on Governmental Operations.

d. The Office of State Budget and Management.

e. The Secretary of Revenue.

(4) The Office of State Budget and Management shall notify the Department of Transportation and the State Controller of an affected local government's ineligibility to receive the funds described in subdivision (1) of this subsection. The Secretary of Revenue shall withhold any distributions otherwise due to the affected local government under subdivision (1) of this subsection.

(5) The Department of Transportation, the State Controller, and the Secretary of Revenue shall ensure that the funds described in subdivision (1) of this subsection are not distributed to an affected local government and that the funds are instead distributed to other local governments that are eligible for distributions pursuant to the relevant statute.

(b) Consequences of Noncompliance; E-Verify Statutes. – When the Attorney General receives a notification from the Commissioner of Labor pursuant to G.S. 64-33.1(b), the Attorney General, the Office of State Budget and Management, the State Controller, the Secretary of Revenue, and the Department of Transportation shall take all of the actions described in subsection (a) of this section except that those actions shall be taken with respect to only the following entities, as applicable:

(1) A municipality found by the Commissioner of Labor to have violated G.S. 143-133.3.

(2) A municipality in which all or part of a local school administrative unit governed by a local board, as those terms are defined in G.S. 115C-5, found by the Commissioner of Labor to have violated G.S. 143-133.3 is located.

(3) A county found by the Commissioner of Labor to have violated G.S. 143-133.3.

(4) A county in which all or part of a local school administrative unit governed by a local board, as those terms are defined in G.S. 115C-5, found by the Commissioner of Labor to have violated G.S. 143-133.3 is located.

(c) Exceptions. – No enactment by the General Assembly shall be construed as an exception to this section unless it specifically mentions this section.

"§ 64-55. Attorney General to maintain copies of orders; reporting.

(a) Database. – The Attorney General shall maintain a database of the local governments and law enforcement agencies that are ineligible to receive the funds described in G.S. 64-54(a)(1) and shall make the database accessible to the public through the Attorney General's Web site.

(b) Reporting. – The Attorney General shall report quarterly to the Joint Legislative Commission on Governmental Operations on all of the following:

(1) The number of statements received by the Attorney General pursuant to G.S. 64-52.

(2) The number of investigations performed pursuant to G.S. 64-53.

(3) The number of times consequences for noncompliance with a State law related to immigration were imposed pursuant to G.S. 64-54.

(4) The names of cities, counties, and law enforcement agencies found not to be in compliance with a State law related to immigration.

"§ 64-56. Appeal.

A determination made by the Attorney General under this Article may be appealed only to the extent and in the manner required by the United States and North Carolina Constitutions. The imposition of consequences for noncompliance with a State law related to immigration pursuant to G.S. 64-54 shall not occur until an appeal made under this section is complete. However, if an appeal under this section is unsuccessful, the length of the period during which

1 an affected local government shall be ineligible to receive the funds described in
2 G.S. 64-54(a)(1) shall be the same as it would have been had no appeal been made, regardless
3 of which fiscal year or years the resulting period of ineligibility shall occur.

4 **"§ 64-57. Attorney General may designate appointed official to carry out duties.**

5 The Attorney General may designate a person to carry out the Attorney General's duties
6 under this Article. The designee shall be an individual appointed by the Attorney General and
7 shall not be a member of the Council of State or any other elected official.

8 **"§ 64-58. Rules.**

9 The Attorney General shall adopt rules needed to implement this Article.

10 **"§ 64-59. Private enforcement.**

11 In addition to any other remedies at law or in equity, any person who resides within the
12 jurisdiction of a city, county, or law enforcement agency that the person believes is not in
13 compliance with a State law related to immigration may bring an action for declaratory and
14 injunctive relief. Such an action shall be filed in the Superior Court of Wake County. The court
15 shall award the prevailing party in an action brought under this section reasonable attorneys'
16 fees and court costs as authorized by law."

17 **SECTION 5.(b)** G.S. 64-33.1 reads as rewritten:

18 **"§ 64-33.1 Consequences of violation of G.S. 143-133.3.**

19 (a) All Violations. – For any violation of G.S. 143-133.3, the Commissioner shall notify
20 the board or governing body of the State, or of any institution of the State government, or of
21 any political subdivision of the State, found to have committed the violation that the board or
22 governing body of the State, or of any institution of the State government, or of any political
23 subdivision of the State, is in violation of the applicable statute. The Department of Labor shall
24 maintain a list of any boards or governing bodies of the State, or of any institutions of the State
25 government, or of any political subdivisions of the State, issued notices pursuant to this section
26 and shall make that list available on its Web site.

27 (b) Violations by Certain Local Entities. – For a violation of G.S. 143-133.3 by a
28 political subdivision of the State, the Commissioner shall immediately notify the Attorney
29 General of the violation so that the Attorney General can take action in accordance with
30 G.S. 64-54(b). Additionally, the Commissioner shall notify the Attorney General if, within 60
31 days of the Commissioner's determination that there has been a violation, the political
32 subdivision fails to demonstrate to the Commissioner's satisfaction that the political subdivision
33 is in compliance with G.S. 143-133.3. The Commissioner may hold additional hearings as
34 needed to implement this subsection."

35 **SECTION 5.(c)** The Attorney General's office shall take reasonable steps to notify
36 local governments of the provisions of this act so that the local governments can take
37 appropriate steps to comply with this act's requirements.

38 **SECTION 5.(d)** G.S. 136-41.1 is amended by adding a new subsection to read:

39 "(e) No city or town shall receive any allocation under this section for any period during
40 which it is ineligible to receive those funds under G.S. 64-54."

41 **SECTION 5.(e)** G.S. 105-113.82(a) reads as rewritten:

42 "(a) Amount. – ~~The Subject to G.S. 64-54, the~~ Secretary must distribute annually a
43 percentage of the net amount of excise taxes collected on the sale of malt beverages and wine
44 during the preceding 12-month period ending March 31 to the counties or cities in which the
45 retail sale of these beverages is authorized in the entire county or city. The percentages to be
46 distributed are as follows:

47"

48 **SECTION 5.(f)** G.S. 105-164.44F(a) reads as rewritten:

49 "(a) Amount. – ~~The Subject to G.S. 64-54, the~~ Secretary must distribute part of the taxes
50 imposed by G.S. 105-164.4(a)(4c) on telecommunications service and ancillary service. The
51 Secretary must make the distribution within 75 days after the end of each calendar quarter. The

1 amount the Secretary must distribute is the following percentages of the net proceeds of the
2 taxes collected during the quarter:

3"

4 **SECTION 5.(g)** G.S. 105-164.44I(a) reads as rewritten:

5 "(a) Distribution. – ~~The Subject to G.S. 64-54, the~~ Secretary must distribute to the
6 counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications
7 service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the
8 distribution within 75 days after the end of each calendar quarter. The amount the Secretary
9 must distribute is the sum of the revenue listed in this subsection. From this amount, the
10 Secretary must first make the distribution required by subsection (b) of this section and then
11 distribute the remainder in accordance with subsections (c) and (d) of this section. The revenue
12 to be distributed under this section consists of the following:

13"

14 **SECTION 5.(h)** G.S. 105-164.44L(a) reads as rewritten:

15 "(a) Distribution. – ~~The Subject to G.S. 64-54, the~~ Secretary must distribute to cities
16 twenty percent (20%) of the net proceeds of the tax collected under G.S. 105-164.4 on piped
17 natural gas, less the cost to the Department of administering the distribution. Each city's share
18 of the amount to be distributed is its excise tax share calculated under subsection (b) of this
19 section plus its ad valorem share calculated under subsection (c) of this section. A gas city will
20 also receive an amount calculated under subsection (b1) of this section as part of its excise tax
21 share. If the net proceeds of the tax allocated under this section are not sufficient to distribute
22 the excise tax share of each city under subsection (b) of this section and the gas city share under
23 subsection (b1) of this section, the proceeds shall be distributed to each city on a pro rata basis.
24 The Secretary must make the distribution within 75 days after the end of each quarter."

25 **SECTION 5.(i)** G.S. 105-187.19(b) reads as rewritten:

26 "(b) Each quarter, the Secretary shall credit thirty percent (30%) of the net tax proceeds
27 to the General Fund. ~~The Subject to G.S. 64-54, the~~ Secretary shall distribute the remaining
28 seventy percent (70%) of the net tax proceeds among the counties on a per capita basis
29 according to the most recent annual population estimates certified to the Secretary by the State
30 Budget Officer."

31 **SECTION 5.(j)** G.S. 143B-919 is amended by adding a new subsection to read:

32 "(d1) The State Bureau of Investigation is further authorized, upon the request of the
33 Attorney General, to investigate local government noncompliance with State laws related to
34 immigration pursuant to the provisions of Article 3 of Chapter 64 of the General Statutes."

35 36 **PART VI. EFFECTIVE DATE AND SEVERABILITY CLAUSE**

37 **SECTION 6.(a)** Sections 2 and 3 of this act become effective December 1, 2017,
38 and apply to offenses committed on or after that date. Section 5 of this act becomes effective
39 August 1, 2017. The remainder of this act is effective when it becomes law.

40 **SECTION 6.(b)** The provisions of this act are severable. If any part of this act is
41 declared invalid or unconstitutional, the declaration shall not affect the remainder of this act. If
42 any particular interpretation or application of the provisions of this act is declared invalid or
43 unconstitutional, the declaration shall not affect other interpretations or applications of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 63
PROPOSED COMMITTEE SUBSTITUTE H63-CSSA-2 [v.3]

03/01/2017 01:57:00 PM

Short Title: Citizens Protection Act of 2017.

(Public)

Sponsors:

Referred to:

February 9, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE IDENTITY THEFT BY INCREASING PENALTIES FOR THE
3 MANUFACTURE OR SALE OF COUNTERFEIT DOCUMENTS; TO CREATE A
4 REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN
5 UNDOCUMENTED ALIENS; TO MAKE PROVISIONS REGARDING IMMIGRATION
6 STATUS RECORDS AND LAW ENFORCEMENT TRANSPORT OF ILLEGAL ALIENS;
7 AND TO CREATE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO
8 COMPLY WITH STATE LAWS RELATED TO IMMIGRATION.
9 The General Assembly of North Carolina enacts:

10
11 PART I. SHORT TITLE

12 SECTION 1. This act shall be known and may be cited as "The Citizens Protection
13 Act of 2017."
14

15 PART II. INCREASE PENALTIES FOR MANUFACTURE OR SALE OF FALSE
16 IDENTIFICATION DOCUMENTS

17 SECTION 2.(a) G.S. 14-100.1 reads as rewritten:

18 "~~§ 14-100.1. Possession or manufacture~~ Possession, manufacture, or sale of certain
19 fraudulent forms of identification.

20 (a) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any
21 person to knowingly ~~possess or manufacture~~ possess, manufacture, or sell a false or fraudulent
22 form of identification as defined in this section for the purpose of deception, fraud, or other
23 criminal conduct.

24 (b) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any
25 person to knowingly obtain a form of identification by the use of false, fictitious, or fraudulent
26 information.

27 (c) Possession of a form of identification obtained in violation of subsection (b) of this
28 section ~~shall constitute~~ is a violation of subsection (a) of this section.

29 (d) For purposes of this section, a "form of identification" means any of the following or
30 any replica thereof:

- 31 (1) An identification card containing a picture, issued by any department, agency,
32 or subdivision of the State of North Carolina, the federal government, or any
33 other state.
34 (2) A military identification card containing a picture.
35 (3) A passport.
36 (4) An alien registration card containing a picture.



* H 6 3 - C S S A - 2 *

(e) A violation of this section ~~shall be punished as is~~ a Class 1 ~~misdemeanor~~. misdemeanor, except that a violation of subsection (a) of this section with respect to the manufacture or sale of a false or fraudulent form of identification is a Class G felony."

SECTION 2.(b) G.S. 20-30 reads as rewritten:

"§ 20-30. Violations of license, learner's permit, or special identification card provisions.

It ~~shall be is~~ unlawful for any person to commit any of the following acts:

- (1) To display or cause to be displayed or to have in possession a driver's license, learner's permit, or special identification card, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.
- (2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license, learner's permit, or special identification card. A violation of this subdivision by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor. A violation of this subdivision by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers shall be punished as a Class 2 misdemeanor. A person who otherwise violates the provisions of this subdivision is guilty of a Class G felony.
- (3) To display or to represent as one's own a drivers license, learner's permit, or special identification card not issued to the person so displaying same.
- (4) To fail or refuse to surrender to the Division upon demand any driver's license, learner's permit, or special identification card that has been suspended, canceled or revoked as provided by law.
- (5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license, learner's permit, or special identification card, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license, learner's permit, or special identification card procured as aforesaid ~~shall be is~~ void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State. ~~Any A~~ person violating who violates the provisions of this subdivision ~~shall be is~~ guilty of a Class 1 misdemeanor.
- (6) To make a color photocopy or otherwise make a color reproduction of a drivers license, learner's permit, or special identification card ~~which that~~ has been color-photocopied or otherwise reproduced in color, unless ~~such the~~ color photocopy or other color reproduction was authorized by the Commissioner. It ~~shall be is~~ lawful to make a black and white photocopy of a drivers license, learner's permit, or special identification card or otherwise make a black and white reproduction of a drivers license, learner's permit, or special identification card.
- (7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license, learner's permit, or special identification card. The provisions of this subdivision ~~shall do~~ not apply to agents or employees of the Division while acting in the course and scope of their employment. ~~Any A~~ person, firm or corporation violating that violates the provisions of this subsection ~~shall be is~~ guilty of a Class ~~I~~G felony.
- (8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers

- license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.
- (9) To present, display, or use a drivers license, learner's permit, or special identification card that contains a false or fictitious name in the commission or attempted commission of a felony. ~~Any A person violating who violates~~ the provisions of this subdivision ~~shall be is~~ guilty of a Class I felony.
- (10) To possess more than one special identification card for a fraudulent purpose."
- SECTION 2.(c) G.S. 20-37.8 is repealed.

PART III. CREATION OF REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN UNDOCUMENTED ALIENS

SECTION 3.(a) G.S. 15A-533 reads as rewritten:

"§ 15A-533. Right to pretrial release in capital and noncapital cases.

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in ~~his the judge's~~ discretion whether a defendant charged with a capital offense may be released before trial. If ~~he the judge~~ determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) There ~~shall be is~~ a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

- (1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
- (2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There ~~shall be is~~ a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

- (1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;
- (2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

(f) ~~There shall be~~ is a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the judicial official also finds any of the following:

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

(f1) There is a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if the person is unlawfully present in the United States and a judicial official finds either of the following:

- (1) There is probable cause to believe that the person committed one or more of the following offenses:

- a. A sex offense. As used in this sub-subdivision, a "sex offense" is any offense upon conviction of which the offense becomes a reportable conviction, as that term is defined in G.S. 14-208.6.
- b. A violent felony, as that term is defined in G.S. 14-7.7(b), or any criminal offense other than a violation described in G.S. 14-33(a) that includes assault as an essential element of the offense.
- c. A driving offense. As used in this sub-subdivision, the term "driving offense" means any violation that requires a mandatory drivers license revocation upon a first conviction.
- d. A drug offense. As used in this sub-subdivision, the term "drug offense" means a violation of G.S. 90-95, other than a violation of G.S. 90-95(a)(3) punishable pursuant to G.S. 90-95(d).
- e. A gang offense. As used in this sub-subdivision, the term "gang offense" means any violation of Article 13A of Chapter 14 of the General Statutes.

- (2) There is probable cause to believe that the person committed an offense not listed in subdivision (1) of this subsection, and United States Immigration and Customs Enforcement has issued a detainer for the initiation of removal proceedings against the person or has indicated that it will do so.

(g) Persons who are considered for bond under the provisions of subsections (d), (e), ~~and (f)~~ (f1), and (f1) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

SECTION 3.(b) Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-534.7. Pretrial release of certain undocumented aliens.

In all cases in which the defendant is an alien who (i) is not lawfully present in the United States and (ii) is charged with a felony or a Class A1 misdemeanor, the judicial official shall require the defendant to execute a secured appearance bond as a condition of pretrial release, as described in G.S. 15A-534(a)(4)."

PART IV. IMMIGRATION STATUS RECORDS AND TRANSPORT OF ILLEGAL ALIENS

SECTION 4. Article 1 of Chapter 64 of the General Statutes is amended by adding the following new sections to read:

"§ 64-6. Permissible methods of verifying immigration status.

Verification of a person's immigration status pursuant to this Chapter or any other provision of State law shall be made consistent with federal law and may be made by any of the following methods, as applicable:

- (1) Pursuant to 8 U.S.C. §§ 1373(c) and 1644 or any other provision of federal law.
- (2) By a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.
- (3) In any other manner authorized by the federal government.

"§ 64-7. Admissibility of immigration status records in courts of this State.

(a) A verification of an alien's immigration status received from the federal government pursuant to G.S. 64-6 is proof of that alien's status. A court of this State shall consider only a verification of immigration status made pursuant to G.S. 64-6 in determining whether an alien is lawfully present in the United States.

(b) Any record that relates to the immigration status of a person is admissible in any court of this State without further foundation or testimony from a custodian of records if all of the following apply:

- (1) The record is certified as authentic by the federal government agency that is responsible for maintaining the record.
- (2) The State notifies the person at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the record into evidence under this section and provides a copy of the record to the person.
- (3) The person fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the record would be used, that the person objects to the introduction of the record into evidence.

If the person's attorney of record, or that person if the person is not represented by an attorney, fails to file a written objection as provided in this subsection, then the record may be admitted into evidence without the testimony of the custodian of records. Upon filing a timely objection, the admissibility of the record is determined and governed by the appropriate rules of evidence.

"§ 64-8. Law enforcement transport of certain unlawfully present aliens.

Notwithstanding any other provision of law, a State or local law enforcement agency may securely transport an alien who is in the agency's custody and who the agency has verified is unlawfully present in the United States to a federal facility in this State or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial authorization or executive authorization from the Governor before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside this State.

"§ 64-9. Construction and severability.

(a) Construction. – This Chapter shall be construed in a manner consistent with federal law.

(b) Severability. – The provisions of this Chapter are severable. If any part of this Chapter is declared invalid or unconstitutional, the declaration shall not affect the remainder of this Chapter. If any particular interpretation or application of the provisions of this Chapter is declared invalid or unconstitutional, the declaration shall not affect other interpretations or applications of this Chapter."

PART V. CREATION OF ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO COMPLY WITH STATE LAWS RELATED TO IMMIGRATION

SECTION 5.(a) Chapter 64 of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Local Government Noncompliance With State Laws Related to Immigration.

"§ 64-49. Findings.

The General Assembly finds the following:

- (1) That the policy objectives it seeks to further by enacting State laws applicable to cities, counties, and law enforcement agencies are frustrated when those entities do not uniformly comply with State law.
- (2) That Section 7(1) of Article V and other sections of the North Carolina Constitution grant the General Assembly supreme power and complete discretion over the appropriation of State funds.
- (3) That the General Assembly's power over the appropriation of State funds can be used to create additional incentives for cities, counties, and law enforcement agencies to comply with duly enacted laws.
- (4) That statutorily setting forth the manner in which the General Assembly elects to exercise its discretion with respect to appropriations provides cities, counties, and law enforcement agencies with a measure of predictability that can be useful to those entities in planning and carrying out their functions and duties.

"§ 64-50. Definitions.

The following definitions apply in this Article:

- (1) Affected local government. – Any of the following:
 - a. A municipality found to be not in compliance with a State law related to immigration.
 - b. A municipality in which a municipal law enforcement agency has been found to be not in compliance with a State law related to immigration.
 - c. A county found to be not in compliance with a State law related to immigration.
 - d. A county in which a county law enforcement agency has been found to be not in compliance with a State law related to immigration.
- (2) Law enforcement agency. – A municipal police department, a county police department, or a sheriff's office.
- (3) State law related to immigration. – G.S. 153A-145.5, or 160A-205.2.

"§ 64-51. Attorney General to prepare form.

(a) Preparation of Form. – The Attorney General shall prescribe a form for a person to allege that a city, county, or law enforcement agency is not in compliance with a State law related to immigration. The form shall clearly state that completed forms shall be sent to the Attorney General, and the form shall be made available to the public on the Attorney General's Web site.

(b) Certain Information Not Required. – A person shall not be required to list the person's Social Security number on the complaint form or to have the form notarized.

"§ 64-52. Filing of statement alleging noncompliance with a State law related to immigration.

Any person with a good-faith belief that a city, county, or law enforcement agency is not in compliance with a State law related to immigration may file a statement with the Attorney General setting forth the basis for that belief. The statement may be on a form prescribed by the Attorney General pursuant to G.S. 64-51 or may be made in any other form that gives the Attorney General information sufficient to proceed with an investigation pursuant to G.S. 64-53. Nothing in this section shall be construed to prohibit the filing of anonymous statements that are not submitted on a prescribed form.

"§ 64-53. Investigation.

1 (a) Investigation. – Within 45 days of receipt of a statement filed in accordance with
2 G.S. 64-52, the Attorney General shall commence an investigation of whether the city, county, or
3 law enforcement agency is in fact not in compliance with a State law related to immigration. The
4 Attorney General shall make a determination and conclude an investigation commenced pursuant
5 to this subsection within 60 days of the investigation's commencement.

6 (b) Assistance by Law Enforcement. – The Attorney General may request that the State
7 Bureau of Investigation assist in an investigation under this section, and the State Bureau of
8 Investigation shall assist in the investigation when it receives such a request.

9 (c) Production of Documents. – A local government shall produce records or documents
10 related to alleged noncompliance with a State law related to immigration within 10 business days
11 of a request by the Attorney General to do so.

12 (d) Confidentiality. – Statements filed with the Attorney General pursuant to G.S. 64-52
13 and reports and other investigative documents and records of the Attorney General connected to an
14 investigation under this section shall be confidential and not matters of public record, except when
15 the local government under investigation requests in writing that these documents be made public.
16 Once an investigation under this section is complete, or once 60 days have elapsed since the
17 investigation was commenced, whichever is earlier, the statement and all other reports and other
18 investigative documents and records of the Attorney General connected to an investigation under
19 this section, not otherwise privileged or confidential under law, shall be public records.

20 **"§ 64-54. Consequences of noncompliance with a State law related to immigration.**

21 (a) Consequences of Noncompliance Generally. – If the Attorney General determines that
22 an affected local government is not in compliance with a State law related to immigration, all of
23 the following shall apply:

24 (1) The affected local government shall be ineligible to receive distributions under
25 G.S. 105-113.82, 105-164.44F, 105-164.44I, 105-164.44L, 105-187.16, and
26 136-41.1 for the fiscal year following the first date of noncompliance with the
27 State law related to immigration.

28 (2) If, within 60 days of the Attorney General's determination, the affected local
29 government fails to demonstrate to the Attorney General's satisfaction that it is
30 in compliance with all State laws related to immigration, the period of
31 ineligibility shall be extended for an additional fiscal year.

32 (3) The Attorney General shall notify the following entities of the determination
33 that the affected local government is not in compliance with a State law related
34 to immigration and of the duration of the period of ineligibility to receive funds
35 determined pursuant to subdivision (1) of this subsection:

36 a. The affected local government.

37 b. The chairs of the Appropriations Committees of the Senate and House
38 of Representatives.

39 c. The chairs of the Joint Legislative Commission on Governmental
40 Operations.

41 d. The Office of State Budget and Management.

42 e. The Secretary of Revenue.

43 (4) The Office of State Budget and Management shall notify the Department of
44 Transportation and the State Controller of an affected local government's
45 ineligibility to receive the funds described in subdivision (1) of this subsection.
46 The Secretary of Revenue shall withhold any distributions otherwise due to the
47 affected local government under subdivision (1) of this subsection.

48 (5) The Department of Transportation, the State Controller, and the Secretary of
49 Revenue shall ensure that the funds described in subdivision (1) of this
50 subsection are not distributed to an affected local government and that the funds

are instead distributed to other local governments that are eligible for distributions pursuant to the relevant statute.

(b) Consequences of Noncompliance; E-Verify Statutes. – When the Attorney General receives a notification from the Commissioner of Labor pursuant to G.S. 64-33.1(b), the Attorney General, the Office of State Budget and Management, the State Controller, the Secretary of Revenue, and the Department of Transportation shall take all of the actions described in subsection (a) of this section except that those actions shall be taken with respect to only the following entities, as applicable:

(1) A municipality found by the Commissioner of Labor to have violated G.S. 143-133.3.

(2) A municipality in which all or part of a local school administrative unit governed by a local board, as those terms are defined in G.S. 115C-5, found by the Commissioner of Labor to have violated G.S. 143-133.3 is located.

(3) A county found by the Commissioner of Labor to have violated G.S. 143-133.3.

(4) A county in which all or part of a local school administrative unit governed by a local board, as those terms are defined in G.S. 115C-5, found by the Commissioner of Labor to have violated G.S. 143-133.3 is located.

(c) Exceptions. – No enactment by the General Assembly shall be construed as an exception to this section unless it specifically mentions this section.

"§ 64-55. Attorney General to maintain copies of orders; reporting.

(a) Database. – The Attorney General shall maintain a database of the local governments and law enforcement agencies that are ineligible to receive the funds described in G.S. 64-54(a)(1) and shall make the database accessible to the public through the Attorney General's Web site.

(b) Reporting. – The Attorney General shall report quarterly to the Joint Legislative Commission on Governmental Operations on all of the following:

(1) The number of statements received by the Attorney General pursuant to G.S. 64-52.

(2) The number of investigations performed pursuant to G.S. 64-53.

(3) The number of times consequences for noncompliance with a State law related to immigration were imposed pursuant to G.S. 64-54.

(4) The names of cities, counties, and law enforcement agencies found not to be in compliance with a State law related to immigration.

"§ 64-56. Appeal.

A determination made by the Attorney General under this Article may be appealed only to the extent and in the manner required by the United States and North Carolina Constitutions. The imposition of consequences for noncompliance with a State law related to immigration pursuant to G.S. 64-54 shall not occur until an appeal made under this section is complete. However, if an appeal under this section is unsuccessful, the length of the period during which an affected local government shall be ineligible to receive the funds described in G.S. 64-54(a)(1) shall be the same as it would have been had no appeal been made, regardless of which fiscal year or years the resulting period of ineligibility shall occur.

"§ 64-57. Attorney General may designate appointed official to carry out duties.

The Attorney General may designate a person to carry out the Attorney General's duties under this Article. The designee shall be an individual appointed by the Attorney General and shall not be a member of the Council of State or any other elected official.

"§ 64-58. Rules.

The Attorney General shall adopt rules needed to implement this Article.

"§ 64-59. Private enforcement.

In addition to any other remedies at law or in equity, any person who resides within the jurisdiction of a city, county, or law enforcement agency that the person believes is not in compliance with a State law related to immigration may bring an action for declaratory and

injunctive relief. Such an action shall be filed in the Superior Court of Wake County. The court shall award the prevailing party in an action brought under this section reasonable attorneys' fees and court costs as authorized by law."

SECTION 5.(b) G.S. 64-33.1 reads as rewritten:

"§ 64-33.1 Consequences of violation of G.S. 143-133.3.

(a) All Violations. – For any violation of G.S. 143-133.3, the Commissioner shall notify the board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, found to have committed the violation that the board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, is in violation of the applicable statute. The Department of Labor shall maintain a list of any boards or governing bodies of the State, or of any institutions of the State government, or of any political subdivisions of the State, issued notices pursuant to this section and shall make that list available on its Web site.

(b) Violations by Certain Local Entities. – For a violation of G.S. 143-133.3 by a political subdivision of the State, the Commissioner shall immediately notify the Attorney General of the violation so that the Attorney General can take action in accordance with G.S. 64-54(b). Additionally, the Commissioner shall notify the Attorney General if, within 60 days of the Commissioner's determination that there has been a violation, the political subdivision fails to demonstrate to the Commissioner's satisfaction that the political subdivision is in compliance with G.S. 143-133.3. The Commissioner may hold additional hearings as needed to implement this subsection."

SECTION 5.(c) The Attorney General's office shall take reasonable steps to notify local governments of the provisions of this act so that the local governments can take appropriate steps to comply with this act's requirements.

SECTION 5.(d) G.S. 136-41.1 is amended by adding a new subsection to read:

"(e) No city or town shall receive any allocation under this section for any period during which it is ineligible to receive those funds under G.S. 64-54."

SECTION 5.(e) G.S. 105-113.82(a) reads as rewritten:

"(a) Amount. – ~~The Subject to G.S. 64-54,~~ the Secretary must distribute annually a percentage of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31 to the counties or cities in which the retail sale of these beverages is authorized in the entire county or city. The percentages to be distributed are as follows:

...."

SECTION 5.(f) G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – ~~The Subject to G.S. 64-54,~~ the Secretary must distribute part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and ancillary service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the following percentages of the net proceeds of the taxes collected during the quarter:

...."

SECTION 5.(g) G.S. 105-164.44I(a) reads as rewritten:

"(a) Distribution. – ~~The Subject to G.S. 64-54,~~ the Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. From this amount, the Secretary must first make the distribution required by subsection (b) of this section and then distribute the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

...."

1 **SECTION 5.(h)** G.S. 105-164.44L(a) reads as rewritten:

2 "(a) Distribution. – ~~The Subject to G.S. 64-54, the~~ Secretary must distribute to cities twenty
3 percent (20%) of the net proceeds of the tax collected under G.S. 105-164.4 on piped natural gas,
4 less the cost to the Department of administering the distribution. Each city's share of the amount to
5 be distributed is its excise tax share calculated under subsection (b) of this section plus its ad
6 valorem share calculated under subsection (c) of this section. A gas city will also receive an
7 amount calculated under subsection (b1) of this section as part of its excise tax share. If the net
8 proceeds of the tax allocated under this section are not sufficient to distribute the excise tax share
9 of each city under subsection (b) of this section and the gas city share under subsection (b1) of this
10 section, the proceeds shall be distributed to each city on a pro rata basis. The Secretary must make
11 the distribution within 75 days after the end of each quarter."

12 **SECTION 5.(i)** G.S. 105-187.19(b) reads as rewritten:

13 "(b) Each quarter, the Secretary shall credit thirty percent (30%) of the net tax proceeds to
14 the General Fund. ~~The Subject to G.S. 64-54, the~~ Secretary shall distribute the remaining seventy
15 percent (70%) of the net tax proceeds among the counties on a per capita basis according to the
16 most recent annual population estimates certified to the Secretary by the State Budget Officer."

17 **SECTION 5.(j)** G.S. 143B-919 is amended by adding a new subsection to read:

18 "(d1) The State Bureau of Investigation is further authorized, upon the request of the
19 Attorney General, to investigate local government noncompliance with State laws related to
20 immigration pursuant to the provisions of Article 3 of Chapter 64 of the General Statutes."

21 22 **PART VI. EFFECTIVE DATE AND SEVERABILITY CLAUSE**

23 **SECTION 6.(a)** Sections 2 and 3 of this act become effective December 1, 2017, and
24 apply to offenses committed on or after that date. Section 5 of this act becomes effective August 1,
25 2017. The remainder of this act is effective when it becomes law.

26 **SECTION 6.(b)** The provisions of this act are severable. If any part of this act is
27 declared invalid or unconstitutional, the declaration shall not affect the remainder of this act. If
28 any particular interpretation or application of the provisions of this act is declared invalid or
29 unconstitutional, the declaration shall not affect other interpretations or applications of this act.



HOUSE BILL 63: Citizens Protection Act of 2017.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Appropriations	Date:	March 7, 2017
Introduced by:	Reps. Warren, Collins, Jordan, Adams	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition H63-CSSA-2		Committee Counsel

OVERVIEW: *House Bill 63 would increase penalties for the manufacture or sale of counterfeit documents, would create a rebuttable presumption against the pretrial release of certain undocumented aliens, would make provisions regarding immigration status records and law enforcement transport of illegal aliens, and would withhold certain funds from local governments that fail to comply with State laws related to immigration.*

The Proposed Committee Substitute creates a process to determine noncompliance with State laws related to immigration.

BILL ANALYSIS:

Section 1 of the bill would provide that this act be known as "The Citizens Protection Act of 2017."

Section 2 of the bill would amend various statutes related to the fraudulent use of identification.

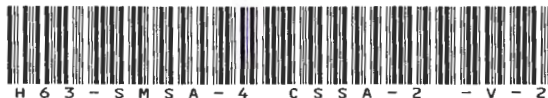
Section 2(a) of the bill would make the following changes to the prohibition on false or fraudulent forms of identification pursuant to G.S. 14-100.1:

- ❖ Create a new Class G felony for the sale of a false or fraudulent form of identification for the purpose of deception, fraud, or other criminal conduct.
- ❖ Increase the penalty for manufacturing such identification from a Class 1 misdemeanor to a Class G felony. Possession of such identification would remain a Class 1 misdemeanor.

Section 2(b) of the bill would modify G.S. 20-30 as follows:

- ❖ Counterfeiting, selling, lending, or knowingly permitting the use of a driver's license, learner's permit, or special identification card would have the following penalties:
 - A violation by a person under 21 for the purpose of the underage purchase of alcohol would be increased to a Class 1 misdemeanor (currently a Class 2 misdemeanor).
 - A violation by a person under 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers would be a Class 2 misdemeanor (same as current law).
 - Any other violation would be a Class G felony.
- ❖ Selling or offering for sale any reproduction, facsimile, or simulation of a driver's license, learner's permit, or special identification card would be increased to a Class G felony (currently a Class I felony).

Karen Cochrane-Brown
Director



Legislative Analysis
Division
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- ❖ Create a new Class 2 misdemeanor for possession of more than one special identification card for fraudulent purpose.

Section 3 of the bill would make modifications to the process of pretrial release for persons unlawfully present in the United States. **Section 3(a)** would create a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if the person is unlawfully present in the United States and a judicial officer finds either of the following:

- ❖ There is probable cause to believe that the person committed one or more of the following offenses:
 - An offense which would require sex offender registration.
 - An A through E felony or any offense, except simple assault, with assault as an essential element.
 - An offense that requires a mandatory driver's license revocation upon a first conviction.
 - A violation of G.S. 90-95 other than what is commonly referred to as "simple possession".
 - A gang offense included in Article 13A of Chapter 14.
- ❖ There is probable cause to believe the person committed an offense not listed above and United States Immigration and Customs Enforcement has issued a detainer for the initiation of removal proceedings against the person or has indicated that it will do so.

Section 3(b) would require any judicial official who releases an alien who is not lawfully present in the US and who has been charged with a felony or a Class A1 misdemeanor to require the defendant to execute a secured appearance bond as a condition of pretrial release.

Section 4 of the bill would enact several new statutes in Article 1 of Chapter 64, Various Provisions Related to Aliens, as follows:

- ❖ G.S. 64-6 would provide how verification of immigration status should be conducted.
- ❖ G.S. 64-7 would provide for the introduction of verification of immigration status in court proceedings.
- ❖ G.S. 64-8 would authorize a State or local law enforcement agency to transport an alien in the agency's custody to a federal facility in this State or outside the State. Judicial or executive authorization must be obtained before transporting an alien outside the State.
- ❖ G.S. 64-9 provides for severability of any statute in this Chapter found invalid or unconstitutional.

Section 5 of the bill would provide a process to withhold certain funds from local governments that are not in compliance with certain State laws related to immigration.

Section 5(a) would add a new Article 3 to Chapter 64 entitled "Local Government Noncompliance With State Laws Related to Immigration." These statutes would do the following:

- ❖ Allow a person to file a statement with the Attorney General alleging that a local government or law enforcement agency is not in compliance with a State law related to immigration. A state law related to immigration is defined as G.S. 153A-145.5 or 160A-205.2 (see **Background** for full statutes)

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- ❖ Require the Attorney General to commence an investigation within 45 days and conclude that investigation within 60 days of its commencement. The Attorney General may request the assistance of the State Bureau of Investigation (SBI).
 - During the investigation, reports and other investigative documents and records connected to the investigation are confidential and not public record unless the local government requests they be made public.
 - These documents become public record at the close of the investigation or after 60 days, whichever is first, unless otherwise privileged or confidential under law.
- ❖ Withhold distribution of funds if the Attorney General determines a local government or law enforcement agency is not in compliance with a State law related to immigration. The funds would be withheld from the municipality or county not in compliance, or the municipality or county whose law enforcement agency is not in compliance. The funds disbursed under the following statutes would be withheld:
 - G.S. 105-113.82 (Beer and wine excise tax)
 - G.S. 105-164.44F (Telecommunications tax)
 - G.S. 105-164.44I (Sales tax on video programming service/telecommunication service)
 - G.S. 105-164.44L (Tax on piped natural gas to cities)
 - G.S. 105-187.16 (Tire tax)
 - G.S. 136-41.1 (DOT State aid to municipalities, aka "Powell Bill" funds)
- ❖ Withhold distribution of funds if the Commissioner of Labor finds a municipality, a county, or a local school administrative unit government by a local board to be in violation of the E-Verify statutes. The same statutory funds as listed above would be withheld from the municipality, the county, or any municipality or county in which all or part of the local school administrative unit is located.
- ❖ Allow any person who resides within the jurisdiction of a city, count, or law enforcement agency that the person believes is not in compliance with a State law related to immigration to bring an action for declaratory and injunctive relief.

Sections 5(b) through 5(j) would make conforming changes to other statutes to effectuate the provisions of Section 5(a) of the bill.

EFFECTIVE DATE: Sections 2 and 3 of this act would become effective December 1, 2017, and apply to offenses committed on or after that date. Section 5 of this act would become effective August 1, 2017. The remainder of this act is effective when it becomes law. This bill contains a severability clause.

BACKGROUND:

§ 153A-145.5. Adoption of sanctuary ordinance prohibited.

(a) No county may have in effect any policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law.

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(b) No county shall do any of the following related to information regarding the citizenship or immigration status, lawful or unlawful, of any individual:

- (1) Prohibit law enforcement officials or agencies from gathering such information.
- (2) Direct law enforcement officials or agencies not to gather such information.
- (3) Prohibit the communication of such information to federal law enforcement agencies.

§ 160A-205.2. Adoption of sanctuary ordinances prohibited.

(a) No city may have in effect any policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law.

(b) No city shall do any of the following related to information regarding the citizenship or immigration status, lawful or unlawful, of any individual:

- (1) Prohibit law enforcement officials or agencies from gathering such information.
- (2) Direct law enforcement officials or agencies not to gather such information.
- (3) Prohibit the communication of such information to federal law enforcement agencies.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

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HOUSE BILL 63

Short Title: Citizens Protection Act of 2017. (Public)

Sponsors: Representatives Warren, Collins, Jordan, and Adams (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II, if favorable, Appropriations

February 9, 2017

A BILL TO BE ENTITLED
AN ACT TO REDUCE IDENTITY THEFT BY INCREASING PENALTIES FOR THE
MANUFACTURE OR SALE OF COUNTERFEIT DOCUMENTS; TO CREATE A
REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN
UNDOCUMENTED ALIENS; AND TO ENACT A PENALTY FOR CITIES AND
COUNTIES THAT VIOLATE STATE LAWS RELATED TO SANCTUARY CITIES.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1. This act shall be known and may be cited as "The Citizens Protection Act of 2017."

PART II. INCREASE PENALTIES FOR MANUFACTURE OR SALE OF FALSE IDENTIFICATION DOCUMENTS

SECTION 2.(a) G.S. 14-100.1 reads as rewritten:

"§ 14-100.1. ~~Possession or manufacture~~ Possession, manufacture, or sale of certain fraudulent forms of identification.

(a) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any person to knowingly ~~possess or manufacture~~ possess, manufacture, or sell a false or fraudulent form of identification as defined in this section for the purpose of deception, fraud, or other criminal conduct.

(b) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any person to knowingly obtain a form of identification by the use of false, fictitious, or fraudulent information.

(c) Possession of a form of identification obtained in violation of subsection (b) of this section ~~shall constitute~~ is a violation of subsection (a) of this section.

(d) For purposes of this section, a "form of identification" means any of the following or any replica thereof:

- (1) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina, the federal government, or any other state.
- (2) A military identification card containing a picture.
- (3) A passport.
- (4) An alien registration card containing a picture.



(e) A violation of this section ~~shall be punished as is~~ a Class 1 ~~misdemeanor~~ ~~misdemeanor~~, except that a violation of subsection (a) of this section with respect to the manufacture or sale of a false or fraudulent form of identification is a Class G felony."

SECTION 2.(b) G.S. 20-30 reads as rewritten:

"§ 20-30. Violations of license, learner's permit, or special identification card provisions.

It ~~shall be is~~ unlawful for any person to commit any of the following acts:

- (1) To display or cause to be displayed or to have in possession a driver's license, learner's permit, or special identification card, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.
- (2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license, learner's permit, or special identification card. A violation of this subdivision by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor. A violation of this subdivision by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers shall be punished as a Class 2 misdemeanor. A person who otherwise violates the provisions of this subdivision is guilty of a Class G felony.
- (3) To display or to represent as one's own a drivers license, learner's permit, or special identification card not issued to the person so displaying same.
- (4) To fail or refuse to surrender to the Division upon demand any driver's license, learner's permit, or special identification card that has been suspended, canceled or revoked as provided by law.
- (5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license, learner's permit, or special identification card, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license, learner's permit, or special identification card procured as aforesaid ~~shall be is~~ void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State. Any A person violating who violates the provisions of this subdivision shall be is guilty of a Class 1 misdemeanor.
- (6) To make a color photocopy or otherwise make a color reproduction of a drivers license, learner's permit, or special identification card ~~which that~~ has been color-photocopied or otherwise reproduced in color, unless ~~such the~~ color photocopy or other color reproduction was authorized by the Commissioner. It ~~shall be is~~ lawful to make a black and white photocopy of a drivers license, learner's permit, or special identification card or otherwise make a black and white reproduction of a drivers license, learner's permit, or special identification card.
- (7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license, learner's permit, or special identification card. The provisions of this subdivision ~~shall do~~ not apply to agents or employees of the Division while acting in the course and scope of their employment. Any A person, firm or corporation violating that violates the provisions of this subsection shall be is guilty of a Class I-G felony.
- (8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers

license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.

- (9) To present, display, or use a drivers license, learner's permit, or special identification card that contains a false or fictitious name in the commission or attempted commission of a felony. ~~Any A person violating who violates the provisions of this subdivision shall be is~~ guilty of a Class I felony.

- (10) To possess more than one special identification card for a fraudulent purpose."

SECTION 2.(c) G.S. 20-37.8 is repealed.

PART III. CREATION OF REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN UNDOCUMENTED ALIENS

SECTION 3.(a) G.S. 15A-533 reads as rewritten:

"§ 15A-533. Right to pretrial release in capital and noncapital cases.

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in ~~his the judge's~~ discretion whether a defendant charged with a capital offense may be released before trial. If ~~he the judge~~ determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) There ~~shall be is~~ a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

- (1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
- (2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There ~~shall be is~~ a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

- (1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;
- (2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

(f) There ~~shall be~~ is a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the judicial official also finds any of the following:

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

(f1) There is a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if the person is unlawfully present in the United States and a judicial official finds either of the following:

- (1) There is probable cause to believe that the person committed one or more of the following offenses:
 - a. A sex offense. As used in this sub-subdivision, a "sex offense" is any offense upon conviction of which the offense becomes a reportable conviction, as that term is defined in G.S. 14-208.6.
 - b. A violent felony, as that term is defined in G.S. 14-7.7(b), or any criminal offense other than a violation described in G.S. 14-33(a) that includes assault as an essential element of the offense or as an aggravating factor in sentencing.
 - c. A driving offense. As used in this sub-subdivision, the term "driving offense" means any violation that requires a mandatory drivers license revocation upon a first conviction.
 - d. A drug offense. As used in this sub-subdivision, the term "drug offense" means a violation of G.S. 90-95, other than a violation for mere possession of a controlled substance.
 - e. A gang offense. As used in this sub-subdivision, the term "gang offense" means any violation of Article 13A of Chapter 14 of the General Statutes.
- (2) There is probable cause to believe that the person committed an offense not listed in subdivision (1) of this subsection, and United States Immigration and Customs Enforcement has issued a detainer for the initiation of removal proceedings against the person or has indicated that it will do so.

(g) Persons who are considered for bond under the provisions of subsections (d), (e), ~~and (f)-(f), and (f1)~~ of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

SECTION 3.(b) Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-534.7. Pretrial release of certain undocumented aliens.

In all cases in which the defendant is an alien who (i) is not lawfully present in the United States and (ii) is charged with a felony or a Class A1 misdemeanor, the judicial official shall require the defendant to execute a secured appearance bond as a condition of pretrial release, as described in G.S. 15A-534(a)(4)."

PART IV. MISCELLANEOUS PROVISIONS

1 **SECTION 4.(a)** Article 1 of Chapter 64 of the General Statutes is amended by adding
2 the following new sections to read:

3 **"§ 64-6. Permissible methods of verifying immigration status.**

4 Verification of a person's immigration status pursuant to this Chapter or any other provision of
5 State law shall be made consistent with federal law and may be made by any of the following
6 methods, as applicable:

- 7 (1) Pursuant to 8 U.S.C. §§ 1373(c) and 1644 or any other provision of federal law.
8 (2) By a law enforcement officer who is authorized by the federal government to
9 verify or ascertain an alien's immigration status.
10 (3) In any other manner authorized by the federal government.

11 **"§ 64-7. Admissibility of immigration status records in courts of this State.**

12 (a) A verification of an alien's immigration status received from the federal government
13 pursuant to G.S. 64-6 is proof of that alien's status. A court of this State shall consider only a
14 verification of immigration status made pursuant to G.S. 64-6 in determining whether an alien is
15 lawfully present in the United States.

16 (b) Any record that relates to the immigration status of a person is admissible in any court
17 of this State without further foundation or testimony from a custodian of records if all of the
18 following apply:

- 19 (1) The record is certified as authentic by the federal government agency that is
20 responsible for maintaining the record.
21 (2) The State notifies the person at least 15 business days before the proceeding at
22 which the evidence would be used of its intention to introduce the record into
23 evidence under this section and provides a copy of the record to the person.
24 (3) The person fails to file a written objection with the court, with a copy to the
25 State, at least five business days before the proceeding at which the record
26 would be used, that the person objects to the introduction of the record into
27 evidence.

28 If the person's attorney of record, or that person if the person is not represented by an attorney,
29 fails to file a written objection as provided in this subsection, then the record may be admitted into
30 evidence without the testimony of the custodian of records. Upon filing a timely objection, the
31 admissibility of the record is determined and governed by the appropriate rules of evidence.

32 **"§ 64-8. Law enforcement transport of certain unlawfully present aliens.**

33 Notwithstanding any other provision of law, a State or local law enforcement agency may
34 securely transport an alien who is in the agency's custody and who the agency has verified is
35 unlawfully present in the United States to a federal facility in this State or to any other point of
36 transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law
37 enforcement agency shall obtain judicial or executive authorization from the Governor before
38 securely transporting an alien who is unlawfully present in the United States to a point of transfer
39 that is outside this State.

40 **"§ 64-9. Construction and severability.**

41 (a) Construction. – This Chapter shall be construed in a manner consistent with federal
42 law.

43 (b) Severability. – The provisions of this Chapter are severable. If any part of this Chapter
44 is declared invalid or unconstitutional, the declaration shall not affect the remainder of this
45 Chapter. If any particular interpretation or application of the provisions of this Chapter is declared
46 invalid or unconstitutional, the declaration shall not affect other interpretations or applications of
47 this Chapter."

48 **SECTION 4.(b)** G.S. 153A-145.5 is amended by adding a new subsection to read:

49 "(c) The Secretary of Revenue shall withhold any distributions otherwise due under
50 G.S. 105-113.82, 105-164.44F, 105-164.44I, and 105-164.44L for any period during which a
51 county is in violation of subsection (a) or (b) of this section. The Attorney General shall be

1 responsible for administering this subsection and shall adopt rules governing its implementation.
2 The Secretary of Revenue, the Office of State Budget and Management, the State Controller, and
3 all other State agencies and officials shall cooperate fully with the implementation of this section
4 and the rules adopted pursuant thereto."

5 **SECTION 4.(c)** G.S. 160A-499.4 is amended by adding a new subsection to read:

6 "(d) The Secretary of Revenue shall withhold any distributions otherwise due under
7 G.S. 105-113.82, 105-164.44F, 105-164.44I, and 105-164.44L for any period during which a city
8 is in violation of subsection (a) or (b) of this section. The Attorney General shall be responsible
9 for administering this subsection and shall adopt rules governing its implementation. The
10 Secretary of Revenue, the Office of State Budget and Management, the State Controller, and all
11 other State agencies and officials shall cooperate fully with the implementation of this section and
12 the rules adopted pursuant thereto."

13 **SECTION 4.(d)** Subsections (b) and (c) of this section become effective October 1,
14 2017.

15
16 **PART V. EFFECTIVE DATE AND SEVERABILITY CLAUSE**

17 **SECTION 5.(a)** Sections 2 and 3 of this act become effective December 1, 2017, and
18 apply to offenses committed on or after that date. Except as otherwise provided, the remainder of
19 this act is effective when it becomes law.

20 **SECTION 5.(b)** The provisions of this act are severable. If any part of this act is
21 declared invalid or unconstitutional, the declaration shall not affect the remainder of this act. If
22 any particular interpretation or application of the provisions of this act is declared invalid or
23 unconstitutional, the declaration shall not affect other interpretations or applications of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 63 (First Edition)

SHORT TITLE: Citizens Protection Act of 2017.

SPONSOR(S): Representatives Warren, Collins, Jordan, and Adams

FISCAL IMPACT

(\$ in millions)

☐ Yes

☐ No

☒ No Estimate Available

	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
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, 2017

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address increased penalties for existing offenses and new offenses being charged, adjudicated, and sentenced. However, given that there is limited historical data on these offenses or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred:

- Administrative Office of the Courts: \$30,728 to \$129,568
- Indigent Defense Services: \$14,512 to \$50,641
- Department of Public Safety (DPS) - Prison Section: \$6,398 per felony conviction resulting in an active sentence
- DPS - Community Corrections: \$1,332 to \$4,292 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 2(a) of the bill amends G.S. 14-100.1, Possession, manufacture, or sale of certain fraudulent forms of identification. This section adds the sale of fraudulent identification to the statute, and makes the manufacture or sale of fraudulent identification a Class G felony. Manufacturing fraudulent identification was previously a Class 1 misdemeanor.

Section 2(b) of the bill amends G.S. 20-30, Violations of license, learner's permit, or special identification card provisions. This section increases the violation of G.S. 20-30(a)(2)), to counterfeit, sell, lend to, or knowingly permit the use of a driver's license, learner's permit, or special identification card, from a Class 2 misdemeanor to a Class G felony. Exceptions are made for violations committed by a person under 18 to buy tobacco underage, which remains a Class 2 misdemeanor, and for violations committed by a person under 21 to buy alcohol underage, which becomes a Class 1 misdemeanor.

Section 2(b) also amends G.S. 20-30(a)(7) to increase the offense of selling or offering for sale any reproduction of a driver's license, learner's permit, or special identification card from a Class I felony to a Class G felony.

Finally, Section 2(b) creates a new G.S. 20-30(a)(10) making it a Class 2 misdemeanor to possess more than one special identification card for a fraudulent purpose.

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.

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.

Judicial Branch

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

Section 2(a) increases the penalty for violation of G.S. 14-100.1, Possession, manufacture, or sale of certain fraudulent forms of identification, from a Class 1 misdemeanor to a Class G felony, except for violations involving merely possession, rather than the manufacture or sale. For every person who would have been charged with a Class 1 misdemeanor who is instead charged with a Class G felony under this legislation, AOC estimates the average increase in costs to the courts would be \$732 (\$938 for a Class G felony minus \$206 for a Class 1 misdemeanor).

In FY 2015-16, 422 offenders were charged with violations of G.S. 14-100.1. AOC cannot differentiate possession charges from manufacturing or sale charges. For the purposes of this fiscal note, we are assuming that anyone under the age of 21 had fraudulent identification to purchase alcohol or tobacco and was charged for possession rather than manufacture. Of the 422 offenders charged, 276 were between 16 and 21 at the time of the offense, leaving a pool of 146 charges. The following chart provides a range of costs that would be incurred if 10%, 50%, or 100% of those charges were for the manufacture of fraudulent identification.

Range of AOC Costs Estimates Based on Percentage of Charges for Manufacturing Fake IDs Section 2(a) G.S. 14-100.1 Charges: 146					
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Inflation Rate	2.76%	2.90%	2.98%	2.65%	1.89%
10% of charges for manufacture	\$10,982	\$11,300	\$11,637	\$11,945	\$12,171
50% of charges for manufacture	\$54,911	\$54,986	\$55,028	\$54,852	\$54,446
100% of charges for manufacture	\$109,822	\$113,007	\$116,375	\$119,459	\$121,717
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

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, 39% of Class 1 misdemeanor defendants used IDS services for a weighted average cost of \$196. In the same year, 78% of Class G felony cases were handled through IDS with a weighted average cost of \$466. The following chart shows a range of costs that would be incurred by the proposed penalty increase using the number of charges provided by AOC and adjusted as noted in the previous paragraph.

Range of IDS Costs Estimates Based on Percentage of Charges for Manufacturing Fake IDs Section 2(a) G.S. 14-100.1 Charges: 146					
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Inflation Rate	2.76%	2.90%	2.98%	2.65%	1.89%
10% of charges for manufacture	\$7,183	\$7,391	\$7,611	\$7,813	\$7,961
50% of charges for manufacture	\$34,957	\$35,005	\$35,032	\$34,919	\$34,661
100% of charges for manufacture	\$43,110	\$44,360	\$45,682	\$46,893	\$47,779
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

Section 2(a) also expands the scope of the offense to add "to knowing sell" (previously, it was just to knowingly possess or manufacture). This change may increase the number of people charged with a

violation of this statute. For every additional person charged with a Class G felony, AOC estimates the average cost to the courts would be \$938. IDS' cost for each additional person charged would be \$466.

Section 2(b) increases the penalty for violation of G.S. 20-30(2), to counterfeit, sell, lend to, or knowingly permit the unauthorized use of a license, permit, or identification card, from a Class 2 misdemeanor to a Class G felony, unless the violation was by a person under the age of 18 for buying tobacco products, in which case the penalty remains a Class 2 misdemeanor, or the violation was by a person under the age of 21 for buying alcohol, in which case the penalty is increased to a Class 1 misdemeanor. For every person who would have been charged with a Class 2 misdemeanor who is instead charged with a Class 1 misdemeanor, the average cost to the court will be \$96 (\$206 for a Class 1 misdemeanor minus \$110 for a Class 2 misdemeanor). For every person who would have been charged with a Class 2 misdemeanor who is instead charged with a Class G felony, the average cost to the court will be \$828 (\$938 for a Class G felony minus \$110 for a Class 2 misdemeanor).

Section 2(b) also increases the penalty for violation of G.S. 20-30(7), to sell or offer for sale any reproduction or facsimile or simulation of a driver's license, learner's permit, or special identification card, from a Class I felony to a Class G felony. For every person who would have been charged with a Class I felony who is instead charged with a Class G felony, the average cost to the court will be \$483 (\$938 for a Class G felony minus \$455 for a Class I felony).

The following chart shows the number of defendants charged with each violation in FY 2015-16 and the estimated cost to the courts if those offenses had been charged at the proposed levels.

AOC Cost Differential Section 2(b) G.S. 20-30(2) and G.S. 20-30(7) Charges: 30							
Description of Offense (subdivision)	Current Class	Proposed Class	Original Cost Per Case	Proposed Cost Per Case	Difference	FY 2015-16 Charges	Total Estimated Cost
G.S. 20-30(2) - Under 18	Class 2 MD	Class 2 MD	\$110	\$110	\$0	1	\$0
G.S. 20-30(2) - Under 21	Class 2 MD	Class 1 MD	\$110	\$206	\$96	3	\$288
G.S. 20-30(2) - Over 21	Class 2 MD	Class G felony	\$110	\$938	\$828	20	\$16,560
G.S. 20-30(7)	Class I felony	Class G felony	\$455	\$938	\$483	6	\$2,898
Total Section 2(b)							\$19,746

AOC Cost Differential Adjusted for Inflation Section 2(b) G.S. 20-30(2) and G.S. 20-30(7) Charges: 30					
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Inflation Rate	2.76%	2.90%	2.98%	2.65%	1.89%
Cost	\$20,291	\$20,879	\$21,501	\$22,071	\$22,488
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

The following table provides the cost differential for IDS for each of the increased penalties in Subsection 2(b).

IDS Cost Differential Section 2(b) G.S. 20-30(2) and G.S. 20-30(7) Charges: 30										
Description of Offense (subdivision)	2015-16 Charges	Current Class	Original Cost Per Case	% Using IDS	Original Cost	Proposed Class	Proposed Cost Per Case	% Using IDS	New Cost	Difference
G.S. 20-30(2) - Under 18	1	Class 2 MD	\$195	30%	\$0	Class 2 MD	\$195	30%	\$0	\$0
G.S. 20-30(2) - Under 21	3	Class 2 MD	\$195	30%	\$195	Class 1 MD	\$196	39%	\$196	\$1
G.S. 20-30(2) - Over 21	20	Class 2 MD	\$195	30%	\$1,170	Class G felony	\$466	78%	\$7,456	\$6,286
G.S. 20-30(7)	6	Class I felony	\$322	68%	\$1,288	Class G felony	\$466	78%	\$2,330	\$1,042
Total Section 2(b)										\$7,329

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, this cost may not be incurred.

IDS Cost Differential Adjusted for Inflation Section 2(b) G.S. 20-30(2) and G.S. 20-30(7) Charges: 30					
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Inflation Rate	2.76%	2.90%	2.98%	2.65%	1.89%
Cost	\$7,531	\$7,749	\$7,980	\$8,191	\$8,346
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

Section 2(b) also creates a new Class 2 misdemeanor for possession of more than one special identification card for a fraudulent purpose. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class 2 misdemeanor, the average cost to the court would be \$110. For IDS, the weighted average cost of a Class misdemeanor is \$195 per case for a PAC attorney; approximately 30% of Class 2 misdemeanor defendants use IDS services.

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 2016.

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). The Sentencing Commission was unable to estimate the additional bed requirements of this bill.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2018	June 30 2019	June 30 2020	June 30 2021	June 30 2022
1. Inmates ²	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
4. <i>Additional Inmates Due to this Bill</i> ³	No estimate available				
5. <i>Additional Beds Required</i>					

Because there are available beds, no additional bed construction will be required for this bill. However, additional spending may be required to house new prisoners or to house prisoners longer as a result of the increased penalties. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$5,482 per year, which includes the cost of food, clothing, and health care. The table below shows the per diem costs related to the additional inmates for each year of the five year projection, adjusted for inflation.

Annual Per Diem Costs for Every One Additional Inmate					
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Inflation Rate	2.76%	2.90%	2.98%	2.65%	1.89%
Annual Cost	\$5,633	\$5,796	\$5,969	\$6,127	\$6,243
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

Section 2(a) increases an existing Class 1 misdemeanor to a Class G felony. In FY 2015-16, there were 42 convictions for possession or manufacture of fraudulent identification. This section also expands the offense to include the sale of fraudulent identification. The Class G felony will not apply to convictions for

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 2017.

³ Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

possession; it will only apply to convictions for manufacture or sale. It is not known how many of these convictions were for manufacture versus possession. All misdemeanants serve their time in local jails, so for misdemeanor convictions receiving active sentences, there is no cost to the prison system. Therefore, any Class G felony offense convictions resulting from this bill will result in additional costs to the prison system. In FY 2015-16, 39% of Class G felony convictions resulted in active sentences averaging 14 months. The per diem cost of 14 months in prison is \$6,398.

A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 39% of Class G convictions resulted in active sentences, with an average estimated time served of 14 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 3 convictions (threshold), 20 convictions (example), or 42 convictions (see data above) that would be reclassified from Class 1 to Class G per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
3 (Threshold)	1	2	2	2	2
20	8	14	14	14	14
42	16	28	28	28	29

Section 2(b) increases an existing Class 2 misdemeanor offense to a Class G felony. The Sentencing Commission does not maintain statistical information on Class 2 or 3 misdemeanor traffic offenses, so it is not known how many convictions would be reclassified as Class G felonies under the proposed bill. All misdemeanants serve their time in local jails, so for misdemeanor convictions receiving active sentences, there is no cost to the prison system. Therefore, any Class G felony offense convictions resulting from this bill will result in additional costs to the prison system. In FY 2015-16, 39% of Class G felony convictions resulted in active sentences averaging 14 months. The per diem cost of 14 months in prison is \$6,398.

In FY 2015-16, 39% of Class G convictions resulted in active sentences, with an average estimated time served of 14 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 3 convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class 2 to Class G. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
3 (Threshold)	1	2	2	2	2
20	8	14	14	14	14

This section also increases an existing Class I felony to a Class G felony. There were no convictions for the Class I felony offense in FY 2015-16. Impact on the prison population will occur if Class I convictions become Class G convictions under the proposed subsection because of the higher rate of active sentences (15% for Class I compared to 39% for Class G) and longer average estimated time served (7 months compared to 14 months for Class G). The following table shows the estimated annual impact if, for example, there were 9 convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class I to Class G. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
3 (Threshold)	1	2	2	2	2
20	8	14	14	14	14

Any Class G felony offense convictions resulting from this section will result in additional costs to the prison system. In FY 2015-16, 39% of Class G felony convictions resulted in active sentences averaging 14 months. The per diem cost of 14 months in prison is \$6,398.

Section 2(b) also creates a new Class 2 misdemeanor offense for possessing more than one special identification card. The Sentencing Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail.

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.

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 \$148 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.

Daily Supervision Cost Adjusted for Inflation Five Year Projection						
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 17-18
Inflation Rate	2.76%	2.90%	2.98%	2.65%	1.89%	2.76%
Monthly Cost	\$152.08	\$156.50	\$161.16	\$165.43	\$168.56	\$152.08
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>						

It is not known how many convictions may result from this bill. The following table shows the percent of convictions receiving active sentences and supervised probation, and the cost of the supervised probation for each offense class in the proposed bill.⁴

Cost of Supervised Probation for One Offender by Offense Class							
	Active	Length	PRS (Months)	PRS Cost	Probation	Length (Months)	Prob. Cost
Class 2 Misdemeanor	34%	21 days	NA	NA	66%	14	\$2,072
Class 1 Misdemeanor	31%	40 days	NA	NA	69%	15	\$2,220
Class G Felony	39%	14 months	9	\$1,332	61%	29	\$4,292

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristine Leggett

APPROVED BY:

DATE: March 7, 2017



Signed Copy Located in the NCGA Principal Clerk's Offices

⁴ Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.





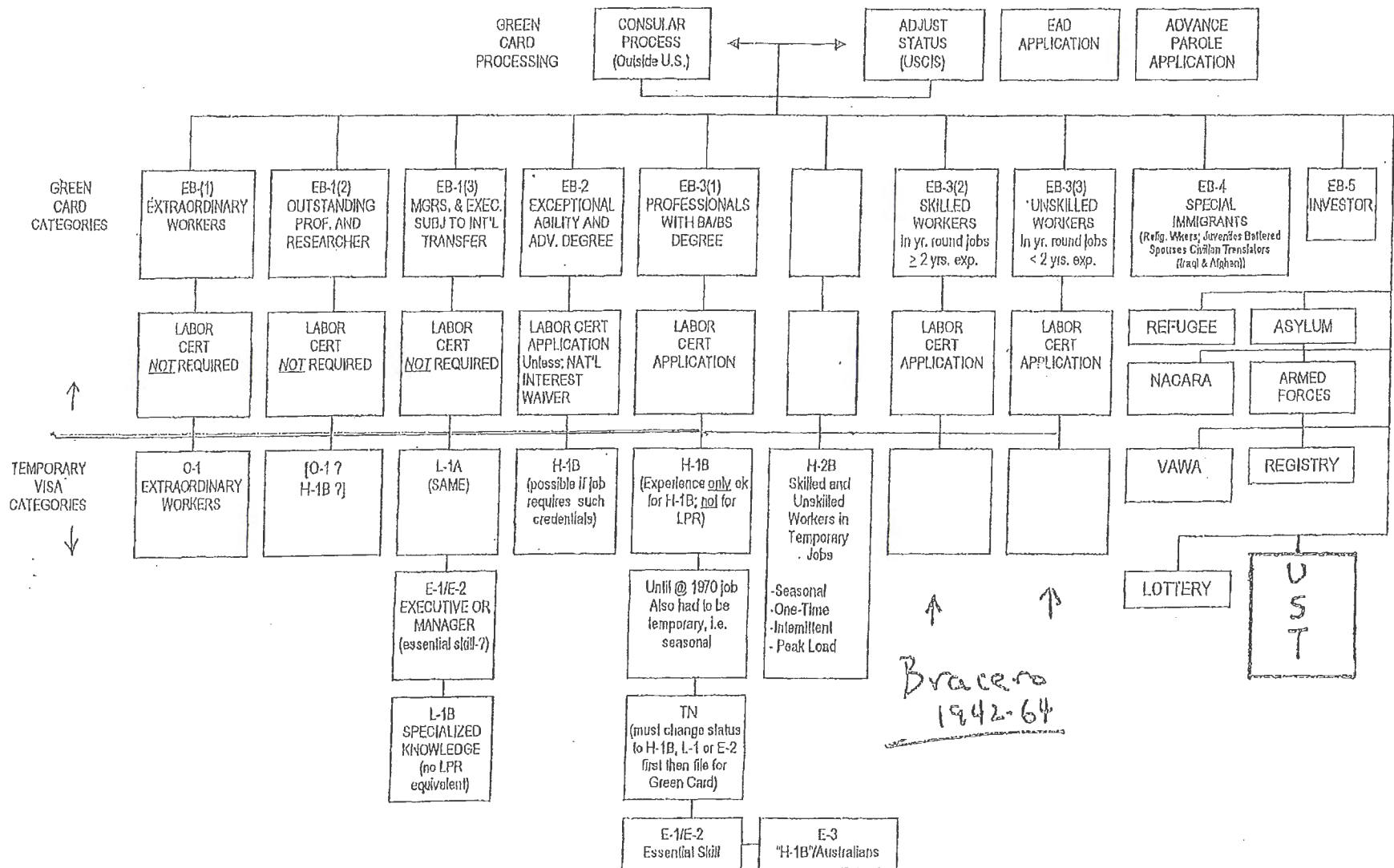
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COMPARISON CHART PERMANENT VS TEMPORARY VISAS (EMPLOYMENT BASED)



Note: Not all temporary visa categories are shown above.

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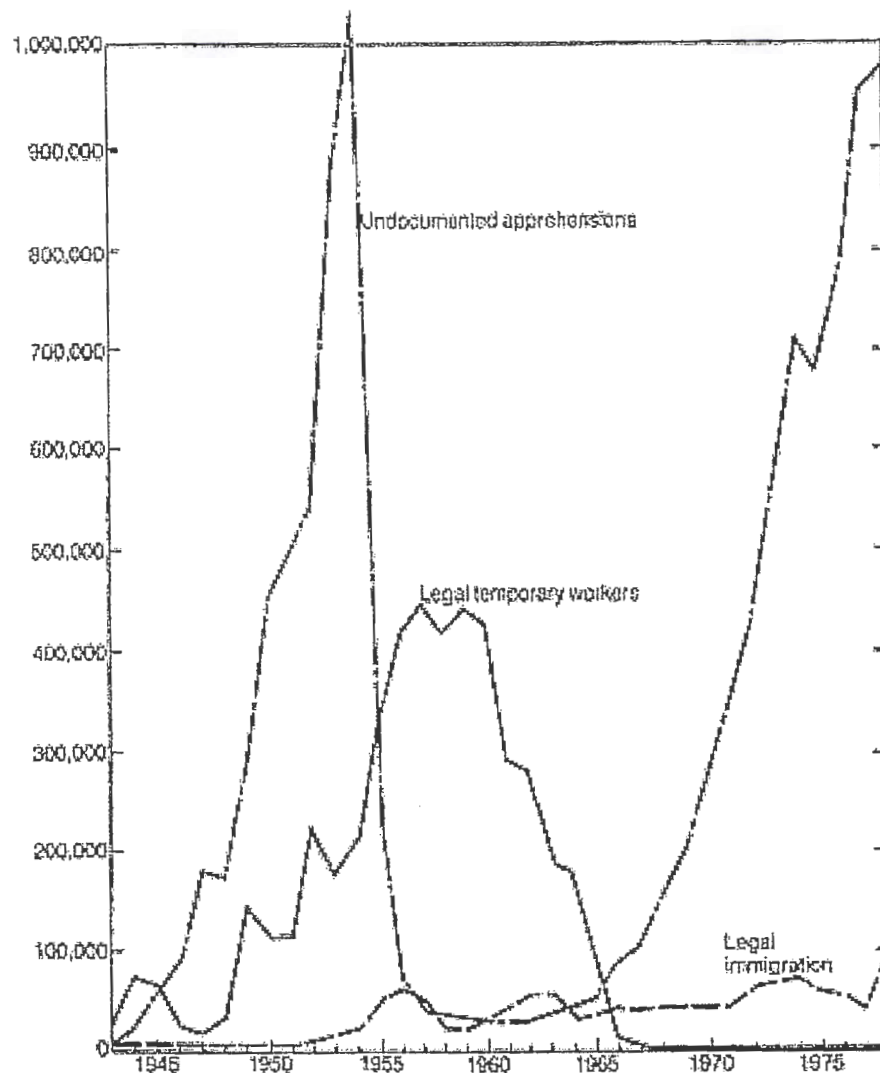
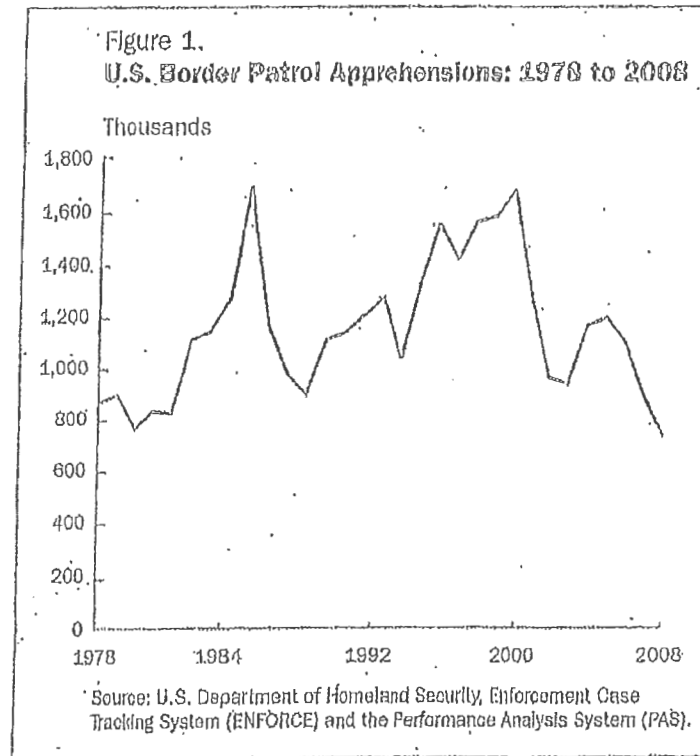


Figure 15.1 Mexican migration to the United States and apprehensions of illegal entrants, 1943-78

Source: Select Commission on Immigration and Refugee Policy, *Staff Report*, 1981, p. 471

ARRESTS ON THE SOUTHERN BORDER (1978-2008)



Subj: **Securing the Border (Again) by John Tierney**
 Date: 6/6/2006 12:30:23 PM Eastern Daylight Time
 From: nolomartinez@gmail.com
 To: gerrychapman@chapman-immig.com, Gmcimm@aol.com

June 6, 2006
 Op-Ed Columnist
 NY Times

Securing the Border (Again)

By JOHN TIERNEY

President Bush heads to New Mexico today to visit his new favorite school, the Border Patrol Academy. He wants it to train thousands more federal agents, but they'll make little difference unless Bush can teach Republicans the lesson learned by agents like Buck Brandemuehl a half century ago — the last time anyone could seriously claim the border was under control.

In the 1950's, federal agents were initially overwhelmed by waves of Mexican farmworkers illegally crossing the border. The number of immigrants apprehended surpassed half a million in 1951 and was approaching 900,000 in 1953, a level roughly comparable to the situation now.

Back then there were fewer than 2,000 federal agents patrolling the borders, less than a fifth the size of today's force. But within two years, the flow of illegal immigrants declined so drastically that the immigration service declared in its 1955 annual report, "The border has been secured."

And it stayed that way the rest of the decade. The number of immigrants caught kept dropping until it reached 45,000 in 1959 — a decline of 95 percent in just six years.

"We really had to scratch for illegals," recalls Brandemuehl, who worked along the New Mexico border in the late 1950's. "We'd do traffic checks and freight-train checks, but we weren't apprehending many people. We'd go camp on the border and look for tracks, but in 30 days you might apprehend only 15 or 20 people, and a lot of them weren't even farmworkers. They were criminals sneaking back and forth to rob ranchers."

What stopped the farmworkers from sneaking across? It wasn't simply the get-tough measures that Republicans are calling for today. Although federal agents did intensify their efforts, conducting sweeps of farms and ranches, immigration officials realized that stricter enforcement wasn't enough.

Along with the crackdown, officials encouraged farmers and ranchers to legally hire Mexican temporary workers called *braceros*. As new rules made it easier to hire *braceros*, the number of these legal workers doubled to more than 400,000 at the same time illegal immigration was plummeting.

"We wanted people to come in the front door, not the back door," Brandemuehl says. The agents' job became simpler not only because there were fewer Mexicans to catch but also because there was more help from American employers. Once farmers and ranchers could legally get the workers they needed, they were more willing to cooperate with agents tracking down illegal immigrants.

Unfortunately, though, Congress started shutting the front door. The *bracero* program became controversial, partly because American labor unions objected to the competition and partly because of concerns that Mexicans were being exploited. Some of the complaints were legitimate, but Congress's response didn't leave immigrants any better off.

They ended up with even fewer rights because they were working illegally after the *bracero* program was restricted in 1960 and then eliminated four years later. As the number of legal workers entering from Mexico dropped during the 1960's, the number of illegal immigrants shot back up, and kept increasing after new limits

were placed on other visas available to Mexicans in 1968.

The border has been out of control ever since, even though the number of agents has grown to 11,000. "Tough enforcement alone can't work unless you allow more people in legally," says Stuart Anderson of the National Foundation for American Policy, who has studied the impact of the bracero program.

Today President Bush and the Senate are trying to apply that lesson by expanding the number of legal immigrants and temporary workers. These visiting workers would have more rights than braceros, which is why the reforms are supported by the United Farm Workers and other unions.

But Republicans in the House are resisting. They say they won't expand legal opportunities until the border is first secured — which will never happen if they have their way.

In 1958, a high-ranking immigration official named James Hennessy was quizzed by a House committee about his agency's success in controlling the border. He said it was due in large part to the increase in legal immigration. When he was asked how his agents would control the border if the bracero program ended, he gave a prescient reply that's more relevant than ever today:

"We can't do the impossible, Mr. Congressman."

--

Dr. H. Nolo Martinez
UNCG Center for New North Carolinians
Assistant Director for Research and Outreach
413 S. Edgeworth Street
Greensboro, NC 27401
Telephone 336-256-1061
nmartinez@uncg.edu

"If you have an opportunity to help others and fail to do so, you are wasting your time on this earth." R. Clemente

Z-no-digital

GOP U.S. Sen. Thom Tillis takes piecemeal approach to immigration

✍ By Bertrand M. Gutiérrez BH Media

🕒 01.26.17

As President Donald Trump on Wednesday moved to build a wall between the United States and Mexico, Republican U.S. Sen. Thom Tillis of North Carolina continued a sustained effort to deal with the 11 million immigrants living in the United States without authorization.

Tillis' approach differs from the one that congressional leaders tried about four years ago, before Tillis was elected. In 2013, the U.S. Senate passed bipartisan comprehensive immigration reform only to see it unravel in the U.S. House. Now, Tillis seeks a piecemeal approach.

"The framework itself is a set of ideas to get the conversation started on how Republicans and Democrats can come together to secure the border and reform our immigration system," Tillis aide Daniel Keylin said.

The framework, he said, "consists of tough but fair proposals to address the undocumented population and reduce illegal immigration moving forward, including imposing penalties for businesses that hire illegals and cracking down on those who abuse our visa system."

With Republicans controlling the House, Senate and White House, Tillis' leadership is "vital," said Bill Stock, an immigration lawyer in Philadelphia and president of the American Immigration Lawyers Association. Pointing to the failed 2013 immigration bill, Stock said that gaining support among Republicans in the House will be important.

"Efforts to move the immigration reform discussion forward were stymied in early 2014 by a minority of Republicans in the House who did not want to move any immigration bill forward," Stock said.

One of the biggest hurdles Tillis will likely face will be drafting legislation that avoids being labeled as amnesty.

"Sen. Tillis is opposed to amnesty, and his framework does not include amnesty," Keylin said.

"Immediately deporting 11 million people is not feasible, and it's why we need to prioritize the removal of bad actors."

Tillis' framework would first focus on two parts: beefing up border security and deporting unauthorized immigrants with serious criminal records. Then the focus would turn toward providing some sort of relief for younger immigrants brought to the United States when they were children.

In 2012, then-President Barack Obama implemented Deferred Action for Childhood Arrivals, or DACA, providing a temporary shield from deportation to certain younger immigrants without serious criminal records who were brought to the United States when they were children.

About 740,000 immigrants nationwide have qualified for DACA.

If anything, the DACA program highlights how difficult it can be to pass immigration legislation, even on a piecemeal basis.

In 2010, when Democrats controlled both the House and Senate, a bipartisan bill known as the DREAM Act focused just on these younger immigrants, and it passed the House by a slim margin. At the time, North Carolina had eight Democratic and five Republican House members. All five Republicans voted against it, as did three Democrats. The other five Democrats voted for it.

But the DREAM Act died in the Senate. Helping to kill the bill were five Democratic U.S. senators, including Kay Hagan of North Carolina, who would say later, during her unsuccessful 2014 re-election campaign against Tillis, that she favored a more comprehensive approach to immigration reform.

Since 2012, when Obama implemented DACA, many congressional Republicans opposed it, including U.S. Rep. Virginia Foxx (R-5th).

"Rather than work to find bipartisan compromise with congressional Republicans, the Obama administration bypassed Congress and illegally created DACA through executive actions," Foxx said. Later, she continued: "It is my hope that Democrats in the House and Senate will work with Republicans to address our broken immigration system in a way that respects the rule of law and treats everyone fairly."

After shoring up agreements on border security and the deportation of immigrants with serious criminal records, Keylin said, other components of Tillis' framework would come into play: enforcing current immigration laws, dealing with older unauthorized immigrants as well as immigrants staying in the United States longer than what their visas allow, and negotiating new work-visa programs.

Jose Hernandez-Paris, the executive director of the Latin American Coalition, based in Charlotte, said that dealing with immigration issues incrementally could yield progress.

"However; it seems immigrant groups and their allies would be giving up a lot with the hope that eventually there would be legislation to provide some sort of relief.

"I believe that his incremental approach would have a better chance of success, if from the beginning both sides are engaged in a negotiation process that allows for mutual concessions and gains. For example, it is not clear if Senator Tillis' plan includes a path to citizenship, which is a non-negotiable for immigrant advocacy groups," Hernandez-Paris said.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 123

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

H123-ABK-9 [v.1]

Page 1 of 2

Amends Title [NO]
First Edition

Date _____, 2017

Representative

Mr. Harrison

moves to amend the bill on page 2, lines 6-7, by adding between the lines a new section to read:

"SECTION 4. G.S. 14-208.12A is amended by adding a new subsection to read:
"§ 14-208.12A. Request for termination of registration requirement.

...
(a4) Notwithstanding subsection (a) and (a1) of this section, any person required to register under this Part solely for a conviction pursuant to G.S. 14-27.33 (sexual battery) for an offense that occurred prior to December 1, 2017 may petition the court to terminate the registration requirement. The petition shall be granted upon a judicial finding that the person is not a danger to the community and requiring the person to register as a sex offender pursuant to this Article would not further the purposes of this Article as stated in G.S. 14-208.5. The provisions of subsection (a2) and (a3) of this section shall apply to petitions filed pursuant to this subsection."

and on page 2, line 7, by deleting the phrase "SECTION 4." and substituting the phrase "SECTION 5.";

and on page 2, line 39, by deleting the phrase "SECTION 5." and substituting the phrase "SECTION 6.";

and on page 2, lines 45-46, by rewriting the lines to read:

"SECTION 7. Section 4 of this act becomes effective December 1, 2017, and expires December 1, 2019. The remainder of this act becomes effective December 1, 2017, and applies to offenses committed on or after that date."



* H 1 2 3 - A B K - 9 - V - 1 *

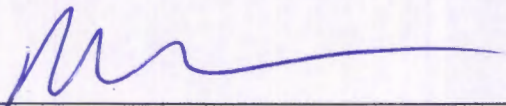
NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 123

H123-ABK-9 [v.1]

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

Page 2 of 2

SIGNED _____


Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____

✓

FAILED _____

TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 123

Short Title: Registration Discretionary for Sexual Battery.

(Public)

Sponsors: Representatives Stevens and Rogers (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

February 20, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE THE REQUIREMENT THAT A PERSON CONVICTED OF A SEXUAL
3 BATTERY REGISTER AS A SEX OFFENDER DISCRETIONARY WITH THE COURT,
4 AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 14-27.33 is amended by adding a new subsection to read:
7 "§ 14-27.33. Sexual battery.

8 (a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal,
9 sexual gratification, or sexual abuse, engages in sexual contact with another person:

- 10 (1) By force and against the will of the other person; or
11 (2) Who is mentally disabled, mentally incapacitated, or physically helpless, and
12 the person performing the act knows or should reasonably know that the other
13 person is mentally disabled, mentally incapacitated, or physically helpless.

14 (b) Any person who commits the offense defined in this section is guilty of a Class A1
15 misdemeanor.

16 (c) When a person is convicted of a violation of this section, the sentencing court shall
17 consider whether the person is a danger to the community and whether requiring the person to
18 register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of
19 that Article as stated in G.S. 14-208.5. At sentencing, the State shall provide all appropriate and
20 competent evidence of the person's danger to the community. Evidence to be considered may
21 include, but is not limited to, age, criminal record, relationship to victim, and a risk assessment
22 conducted by the Division of Adult Correction. If the sentencing court finds that the person is a
23 danger to the community and that the person shall register, then an order shall be entered requiring
24 the person to register."

25 SECTION 2. G.S. 14-208.6(4) reads as rewritten:

26 "(4) "Reportable conviction" means:

27 ...

28 f. A final conviction for a violation of G.S. 14-27.33, only if the court
29 sentencing the individual issues an order pursuant to G.S. 14-27.33(c)
30 requiring the individual to register."

31 SECTION 3. G.S. 14-202(l) reads as rewritten:

32 "(l) When a person violates subsection (d), (e), (f), (g), or (h) of this section, or is convicted
33 of a second or subsequent violation of subsection (a), (a1), or (c) of this section, the sentencing
34 court shall consider whether the person is a danger to the community and whether requiring the
35 person to register as a sex offender pursuant to Article 27A of this Chapter would further the



1 purposes of that Article as stated in G.S. 14-208.5. At sentencing, the State shall provide all
2 appropriate and competent evidence of the person's danger to the community. Evidence to be
3 considered may include, but is not limited to, age, criminal record, relationship to victim, and a
4 risk assessment conducted by the Division of Adult Correction. If the sentencing court rules that
5 the person is a danger to the community and that the person shall register, then an order shall be
6 entered requiring the person to register."

7 **SECTION 4.** G.S. 14-208.6(5) reads as rewritten:

8 "(5) "Sexually violent offense" means a violation of former G.S. 14-27.6 (attempted
9 rape or sexual offense), G.S. 14-27.21 (first-degree forcible rape),
10 G.S. 14-27.22 (second-degree forcible rape), G.S. 14-27.23 (statutory rape of a
11 child by an adult), G.S. 14-27.25(a) (statutory rape of a person who is 15 years
12 of age or younger and where the defendant is at least six years older),
13 G.S. 14-27.26 (first-degree forcible sexual offense), G.S. 14-27.27
14 (second-degree forcible sexual offense), G.S. 14-27.28 (statutory sexual offense
15 with a child by an adult), G.S. 14-27.29 (first-degree statutory sexual offense),
16 G.S. 14-27.30(a) (statutory sexual offense with a person who is 15 years of age
17 or younger and where the defendant is at least six years older), G.S. 14-27.31
18 (sexual activity by a substitute parent or custodian), G.S. 14-27.32 (sexual
19 activity with a student), ~~G.S. 14-27.33 (sexual battery)~~, G.S. 14-43.11 (human
20 trafficking) if (i) the offense is committed against a minor who is less than 18
21 years of age or (ii) the offense is committed against any person with the intent
22 that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a
23 person for sexual servitude), G.S. 14-178 (incest between near relatives),
24 G.S. 14-190.6 (employing or permitting minor to assist in offenses against
25 public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure),
26 G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17
27 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree
28 sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with
29 children), G.S. 14-202.3 (Solicitation of child by computer or certain other
30 electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking
31 indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a
32 prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b)
33 (promoting prostitution of a minor or a mentally disabled person),
34 G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with
35 or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act
36 upon a juvenile by parent or guardian). The term also includes the following: a
37 solicitation or conspiracy to commit any of these offenses; aiding and abetting
38 any of these offenses."

39 **SECTION 5.** G.S. 50-13.1(a1) reads as rewritten:

40 "(a1) Notwithstanding any other provision of law, any person instituting an action or
41 proceeding for custody ex parte who has been convicted of a sexually violent
42 offense as defined in G.S. 14-208.6(5) or who has been convicted of an offense
43 under G.S. 14-27.33 and ordered to register under Article 27A of Chapter 14 of
44 the General Statutes shall disclose the conviction in the pleadings."

45 **SECTION 6.** This act becomes effective December 1, 2017, and applies to offenses
46 committed on or after that date.



HOUSE BILL 123: Registration Discretionary for Sexual Battery.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Reps. Stevens, Rogers
Analysis of: First Edition

Date: March 14, 2017
Prepared by: Susan Sitze
Jessica Sammons
Committee Co-Counsel

OVERVIEW: *House Bill 123 would make registration on the sex offender registry discretionary for a conviction of sexual battery. It would also direct the State to provide evidence of a person's danger to the community to guide the court's discretion in determining whether registration is appropriate for convictions of sexual battery and secret peeping.*

CURRENT LAW: Under the Sex Offender and Public Protection Registration Programs, a person who has been convicted of certain sexual offenses or offenses against a minor is required to maintain registration with the sheriff of the county where the person resides. Depending on the offense, the offender is either required to maintain registration for at least 30 years, with the ability to petition the court for early termination after ten years, or for life.

Sexual battery under G.S. 14-27.33 is a Class A1 misdemeanor, and currently requires mandatory registration as a sex offender.

BILL ANALYSIS:

Section 1: Would provide that when a person is convicted of sexual battery, the court shall 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 the registry. The State must provide appropriate and competent evidence of the person's danger to the community to guide the court in this determination.

Section 2: Would amend the definition of "reportable conviction" to include a final conviction for sexual battery, if the sentencing court orders registration pursuant to G.S. 14-27.33(c).

Section 3: Would amend secret peeping, which currently provides for court discretion for sex offender registration, to direct the State to provide appropriate and competent evidence of the person's danger to the community to guide the court in determining whether the individual must register, using the same language as used for sexual battery.

Section 4: Would remove sexual battery from the list of crimes requiring mandatory sex offender registration.

Section 5: Would require a person who has been convicted of sexual battery and ordered to register as a sex offender to disclose that conviction in the pleadings when instituting an action or proceeding for custody of a child ex parte.

EFFECTIVE DATE: This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

BACKGROUND: House Bill 123 is a recommendation of the North Carolina Courts Commission.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 3-14-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Jonas Cherry
3. Name: Mark Cone
4. Name: Will Crocker
5. Name: _____

Senate Sgt-At Arms:

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



**House Pages
Assignments
Tuesday, March 14, 2017
Session: 2:00 PM**

Committee	Room	Time	Staff	Comments	Member
Insurance	1228/1327	12:00 PM	Eleanor McNamee		Rep. Speaker Tim Moore
			Wilson Moore		Rep. Speaker Tim Moore
Judiciary II	421	1:00 PM	Sophia Sload		Rep. Speaker Tim Moore
			Makenzie Waites		Rep. Sarah Stevens

16

17



18



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

3-14-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Walter Gomez

HOLA NOTICIAS

PADA JARAMA

LA NOTICIA

Carl Hintz

Students For Immigrant Rights

Caroline Miller

AMGA

Angel Sans

Rolivo E Sans

Lamont Wiggins

City of Rocky Mount / NCLM Bd of Directors

Sarah Collins

NCLM

Rebecca Murdock

NC SPAC

John Cooper

Connect C

Peter Daniel

↓

John A/erres

CC Self-Help.



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

3-14-2017

Date

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NAME	FIRM OR AGENCY AND ADDRESS
Josh Lanier	SMU
AARON SANCHEZ	EL PUEBLO/NC STATE
Cheraton Love	NCWU
BRIAN LEWIS	NEW FRAME
Joy Hiles	NC DOT
Laura Edwards	Women Advance
Kris Parks	NCAJ
Emily Walter	Intern to Rep. Fisher
Sarah Gillody	ACLU
Joanne Mahone	NCWU
Becky Jorck	NCWU



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

3-14-2017

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Johanna Reese

NCACC

Wendy Kelly

Focus Carolina

Brent Johnson

NASW-NC

Math Gross

NC Child

Dean Diagrove

CJPC

Suzanna Birdsong

ACU-NC

Tom VITAGLIONE

NC CHILD

Robert PASCHER

NC DOJ

Bill Rowe

NC Justice Center

Jenny Doyle

Immigration Counsel, LLC

fl st

SA



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

3-14-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Brian Irving	Libertarian Party of NC
Edouard Huel	SELF
Victoria Holder	Storero NC
Laura DeVivo	D&S
Elizer Pascoe	El Centro Hispano, Inc
Gerard McChesman	Chesman Law Firm
Kelly Garry	OP
Kelly Garry	El Pueblo
Martin Lopez	El pueblo
Wendy Funes	El pueblo
Gregorio Maldonado	Comite Popular S.R.
Benny Bueh	BOG
Alexander De Leon	El Pueblo



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

3-14-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Rhaegan Jackson

Focus Carolina

Isabel Villa - Grima

NC REALTORS

Cody Thomas

Focus Carolina



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

3-14-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Maria Sanhila

El Pueblo

T. W. Reed

News & Record



**House Committee on Judiciary II
Tuesday, March 21, 2017 at 1:00 PM
Room 421 of the Legislative Office Building**

MINUTES

The House Committee on Judiciary II met at 1:00 PM on March 21, 2017 in Room 421 of the Legislative Office Building. Representatives Blust, Faircloth, Hurley, McGrady, Michaux, Bumgardner, Fisher, Hall, Harrison, and John attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:20 PM. He recognized the Pages and the Sergeants-at-Arms.

The following bills were considered:

HB 138 Revise Gang Laws. (Representatives McNeill, Faircloth, Hurley, R. Turner)

Representative McNeill was recognized to explain the bill. After a brief discussion, Representative Hurley made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

Chairman Blust recognized the following individuals who spoke on the bill:

Mr. Mark Bridgeman, President, NC Gang Investigators Association
Ms. Kimberly Robb, District Attorney, Pitt County
Mr. Jim Stuit, Gang Reduction Manager, Durham, NC

Representative McNeill, Representative John, and Pitt County District Attorney Kimberly Robb will meet with Ms. Susan Sitze, Committee Counsel, to make any necessary changes to the bill before it goes to the House Floor.

HB 128 Prohibit Drone Use Over Prison/Jail. (Representatives McNeill, Torbett, Faircloth)

Representative Faircloth made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative McNeill was recognized to explain the bill. After a lengthy discussion, Representative Hurley made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report.

HB 123 Registration Discretionary for Sexual Battery. (Representatives Stevens, Rogers)

Representative Michaux made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Stevens was recognized to explain the bill. There was a brief discussion. Chairman Blust announced that the bill would be removed from the committee agenda and sent to the NC Courts Commission for review.

HB 122 Discovery Not Disseminated to Defendant. (Representatives Stevens, McNeill, Destin Hall)

Chairman Blust recognized Representative Stevens to explain the bill. Representative McNeill was recognized to make remarks about the bill. Representative Stevens gave further explanation on the bill.

The following individuals were recognized by Chairman Blust to speak on the bill:

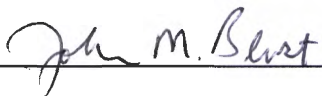
Ms. Lauren Raynor, Attorney, Blachard, Miller, Lewis & Isley, P.A.
Mr. Brad Bannon, Attorney, Patterson/Harkavy, LLP
Mr. Bert Kemp, Member, NC Courts Commission and Public Defender, Pitt County



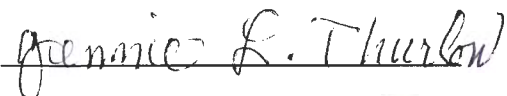
Mr. Mark Bridgeman, President, NC Gang Investigators Association
Representative David Rogers, NC House of Representatives
Mr. Rico Boyce, NC Gang Investigators Association

Chairman Blust announced that the bill would be removed from the committee agenda and sent to the NC Courts Commission for review.

There being no further business, Chairman Blust adjourned the meeting at 2:20 PM.

A handwritten signature in blue ink that reads "John M. Blust". The signature is written over a horizontal line.

Representative John M. Blust, Chairman
Presiding

A handwritten signature in blue ink that reads "Gennie L. Thurlow". The signature is written over a horizontal line.

Gennie L. Thurlow, Committee Clerk



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, March 21, 2017

TIME: 1:00 PM

LOCATION: 421 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 122	Discovery Not Disseminated to Defendant.	Representative Stevens Representative McNeill Representative Destin Hall
HB 123	Registration Discretionary for Sexual Battery.	Representative Stevens Representative Rogers
HB 128	Prohibit Drone Use Over Prison/Jail.	Representative McNeill Representative Torbett Representative Faircloth
HB 138	Revise Gang Laws.	Representative McNeill Representative Faircloth Representative Hurley Representative R. Turner

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 5:30 PM on Wednesday, March 15, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Tuesday, March 21, 2017, 1:00 PM
421 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Representative John M. Blust

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
<u>HB 122</u>	Discovery Not Disseminated to Defendant.	Representative Stevens Representative McNeill Representative Deslin Hall
<u>HB 123</u>	Registration Discretionary for Sexual Battery.	Representative Stevens Representative Rogers
<u>HB 128</u>	Prohibit Drone Use Over Prison/Jail.	Representative McNeill Representative Torbett Representative Faircloth
<u>HB 138</u>	Revise Gang Laws.	Representative McNeill Representative Faircloth Representative Hurley Representative R. Turner

Other Business

Adjournment



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair**

FAVORABLE

HB 138

Revise Gang Laws.

Draft Number:	None
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	McNeill

FAVORABLE COM SUB NO. 2, UNFAVORABLE COM SUB NO. 1

HB 128 (CS#1)

Prohibit Drone Use Over Prison/Jail.

Draft Number:	H128-PCS40258-BG-4
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	McNeill

TOTAL REPORTED: 2



* C M R 9 1 - V - 1 *



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 122

Short Title: Discovery Not Disseminated to Defendant. (Public)

Sponsors: Representatives Stevens, McNeill, and Destin Hall (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

February 20, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE PROTECTION FOR WITNESSES AND VICTIMS BY ENSURING
3 CERTAIN DISCOVERY MATERIALS REMAIN IN THE CONTROL OF DEFENSE
4 COUNSEL AND ARE NOT DISSEMINATED TO THE DEFENDANT, AS
5 RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 15A-903 reads as rewritten:

8 "§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.

9 (a) Upon motion of the defendant, the court must order:

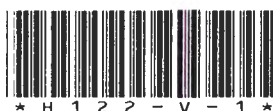
10 (1) The State to make available to the defendant the complete files of all law
11 enforcement agencies, investigatory agencies, and prosecutors' offices involved
12 in the investigation of the crimes committed or the prosecution of the
13 defendant.

14 a. The term "file" includes the defendant's statements, the codefendants'
15 statements, witness statements, investigating officers' notes, results of
16 tests and examinations, or any other matter or evidence obtained during
17 the investigation of the offenses alleged to have been committed by the
18 defendant. When any matter or evidence is submitted for testing or
19 examination, in addition to any test or examination results, all other
20 data, calculations, or writings of any kind shall be made available to the
21 defendant, including, but not limited to, preliminary test or screening
22 results and bench notes.

23 b. The term "prosecutor's office" refers to the office of the prosecuting
24 attorney.

25 bl. The term "investigatory agency" includes any public or private entity
26 that obtains information on behalf of a law enforcement agency or
27 prosecutor's office in connection with the investigation of the crimes
28 committed or the prosecution of the defendant.

29 c. Oral statements shall be in written or recorded form, except that oral
30 statements made by a witness to a prosecuting attorney outside the
31 presence of a law enforcement officer or investigatorial assistant shall
32 not be required to be in written or recorded form unless there is
33 significantly new or different information in the oral statement from a
34 prior statement made by the witness.



- 1 d. ~~The Subject to any restrictions imposed pursuant to sub-subdivision e.~~
2 of this subdivision, the defendant shall have the right to inspect and
3 copy or photograph any materials contained therein and, under
4 appropriate safeguards, to inspect, examine, and test any physical
5 evidence or sample contained therein.
- 6 e. Any time the State provides discovery to defense counsel, the State may
7 also give written notice of discovery designating certain items of
8 discovery that are not to be used by the defendant or his or her attorney
9 for any other purpose than in direct relationship to the case and
10 prohibiting further disclosure of these items. In the notice, the State
11 shall state the grounds for its view that limited disclosure of the
12 designated discovery items is necessary for the protection of witnesses,
13 victims, or officers. Upon receipt of such notice, all items of discovery
14 designated in the notice shall remain in the custody and control of
15 defense counsel. Defense counsel may allow the defendant to view the
16 discovery items designated in the notice and may discuss those items
17 with the defendant but shall not permit the defendant to possess or
18 control any designated discovery items or any copies thereof. If served
19 with a notice by the State pursuant to this sub-subdivision, defense
20 counsel may file a motion with the superior court for such relief from
21 the notice as the interests of justice require. If the defendant is pro se in
22 a case that falls under this sub-subdivision, the State may move for a
23 protective order restricting disclosure by the defendant of specified
24 items of discovery and shall state in its motion the grounds for its view
25 that limited disclosure of the designated discovery items is necessary for
26 the protection of witnesses, victims, or officers.
- 27 (2) The prosecuting attorney to give notice to the defendant of any expert witnesses
28 that the State reasonably expects to call as a witness at trial. Each such witness
29 shall prepare, and the State shall furnish to the defendant, a report of the results
30 of any examinations or tests conducted by the expert. The State shall also
31 furnish to the defendant the expert's curriculum vitae, the expert's opinion, and
32 the underlying basis for that opinion. The State shall give the notice and furnish
33 the materials required by this subsection within a reasonable time prior to trial,
34 as specified by the court. Standardized fee scales shall be developed by the
35 Administrative Office of the Courts and Indigent Defense Services for all
36 expert witnesses and private investigators who are compensated with State
37 funds.
- 38 (3) The prosecuting attorney to give the defendant, at the beginning of jury
39 selection, a written list of the names of all other witnesses whom the State
40 reasonably expects to call during the trial. Names of witnesses shall not be
41 subject to disclosure if the prosecuting attorney certifies in writing and under
42 seal to the court that to do so may subject the witnesses or others to physical or
43 substantial economic harm or coercion, or that there is other particularized,
44 compelling need not to disclose. If there are witnesses that the State did not
45 reasonably expect to call at the time of the provision of the witness list, and as a
46 result are not listed, the court upon a good faith showing shall allow the
47 witnesses to be called. Additionally, in the interest of justice, the court may in
48 its discretion permit any undisclosed witness to testify.
- 49 (b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall
50 be to the same extent as required by subsection (a) of this section.

1 (c) On a timely basis, law enforcement and investigatory agencies shall make available to
2 the prosecutor's office a complete copy of the complete files related to the investigation of the
3 crimes committed or the prosecution of the defendant for compliance with this section and any
4 disclosure under G.S. 15A-902(a). Investigatory agencies that obtain information and materials
5 listed in subdivision (1) of subsection (a) of this section shall ensure that such information and
6 materials are fully disclosed to the prosecutor's office on a timely basis for disclosure to the
7 defendant.

8 (d) Any person who willfully omits or misrepresents evidence or information required to
9 be disclosed pursuant to subdivision (1) of subsection (a) of this section, or required to be
10 provided to the prosecutor's office pursuant to subsection (c) of this section, shall be guilty of a
11 Class H felony. Any person who willfully omits or misrepresents evidence or information required
12 to be disclosed pursuant to any other provision of this section shall be guilty of a Class 1
13 misdemeanor."

14 **SECTION 2.** This act becomes effective December 1, 2017, and applies to offenses
15 committed on or after that date.





HOUSE BILL 122: Discovery Not Disseminated to Defendant.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	March 21, 2017
Introduced by:	Reps. Stevens, McNeill, Destin Hall	Prepared by:	Susan Sitze
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House Bill 122 would provide a process for the State to limit disclosure of certain items in discovery to a defendant.*

CURRENT LAW: G.S. 15A-903 requires that the State make available to a defendant in a criminal case the complete files of all law enforcement agencies, investigatory agencies, and prosecutors' offices involved in the investigation of the crimes committed or the prosecution of the defendant.

BILL ANALYSIS: House Bill 122 would allow the State to give written notice of discovery designating certain items that are not to be used by defendant or the defendant's attorney for any purpose other than in direct relationship to the case and prohibiting further disclosure of those items. The notice shall state grounds for the State's view that limited disclosure is necessary to protect witnesses, victims, or officers. Upon receipt of such notice, the items shall remain in the custody and control of defense counsel. Defendant may view the items, but shall not possess or control them, or have copies of the items. Defense counsel may file a motion with the superior court for relief from the notice as the interests of justice require. If the defendant has no attorney, the State may move for a protective order restricting disclosure by defendant.

EFFECTIVE DATE: This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 123
PROPOSED COMMITTEE SUBSTITUTE H123-CSBK-6 [v.1]

03/15/2017 10:56:36 AM

Short Title: Registration Discretionary for Sexual Battery.

(Public)

Sponsors:

Referred to:

February 20, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE THE REQUIREMENT THAT A PERSON CONVICTED OF A
3 SEXUAL BATTERY REGISTER AS A SEX OFFENDER DISCRETIONARY WITH
4 THE COURT, AS RECOMMENDED BY THE NORTH CAROLINA COURTS
5 COMMISSION.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 14-27.33 is amended by adding a new subsection to read:

8 "§ 14-27.33. Sexual battery.

9 (a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal,
10 sexual gratification, or sexual abuse, engages in sexual contact with another person:

11 (1) By force and against the will of the other person; or

12 (2) Who is mentally disabled, mentally incapacitated, or physically helpless, and
13 the person performing the act knows or should reasonably know that the
14 other person is mentally disabled, mentally incapacitated, or physically
15 helpless.

16 (b) Any person who commits the offense defined in this section is guilty of a Class A1
17 misdemeanor.

18 (c) When a person is convicted of a violation of this section, the sentencing court shall
19 consider whether the person is a danger to the community and whether requiring the person to
20 register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of
21 that Article as stated in G.S. 14-208.5. At sentencing, the State shall provide all appropriate and
22 competent evidence of the person's danger to the community. Evidence to be considered may
23 include, but is not limited to, age, criminal record, relationship to victim, and a risk assessment
24 conducted by the Division of Adult Correction. If the sentencing court finds that the person is a
25 danger to the community and that the person shall register, then an order shall be entered
26 requiring the person to register."

27 SECTION 2. G.S. 14-208.6(4) reads as rewritten:

28 "(4) "Reportable conviction" means:

29 ...

30 f. A final conviction for a violation of G.S. 14-27.33, only if the court
31 sentencing the individual issues an order pursuant to
32 G.S. 14-27.33(c) requiring the individual to register."

33 SECTION 3. G.S. 14-202(l) reads as rewritten:

34 "(l) When a person violates subsection (d), (e), (f), (g), or (h) of this section, or is
35 convicted of a second or subsequent violation of subsection (a), (a1), or (c) of this section, the
36 sentencing court shall consider whether the person is a danger to the community and whether



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1 requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would
2 further the purposes of that Article as stated in G.S. 14-208.5. At sentencing, the State shall
3 provide all appropriate and competent evidence of the person's danger to the community.
4 Evidence to be considered may include, but is not limited to, age, criminal record, relationship
5 to victim, and a risk assessment conducted by the Division of Adult Correction. If the
6 sentencing court rules that the person is a danger to the community and that the person shall
7 register, then an order shall be entered requiring the person to register."

8 **SECTION 4.** G.S. 14-208.12A is amended by adding a new subsection to read:

9 **"§ 14-208.12A. Request for termination of registration requirement.**

10 ...

11 (a4) Notwithstanding subsection (a) and (a1) of this section, any person required to
12 register under this Part solely for a conviction pursuant to G.S. 14-27.33 (sexual battery) for an
13 offense that occurred prior to December 1, 2017 may petition the court to terminate the
14 registration requirement. The petition shall be granted upon a judicial finding that the person is
15 not a danger to the community and requiring the person to register as a sex offender pursuant to
16 this Article would not further the purposes of this Article as stated in G.S. 14-208.5. The
17 provisions of subsection (a2) and (a3) of this section shall apply to petitions filed pursuant to
18 this subsection."

19 **SECTION 5.** G.S. 14-208.6(5) reads as rewritten:

20 "(5) "Sexually violent offense" means a violation of former G.S. 14-27.6
21 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree forcible rape),
22 G.S. 14-27.22 (second-degree forcible rape), G.S. 14-27.23 (statutory rape of
23 a child by an adult), G.S. 14-27.25(a) (statutory rape of a person who is 15
24 years of age or younger and where the defendant is at least six years older),
25 G.S. 14-27.26 (first-degree forcible sexual offense), G.S. 14-27.27
26 (second-degree forcible sexual offense), G.S. 14-27.28 (statutory sexual
27 offense with a child by an adult), G.S. 14-27.29 (first-degree statutory sexual
28 offense), G.S. 14-27.30(a) (statutory sexual offense with a person who is 15
29 years of age or younger and where the defendant is at least six years older),
30 G.S. 14-27.31 (sexual activity by a substitute parent or custodian),
31 G.S. 14-27.32 (sexual activity with a student), ~~G.S. 14-27.33 (sexual~~
32 ~~battery)~~, G.S. 14-43.11 (human trafficking) if (i) the offense is committed
33 against a minor who is less than 18 years of age or (ii) the offense is
34 committed against any person with the intent that they be held in sexual
35 servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual
36 servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6
37 (employing or permitting minor to assist in offenses against public morality
38 and decency), G.S. 14-190.9(a1) (felonious indecent exposure),
39 G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17
40 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third
41 degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent
42 liberties with children), G.S. 14-202.3 (Solicitation of child by computer or
43 certain other electronic devices to commit an unlawful sex act),
44 G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c)
45 or (d) (patronizing a prostitute who is a minor or a mentally disabled
46 person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally
47 disabled person), G.S. 14-318.4(a1) (parent or caretaker commit or permit
48 act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission
49 or allowing of sexual act upon a juvenile by parent or guardian). The term
50 also includes the following: a solicitation or conspiracy to commit any of
51 these offenses; aiding and abetting any of these offenses."

1 **SECTION 6.** G.S. 50-13.1(a1) reads as rewritten:

2 "(a1) Notwithstanding any other provision of law, any person instituting an action
3 or proceeding for custody ex parte who has been convicted of a sexually
4 violent offense as defined in G.S. 14-208.6(5) or who has been convicted of
5 an offense under G.S. 14-27.33 and ordered to register under Article 27A of
6 Chapter 14 of the General Statutes shall disclose the conviction in the
7 pleadings."

8 **SECTION 7.** Section 4 of this act becomes effective December 1, 2017, and
9 expires December 1, 2019. The remainder of this act becomes effective December 1, 2017, and
10 applies to offenses committed on or after that date."





HOUSE BILL 123: Registration Discretionary for Sexual Battery.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Reps. Stevens, Rogers
Analysis of: PCS to First Edition
H123-CSBK-6

Date: March 21, 2017
Prepared by: Susan Sitze
Jessica Sammons
Committee Co-Counsel

OVERVIEW: *House Bill 123 would make registration on the sex offender registry discretionary for a conviction of sexual battery. It would also direct the State to provide evidence of a person's danger to the community to guide the court's discretion in determining whether registration is appropriate for convictions of sexual battery and secret peeping.*

The Proposed Committee Substitute allows for a person convicted of sexual battery prior to the act's effective date to petition the court for termination of the registration requirement within 24 months of the act's effective date.

CURRENT LAW: Under the Sex Offender and Public Protection Registration Programs, a person who has been convicted of certain sexual offenses or offenses against a minor is required to maintain registration with the sheriff of the county where the person resides. Depending on the offense, the offender is either required to maintain registration for at least 30 years, with the ability to petition the court for early termination after ten years, or for life.

Sexual battery under G.S. 14-27.33 is a Class A1 misdemeanor, and currently requires mandatory registration as a sex offender.

BILL ANALYSIS:

Section 1: Would provide that when a person is convicted of sexual battery, the court shall 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 the registry. The State must provide appropriate and competent evidence of the person's danger to the community to guide the court in this determination.

Section 2: Would amend the definition of "reportable conviction" to include a final conviction for sexual battery, if the sentencing court orders registration pursuant to G.S. 14-27.33(c).

Section 3: Would amend secret peeping, which currently provides for court discretion for sex offender registration, to direct the State to provide appropriate and competent evidence of the person's danger to the community to guide the court in determining whether the individual must register, using the same language as used for sexual battery.

Section 4: Would allow any person required to register as a sex offender solely for a sexual battery conviction for an offense that occurred prior the act's effective date to petition the court to terminate the registration requirement. Registration would be terminated upon a finding that the person is not a danger to the community and requiring the person to register as a sex offender would not further the purposes of the registry. This petition must be made within 24 months of this act becoming effective.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House PCS 123

Page 2

Section 5: Would remove sexual battery from the list of crimes requiring mandatory sex offender registration.

Section 6: Would require a person who has been convicted of sexual battery and ordered to register as a sex offender to disclose that conviction in the pleadings when instituting an action or proceeding for custody of a child ex parte.

EFFECTIVE DATE: Section 4 of this act becomes effective December 1, 2017, and expires December 1, 2019. The remainder of this act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

BACKGROUND: House Bill 123 is a recommendation of the North Carolina Courts Commission.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 123

Short Title: Registration Discretionary for Sexual Battery. (Public)

Sponsors: Representatives Stevens and Rogers (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

February 20, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE THE REQUIREMENT THAT A PERSON CONVICTED OF A SEXUAL
3 BATTERY REGISTER AS A SEX OFFENDER DISCRETIONARY WITH THE COURT,
4 AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 14-27.33 is amended by adding a new subsection to read:

7 "§ 14-27.33. Sexual battery.

8 (a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal,
9 sexual gratification, or sexual abuse, engages in sexual contact with another person:

- 10 (1) By force and against the will of the other person; or
11 (2) Who is mentally disabled, mentally incapacitated, or physically helpless, and
12 the person performing the act knows or should reasonably know that the other
13 person is mentally disabled, mentally incapacitated, or physically helpless.

14 (b) Any person who commits the offense defined in this section is guilty of a Class A1
15 misdemeanor.

16 (c) When a person is convicted of a violation of this section, the sentencing court shall
17 consider whether the person is a danger to the community and whether requiring the person to
18 register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of
19 that Article as stated in G.S. 14-208.5. At sentencing, the State shall provide all appropriate and
20 competent evidence of the person's danger to the community. Evidence to be considered may
21 include, but is not limited to, age, criminal record, relationship to victim, and a risk assessment
22 conducted by the Division of Adult Correction. If the sentencing court finds that the person is a
23 danger to the community and that the person shall register, then an order shall be entered requiring
24 the person to register."

25 SECTION 2. G.S. 14-208.6(4) reads as rewritten:

26 "(4) "Reportable conviction" means:

27 ...
28 f. A final conviction for a violation of G.S. 14-27.33, only if the court
29 sentencing the individual issues an order pursuant to G.S. 14-27.33(c)
30 requiring the individual to register."

31 SECTION 3. G.S. 14-202(l) reads as rewritten:

32 "(l) When a person violates subsection (d), (e), (f), (g), or (h) of this section, or is convicted
33 of a second or subsequent violation of subsection (a), (a1), or (c) of this section, the sentencing
34 court shall consider whether the person is a danger to the community and whether requiring the
35 person to register as a sex offender pursuant to Article 27A of this Chapter would further the



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purposes of that Article as stated in G.S. 14-208.5. At sentencing, the State shall provide all appropriate and competent evidence of the person's danger to the community. Evidence to be considered may include, but is not limited to, age, criminal record, relationship to victim, and a risk assessment conducted by the Division of Adult Correction. If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register."

SECTION 4. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of 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. 14-27.23 (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 and where the defendant is at least six years older), G.S. 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 and 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 5. 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. 14-27.33 and ordered to register under Article 27A of Chapter 14 of the General Statutes shall disclose the conviction in the pleadings."

SECTION 6. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 128
Committee Substitute Favorable 3/7/17
PROPOSED COMMITTEE SUBSTITUTE H128-PCS40258-BG-4

Short Title: Prohibit Drone Use Over Prison/Jail.

(Public)

Sponsors:

Referred to:

February 20, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE USE OF AN UNMANNED AIRCRAFT SYSTEM NEAR A
3 LOCAL CONFINEMENT FACILITY OR STATE OR FEDERAL CORRECTIONAL
4 FACILITY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 16B of Chapter 15A of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 15A-300.3. Use of an unmanned aircraft system near a confinement or correctional**
9 **facility prohibited.**

10 (a) Prohibition. – No person, entity, or State agency shall use an unmanned aircraft
11 system within a horizontal distance of 500 feet or a vertical distance of 250 feet from any local
12 confinement facility or State or federal correctional facility. For the purpose of this section,
13 horizontal distance shall extend outward from the furthest exterior building walls, perimeter
14 fences, and permanent fixed perimeter, or from another boundary clearly marked with posted
15 notices. Posted notices shall be conspicuously posted not more than 100 yards apart along a
16 marked boundary and comply with Department of Transportation guidelines.

17 (b) Exceptions. – Unless the use of the unmanned aircraft system is otherwise
18 prohibited under State or federal law, the provisions of subsection (a) of this section do not
19 apply to any of the following:

20 (1) A person operating an unmanned aircraft system with written consent from
21 the official in responsible charge of the facility.

22 (2) A law enforcement officer using an unmanned aircraft system in accordance
23 with G.S. 15A-300.1(c).

24 (3) A public utility, as defined in G.S. 62-3(23), or a provider, as defined in
25 G.S. 146-29.2(a)(6), provided that the public utility or provider complies
26 with all of the following:

27 a. Remains outside a horizontal distance of 100 feet or a vertical
28 distance of 100 feet from any local confinement facility or State or
29 federal correctional facility.

30 b. Notifies the official in responsible charge of the facility at least 24
31 hours prior to operating the unmanned aircraft system.

32 c. Uses the unmanned aircraft system for the purpose of inspecting
33 public utility or provider transmission lines or equipment.



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d. Uses the unmanned aircraft system for commercial purposes pursuant to and in compliance with Federal Aviation Administration regulations, authorizations, or exemptions.

(c) Penalty. – The following penalties apply for violations of subsection (a) of this section:

(1) A person who uses an unmanned aircraft system in violation of subsection (a) of this section for the purpose of delivering a weapon to a local confinement facility or State or federal correctional facility is guilty of a Class H felony, which shall include a fine of one thousand five hundred dollars (\$1,500). For purposes of this subdivision, the term "weapon" is as defined in G.S. 14-401.24(c).

(2) A person who uses an unmanned aircraft system in violation of subsection (a) of this section for the purpose of delivering contraband to a local confinement facility or State or federal correctional facility is guilty of a Class I felony, which shall include a fine of one thousand dollars (\$1,000). For purposes of this subdivision, the term "contraband" includes controlled substances, as defined in G.S. 90-87, cigarettes, alcohol, and communication devices, but does not include weapons.

(3) A person who uses an unmanned aircraft system in violation of subsection (a) of this section for any other purpose is guilty of a Class 1 misdemeanor, which shall include a fine of five hundred dollars (\$500.00).

(d) Seizure, Forfeiture, and Disposition of Seized Property. – A law enforcement agency may seize an unmanned aircraft system and any attached property, weapons, and contraband used in violation of this section. An unmanned aircraft system used in violation of this section and seized by a law enforcement agency is subject to forfeiture and disposition pursuant to G.S. 18B-504. An innocent owner or holder of a security interest applying to the court for release of the unmanned aircraft system, in accordance with G.S. 18B-504(h), shall also provide proof of ownership or security interest and written certification that the unmanned aircraft system will not be returned to the person who was charged with the violation of subsection (a) of this section. The court shall forfeit and dispose of any other property, weapons, or contraband seized by a law enforcement agency in connection with a violation of this section pursuant to G.S. 18B-504, 14-269.1, 90-112, or any combination thereof."

SECTION 2. For the purpose of restricting the operation of an unmanned aircraft system in accordance with Section 1 of this act, the Division of Aviation of the Department of Transportation shall petition the Federal Aviation Administration (FAA) to designate any local confinement facility or State or federal correctional facility in the State as a fixed site facility, pursuant to rules and regulations adopted pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016, Public Law No. 114-190. The Division shall follow all guidance from the FAA in submitting and processing the petition. The Division shall publish designations by the FAA in accordance with this act on the Division Web site.

SECTION 3. The Division of Aviation of the Department of Transportation shall develop guidelines for the content and dimensions for posted notices to mark boundaries in accordance with Section 1 of this act.

SECTION 4. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

H

D

HOUSE BILL 128

Committee Substitute Favorable 3/7/17

PROPOSED COMMITTEE SUBSTITUTE H128-CSBG-4 [v.11]

03/20/2017 06:20:14 PM

Short Title: Prohibit Drone Use Over Prison/Jail.

(Public)

Sponsors:

Referred to:

February 20, 2017

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF AN UNMANNED AIRCRAFT SYSTEM NEAR A LOCAL CONFINEMENT FACILITY OR STATE OR FEDERAL CORRECTIONAL FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-300.3. Use of an unmanned aircraft system near a confinement or correctional facility prohibited.

(a) Prohibition. – No person, entity, or State agency shall use an unmanned aircraft system within a horizontal distance of 500 feet or a vertical distance of 250 feet from any local confinement facility or State or federal correctional facility. For the purpose of this section, horizontal distance shall extend outward from the furthest exterior building walls, perimeter fences, and permanent fixed perimeter, or from another boundary clearly marked with posted notices. Posted notices shall be conspicuously posted not more than 100 yards apart along a marked boundary and comply with Department of Transportation guidelines.

(b) Exceptions. – Unless the use of the unmanned aircraft system is otherwise prohibited under State or federal law, the provisions of subsection (a) of this section do not apply to any of the following:

(1) A person operating an unmanned aircraft system with written consent from the official in responsible charge of the facility.

(2) A law enforcement officer using an unmanned aircraft system in accordance with G.S. 15A-300.1(c).

(3) A public utility, as defined in G.S. 62-3(23), or a provider, as defined in G.S. 146-29.2(a)(6), provided that the public utility or provider complies with all of the following:

a. Remains outside a horizontal distance of 100 feet or a vertical distance of 100 feet from any local confinement facility or State or federal correctional facility.

b. Notifies the official in responsible charge of the facility at least twenty-four hours prior to operating the unmanned aircraft system.

c. Uses the unmanned aircraft system for the purpose of inspecting public utility or provider transmission lines or equipment.



d. Uses the unmanned aircraft system for commercial purposes pursuant to and in compliance with Federal Aviation Administration regulations, authorizations, or exemptions.

(c) Penalty. – The following penalties apply for violations of subsection (a) of this section:

(1) A person who uses an unmanned aircraft system in violation of subsection (a) of this section for the purpose of delivering a weapon to a local confinement facility or State or federal correctional facility is guilty of a Class H felony, which shall include a fine of one thousand five hundred dollars (\$1,500). For purposes of this subdivision, the term "weapon" is as defined in G.S. 14-401.24(c).

(2) A person who uses an unmanned aircraft system in violation of subsection (a) of this section for the purpose of delivering contraband to a local confinement facility or State or federal correctional facility is guilty of a Class I felony, which shall include a fine of one thousand dollars (\$1,000). For purposes of this subdivision, the term "contraband" includes controlled substances, as defined in G.S. 90-87, cigarettes, alcohol, and communication devices, but does not include weapons.

(3) A person who uses an unmanned aircraft system in violation of subsection (a) of this section for any other purpose is guilty of a Class 1 misdemeanor, which shall include a fine of five hundred dollars (\$500.00).

(d) Seizure, Forfeiture, and Disposition of Seized Property. – A law enforcement agency may seize an unmanned aircraft system and any attached property, weapons, and contraband used in violation of this section. An unmanned aircraft system used in violation of this section and seized by a law enforcement agency is subject to forfeiture and disposition pursuant to G.S. 18B-504. An innocent owner or holder of a security interest applying to the court for release of the unmanned aircraft system, in accordance with G.S. 18B-504(h), shall also provide proof of ownership or security interest and written certification that the unmanned aircraft system will not be returned to the person who was charged with the violation of subsection (a) of this section. The court shall forfeit and dispose of any other property, weapons, or contraband seized by a law enforcement agency in connection with a violation of this section pursuant to G.S. 18B-504, 14-269.1, 90-112, or any combination thereof."

SECTION 2. For the purpose of restricting the operation of an unmanned aircraft system in accordance with Section 1 of this act, the Division of Aviation of the Department of Transportation shall petition the Federal Aviation Administration (FAA) to designate any local confinement facility or State or federal correctional facility in the State as a fixed site facility, pursuant to rules and regulations adopted pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016, Public Law No. 114-190. The Division shall follow all guidance from the FAA in submitting and processing the petition. The Division shall publish designations by the FAA in accordance with this act on the Division Web site.

SECTION 3. The Division of Aviation of the Department of Transportation shall develop guidelines for the content and dimensions for posted notices to mark boundaries in accordance with Section 1 of this act.

SECTION 4. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.



HOUSE BILL 128: Prohibit Drone Use Over Prison/Jail.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	March 21, 2017
Introduced by:	Reps. McNeill, Torbett, Faircloth	Prepared by:	Susan Sitze
Analysis of:	PCS to Second Edition		Howard Marsilio
	H128-CSBG-4		Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) would create multiple criminal offenses making it unlawful for a person to use an unmanned aircraft system (UAS) near local confinement facilities or State or federal correctional facilities. The PCS would also require the Division of Aviation of the Department of Transportation, to petition the Federal Aviation Administration to designate these facilities as fixed site facilities and develop the guidelines for notices for marked boundaries.*

CURRENT LAW: The following UAS related offenses make it unlawful to:

- Interfere with manned aircraft, G.S. 14-280.3 Interference with manned aircraft by unmanned aircraft systems. This offense is a Class H felony.
- Possess or use a UAS that has a weapon attached, G.S. 14-401.24(a) Unlawful possession and use of unmanned aircraft systems. This offense is a Class E felony.
- Fish or hunt using a UAS unless an exception for possession or use that is authorized by federal law or regulation applies, G.S. 14-401.24(b) Unlawful possession and use of unmanned aircraft systems. This offense is a Class 1 misdemeanor.
- Publish or disseminate thermal or infrared images revealing individuals, materials, or activities inside of a structure taken by a UAS, G.S. 14-401.25 Unlawful distribution of images. This offense is a Class A1 misdemeanor.
- Intentionally interfere with the lawful taking of wildlife resources with a UAS, G.S. 113-295 Unlawful harassment of persons taking wildlife resources. This offense is a Class 1 misdemeanor.
- Operate a UAS in this State for commercial purposes without a permit, G.S. 63-96 Permit required for commercial operation of unmanned aircraft systems. This offense is a Class 1 misdemeanor.

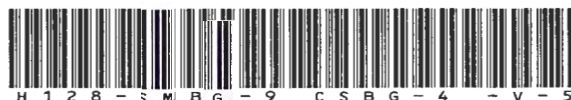
BILL ANALYSIS:

SECTION 1 - This PCS would make unauthorized UAS use within a horizontal distance of 500 feet from buildings, a fixed perimeter, or a marked boundary, or a vertical distance of 250 feet of local confinement facilities or State or federal correctional facilities unlawful.

The following uses would not be violations, unless otherwise prohibited by State or federal law:

- A person using a UAS with written consent from the facility.

Karen Cochrane-Brown
Director



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House PCS 128

Page 2

- An authorized law enforcement use pursuant to G.S. 15A-300.1(c).
- A public utility or wireless signal provider using a UAS for inspecting lines and equipment with proper notice to the facility and maintaining a horizontal and vertical a distance of 100 feet or more from the facility.

This PCS would create the following new criminal offenses:

- A Class H felony, and a fine of one thousand five hundred dollars (\$1,500), for a violation for the purpose of delivering a weapon.
- A Class I felony, and a fine of one thousand dollars (\$1,000), for a violation for the purpose of delivering contraband. For the purpose of this subdivision, the term "contraband" includes controlled substances, cigarettes, alcohol, and communication devices, but does not include weapons.
- A Class 1 misdemeanor, and a fine of five hundred dollars (\$500.00), for a violation for any other purpose.

This PCS would also authorize law enforcement to seize a UAS and property used in connection with a violation. A UAS and other property seized in connection with a violation may be forfeited. Unmanned aircraft systems would be forfeited pursuant to G.S. 18B-504 (forfeiture of conveyances used to conceal, convey, or transport intoxicating beverages). Other property, weapons, or contraband would be forfeited pursuant to G.S. 18B-504, G.S. 14-269.1 (confiscation and disposition of deadly weapons), or G.S. 90-112 (forfeiture related to controlled substances).

The proceeds of seized property disposed of by sale for a violation of this act would be paid to the school fund in accordance with Article IX, Section 7 of the Constitution of North Carolina.

SECTION 2 would require the Division of Aviation of the Department of Transportation to petition the Federal Aviation Administration to designate these facilities as fixed site facilities pursuant to the Extension, Safety, and Security Act of 2016.

SECTION 3 would require the Division to develop guidelines for the content and dimensions for posted notices for marked boundaries around facilities.

EFFECTIVE DATE: This act would become effective December 1, 2017, and would apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

2

HOUSE BILL 128
Committee Substitute Favorable 3/7/17

Short Title: Prohibit Drone Use Over Prison/Jail.

(Public)

Sponsors:

Referred to:

February 20, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE USE OF AN UNMANNED AIRCRAFT SYSTEM NEAR A
3 LOCAL CONFINEMENT FACILITY OR STATE OR FEDERAL CORRECTIONAL
4 FACILITY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 16B of Chapter 15A of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 15A-300.3. Use of an unmanned aircraft system near a confinement or correctional**
9 **facility prohibited.**

10 (a) Prohibition. – Except for a law enforcement officer using an unmanned aircraft system
11 in accordance with G.S. 15A-300.1(c), no person, entity, or State agency shall use an unmanned
12 aircraft system within a horizontal distance of 500 feet or a vertical distance of 250 feet from any
13 local confinement facility or State or federal correctional facility unless (i) written consent is
14 obtained from the official in responsible charge of the facility and (ii) use of the unmanned aircraft
15 system is not otherwise prohibited under State or federal law.

16 (b) Penalty. – The following penalties apply for violations of subsection (a) of this section:

17 (1) A person who uses an unmanned aircraft system in violation of subsection (a)
18 of this section for the purpose of delivering a weapon to a local confinement
19 facility or State or federal correctional facility is guilty of a Class H felony,
20 which shall include a fine of one thousand five hundred dollars (\$1,500). For
21 purposes of this subdivision, the term "weapon" is as defined in G.S. 14-401.24.

22 (2) A person who uses an unmanned aircraft system in violation of subsection (a)
23 of this section for the purpose of delivering contraband to a local confinement
24 facility or State or federal correctional facility is guilty of a Class I felony,
25 which shall include a fine of one thousand dollars (\$1,000). For purposes of this
26 subdivision, the term "contraband" includes controlled substances, as defined in
27 G.S. 90-87, cigarettes, alcohol, and communication devices, but does not
28 include weapons.

29 (3) A person who uses an unmanned aircraft system in violation of subsection (a)
30 of this section for any other purpose is guilty of a Class 1 misdemeanor, which
31 shall include a fine of five hundred dollars (\$500.00).

32 (c) Forfeiture and Disposition of Seized Property. – An unmanned aircraft system used in
33 violation of this section and seized by a law enforcement agency is subject to forfeiture and
34 disposition as prescribed by G.S. 18B-504. An innocent owner or holder of a security interest
35 applying to the court for release of the unmanned aircraft system, in accordance with
36 G.S. 18B-504(h), shall also provide proof of ownership or security interest and written



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1 certification that the unmanned aircraft system will not be returned to the person who was charged
2 with the violation of subsection (a) of this section. Any property, weapons, or contraband seized
3 by a law enforcement agency in connection with a violation of this section is subject to forfeiture
4 and disposition as prescribed by either G.S. 18B-504, 14-269.1, 90-112, or any combination
5 thereof by order of the court."

6 **SECTION 2.** This act becomes effective December 1, 2017, and applies to offenses
7 committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 138

Short Title: Revise Gang Laws. (Public)

Sponsors: Representatives McNeill, Faircloth, Hurley, and R. Turner (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

February 21, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO STANDARDIZE CRITERIA FOR CLASSIFICATION OF CRIMINAL GANG
3 MEMBERSHIP, CREATE A SENTENCING ENHANCEMENT FOR CERTAIN CRIMES
4 PERPETRATED BY GANG MEMBERS, AND INCREASE THE PENALTIES FOR
5 CERTAIN GANG-RELATED OFFENSES.

6 Whereas, the General Assembly finds that it is the right of every person to be secure
7 and protected from fear, intimidation, and physical harm caused by the activities of criminal
8 gangs; and

9 Whereas, the General Assembly also recognizes the constitutional right of every citizen
10 to harbor and express beliefs on any lawful subject whatsoever and to lawfully associate with
11 others who share similar beliefs; and

12 Whereas, the General Assembly finds a need for enhanced punishment of criminal
13 gang activity to afford adequate protection of the people of North Carolina from the harms caused
14 by criminal gangs; and

15 Whereas, it is the intent of the General Assembly to outlaw certain conduct associated
16 with the existence and proliferation of criminal gangs and provide enhanced criminal penalties
17 when crimes are committed in the course of criminal gang activity; Now, therefore,
18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** G.S. 14-50.16 is repealed.

20 **SECTION 2.** The title for Article 13A of Chapter 14 of the General Statutes reads as
21 rewritten:

22 "North Carolina ~~Street~~Criminal Gang Suppression Act."

23 **SECTION 3.** G.S. 14-50.15 reads as rewritten:

24 "**§ 14-50.15. Short title.**

25 This Article shall be known and may be cited as the "North Carolina ~~Street~~Criminal Gang
26 Suppression Act."

27 **SECTION 4.** Article 13A of Chapter 14 of the General Statutes is amended by adding
28 a new section to read:

29 "**§ 14-50.16A. Criminal gang activity.**

30 Definitions. – The following definitions apply in this Article:

31 (1) Criminal gang. – Any ongoing organization, association, or group of three or
32 more persons, whether formal or informal, that (i) has as one of its primary
33 activities the commission of criminal or delinquent acts and (ii) shares a
34 common name, identification, signs, symbols, tattoos, graffiti, attire, or other
35 distinguishing characteristics, including common activities, customs, or



- 1 behaviors. The term shall not include three or more persons associated in fact,
2 whether formal or informal, who are not engaged in criminal gang activity.
- 3 (2) Criminal gang activity. – The commission of, attempted commission of, or
4 solicitation, coercion, or intimidation of another person to commit (i) any
5 offense under Article 5 of Chapter 90 of the General Statutes or (ii) any offense
6 under Chapter 14 of the General Statutes except Article 9, 22A, 40, 46, or 59
7 thereof, and further excepting G.S. 14-82, 14-145, 14-183, 14-184, 14-186,
8 14-190.9, 14-247, 14-248, or 14-313 thereof, and either of the following
9 conditions is met:
- 10 a. The offense is committed with the intent to benefit, promote, or further
11 the interests of a criminal gang or for the purposes of increasing a
12 person's own standing or position within a criminal gang.
- 13 b. The participants in the offense are identified as criminal gang members
14 acting individually or collectively to further any criminal purpose of a
15 criminal gang.
- 16 (3) Criminal gang leader or organizer. – Any criminal gang member who acts in
17 any position of management with regard to the criminal gang and who meets
18 two or more of the following criteria:
- 19 a. Exercises decision-making authority over matters regarding a criminal
20 gang.
- 21 b. Participates in the direction, planning, organizing, or commission of
22 criminal gang activity.
- 23 c. Recruits other gang members.
- 24 d. Receives a larger portion of the proceeds of criminal gang activity.
- 25 e. Exercises control and authority over other criminal gang members.
- 26 (4) Criminal gang member. – Any person who meets three or more of the following
27 criteria:
- 28 a. The person admits to being a member of a criminal gang.
- 29 b. The person is identified as a criminal gang member by a reliable source,
30 including a parent or a guardian.
- 31 c. The person has been previously involved in criminal gang activity.
- 32 d. The person has adopted symbols, hand signs, or graffiti associated with
33 a criminal gang.
- 34 e. The person has adopted the display of colors or the style of dress
35 associated with a criminal gang.
- 36 f. The person is in possession of or linked to a criminal gang by physical
37 evidence, including photographs, ledgers, rosters, written or electronic
38 communications, or membership documents.
- 39 g. The person has tattoos or markings associated with a criminal gang.
- 40 h. The person has adopted language or terminology associated with a
41 criminal gang.
- 42 i. The person appears in any form of social media to promote a criminal
43 gang."

44 **SECTION 5.** Article 81B of Chapter 15A of the General Statutes is amended by
45 adding a new section to read:

46 **"§ 15A-1340.16E. Enhanced sentence for offenses committed by criminal gang members as a**
47 **part of criminal gang activity.**

48 (a) Except as otherwise provided in subsection (b) of this section, if a person is convicted
49 of any felony other than a Class A, B1, or B2 felony, and it is found that the offense was
50 committed as part of criminal gang activity as defined in G.S. 14-50.16A(2), then the person shall

be sentenced at a felony class level one class higher than the principal felony for which the person was convicted.

(b) If subsection (a) of this section applies and the person is found to be a criminal gang leader or organizer as defined in G.S. 14-50.16A(3), the person shall be sentenced at a felony class level two classes higher than the principal felony for which the person was convicted.

(c) No defendant sentenced pursuant to this section shall be sentenced at a level higher than a Class C felony. Any sentence imposed under this section shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

(d) An indictment or information for the felony shall allege in that indictment or information the facts that qualify the offense for an enhancement under this section. One pleading is sufficient for all felonies that are tried at a single trial.

(e) The State shall prove the issues set out under subsection (a) or (b) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony, unless the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues alleged, then a jury shall be impaneled to determine the issues.

(f) This section shall not apply to any gang offense included under Article 13A of Chapter 14 of the General Statutes."

SECTION 6. G.S. 14-34.9 reads as rewritten:

"§ 14-34.9. Discharging a firearm from within an enclosure.

Unless covered under some other provision of law providing greater punishment, any person who willfully or wantonly discharges or attempts to discharge a firearm, as a part of ~~a pattern of criminal street gang activity~~, criminal gang activity, from within any building, structure, motor vehicle, or other conveyance, erection, or enclosure toward a person or persons not within that enclosure shall be punished as a Class E felon."

SECTION 7. G.S. 14-50.17 reads as rewritten:

"§ 14-50.17. Soliciting; encouraging participation.

(a) It is unlawful for any person to cause, encourage, solicit, or coerce a person 16 years of age or older to participate in criminal ~~street~~-gang activity.

(b) A violation of this section is a Class H felony."

SECTION 8. G.S. 14-50.18 reads as rewritten:

"§ 14-50.18. Soliciting; encouraging participation; minor.

(a) It is unlawful for any person to cause, encourage, solicit, or coerce a person under 16 years of age to participate in criminal ~~street~~-gang activity.

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

(c) Nothing in this section shall preclude a person who commits a violation of this section from criminal culpability for the underlying offense committed by the minor under any other provision of law."

SECTION 9. G.S. 14-50.19 reads as rewritten:

"§ 14-50.19. Threats to deter from gang withdrawal.

(a) It is unlawful for any person to communicate a threat of injury to a person, or to damage the property of another, with the intent to deter a person from assisting another to withdraw from membership in a criminal ~~street~~-gang.

(b) A violation of this section is a Class ~~H felony~~-F felony."

SECTION 10. G.S. 14-50.20 reads as rewritten:

"§ 14-50.20. Threats of punishment or retaliation.

(a) It is unlawful for any person to communicate a threat of injury to a person, or to damage the property of another, as punishment or retaliation against a person for having withdrawn from a criminal ~~street~~-gang.

(b) A violation of this section is a Class ~~H felony~~-F felony."

SECTION 11. G.S. 14-50.22 reads as rewritten:

1 **"§ 14-50.22. Enhanced offense for misdemeanor criminal gang activity.**

2 A person age 15 or older who is convicted of a misdemeanor offense that is committed for the
3 benefit of, at the direction of, or in association with, any criminal ~~street~~-gang is guilty of an
4 offense that is one class higher than the offense committed. A Class A1 misdemeanor shall be
5 enhanced to a Class I felony under this section."

6 **SECTION 12.** G.S. 14-50.23 reads as rewritten:

7 **"§ 14-50.23. Contraband, seizure, and forfeiture.**

8 (a) All property of every kind used or intended for use in the course of, derived from, or
9 realized through criminal ~~street~~-gang activity ~~or a pattern of criminal street-gang activity~~ is subject
10 to the seizure and forfeiture provisions of G.S. 14-2.3.

11 (b) In any action under this section, the court may enter a restraining order in connection
12 with any interest that is subject to forfeiture.

13 (c) Innocent Activities. – The provisions of this section shall not apply to property used for
14 criminal ~~street~~-gang activity where the owner or person who has legal possession of the property
15 does not have actual knowledge that the property is being used for criminal ~~street~~-gang activity."

16 **SECTION 13.** G.S. 14-50.25 reads as rewritten:

17 **"§ 14-50.25. Reports of disposition; criminal street-gang activity.**

18 When a defendant is found guilty of a criminal offense, other than an offense under
19 G.S. 14-50.16 through G.S. 14-50.20, the presiding judge shall determine whether the offense
20 involved criminal ~~street~~-gang activity. If the judge so determines, then the judge shall indicate on
21 the form reflecting the judgment that the offense involved criminal ~~street~~-gang activity. The clerk
22 of court shall ensure that the official record of the defendant's conviction includes a notation of the
23 court's determination."

24 **SECTION 14.** The title for Article 13B of Chapter 14 of the General Statutes reads as
25 rewritten:

26 "North Carolina ~~Street~~Criminal Gang Nuisance Abatement Act."

27 **SECTION 15.** G.S. 14-50.42 reads as rewritten:

28 **"§ 14-50.42. Real property used by criminal ~~street~~-gangs declared a public nuisance:
29 abatement.**

30 (a) Public Nuisance. – Any real property that is erected, established, maintained, owned,
31 leased, or used by any criminal ~~street~~-gang for the purpose of conducting criminal ~~street~~-gang
32 activity, as defined in ~~G.S. 14-50.16(e)~~, G.S. 14-50.16A(2), shall constitute a public nuisance and
33 may be abated as provided by and subject to the provisions of Article 1 of Chapter 19 of the
34 General Statutes.

35 (b) Innocent Activities. – The provisions of this section shall not apply to real property
36 used for criminal ~~street~~-gang activity where the owner or person who has legal possession of the
37 real property does not have actual knowledge that the real property is being used for criminal
38 ~~street~~-gang activity or the owner is being coerced into allowing the property to be used for
39 criminal ~~street~~-gang activity."

40 **SECTION 16.** G.S. 14-50.43 reads as rewritten:

41 **"§ 14-50.43. ~~Street~~gangsCriminal gangs declared a public nuisance.**

42 (a) A ~~street~~criminal gang, as defined in ~~G.S. 14-50.16(b)~~, G.S. 14-50.16A(a), that regularly
43 engages in criminal ~~street~~-gang activities, ~~activity~~, as defined in
44 G.S. 14-50.16(e), G.S. 14-50.16A(2), constitutes a public nuisance. For the purposes of this
45 section, the term "regularly" means at least five times in a period of not more than 12 months.

46 (b) Any person who regularly associates with others to engage in criminal ~~street~~-gang
47 activity, as defined in ~~G.S. 14-50.16(e)~~, G.S. 14-50.16A(2), may be made a defendant in a suit,
48 brought pursuant to Chapter 19 of the General Statutes, to abate any public nuisance resulting
49 from criminal ~~street~~-gang activity.

50 (c) If the court finds that a public nuisance exists under this section, the court may enter an
51 order enjoining the defendant in the suit from engaging in criminal ~~street~~-gang activities and

1 impose other reasonable requirements to prevent the defendant or a gang from engaging in future
2 criminal ~~street-gang~~ activities.

3 (d) An order entered under this section shall expire ~~one year~~three years after entry unless
4 extended by the court for good cause established by the plaintiff after a hearing. The order may be
5 modified, rescinded, or vacated at any time prior to its expiration date upon the motion of any
6 party if it appears to the court that one or more of the defendants is no longer engaging in criminal
7 ~~street-gang~~ activities."

8 **SECTION 17.** G.S. 15A-1340.16(d) reads as rewritten:

9 **"§ 15A-1340.16. Aggravated and mitigated sentences.**

10 ...

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

12 ...

13 (2a) The offense was committed for the benefit of, or at the direction of, any
14 criminal ~~street-gang~~ as defined by G.S. 14-50.16A(1), with the specific
15 intent to promote, further, or assist in any criminal conduct by gang members,
16 and the defendant was not charged with committing a conspiracy. ~~A "criminal~~
17 ~~street-gang" means any ongoing organization, association, or group of three or~~
18 ~~more persons, whether formal or informal, having as one of its primary~~
19 ~~activities the commission of felony or violent misdemeanor offenses, or~~
20 ~~delinquent acts that would be felonies or violent misdemeanors if committed by~~
21 ~~an adult, and having a common name or common identifying sign, colors, or~~
22 ~~symbols.~~

23"

24 **SECTION 18.** G.S. 15A-1343(b1) reads as rewritten:

25 **"§ 15A-1343. Conditions of probation.**

26 ...

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

30 ...

31 (9b) Any or all of the following conditions relating to ~~street~~criminal gangs as
32 defined in ~~G.S. 14-50.16(b);~~ G.S. 14-50.16A(1):

- 33 a. Not knowingly associate with any known ~~street~~criminal gang members
34 and not knowingly be present at or frequent any place or location where
35 ~~street~~criminal gangs gather or where ~~street~~criminal gang activity is
36 known to occur.
- 37 b. Not wear clothes, jewelry, signs, symbols, or any paraphernalia readily
38 identifiable as associated with or used by a ~~street~~criminal gang.
- 39 c. Not initiate or participate in any contact with any individual who was or
40 may be a witness against or victim of the defendant or the defendant's
41 ~~street~~criminal gang.

42"

43 **SECTION 19.** G.S. 15A-533(e) reads as rewritten:

44 **"§ 15A-533. Right to pretrial release in capital and noncapital cases.**

45 ...

46 (e) There shall be a rebuttable presumption that no condition of release will reasonably
47 assure the appearance of the person as required and the safety of the community, if a judicial
48 official finds ~~all of~~ the following:

- 49 (1) There is reasonable cause to believe that the person committed an offense for
50 the benefit of, at the direction of, or in association with, any criminal ~~street~~
51 gang, as defined in ~~G.S. 14-50.16;~~ G.S. 14-50.16A(1).

- 1 (2) The offense described in subdivision (1) of this subsection was committed
2 while the person was on pretrial release for another ~~offense; and offense.~~
3 (3) The person (i) has been previously convicted of an offense described in
4 ~~G.S. 14-50.16 through G.S. 14-50.20, G.S. 14-50.16 through G.S. 14-50.20 or~~
5 (ii) has been convicted of a criminal offense and received an enhanced sentence
6 for that offense pursuant to G.S. 15A-1340.16E, and not more than five years
7 has elapsed since the date of conviction or the person's release for the offense,
8 whichever is later."

9 **SECTION 20.** This act becomes effective December 1, 2017, and applies to offenses
10 committed on or after that date.



HOUSE BILL 138: Revise Gang Laws.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	March 21, 2017
Introduced by:	Reps. McNeill, Faircloth, Hurley, R. Turner	Prepared by:	Susan Sitze
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House Bill 138 would make changes to the laws governing criminal gang activity to create criteria for classification of criminal gang membership, create a sentencing enhancement for certain crimes committed by gang members, and increase the penalties for certain gang-related offenses.*

CURRENT LAW: Article 13A of Chapter 14 of the General Statutes, the North Carolina Street Gang Suppression Act, defines a criminal street gang and criminal street gang activity, and creates criminal offenses for participating in a pattern of criminal street gang activity and other related offenses.

BILL ANALYSIS:

Section 1 of the bill would repeal G.S. 14-50.16, which contains the current definitions for the criminal street gang statutes, and provides two felony offenses for criminal street gang activity.

Sections 2 and 3 of the bill would amend the title of Article 13A of Chapter 14 and the short title of the North Carolina Street Gang Suppression Act to be the "North Carolina Criminal Gang Suppression Act". The same change is made throughout the bill to remove the word "street".

Section 4 of the bill would enact a new G.S. 14-50.16A, which includes definitions for the following terms:

- Criminal gang – An ongoing organization, association, or group of 3 or more that (i) has the commission of criminal or delinquent acts as one of its primary activities and (ii) shares a common name, identifiers, signs, tattoos, etc. "Criminal gang" does not include 3 or more persons associated, that do not engage in "criminal gang activity".
- Criminal gang activity – The commission of, attempted commission of, or solicitation, coercion, or intimidation of another person to commit any drug offense or any criminal offense (with a few exceptions) and either (i) the offense is committed to benefit, promote, or further the interests of a criminal gang or for the purpose of increasing a person's own standing in a criminal gang, or (ii) the participants in the offense are identified as criminal gang members acting to further a criminal purpose of a criminal gang.
- Criminal gang leader or organizer – A criminal gang member in a position of management and who meets 2 or more of the listed criteria.
- Criminal gang member – A person who meets 3 or more of the listed criteria.

Section 5 of the bill would enact G.S. 15A-1340.16E to create a sentencing enhancement for any person convicted of a Class C through Class I felony when it is found that the offense was committed as part of criminal gang activity. If the offense was committed as part of criminal gang activity, the person would

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 138

Page 2

be sentenced at one felony class higher than the underlying offense. If the person is also found to be a criminal gang leader or organizer, the person would be sentenced at two felony classes higher than the underlying offense. No person could be sentenced higher than a Class C pursuant to this section.

Sections 6, 7, and 8 would make conforming changes.

Section 9 would increase the penalty for threatening injury to person or damage to property with the intent to deter a person from assisting another person in withdrawal from a criminal gang to a Class F felony.

Section 10 would increase the penalty for threatening injury to person or damage to property as punishment or retaliation against a person for withdrawal from a criminal gang to a Class F felony.

Sections 11 through 15 would make conforming changes.

Section 16 would amend the statute declaring criminal gangs a public nuisance to make conforming changes and to provide that a nuisance order entered because of criminal gang activity is valid for 3 years.

Sections 17, 18, and 19 would make conforming changes.

EFFECTIVE DATE: This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

House Pages Assignments Tuesday, March 21, 2017

Committee	Room	Time	Staff	Comments	Member
			Connor Scanlon		Rep. Joe John
Transportation	643	11:00 AM	Blake Bellanger		Rep. Larry Bell
			Garrett Penley		Rep. Julia Howard
Education - Community Colleges	1228/1327	1:00 PM	Lily Ahlin		Rep. George Cleveland
			Joshua Babson		Rep. William Brisson
Judiciary II	421	1:00 PM	Akirah Graves		Rep. Rodney Moore
			Kayla Yarborough		Rep. Dean Arp

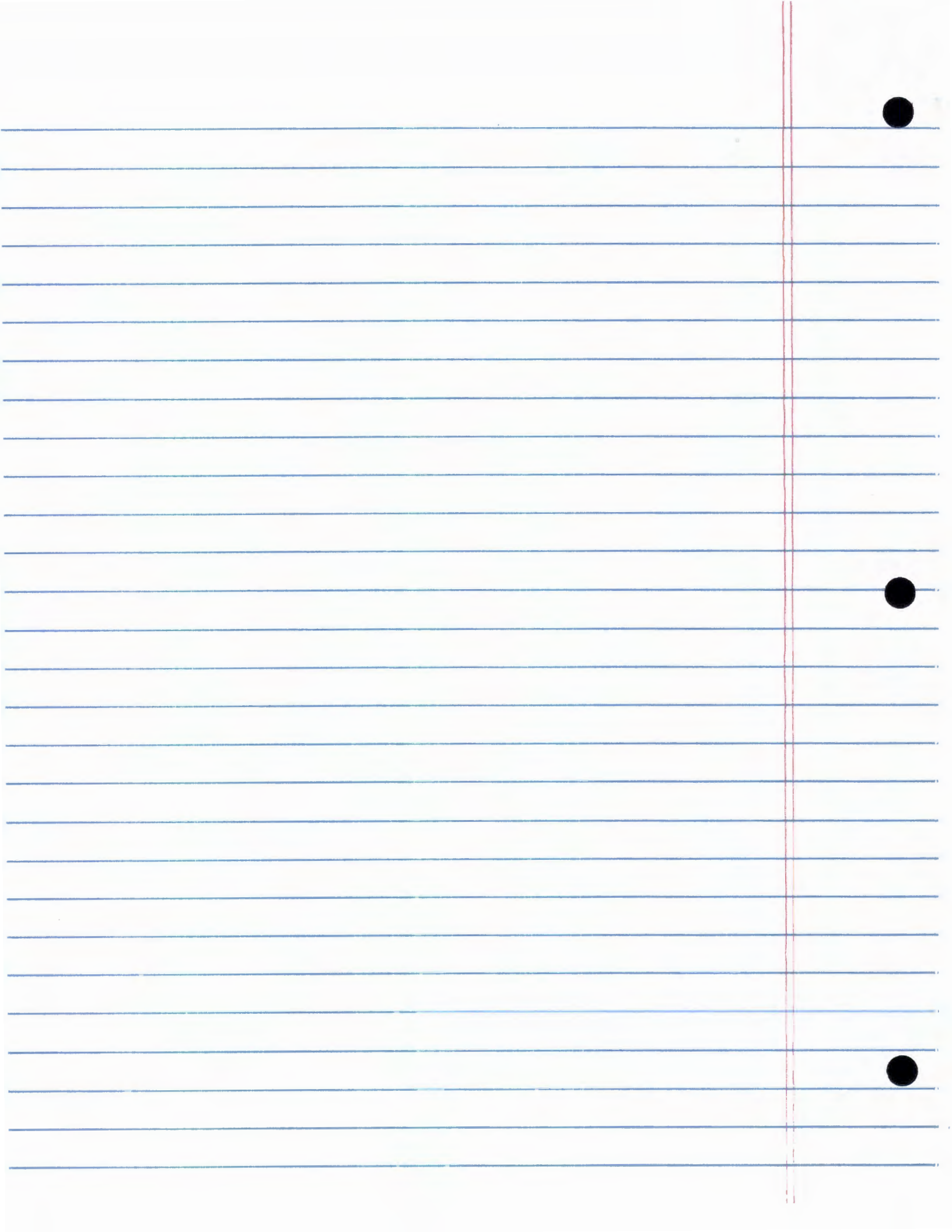


House Pages

Rm 421

1. Colin Konieczka

2. Blake Bellanger



Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 3-21-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Will Crocker
4. Name: Rex Foster
5. Name: _____

Senate Sgt-At Arms:

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



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

3-21-2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

William Vandermale	NCRSOL PO Box 45123 Raleigh
M.L. Gatch	FV, NC
Yvonne	
Andy Dohy	Andy
Jim Stuit	Durham County
MAK	NORTH CAROLINA
Bridgeport	Gang Investigator Assn.
Mildred Spearman	NCAOC
Emily Walter	Intern. Rep Fisher
Caroline Miller	AMGA
Trey Roben	ATT
Michelle Frazer	SML



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

3-21-2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Bradley Bannon	North Carolina Advocates for Justice
Mary Pollard	NC Prison Legal Services
Kris Parker	DRNC
Dick Taylor	NCATJ
Kathy Krysberg	BP
Suzanne Boudreau	ACLU-NC
Senell Gallo	ACLU-NC
Bruce Thompson	PRZKEZ P&S
BASIL YAP	NC DOT DIV. AVIATION
Chris Broughton	MWC
Ryan Gee	Cap Ad
Liza Martin	Cap-Ad



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

3-21-2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Matthew Joseph	Rep Stevens guest
Andy Serbriest	Rep Stevens guest
Col G. Wright	NC Emergency mgmt
Gary Thompson	NC Emergency Mgmt
Andy Brandon	NC DPS
Karen Miller	Iredell voter
Eva Johnson	Iredell voter
Curtis Johnson	Iredell voter
Diane Sheehan	Iredell voter



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

3-21-2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jaz Turner	Duke Energy
Rico Boyce	NC Gang Investigators Association
Chris Rich	NC Gang Investigators Association / NCAPS
John Madler	NC Sentencing Commission
Kimberly Robb	Pitt Co. DA
Peg Dour	Conference of DAs
Skye David	NewsRadio
JASON Joyner	NewsRadio



**House Committee on Judiciary II
Tuesday, March 28, 2017 at 1:00 PM
Room 421 of the Legislative Office Building**

MINUTES

The House Committee on Judiciary II met at 1:00 PM on March 28, 2017 in Room 421 of the Legislative Office Building. Representatives Faircloth, McGrady, Fisher, Hall, John, Jones, and Sauls attended.

Representative Faircloth presided. Representative Faircloth called the meeting to order at 1:05 PM. He recognized the Pages and the Sergeants-at-Arms.

The following bills were considered:

HB 125 Threatened Weapon Inc. in First-Deg Rape. (Representatives Rogers, Duane Hall, Jackson, Destin Hall)

Representative Rogers was recognized to present the bill. Representative McGrady made the motion for a favorable report for the bill. The motion passed, and the bill received a favorable report.

HB 216 DOC and JJ Combined Records. (Representatives Rogers, Duane Hall, Destin Hall)

Representative Faircloth made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Rogers was recognized to explain the bill. After a brief comment from one committee member, Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion passed, and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill.

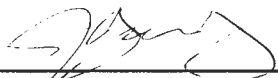
HB 225 Attempted Robbery is Lesser Included. (Representatives Rogers, Duane Hall, Destin Hall, John)

Representative Faircloth made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Rogers was recognized to explain the bill. After a brief comment from one committee member, Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion passed, and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill.

Mr. T. Andrew Brandon, Legislative Affairs Program Manager for Adult Correction and Juvenile Justice, NC Department of Public Safety, spoke briefly on the bill.

There being no further business, Representative Faircloth adjourned the meeting at 1:11 PM.

Respectfully submitted,



Representative John Faircloth
Presiding



Gennie Thurlow, Committee Clerk



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, March 28, 2017

TIME: 1:00 PM

LOCATION: 421 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 125	Threatened Weapon Inc. in First-Deg Rape.	Representative Rogers Representative Duane Hall Representative Jackson Representative Destin Hall
HB 216	DOC and JJ Combined Records.	Representative Rogers Representative Duane Hall Representative Destin Hall
HB 225	Property Taken Not Preclude Attempted Robbery.	Representative Rogers Representative Duane Hall Representative Destin Hall Representative John

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:12 PM on Thursday, March 23, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Tuesday, March 28, 2017, 1:00 PM
421 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Introduction of Pages and Sergeants-at-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 125	Threatened Weapon Inc. in First-Deg Rape.	Representative Rogers Representative Duane Hall Representative Jackson Representative Destin Hall
HB 216	DOC and JJ Combined Records.	Representative Rogers Representative Duane Hall Representative Destin Hall
HB 225	Property Taken Not Preclude Attempted Robbery.	Representative Rogers Representative Duane Hall Representative Destin Hall Representative John

Other Business

Adjournment



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair**

FAVORABLE

HB 125 Threatened Weapon Inc. in First-Deg Rape.
Draft Number: None
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Rogers

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB 216 DOC and JJ Combined Records.
Draft Number: H216-PCS40300-BG-6
Serial Referral: None
Recommended Referral: None
Long Title Amended: Yes
Floor Manager: Rogers

HB 225 Property Taken Not Preclude Attempted Robbery.
Draft Number: H225-PCS40299-SA-6
Serial Referral: None
Recommended Referral: None
Long Title Amended: Yes
Floor Manager: Rogers

TOTAL REPORTED: 3



* C M R 1 1 7 - V - 1 *



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 125

Short Title: Threatened Weapon Inc. in First-Deg Rape. (Public)

Sponsors: Representatives Rogers, Duane Hall, Jackson, and Destin Hall (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

February 20, 2017

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ADD THE THREATENED USE OF A WEAPON TO ONE OF THE ELEMENTS
3 FOR FIRST-DEGREE FORCIBLE RAPE, AS RECOMMENDED BY THE NORTH
4 CAROLINA COURTS COMMISSION.
5 The General Assembly of North Carolina enacts:
6 **SECTION 1.** G.S.14-27.21 reads as rewritten:
7 **"§ 14-27.21. First-degree forcible rape.**
8 (a) A person is guilty of first-degree forcible rape if the person engages in vaginal
9 intercourse with another person by force and against the will of the other person, and does any of
10 the following:
11 (1) ~~Employs or displays a~~ Uses, threatens to use, or displays a dangerous or deadly
12 weapon or an article which the other person reasonably believes to be a
13 dangerous or deadly weapon.
14 (2) Inflicts serious personal injury upon the victim or another person.
15 (3) The person commits the offense aided and abetted by one or more other
16 persons.
17 (b) Any person who commits an offense defined in this section is guilty of a Class B1
18 felony.
19 (c) Upon conviction, a person convicted under this section has no rights to custody of or
20 rights of inheritance from any child born as a result of the commission of the rape, nor shall the
21 person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the
22 General Statutes."
23 **SECTION 2.** This act becomes effective December 1, 2017, and applies to offenses
24 committed on or after that date.



* H 1 2 5 - V - 1 *





HOUSE BILL 125: Threatened Weapon Inc. in First-Deg Rape.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	March 28, 2017
Introduced by:	Reps. Rogers, Duane Hall, Jackson, Destin Hall	Prepared by:	Susan Sitze Jessica Sammons
Analysis of:	First Edition		Committee Co-Counsel

OVERVIEW: *House Bill 125 would expand the offense of first-degree forcible rape to include having vaginal intercourse with a person by force and against that person's will while threatening to use a dangerous or deadly weapon.*

CURRENT LAW: A person is guilty of first-degree forcible rape if the person has vaginal intercourse with a person by force and against that person's will, and does any of the following:

- 1) Employs or displays a dangerous or deadly weapon (or what reasonably appears to be a dangerous or deadly weapon).
- 2) Inflicts serious personal injury on the victim or another person.
- 3) Is aided and abetted by one or more other persons.

First-degree forcible rape under G.S. 14-27.21 is a Class B1 felony and requires mandatory registration as a sex offender. Assuming a person has no prior offenses, and there are no aggravating or mitigating factors, the presumptive minimum penalty for a B1 felony would be 192-240 months imprisonment. A person with an extensive record of prior offenses, and where there are aggravating factors, could receive a sentence of life without parole.

BILL ANALYSIS: House Bill 125 would add threatening to use a dangerous or deadly weapon, while having vaginal intercourse with a person by force and against that person's will, as an additional way to meet the statutory elements to first-degree forcible rape.

EFFECTIVE DATE: The act would become effective December 1, 2017, and applies to offenses committed on or after that date.

BACKGROUND: House Bill 125 is a recommendation of the North Carolina Courts Commission.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 125 (First Edition)

SHORT TITLE: Threatened Weapon Inc. in First-Deg Rape.

SPONSOR(S): Representatives Rogers, Duane Hall, and Jackson

FISCAL IMPACT (\$ in millions)					
	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> No Estimate Available		
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
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, 2017

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address the expanded scope of an existing offense. However, given that there is no historical data on the elements of the expanded scope 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: \$10,885 per disposition
- Indigent Defense Services: \$1,410 per disposition
- Department of Public Safety (DPS) - Prisons: \$79,061 per conviction
- DPS - Community Corrections: Minimum of \$1,776 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

The bill expands the conduct punishable under an existing Class B1 felony. Under G.S. 14-27.21, it is currently a Class B1 felony for a person to employ or display a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon when committing forcible

rape. This bill would expand the prohibited conduct to include threatening to use a dangerous or deadly weapon when committing forcible rape.

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 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.

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.

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 an existing Class B2 felony offense. It is not known how many new charges may occur as a result of this expanded scope. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class B2 felony, the average cost to the court would be \$10,885.

The Office of Indigent Defense Services (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, the most recent year data is available, 85% of Class B2 felony cases were handled through IDS. The weighted average cost of a Class B2 felony is \$1,410 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 – Prisons

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 2016.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

Population Projections and Bed Capacity Five Year Impact					
	June 30 2018	June 30 2019	June 30 2020	June 30 2021	June 30 2022
1. Inmates ²	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
4. <i>Additional Inmates Due to this Bill</i> ³	No estimate available				
5. <i>Additional Beds Required</i>					

Since the bill expands the scope of an existing offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 100% of Class B2 felony convictions resulted in active sentences, with an average estimated time served of 173 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was one conviction (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission's Forecasting Technical Advisory Group.

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 2017.

³ Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class B2 Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

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 \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, all Class B2 felony offenders received active sentences averaging 173 months. For every one Class B2 felony offender receiving an active sentence, the cost to the prison section will be \$79,061 (\$457 monthly cost times 173 months).

Department of Public Safety – Community Corrections

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 F 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 \$148 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 2015-16, all Class B2 felony offenders received active sentences. All active sentences for Class B1 through D felonies result in 12 months of post-release supervision (PRS). Therefore one conviction resulting from this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,776 per offender (\$148 per month times 12 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

⁴ Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristine Leggett

APPROVED BY:

DATE: March 13, 2017



Signed Copy Located in the NCGA Principal Clerk's Offices



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 216
PROPOSED COMMITTEE SUBSTITUTE H216-CSBG-6 [v.3]
03/27/2017 12:08:24 PM

Short Title: DOC and JJ Combined Records. (Public)

Sponsors:

Referred to:

March 2, 2017

- 1 A BILL TO BE ENTITLED
2 AN ACT TO MANDATE THAT THE CLERK OF SUPERIOR COURT SEND A
3 CERTIFIED COPY OF ORDERS GRANTING EXPUNCTIONS TO THE COMBINED
4 RECORDS SECTION OF THE DEPARTMENT OF PUBLIC SAFETY AND TO THE
5 STATE BUREAU OF INVESTIGATION.
6 The General Assembly of North Carolina enacts:
7 **SECTION 1.** G.S. 15A-150(b) reads as rewritten:
8 "(b) Notification to Other State and Local Agencies. – Unless otherwise instructed by the
9 Administrative Office of the Courts pursuant to an agreement entered into under subsection (e)
10 of this section for the electronic or facsimile transmission of information, the clerk of superior
11 court in each county in North Carolina shall send a certified copy of an order granting an
12 expunction to a person named in subsection (a) of this section to all of the agencies listed in this
13 subsection. An agency receiving an order under this subsection shall expunge from its records
14 all entries made as a result of the charge or conviction ordered expunged, except as provided in
15 G.S. 15A-151. The list of agencies is as follows:
16 (1) The sheriff, chief of police, or other arresting agency.
17 (2) When applicable, the Division of Motor Vehicles.
18 (3) Any State or local agency identified by the petition as bearing record of the
19 offense that has been expunged.
20 (4) ~~The Department of Public Safety.~~ The Department of Public Safety,
21 Combined Records Section.
22 (5) The State Bureau of Investigation."
23 **SECTION 2.** This act is effective when it becomes law.



* H 2 1 6 - C S B G - 6 *





HOUSE BILL 216: DOC and JJ Combined Records.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	March 28, 2017
Introduced by:	Reps. Rogers, Duane Hall, Destin Hall	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition H216-CSBG-6		Howard Marsilio Committee Counsel

OVERVIEW: *House Bill 216 would mandate that Clerks of Superior Court send certified copies of orders granting expunctions to the Combined Records Section of the Department of Public Safety and State Bureau of Investigation.*

CURRENT LAW: G.S. 15A-150(b) currently requires Clerks of Superior Court to send certified copies of orders granting expunctions to the following:

- (1) The sheriff, chief of police, or other arresting agency.
- (2) When applicable, the Division of Motor Vehicles.
- (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.

BILL ANALYSIS: This bill would clarify that Clerks of Court must send certified copies of expunction orders specifically to the Combined Records Section of the Department of Public Safety and the State Bureau of Investigation, in addition to the other agencies listed in G.S. 15A-150(b) and the Administrative Office of the Courts pursuant to G.S. 15A-150(a).

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

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 216

Short Title: DOC and JJ Combined Records. (Public)

Sponsors: Representatives Rogers, Duane Hall, and Destin Hall (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

March 2, 2017

- 1 A BILL TO BE ENTITLED
2 AN ACT TO MANDATE THAT THE CLERK OF SUPERIOR COURT SEND A CERTIFIED
3 COPY OF ORDERS GRANTING EXPUNCTIONS TO THE DIVISION OF ADULT
4 CORRECTIONS AND JUVENILE JUSTICE COMBINED RECORDS SECTION AND TO
5 THE STATE BUREAU OF INVESTIGATION, AS RECOMMENDED BY THE NORTH
6 CAROLINA COURTS COMMISSION.
7 The General Assembly of North Carolina enacts:
8 **SECTION 1.** G.S. 15A-150(b) reads as rewritten:
9 "(b) Notification to Other State and Local Agencies. – Unless otherwise instructed by the
10 Administrative Office of the Courts pursuant to an agreement entered into under subsection (e) of
11 this section for the electronic or facsimile transmission of information, the clerk of superior court
12 in each county in North Carolina shall send a certified copy of an order granting an expunction to
13 a person named in subsection (a) of this section to all of the agencies listed in this subsection. An
14 agency receiving an order under this subsection shall expunge from its records all entries made as
15 a result of the charge or conviction ordered expunged, except as provided in G.S. 15A-151. The
16 list of agencies is as follows:
17 (1) The sheriff, chief of police, or other arresting agency.
18 (2) When applicable, the Division of Motor Vehicles.
19 (3) Any State or local agency identified by the petition as bearing record of the
20 offense that has been expunged.
21 (4) ~~The Department of Public Safety.~~ The Department of Public Safety, Division of
22 Adult Correction and Juvenile Justice, Combined Records Section.
23 (5) The State Bureau of Investigation.
24 **SECTION 2.** This act is effective when it becomes law.



* H 2 1 6 - V - 1 *



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 225
PROPOSED COMMITTEE SUBSTITUTE H225-CSSA-6 [v.1]

03/27/2017 05:51:36 PM

Short Title: Attempted Robbery is Lesser Included.

(Public)

Sponsors:

Referred to:

March 2, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT ATTEMPTED ROBBERY WITH A DANGEROUS
3 WEAPON IS A LESSER INCLUDED OFFENSE OF ROBBERY WITH A
4 DANGEROUS WEAPON.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 14-87 is amended by adding a new subsection to read:

7 "§ 14-87. Robbery with firearms or other dangerous weapons.

8 (a) Any person or persons who, having in possession or with the use or threatened use
9 of any firearms or other dangerous weapon, implement or means, whereby the life of a person
10 is endangered or threatened, unlawfully takes or attempts to take personal property from
11 another or from any place of business, residence or banking institution or any other place where
12 there is a person or persons in attendance, at any time, either day or night, or who aids or abets
13 any such person or persons in the commission of such crime, shall be guilty of a Class D
14 felony.

15 (a1) Attempted robbery with a dangerous weapon shall constitute a lesser included
16 offense of robbery with a dangerous weapon, and evidence sufficient to prove robbery with a
17 dangerous weapon shall be sufficient to support a conviction of attempted robbery with a
18 dangerous weapon.

19"

20 SECTION 2. This act becomes effective December 1, 2017, and applies to
21 offenses committed on or after that date.



★ H 2 2 5 - C S S A - 6 ★





HOUSE BILL 225: Attempted Robbery is Lesser Included.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	March 28, 2017
Introduced by:	Reps. Rogers, Duane Hall, Destin Hall, John	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition		Committee Counsel
	H225-CSSA-6		

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 225 would clarify that attempted robbery with a dangerous weapon is a lesser included offense of robbery with a dangerous weapon.*

BILL ANALYSIS: The PCS for House Bill 225 would clarify that attempted robbery with a dangerous weapon is a lesser included offense of robbery with a dangerous weapon, and that if the evidence would support a conviction of robbery with a dangerous weapon, it will also support a conviction of attempted robbery with a dangerous weapon.

EFFECTIVE DATE: This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

BACKGROUND: This First Edition of this bill is a recommendation of The Courts Commission.

The North Carolina Court of Appeals ruled in State v. McCoy, 207 N.C. App. 378 (2010) (unpublished) that attempted robbery with a dangerous weapon was not a lesser included offense of robbery with a dangerous weapon. The result of the particular case was that charges of attempted robbery with a dangerous weapon were dismissed because it came out in trial that the defendant did take some item of value in the course of events, and, therefore, actually committed robbery with a dangerous weapon, which the defendant was not charged with.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 225

Short Title: Property Taken Not Preclude Attempted Robbery. (Public)

Sponsors: Representatives Rogers, Duane Hall, Destin Hall, and John (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

March 2, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO ENSURE THAT VALUE IS NOT AN ESSENTIAL ELEMENT FOR A
3 CONVICTION OF ATTEMPTED ROBBERY WITH A DANGEROUS WEAPON, AS
4 RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.
5 The General Assembly of North Carolina enacts:
6 SECTION 1. G.S. 14-87 is amended by adding a new subsection to read:
7 "§ 14-87. Robbery with firearms or other dangerous weapons.
8 (a) Any person or persons who, having in possession or with the use or threatened use of
9 any firearms or other dangerous weapon, implement or means, whereby the life of a person is
10 endangered or threatened, unlawfully takes or attempts to take personal property from another or
11 from any place of business, residence or banking institution or any other place where there is a
12 person or persons in attendance, at any time, either day or night, or who aids or abets any such
13 person or persons in the commission of such crime, shall be guilty of a Class D felony.
14 (a1) Evidence that the personal property of another was taken will not preclude conviction
15 under subsection (a) of this section.
16"
17 SECTION 2. This act becomes effective December 1, 2017, and applies to offenses
18 committed on or after that date.



* H 2 2 5 - V - 1 *



**House Pages
Assignments
Tuesday, March 28, 2017
Session: 2:00 PM**

Committee	Room	Time	Staff	Comments	Member
Agriculture	643	12:00 PM	Christopher Tucker		Rep. Speaker Tim Moore
			Anthony Vincent		Rep. Speaker Tim Moore
Insurance	1228/1327	12:00 PM	Brenton Lanier		Rep. Brenden Jones
			Greyson Siderio		Rep. Chris Malone
Education - Universities	1228/1327	1:00 PM	Megan Hammaker		Rep. Kevin Corbin
			Sydney Todd		Rep. Speaker Tim Moore
			Benjamin Williams		Rep. Marvin Lucas
			TJ Elbert		Rep. Marvin Lucas
Health Care	643	1:00 PM	Jon Edmonston		Rep. Grier Martin
			Situna Taliau		Rep. Speaker Tim Moore
			Paul Patterson, II		Rep. Marvin Lucas
Judiciary II	421	1:00 PM	Darius Bellamy	Tar Heel Challenge - Salemburg, NC	Rep. Speaker Tim Moore
			Hunter Freeman		Rep. Speaker Tim Moore
			Naiia Pullen		Rep. Speaker Tim Moore
			Ubaldo Velasco-Lopez		Rep. Speaker Tim Moore

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Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 3-28-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Will Crocker
4. Name: Bill Moore
5. Name: _____

Senate Sgt-At Arms:

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



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

3/28/2017
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Skye David

new frame

KONA KUSA

CITIZEN

LAURA PINEYAK

MWC

Brian Lewis

new frame

Andy Brandon

NC DPS



Visitor

Speaker Registration Sheet

House Committee on Judiciary II

3/28/2017
Date

Bill: _____

NAME - Please PRINT

FIRM OR AGENCY

Caroline Miller	AMGA
Will Polk	NCDPF
Crystal Feldman	SA
Mildred Spearman	NCAOC
Yvonne A. Clark	UNED
Elizabeth Ferguson	Commissioner Clerk of Superior Ct.
Tamela Callahan	CCSR
Peter Bolac	NC State Bar



**House Committee on Judiciary II
Tuesday, April 4, 2017 at 1:00 PM
Room 421 of the Legislative Office Building**

MINUTES

The House Committee on Judiciary II met at 1:00 PM on April 4, 2017 in Room 421 of the Legislative Office Building. Representatives Blust, Faircloth, Hurley, McGrady, Michaux, Fisher, Harrison, and John attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:05 PM. He recognized the Pages and Sergeants-at-Arms.

The following bills were considered:

HB 128 Prohibit Drone Use Over Prison/Jail. (Representatives McNeill, Torbett, Faircloth)

Representative McGrady made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative McNeill was recognized to explain the Proposed Committee Substitute No. 3. Mr. T. Andrew Brandon, Legislative Affairs Program Manager for Adult Correction and Juvenile Justice, NC Department of Public Safety, spoke briefly in favor of the bill. Representative Hurley made the motion for a favorable report for the Proposed Committee Substitute No. 3, with an unfavorable report for the Committee Substitute No. 2. The motion passed; and the Proposed Committee Substitute No. 3 received a favorable report, with an unfavorable report for the Committee Substitute No. 2.


HB 325 Amend Arson Law/Prosecutor Funds. (Representatives McNeill, Hurley)

Representative Fisher made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative McNeill was recognized to explain the bill. Ms. Maureen Krueger, Moore County District Attorney, spoke in favor of the bill. Representative Hurley made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion passed; and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill. HB 325 was re-referred to the House Committee on Appropriations.

HB 337 Unmanned Aircraft Systems Law Revisions. (Representative Torbett)

Representative Torbett was recognized to explain the bill. After a brief discussion, Representative Faircloth made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

There being no further business, Chairman Blust adjourned the meeting at 1:23 PM.



Representative John M. Blust, Chairman
Presiding



Gennie L. Thurlow, Committee Clerk



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, April 4, 2017

TIME: 1:00 PM

LOCATION: 421 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 128	Prohibit Drone Use Over Prison/Jail.	Representative McNeill Representative Torbett
HB 325	Amend Arson Law/Prosecutor Funds.	Representative Faircloth Representative McNeill
HB 337	Unmanned Aircraft Systems Law Revisions.	Representative Hurley Representative Torbett

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:25 PM on Thursday, March 30, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Tuesday, April 4, 2017, 1:00 PM
421 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Introduction of Pages and Sergeants-at-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 128	Prohibit Drone Use Over Prison/Jail.	Representative McNeill Representative Torbett Representative Faircloth
HB 325	Amend Arson Law/Prosecutor Funds.	Representative McNeill Representative Hurley
HB 337	Unmanned Aircraft Systems Law Revisions.	Representative Torbett

Adjournment



NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair

FAVORABLE

HB 337 Unmanned Aircraft Systems Law Revisions.
Draft Number: None
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Torbett

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 325 Amend Arson Law/Prosecutor Funds.
Draft Number: H325-PCS40340-BK-13
Serial Referral: **APPROPRIATIONS**
Recommended Referral: None
Long Title Amended: Yes
Floor Manager: McNeill

FAVORABLE COM SUB NO. 3, UNFAVORABLE COM SUB NO. 2

HB 128 (CS#2) Prohibit Drone Use Over Prison/Jail.
Draft Number: H128-PCS40341-BG-8
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: McNeill

TOTAL REPORTED: 3



* C M R 1 4 6 - V - 1 *



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 128
Committee Substitute Favorable 3/7/17
Committee Substitute #2 Favorable 3/21/17
PROPOSED COMMITTEE SUBSTITUTE H128-CSBG-8 [v.4]

03/31/2017 04:02:27 PM

Short Title: Prohibit Drone Use Over Prison/Jail.

(Public)

Sponsors:

Referred to:

February 20, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE USE OF AN UNMANNED AIRCRAFT SYSTEM NEAR A
3 LOCAL CONFINEMENT FACILITY OR STATE OR FEDERAL CORRECTIONAL
4 FACILITY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 16B of Chapter 15A of the General Statutes is amended by
7 adding a new section to read:

8 "**§ 15A-300.3. Use of an unmanned aircraft system near a confinement or correctional**
9 **facility prohibited.**

10 (a) Prohibition. – No person, entity, or State agency shall use an unmanned aircraft
11 system within a horizontal distance of 500 feet or a vertical distance of 250 feet from any local
12 confinement facility, as defined in G.S. 153A-217, or State or federal correctional facility. For
13 the purpose of this section, horizontal distance shall extend outward from the furthest exterior
14 building walls, perimeter fences, and permanent fixed perimeter, or from another boundary
15 clearly marked with posted notices. Posted notices shall be conspicuously posted not more than
16 100 yards apart along a marked boundary and comply with Department of Transportation
17 guidelines.

18 (b) Exceptions. – Unless the use of the unmanned aircraft system is otherwise
19 prohibited under State or federal law, the distance restrictions of subsection (a) of this section
20 do not apply to any of the following:

21 (1) A person operating an unmanned aircraft system with written consent from
22 the official in responsible charge of the facility.

23 (2) A law enforcement officer using an unmanned aircraft system in accordance
24 with G.S. 15A-300.1(c).

25 (3) A public utility, as defined in G.S. 62-3(23), a provider, as defined in
26 G.S. 146-29.2(a)(6), or a commercial entity, provided that the public utility,
27 provider, or commercial entity complies with all of the following:

28 a. The unmanned aircraft system remains outside a horizontal distance
29 of 150 feet or a vertical distance of 150 feet from any local
30 confinement facility or State or federal correctional facility.

31 b. Notifies the official in responsible charge of the facility at least 24
32 hours prior to operating the unmanned aircraft system.

33 c. Uses the unmanned aircraft system for the purpose of inspecting
34 public utility or provider transmission lines, equipment, or



* H 1 2 8 - C S B G - 8 *

1 communication infrastructure, or for another purpose directly related
2 to the business of the public utility, provider, or commercial entity.
3 d. Uses the unmanned aircraft system for commercial purposes pursuant
4 to and in compliance with (i) Federal Aviation Administration
5 regulations, authorizations, or exemptions and (ii) Article 10 of
6 Chapter 63 of the General Statutes.
7 e. The person operating the unmanned aircraft system does not
8 physically enter the prohibited space without an escort from the
9 facility.
10 (4) An emergency management agency, as defined in G.S. 166A-19.3,
11 emergency medical services personnel, firefighters, and law enforcement
12 officers, when using an unmanned aircraft system in response to an
13 emergency.
14 (c) Penalty. – The following penalties apply for violations of this section:
15 (1) A person who uses an unmanned aircraft system (i) in violation of
16 subsection (a) of this section, or (ii) pursuant to an exception in subsection
17 (b) of this section, and who delivers, or attempts to deliver, a weapon to a
18 local confinement facility or State or federal correctional facility, is guilty of
19 a Class H felony, which shall include a fine of one thousand five hundred
20 dollars (\$1,500). For purposes of this subdivision, the term "weapon" is as
21 defined in G.S. 14-401.24(c).
22 (2) A person who uses an unmanned aircraft system (i) in violation of
23 subsection (a) of this section, or (ii) pursuant to an exception in subsection
24 (b) of this section, and who delivers, or attempts to deliver, contraband to a
25 local confinement facility or State or federal correctional facility, is guilty of
26 a Class I felony, which shall include a fine of one thousand dollars (\$1,000).
27 For purposes of this subdivision, the term "contraband" includes controlled
28 substances, as defined in G.S. 90-87, cigarettes, alcohol, and communication
29 devices, but does not include weapons.
30 (3) A person who uses an unmanned aircraft system in violation of subsection
31 (a) of this section for any other purpose is guilty of a Class 1 misdemeanor,
32 which shall include a fine of five hundred dollars (\$500.00).
33 (d) Seizure, Forfeiture, and Disposition of Seized Property. – A law enforcement
34 agency may seize an unmanned aircraft system and any attached property, weapons, and
35 contraband used in violation of this section. An unmanned aircraft system used in violation of
36 this section and seized by a law enforcement agency is subject to forfeiture and disposition
37 pursuant to G.S. 18B-504. An innocent owner or holder of a security interest applying to the
38 court for release of the unmanned aircraft system, in accordance with G.S. 18B-504(h), shall
39 also provide proof of ownership or security interest and written certification that the unmanned
40 aircraft system will not be returned to the person who was charged with the violation of
41 subsection (a) of this section. The court shall forfeit and dispose of any other property,
42 weapons, or contraband seized by a law enforcement agency in connection with a violation of
43 this section pursuant to G.S. 18B-504, 14-269.1, 90-112, or any combination thereof."

44 **SECTION 2.** For the purpose of restricting the operation of an unmanned aircraft
45 system in accordance with Section 1 of this act, the Division of Aviation of the Department of
46 Transportation shall petition the Federal Aviation Administration (FAA) to designate any local
47 confinement facility, as defined in G.S. 153A-217, or State or federal correctional facility in the
48 State as a fixed site facility, pursuant to rules and regulations adopted pursuant to section 2209
49 of the FAA Extension, Safety, and Security Act of 2016, Public Law No. 114-190. The
50 Division shall follow all guidance from the FAA in submitting and processing the petition. The

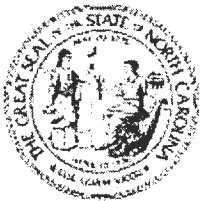
1 Division shall publish designations by the FAA in accordance with this act on the Division
2 Web site.

3 At the request of the Division, the Social Services Commission of the Department of
4 Health and Human Services shall provide to the Division a list of local confinement facilities,
5 as defined in G.S. 153A-217, including facility location and a contact person for each facility.
6 At the request of the Division, the Department of Public Safety shall provide to the Division a
7 list of State correctional facilities, including facility location, a contact person for each facility,
8 and each facility's operational status.

9 **SECTION 3.** The Division of Aviation of the Department of Transportation shall
10 develop guidelines for the content and dimensions for posted notices to mark boundaries in
11 accordance with Section 1 of this act.

12 **SECTION 4.** This act becomes effective December 1, 2017, and applies to
13 offenses committed on or after that date.





HOUSE BILL 128: Prohibit Drone Use Over Prison/Jail.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Reps. McNeill, Torbett, Faircloth
Analysis of: PCS to Third Edition
H128-CSBG-8

Date: April 4, 2017
Prepared by: Susan Sitze
Howard Marsilio
Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) would create multiple criminal offenses making it unlawful for a person to use an unmanned aircraft system (UAS) near local confinement facilities or State or federal correctional facilities. This bill would create use exceptions from the default distance restrictions. The PCS would also require the Division of Aviation of the Department of Transportation to petition the Federal Aviation Administration to designate these facilities as fixed site facilities and develop the guidelines for notices for marked boundaries.*

CURRENT LAW: The following UAS related offenses make it unlawful to:

- Interfere with manned aircraft, G.S. 14-280.3 Interference with manned aircraft by unmanned aircraft systems. This offense is a Class H felony.
- Possess or use a UAS that has a weapon attached, G.S. 14-401.24(a) Unlawful possession and use of unmanned aircraft systems. This offense is a Class E felony.
- Fish or hunt using a UAS unless an exception for possession or use that is authorized by federal law or regulation applies, G.S. 14-401.24(b) Unlawful possession and use of unmanned aircraft systems. This offense is a Class 1 misdemeanor.
- Publish or disseminate thermal or infrared images revealing individuals, materials, or activities inside of a structure taken by a UAS, G.S. 14-401.25 Unlawful distribution of images. This offense is a Class A1 misdemeanor.
- Intentionally interfere with the lawful taking of wildlife resources with a UAS, G.S. 113-295 Unlawful harassment of persons taking wildlife resources. This offense is a Class 1 misdemeanor.
- Operate a UAS in this State for commercial purposes without a permit, G.S. 63-96 Permit required for commercial operation of unmanned aircraft systems. This offense is a Class 1 misdemeanor.

BILL ANALYSIS:

SECTION 1 - This PCS would make unauthorized UAS use within a horizontal distance of 500 feet from buildings, a fixed perimeter, or a marked boundary, or a vertical distance of 250 feet of local confinement facilities or State or federal correctional facilities unlawful.

The following uses would not be violations, unless otherwise prohibited by State or federal law:

- A person using a UAS with written consent from the facility.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House PCS 128

Page 2

- An authorized law enforcement use pursuant to G.S. 15A-300.1(c).
- A public utility, wireless signal provider or commercial entity using the UAS for inspections or a purpose directly related to the business, and abiding by certain criteria such as maintaining a 150-foot distance and providing notification to the facility.
- First responders using a UAS in response to an emergency.

The following new criminal offenses would be created:

- A Class H felony, and a fine of one thousand five hundred dollars (\$1,500), for a violation while delivering or an attempting to deliver a weapon.
- A Class I felony, and a fine of one thousand dollars (\$1,000), for a violation while delivering or an attempting to deliver contraband. For the purpose of this subdivision, the term "contraband" includes controlled substances, cigarettes, alcohol, and communication devices, but does not include weapons.
- A Class 1 misdemeanor, and a fine of five hundred dollars (\$500.00), for a violation for any other purpose.

This PCS would also authorize law enforcement to seize a UAS and property used in connection with a violation. A UAS and other property seized in connection with a violation may be forfeited. Unmanned aircraft systems would be forfeited pursuant to G.S. 18B-504 (forfeiture of conveyances used to conceal, convey, or transport intoxicating beverages). Other property, weapons, or contraband would be forfeited pursuant to G.S. 18B-504, G.S. 14-269.1 (confiscation and disposition of deadly weapons), or G.S. 90-112 (forfeiture related to controlled substances).

The proceeds of seized property disposed of by sale for a violation of this act would be paid to the school fund in accordance with Article IX, Section 7 of the Constitution of North Carolina.

SECTION 2 would require the Division of Aviation of the Department of Transportation to petition the Federal Aviation Administration to designate these facilities as fixed site facilities pursuant to the Extension, Safety, and Security Act of 2016. It would also require the Social Services Commission of DHHS, and DPS, to provide the Division of Aviation with a list of local confinement and state correctional facilities.

SECTION 3 would require the Division to develop guidelines for the content and dimensions for posted notices for marked boundaries around facilities.

EFFECTIVE DATE: This act would become effective December 1, 2017, and would apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

3

HOUSE BILL 128
Committee Substitute Favorable 3/7/17
Committee Substitute #2 Favorable 3/21/17

Short Title: Prohibit Drone Use Over Prison/Jail.

(Public)

Sponsors:

Referred to:

February 20, 2017

A BILL TO BE ENTITLED
AN ACT TO PROHIBIT THE USE OF AN UNMANNED AIRCRAFT SYSTEM NEAR A
LOCAL CONFINEMENT FACILITY OR STATE OR FEDERAL CORRECTIONAL
FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16B of Chapter 15A of the General Statutes is amended by
adding a new section to read:

**"§ 15A-300.3. Use of an unmanned aircraft system near a confinement or correctional
facility prohibited.**

(a) Prohibition. – No person, entity, or State agency shall use an unmanned aircraft
system within a horizontal distance of 500 feet or a vertical distance of 250 feet from any local
confinement facility or State or federal correctional facility. For the purpose of this section,
horizontal distance shall extend outward from the furthest exterior building walls, perimeter
fences, and permanent fixed perimeter, or from another boundary clearly marked with posted
notices. Posted notices shall be conspicuously posted not more than 100 yards apart along a
marked boundary and comply with Department of Transportation guidelines.

(b) Exceptions. – Unless the use of the unmanned aircraft system is otherwise
prohibited under State or federal law, the provisions of subsection (a) of this section do not
apply to any of the following:

(1) A person operating an unmanned aircraft system with written consent from
the official in responsible charge of the facility.

(2) A law enforcement officer using an unmanned aircraft system in accordance
with G.S. 15A-300.1(c).

(3) A public utility, as defined in G.S. 62-3(23), or a provider, as defined in
G.S. 146-29.2(a)(6), provided that the public utility or provider complies
with all of the following:

a. Remains outside a horizontal distance of 100 feet or a vertical
distance of 100 feet from any local confinement facility or State or
federal correctional facility.

b. Notifies the official in responsible charge of the facility at least 24
hours prior to operating the unmanned aircraft system.

c. Uses the unmanned aircraft system for the purpose of inspecting
public utility or provider transmission lines or equipment.



d. Uses the unmanned aircraft system for commercial purposes pursuant to and in compliance with Federal Aviation Administration regulations, authorizations, or exemptions.

(c) Penalty. – The following penalties apply for violations of subsection (a) of this section:

(1) A person who uses an unmanned aircraft system in violation of subsection (a) of this section for the purpose of delivering a weapon to a local confinement facility or State or federal correctional facility is guilty of a Class H felony, which shall include a fine of one thousand five hundred dollars (\$1,500). For purposes of this subdivision, the term "weapon" is as defined in G.S. 14-401.24(c).

(2) A person who uses an unmanned aircraft system in violation of subsection (a) of this section for the purpose of delivering contraband to a local confinement facility or State or federal correctional facility is guilty of a Class I felony, which shall include a fine of one thousand dollars (\$1,000). For purposes of this subdivision, the term "contraband" includes controlled substances, as defined in G.S. 90-87, cigarettes, alcohol, and communication devices, but does not include weapons.

(3) A person who uses an unmanned aircraft system in violation of subsection (a) of this section for any other purpose is guilty of a Class 1 misdemeanor, which shall include a fine of five hundred dollars (\$500.00).

(d) Seizure, Forfeiture, and Disposition of Seized Property. – A law enforcement agency may seize an unmanned aircraft system and any attached property, weapons, and contraband used in violation of this section. An unmanned aircraft system used in violation of this section and seized by a law enforcement agency is subject to forfeiture and disposition pursuant to G.S. 18B-504. An innocent owner or holder of a security interest applying to the court for release of the unmanned aircraft system, in accordance with G.S. 18B-504(h), shall also provide proof of ownership or security interest and written certification that the unmanned aircraft system will not be returned to the person who was charged with the violation of subsection (a) of this section. The court shall forfeit and dispose of any other property, weapons, or contraband seized by a law enforcement agency in connection with a violation of this section pursuant to G.S. 18B-504, 14-269.1, 90-112, or any combination thereof."

SECTION 2. For the purpose of restricting the operation of an unmanned aircraft system in accordance with Section 1 of this act, the Division of Aviation of the Department of Transportation shall petition the Federal Aviation Administration (FAA) to designate any local confinement facility or State or federal correctional facility in the State as a fixed site facility, pursuant to rules and regulations adopted pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016, Public Law No. 114-190. The Division shall follow all guidance from the FAA in submitting and processing the petition. The Division shall publish designations by the FAA in accordance with this act on the Division Web site.

SECTION 3. The Division of Aviation of the Department of Transportation shall develop guidelines for the content and dimensions for posted notices to mark boundaries in accordance with Section 1 of this act.

SECTION 4. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 128 (First Edition)

SHORT TITLE: Prohibit Drone Use Over Prison/Jail.

SPONSOR(S): Representatives McNeill, Torbett, and Faircloth

FISCAL IMPACT (\$ in millions)					
	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> No Estimate Available		
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
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, 2017

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated, and having penalties applied to those convicted of the new offenses. However, given that there is no historical data on these new offenses or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: \$206 to \$625 per disposition
- Indigent Defense Services: \$196 to \$361 per disposition
- Department of Public Safety (DPS) - Prisons: \$3,199 to \$5,027 per active felony sentence
- DPS - Community Corrections: Minimum of \$1,332 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill creates a new section in Article 16B of Chapter 15A in G.S. 15A-300.3, Use of an unmanned aircraft system near a confinement or correctional facility prohibited. Subsections (a) and (b) prohibit the

use of a drone within a specified distance from any local confinement facility or State or federal correctional facility unless certain criteria are met. This new section creates three new criminal penalties:

- A Class H felony for using the drone to deliver a weapon;
- A Class I felony for using the drone to deliver contraband such as controlled substances, cigarettes, and alcohol; and,
- A Class 1 misdemeanor for using the drone for any other purpose.

Subsections (c) and (d) lay out the procedure for confiscation and release of drones used in committing violations of this section.

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 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.

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.

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 creates three new criminal penalties. Because these are new offenses, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged, the following costs may be incurred:

Offense Level	AOC Cost
Class H felony	\$625
Class I felony	\$455
Class 1 misdemeanor	\$206

The Office of Indigent Defense Services (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 and the weighted average cost for each new criminal penalty in this bill.

Offense Level	Percent Handled by IDS	Weighted Average Cost
Class H felony	78%	\$361
Class I felony	68%	\$322
Class I misdemeanor	39%	\$196

These estimates assume 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.

Department of Public Safety – Prisons

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 2015.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

Population Projections and Bed Capacity Five Year Impact					
	June 30 2018	June 30 2019	June 30 2020	June 30 2021	June 30 2022
1. Inmates ²	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

Since the bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change.

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 2016.

³ Criminal penalty bills effective December 1, 2016 should not affect prison population and bed needs until FY 2017-18 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 35% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were four convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission's Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	1	2	2	2	2
20	7	10	10	10	10

In FY 2015-16, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of seven months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were nine convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission's Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class I Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
9 (Threshold)	1	2	2	2	2
20	2	4	4	4	4

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 \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 35% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,027 (\$457 monthly cost times 11 months). In FY 2015-16, 15% of Class I felony offenders received active sentences averaging seven months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$3,199 (\$457 monthly cost times seven months).

This bill also creates a new Class 1 misdemeanor offense. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population from this offense because all misdemeanor offenders who receive active sentences will serve them in the local jail.

Department of Public Safety – Community Corrections

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 F 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 \$148 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 2015-16, 35% of Class H offenders received active sentences. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 27 months. Therefore, at a minimum, one Class H felony conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,332 per offender (\$148 per month times nine months).⁴ For every offender sentenced to probation, the average cost would be \$3,996 (\$148 per month times 27 months).

In FY 2015-16, 15% of Class I offenders received active sentences. All active sentences for Class F through I felonies 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 Class I felony conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,332 per offender (\$148 per month times nine months).⁴ For every offender sentenced to probation, the average cost would be \$3,404 (\$148 per month times 23 months).

This bill also creates a new Class 1 misdemeanor offense. All misdemeanor offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). In FY 2015-16, 31% of Class 1 misdemeanor offenders received active sentences; 69% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in a non-active sentence will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,200 per offender (\$148 per month times 15 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

⁴ Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristine Leggett

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: February 27, 2017



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 325
PROPOSED COMMITTEE SUBSTITUTE H325-CSBK-13 [v.2]

04/03/2017 04:31:47 PM

Short Title: Amend Arson Law/Prosecutor Funds.

(Public)

Sponsors:

Referred to:

March 14, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY AND STRENGTHEN THE CRIMINAL LAWS REGARDING
3 ARSON AND TO APPROPRIATE FUNDS TO THE CONFERENCE OF DISTRICT
4 ATTORNEYS TO ESTABLISH AND SUPPORT A POSITION FOR A RESOURCE
5 PROSECUTOR.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Article 15 of Chapter 14 of the General Statutes is amended by
8 adding a new section to read:

9 "§ 14-67.2. Burning caused during commission of another felony.

10 If any person shall, during the commission of a felony, by means of fire or explosive,
11 knowingly damage or knowingly cause, aid, abet, advise, encourage, hire, counsel, or procure
12 another to damage any dwelling, structure, building, or conveyance referenced in this Article,
13 the person shall be punished as a Class D felon."

14 SECTION 2. G.S. 14-69.3 reads as rewritten:

15 "§ 14-69.3. Arson or other unlawful burning that results in serious injury to a firefighter
16 or firefighter, law enforcement officer, fire investigator, or emergency medical
17 technician.

18 (a) The following definitions apply in this section:

19 (1) Emergency medical technician. – The term includes an emergency medical
20 technician, an emergency medical technician-intermediate, and an
21 emergency medical technician-paramedic, as those terms are defined in
22 G.S. 131E-155.

23 (2) Fire investigator. – The term includes any person who, individually or as
24 part of an investigative team, has the responsibility and authority to
25 determine the origin, cause, or development of a fire or explosion.

26 (b) A person is guilty of a Class E felony if the person commits a felony under Article
27 15 of Chapter 14 of the General Statutes and a firefighter-firefighter, law enforcement officer,
28 fire investigator, or emergency medical technician suffers serious bodily injury while
29 discharging or attempting to discharge the firefighter's or emergency medical technician's
30 official duties on the property, or proximate to the property, that is the subject of the
31 firefighter's firefighter's, law enforcement officer's, fire investigator's, or emergency medical
32 technician's discharge or attempt to discharge his or her respective duties. As used in this
33 section, the term "emergency medical technician" includes an emergency medical technician,
34 an emergency medical technician intermediate, and an emergency medical
35 technician-paramedic, as those terms are defined in G.S. 131E-155."

36 SECTION 3. G.S. 58-79-1 reads as rewritten:



* H 3 2 5 - C S B K - 1 3 *

1 **"§ 58-79-1. Fires investigated; reports; records.**

2 The Director of the State Bureau of Investigation, through the State Bureau of
3 Investigation, the Office of the State Fire Marshal, and the chief of the fire department, or chief
4 of police where there is no chief of the fire department, in municipalities and towns, and the
5 county fire marshal and the sheriff of the county and the chief of the rural fire department
6 where such fire occurs outside of a municipality, are hereby authorized to investigate the cause,
7 origin, and circumstances of every fire occurring in such municipalities or counties in which
8 property has been destroyed or damaged, and shall specially make investigation whether the
9 fire was the result of carelessness or design. A preliminary investigation shall be made by the
10 chief of fire department or chief of police, where there is no chief of fire department in
11 municipalities, and by the county fire marshal and the sheriff of the county or the chief of the
12 rural fire department where such fire occurs outside of a municipality, and must be begun
13 within three days, exclusive of Sunday, of the occurrence of the fire, and the Director of the
14 State Bureau of Investigation, through the State Bureau of Investigation, shall have the right to
15 supervise and direct the investigation when he deems it expedient or necessary.

16 The officer making the investigation of fires shall forthwith notify the Director of the State
17 Bureau of Investigation, and must within one week of the occurrence of the fire furnish to the
18 Director of the State Bureau of Investigation a written statement of all facts relating to the
19 cause and origin of the fire, the kind, value and ownership of the property destroyed, and such
20 other information as is called for by the forms provided by the Director of the State Bureau of
21 Investigation. Departments capable of submitting the required information by the utilization of
22 computers and related equipment, by means of an approved format of standard punch cards,
23 magnetic tapes or an approved telecommunications system, may do so in lieu of the submission
24 of the written statement as provided for in this section. The Director of the State Bureau of
25 Investigation shall keep in his office a record of all reports submitted pursuant to this section.
26 These reports shall at all times be open to public inspection.

27 **SECTION 4.** There is appropriated from the General Fund to the Conference of
28 District Attorneys the sum of one hundred fifteen thousand six hundred three dollars
29 (\$115,603) in recurring funds and the sum of three thousand eight hundred sixty-five dollars
30 (\$3,865) in nonrecurring funds for the 2017-2018 fiscal year to establish and support a position
31 for a resource prosecutor. The resource prosecutor will serve as a resource for prosecutors, law
32 enforcement, firefighters, fire marshals, arson investigators, medical professionals, and other
33 allied professionals in the State on arson and homicide cases and also develop and provide
34 training programs for prosecutors, law enforcement officers, and other allied professionals that
35 will improve the ability to effectively prosecute arson and homicide cases.

36 **SECTION 5.** Sections 1 and 2 of this act become effective December 1, 2017, and
37 apply to offenses committed on or after that date. Section 4 of this act becomes effective July 1,
38 2017. The remainder of this act is effective when it becomes law.



HOUSE BILL 325: Amend Arson Law/Prosecutor Funds.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Appropriations	Date:	April 4, 2017
Introduced by:	Reps. McNeill, Hurley	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition H325-CSBK-13		Jessica Sammons Committee Co-Counsel

OVERVIEW: *The proposed committee substitute (PCS) for House Bill 325 would create a new offense for knowingly damaging a building by fire or explosive during the commission of another felony, expand the scope of an unlawful burning resulting in serious injury to include a law enforcement officer or fire investigator, clarify who is authorized to investigate fires, and appropriate funds to create a resource prosecutor position for arson and homicide cases.*

CURRENT LAW: There are varying offenses of arson, depending on the circumstances involved. Offenses of arson and other unlawful burnings are classified as Class D through Class H felonies. If the burned building is occupied at the time of the burning, the offense is a Class D felony. The minimum presumptive punishment, assuming no prior record level, for convictions of these felonies ranges from 5-6 months of community, intermediate, or active punishment (for a Class H felony) through 51-64 months of active punishment (for a Class D felony).

Under G.S. 14-69.3, committing a felony involving arson or an unlawful burning that results in serious bodily injury to a firefighter or emergency medical technician who is discharging or attempting to discharge his or her duties on or near the property is a Class E felony. The minimum presumptive punishment, assuming no prior record level, for a Class E felony conviction is 20-25 months of active or intermediate punishment.

BILL ANALYSIS:

Section 1 of the PCS would create a new offense for an unlawful burning during the commission of another felony. Knowingly damaging or knowingly aiding, encouraging, or procuring damage to any building or structure described in this Article, while in the commission of a felony, and by means of fire or explosive, would be a Class D felony.

Section 2 of the PCS would expand G.S. 14-69.3 to include serious bodily injury to a law enforcement officer or fire investigator.

Section 3 of the PCS would clarify that the Office of the State Fire Marshal is authorized to investigate the cause, origin, and circumstances of every fire in which property has been destroyed or damaged, and may make investigate whether the fire was the result of carelessness or design.

Section 4 of the PCS would appropriate from the General Fund to the Conference of District Attorneys \$115,603 in recurring funds and \$3,865 in nonrecurring funds for the 2017-2018 fiscal year to establish and support a resource prosecutor position. The resource prosecutor would serve as a State resource on arson and homicide cases and develop training programs to improve the ability to effectively prosecute arson and homicide cases.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House PCS 325

Page 2

EFFECTIVE DATE: Section 1 and 2 of this act would become effective on December 1, 2017, and apply to offenses committed on or after that date. Section 4 would become effective July 1, 2017. The remainder of this act would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 325

Short Title: Amend Arson Law/Prosecutor Funds.

(Public)

Sponsors: Representatives McNeill and Hurley (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II, if favorable, Appropriations

March 14, 2017

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE CRIMINAL LAWS REGARDING ARSON AND TO
APPROPRIATE FUNDS TO THE CONFERENCE OF DISTRICT ATTORNEYS TO
ESTABLISH AND SUPPORT A POSITION FOR A RESOURCE PROSECUTOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 15 of Chapter 14 of the General Statutes is amended by adding a
new section to read:

"§ 14-67.2. Burning caused during commission of another felony.

If any person shall, during the commission of a felony, by means of fire or explosive,
knowingly damage or knowingly cause, aid, abet, advise, encourage, hire, counsel, or procure
another to damage any dwelling, structure, building, or conveyance referenced in this Article, the
person shall be punished as a Class D felon."

SECTION 2. G.S. 14-69.3 reads as rewritten:

**"§ 14-69.3. Arson or other unlawful burning that results in serious injury to a firefighter or
firefighter, law enforcement officer, fire investigator, or emergency medical
technician.**

(a) The following definitions apply in this section:

(1) Emergency medical technician. – The term includes an emergency medical
technician, an emergency medical technician-intermediate, and an emergency
medical technician-paramedic, as those terms are defined in G.S. 131E-155.

(2) Fire investigator. – The term includes any person who, individually or as part of
an investigative team, has the responsibility and authority to determine the
origin, cause, or development of a fire or explosion.

(b) A person is guilty of a Class E felony if the person commits a felony under Article 15
of Chapter 14 of the General Statutes and a firefighter, law enforcement officer, fire
investigator, or emergency medical technician suffers serious bodily injury while discharging or
attempting to discharge the firefighter's or emergency medical technician's official duties on the
property, or proximate to the property, that is the subject of the firefighter's, law
enforcement officer's, fire investigator's, or emergency medical technician's discharge or attempt
to discharge his or her respective duties. As used in this section, the term "emergency medical
technician" includes an emergency medical technician, an emergency medical
technician-intermediate, and an emergency medical technician-paramedic, as those terms are
defined in G.S. 131E-155."

SECTION 3. There is appropriated from the General Fund to the Conference of
District Attorneys the sum of one hundred fifteen thousand six hundred three dollars (\$115,603) in



1 recurring funds and the sum of three thousand eight hundred sixty-five dollars (\$3,865) in
2 nonrecurring funds for the 2017-2018 fiscal year to establish and support a position for a resource
3 prosecutor. The resource prosecutor will serve as a resource for prosecutors, law enforcement,
4 firefighters, fire marshals, arson investigators, medical professionals, and other allied professionals
5 in the State on arson and homicide cases and also develop and provide training programs for
6 prosecutors, law enforcement officers, and other allied professionals that will improve the ability
7 to effectively prosecute arson and homicide cases.

8 **SECTION 4.** Sections 3 and 4 of this act become effective July 1, 2017. The
9 remainder of this act becomes effective December 1, 2017, and applies to offenses committed on
10 or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 325 (First Edition)

SHORT TITLE: Amend Arson Law/Prosecutor Funds.

SPONSOR(S): Representatives McNeill and Hurley

FISCAL IMPACT					
(\$ in millions)					
	Yes	No	No Estimate Available		
State Impact	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
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, 2017					
TECHNICAL CONSIDERATIONS:					
None					

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address new or expanded offenses being enforced, adjudicated, and having penalties applied to those convicted of the new offenses. However, given that there is no historical data on these offenses the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: \$2,017 to \$4,320 per disposition
- Indigent Defense Services: \$375 to \$961 per indigent defendant
- Department of Public Safety (DPS) - Prisons: \$12,339 to \$30,162 per active sentence
- DPS - Community Corrections: Minimum of \$1,776

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of the bill creates new G.S. 14-67.2, Burning caused during commission of another felony, which includes a new Class D felony offense for knowingly damaging or helping someone else damage any building while in the commission of another felony offense.

Section 2 of the bill amends existing G.S. 14-69.3, Arson or other unlawful burning that results in serious injury to a firefighter or emergency medical technician, to include law enforcement officers and fire investigators in the list of covered victims for the Class E felony.

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 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.

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.

SECTION 1

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 1 of the bill creates a new Class D felony offense. The new offense created in Section 1 of the bill appears to offer the prosecution another Class D felony option, other than the existing offense of first-degree arson. The new offense is likely to supplant existing charges other than first-degree arson when there is another felony also being charged (most likely when the other felony is non-arson related, such as a robbery, etc.). For example, the other arson charges may range from burning a church/religious building (a Class E felony); burning a building under construction, fraudulently burning a dwelling, or burning personal property (all Class H felonies); burning a school house or burning certain other buildings (Class F felonies). The new offense may also have a similar effect on the existing charges for solicitation and conspiracy to commit arson. Because AOC does not have data on how many current offenses would be upgraded to the new Class D felony, it is not possible to accurately estimate the potential impact to the courts. AOC

provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class D felony, the average cost to the court would be \$4,320. The following chart shows the current offense class that could be charged compared to the new offense class and the cost difference for each.

AOC Cost Differential by Felony Class FY 2016-17						
Statute	Offense	Class	Cost	New Class	Cost	Difference
14-58	Arson in the first degree	D	\$4,320	D	\$4,320	NA
14-58.2	Burning of mobile home	D	\$4,320	D	\$4,320	NA
14-62.2	Burning of religious buildings	E	\$2,017	D	\$4,320	\$2,303
14-59	Burning of public buildings	F	\$1,137	D	\$4,320	\$3,183
14-60	Burning of educational institutions	F	\$1,137	D	\$4,320	\$3,183
14-61	Burning of bridges and buildings	F	\$1,137	D	\$4,320	\$3,183
14-62	Burning of buildings	F	\$1,137	D	\$4,320	\$3,183
14-58	Arson in the second degree	G	\$938	D	\$4,320	\$3,382
14-62.1	Burning of building under construction	H	\$625	D	\$4,320	\$3,695
14-63	Burning of boats and barges	H	\$625	D	\$4,320	\$3,695
14-64	Burning of ginhouses and tobacco houses	H	\$625	D	\$4,320	\$3,695
14-65	Fraudulently setting fire to dwellings	H	\$625	D	\$4,320	\$3,695
14-66	Burning of personal property	H	\$625	D	\$4,320	\$3,695
14-67.1	Burning other buildings	H	\$625	D	\$4,320	\$3,695

The Office of Indigent Defense Services (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, the most recent year data is available, 89% of Class D felony cases were handled through IDS. The weighted average cost of a new Class D felony is \$961 per case for a private appointed counsel (PAC) attorney. The chart below shows the current offense class that could be charged compared to the new offense class and the cost difference for each.

IDS Cost Differential by Felony Class FY 2016-17						
Statute	Offense	Class	Cost	New Class	Cost	Difference
14-58	Arson in the first degree	D	\$961	D	\$961	NA
14-58.2	Burning of mobile home	D	\$961	D	\$961	NA
14-62.2	Burning of religious buildings	E	\$586	D	\$961	\$375
14-59	Burning of public buildings	F	\$569	D	\$961	\$392
14-60	Burning of educational institutions	F	\$569	D	\$961	\$392
14-61	Burning of bridges and buildings	F	\$569	D	\$961	\$392
14-62	Burning of buildings	F	\$569	D	\$961	\$392
14-58	Arson in the second degree	G	\$498	D	\$961	\$463
14-62.1	Burning of building under construction	H	\$392	D	\$961	\$569
14-63	Burning of boats and barges	H	\$392	D	\$961	\$569
14-64	Burning of ginhouses and tobacco houses	H	\$392	D	\$961	\$569
14-65	Fraudulently setting fire to dwellings	H	\$392	D	\$961	\$569
14-66	Burning of personal property	H	\$392	D	\$961	\$569
14-67.1	Burning other buildings	H	\$392	D	\$961	\$569

These estimates assume 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.

Department of Public Safety – Prisons

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 2016.

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).

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 2018	June 30 2019	June 30 2020	June 30 2021	June 30 2022
1. Inmates ²	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
4. Additional Inmates Due to this Bill ³	No estimate available				
5. Additional Beds Required					

Since Section 1 of the bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 98% of Class D felony convictions resulted in active sentences, with an average estimated time served of 66 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was one conviction (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission's Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class D Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

Since the new offense must occur during the commission of another felony, additional impact would occur if the sentence for the companion offense is run consecutive to the proposed Class D felony offense.

Some of the conduct covered by the proposed offense may currently be prosecuted in one of the existing offenses listed below, if the conduct occurred in conjunction with another felony offense. It is unclear whether a prosecution for this new felony would preempt the prosecution of any other burning related offenses, or if the two felonies could be charged in conjunction.

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 2017.

³ Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Arson Crimes by Felony Class FY 2016-17						
Statute	Offense	Class	Percent Active	Active Sentence Length (Months)	Percent Probation	Probation Sentence Length (Months)
14-58	Arson in the first degree	D	98%	66	2%	40
14-58.2	Burning of mobile home	D	98%	66	2%	40
14-62.2	Burning of religious buildings	E	63%	27	37%	33
14-59	Burning of public buildings	F	50%	17	50%	32
14-60	Burning of educational institutions	F	50%	17	50%	32
14-61	Burning of bridges and buildings	F	50%	17	50%	32
14-62	Burning of buildings	F	50%	17	50%	32
14-58	Arson in the second degree	G	39%	14	61%	29
14-62.1	Burning of building under construction	H	35%	11	65%	27
14-63	Burning of boats and barges	H	35%	11	65%	27
14-64	Burning of ginhouses and tobacco houses	H	35%	11	65%	27
14-65	Fraudulently setting fire to dwellings	H	35%	11	65%	27
14-66	Burning of personal property	H	35%	11	65%	27
14-67.1	Burning other buildings	H	35%	11	65%	27

There would be no additional prison impact if any of the Class D convictions listed above were convicted as a violation of the proposed Class D instead. Impact on the prison population will occur if any of the Class E, Class F, Class G, or Class H arson/burning convictions listed above become Class D convictions under the proposed statute because of the higher rates of active sentences (63% for Class E, 50% for Class F, 39% for Class G, and 35% for Class H compared to the required active sentence for the proposed Class D) and longer average estimated time served (27 months for Class E, 17 months for Class F, 14 months for Class G, and 11 months for Class H compared to 66 months for the proposed Class D).

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 \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 98% of Class D felony offenders received active sentences averaging 66 months. For every one Class D felony offender receiving an active sentence, the cost to the prison section will be \$30,162 (\$457 monthly cost times 66 months). The following table shows the cost at the current offense level and the difference from the proposed Class D offense level.

**Cost of Active Sentence for Current Offense Class vs. New Offense Class
FY 2016-17**

Statute	Offense	Class	Percent Active	Active Sentence Length (Months)	Per Diem Cost	Difference from Class D Cost \$30,162
14-58	Arson in the first degree	D	98%	66	\$30,162	NA
14-58.2	Burning of mobile home	D	98%	66	\$30,162	NA
14-62.2	Burning of religious buildings	E	63%	27	\$12,339	\$17,823
14-59	Burning of public buildings	F	50%	17	\$7,769	\$22,393
14-60	Burning of educational institutions	F	50%	17	\$7,769	\$22,393
14-61	Burning of bridges and buildings	F	50%	17	\$7,769	\$22,393
14-62	Burning of buildings	F	50%	17	\$7,769	\$22,393
14-58	Arson in the second degree	G	39%	14	\$6,398	\$23,764
14-62.1	Burning of building under construction	H	35%	11	\$5,027	\$25,135
14-63	Burning of boats and barges	H	35%	11	\$5,027	\$25,135
14-64	Burning of ginhouses and tobacco houses	H	35%	11	\$5,027	\$25,135
14-65	Fraudulently setting fire to dwellings	H	35%	11	\$5,027	\$25,135
14-66	Burning of personal property	H	35%	11	\$5,027	\$25,135
14-67.1	Burning other buildings	H	35%	11	\$5,027	\$25,135

Department of Public Safety – Community Corrections

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 F 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 \$148 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 2015-16, 98% of Class D felony offenders received active sentences. All active sentences for Class B1 through D felonies result in 12 months of post-release supervision (PRS). Therefore one conviction

resulting from this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,776 per offender (\$148 per month times 12 months).⁴

Probationary Sentences for Arson Crimes by Felony Class FY 2016-17					
Statute	Offense	Class	Percent Probation	Probation Sentence Length (Months)	PRS
14-58	Arson in the first degree	D	2%	40	12
14-58.2	Burning of mobile home	D	2%	40	12
14-62.2	Burning of religious buildings	E	37%	33	12
14-59	Burning of public buildings	F	50%	32	9
14-60	Burning of educational institutions	F	50%	32	9
14-61	Burning of bridges and buildings	F	50%	32	9
14-62	Burning of buildings	F	50%	32	9
14-58	Arson in the second degree	G	61%	29	9
14-62.1	Burning of building under construction	H	65%	27	9
14-63	Burning of boats and barges	H	65%	27	9
14-64	Burning of ginhouses and tobacco houses	H	65%	27	9
14-65	Fraudulently setting fire to dwellings	H	65%	27	9
14-66	Burning of personal property	H	65%	27	9
14-67.1	Burning other buildings	H	65%	27	9

SECTION 2

Judicial Branch

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

Section 2 of the bill expands the scope of an existing Class E felony offense. AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class E felony, the average cost to the court would be \$2,017.

The Office of Indigent Defense Services (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, the most recent year data is available, 79% of Class E felony cases were handled through IDS. The weighted average cost of a new Class E felony is \$586 per case for a private appointed counsel (PAC) attorney. This estimate assumes the

⁴ Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.

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 – Prisons

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,⁵ and represent the total number of beds in operation, or authorized for construction or operation as of December 2016.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

Population Projections and Bed Capacity Five Year Impact					
	June 30 2018	June 30 2019	June 30 2020	June 30 2021	June 30 2022
1. Inmates ⁶	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
4. Additional Inmates Due to this Bill⁷	No estimate available				
5. Additional Beds Required					

Since the bill expands the scope of an existing offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 63% of Class E felony convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission's Forecasting Technical Advisory Group.

⁵ 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.

⁶ 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 2017.

⁷ Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	3	3	3	3
20	13	28	34	34	35

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 \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 63% of Class E felony offenders received active sentences averaging 79 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$12,339 (\$457 monthly cost times 27 months).

Department of Public Safety – Community Corrections

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 F 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 \$148 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 2015-16, 63% of Class E felony offenders received active sentences. All active sentences for Class E felonies result in 12 months of post-release supervision (PRS). The average length of probation imposed for this offense class was 33 months. Therefore, at a minimum, one conviction resulting from this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,776 per offender (\$148 per month times 12 months).⁸ For every offender sentenced to probation, the average cost would be \$4,884 (\$148 per month times 33 months).

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

⁸ Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.

TECHNICAL CONSIDERATIONS: None

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APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: April 3, 2017



Signed Copy Located in the NCGA Principal Clerk's Offices



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

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HOUSE BILL 337

Short Title: Unmanned Aircraft Systems Law Revisions. (Public)

Sponsors: Representative Torbett.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Transportation, if favorable, Judiciary II

March 15, 2017

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS REVISIONS TO THE LAWS GOVERNING THE USE OF
UNMANNED AIRCRAFT SYSTEMS.

The General Assembly of North Carolina enacts:

**MODEL AIRCRAFTS/REMOVE EXEMPTION FROM UNMANNED AIRCRAFT
SYSTEMS LAWS**

SECTION 1. G.S. 15A-300.1(a) reads as rewritten:

"(a) Definitions. – The following definitions apply to this Article:

...

(2) ~~Model aircraft. – An aircraft, as defined in G.S. 63-1, that is mechanically
driven or launched into flight and that meets all of the following requirements:~~

a. ~~Is flown solely for hobby or recreational purposes.~~

b. ~~Is not used for payment, consideration, gratuity, or benefit, directly or
indirectly charged, demanded, received, or collected, by any person for
the use of the aircraft or any photographic or video image produced by
the aircraft.~~

(3) Unmanned aircraft. – An aircraft, as defined in G.S. 63-1, that is operated
without the possibility of human intervention from within or on the aircraft and
that does not meet the definition of model aircraft.

...."

REMOVE RESTRICTION ON USE OF SPECIAL IMAGING TECHNOLOGY

SECTION 2. G.S. 15A-300.1(d) is repealed.

EMERGENCY MANAGEMENT EXCEPTION

SECTION 3. G.S. 15A-300.1 is amended by adding a new subsection to read:

"(c1) Emergency Management Exception. – Notwithstanding the provisions of subsection
(b) of this section, an emergency management agency, as defined in G.S. 166A-19.3, may use
unmanned aircraft systems for all functions and activities related to emergency management,
including incident command, area reconnaissance, search and rescue, preliminary damage
assessment, hazard risk management, and floodplain mapping."

ALIGN WITH FEDERAL LAW STANDARD

SECTION 4. G.S. 63-96 reads as rewritten:



* H 3 3 7 - V - 1 *

1 "§ 63-96. Permit required for commercial operation of unmanned aircraft systems.

2 ...

3 (b) No person shall be issued a permit under this section unless all of the following apply:

4 (1) The person is at least ~~16 years of age~~ the minimum age required by federal
5 regulation for operation of an unmanned aircraft system.

6 (2) The person possesses a valid ~~drivers license issued by any state or territory of~~
7 ~~the United States or the District of Columbia~~ government-issued photographic
8 identification acceptable to the Federal Aviation Administration for issuing
9 authorization to operate an unmanned aircraft system.

10 (3) The person has passed the knowledge test for operating an unmanned aircraft
11 system as prescribed in G.S. 63-95(b).

12 (4) The person has satisfied all other applicable requirements of this Article or
13 federal regulation.

14 ...

15 (d) The Division shall develop and administer a program that complies with all applicable
16 federal regulations to issue permits to operators of unmanned aircraft systems for commercial
17 ~~purposes~~ purposes, including a fee structure for permits. Criteria and requirements established
18 under the subdivisions set forth in this subsection shall be no more restrictive than the rules or
19 regulations adopted by the Federal Aviation Administration setting forth the criteria and
20 requirements under which a person may operate an unmanned aircraft system for commercial
21 purposes. The program must include the following components:

22 ...

23 (2) ~~A fee structure for permits.~~

24 ...

25 (7) A designation of the geographic area within which a permittee shall be
26 authorized to operate an unmanned aircraft system. ~~The rules adopted by the~~
27 ~~Division for designating a geographic area pursuant to this subdivision shall be~~
28 ~~no more restrictive than the rules or regulations adopted by the Federal~~
29 ~~Aviation Administration for designating a geographic area for the commercial~~
30 ~~operation of unmanned aircraft systems.~~

31 ...

32 (f) ~~The~~ Subject to the limitations set forth in subsection (d) of this section, the Division
33 may issue rules and regulations to implement the provisions of this section."

34
35 **EFFECTIVE DATE**

36 **SECTION 5.** This act is effective when it becomes law.



HOUSE BILL 337: Unmanned Aircraft Systems Law Revisions.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Rep. Torbett
Analysis of: First Edition

Date: April 4, 2017
Prepared by: Susan Sitze
Howard Marsilio
Committee Counsel

OVERVIEW: *House Bill 337 would revise multiple existing statutes related to use limitations and commercial operation permitting requirements for unmanned aircraft systems (UAS).*

CURRENT LAW:

G.S. 15A-300.1(a) defines various types of aircraft for the purposes of Article 16B, Use of Unmanned Aircraft Systems, which include: "manned aircraft"; "model aircraft"; "unmanned aircraft"; and "unmanned aircraft systems."

G.S. 15A-300.1(b) prohibits using a UAS for surveillance of a person or a dwelling occupied by a person or private lands without consent, or taking unauthorized photographs of individuals for public dissemination (except for newsgathering, newsworthy events, public events, or public places).

G.S. 15A-300.1(c) exempts law enforcement from the general UAS use prohibitions in G.S. 15A-300.1(b) under certain circumstances, but emergency services are not currently exempt from these general prohibitions in subsection (b).

G.S. 15A-300.1(d) states that a commercial and private UAS may be equipped with infrared or thermal imaging technology for only the purposes listed in subsection (d), such as scientific research and agricultural activities.

G.S. 63-96 contains commercial UAS operation permitting requirements.

BILL ANALYSIS:

Section 1 would remove the definition of "model aircraft," and the exemption of model aircrafts from unmanned aircraft and UAS State law.

Section 2 would repeal 15A-300.1(d), and therefore would remove the use limitations on a commercial and private UAS equipped with infrared or thermal imaging technology.

Section 3 would add a new subsection exempting specified emergency service functions from the UAS operation prohibitions in G.S. 15A-300.1(b), and specifies the following as permissible functions: incident command; area reconnaissance; search and rescue; preliminary damage assessment; hazard risk management; and floodplain mapping.

Section 4 would align State UAS law with federal commercial UAS operator regulations, and would clarify that the State criteria and requirements could not be more restrictive than federal regulations.

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

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



**House Pages
Assignments
Tuesday, April 04, 2017
Session: 6:00 PM**

Committee	Room	Time	Staff	Comments	Member
Transportation	643	11:00 AM	Caroline Cholette		Rep. Ted Davis, Jr.
			Jared Diegelman		Rep. Dean Arp
			Zina Hockaday		Rep. Yvonne Lewis Holley
			Samantha Lenger		Rep. Duane Hall
Education - Community Colleges	1228/1327	1:00 PM	Caroline Byars		Rep. John Bradford
			Madison Gunter		Rep. Mike Clampitt
Judiciary II	421	1:00 PM	Austin Calhoun		Rep. William Richardson
			Ashley Holland		Rep. Pat Hurley
			Carolyn McCarthy		Rep. Susan Martin
			Alex Smith		Rep. Holly Grange
Elections	643	3:00 PM	Noah Ellington		Rep. Speaker Tim Moore
			Samantha Lenger		Rep. Duane Hall
			Joseph Pinnix		Rep. Chris Malone
			Chloe Worner		Rep. Harry Warren

25



26



Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 04-04-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Will Crocker
4. Name: Warren Hawkins
5. Name: _____

Senate Sgt-At Arms:

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



Maureen Krueger Moore County District Atty



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

4-4-2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Dave Horne	SA
Capital Feldman	SA
Lisa Martin	Cap-Ad
Peggy Gnee	Cap-Ad
Dan Morrison	PSG
Jim Lake	Enterprise
Seilloddy	ACLU
Mildred Spearman	AOC
Peter Bolac	NC State Bar
Caroline Miller	AMGA
Kenneth	MWC



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

4-4-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Thacron Jackson	Focus Carolina
Cady Thomas	"
Joy Hides	NCDOT
Rebecca Murbok	NC Sentencing Commission
TIM BRADLEY	NC STATE FIREFIGHTERS ASSOC
Maureen Kueger	Moore County District Attorney
Kimberly N Overton	NC Conference of District Attorneys
Meghan Cook	DOI
George Robinson	DOI
BRIAN TAYLOR	DOT/OSFM
Mike Williams	DOI/OSFM

Der



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

4-3-17

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Dub Clary	NCSP
Gene Royall	NCFPC
Angie Gray	NC SBI
W. H. Polk	NC DPS
Brad Salton	JAS
Andy Brandon	NC DPS
David Farnham	UB
Brian Johnson	NFA5W-NC



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Derrick S. Clouston

NC OS FM

Chris Broughton

MWC

MARKY Jernity = speaker stuff

Madeline Hurley

Ward and Smith, P.A.

Kayla Skinner

Wake STEM ECHS

Isabel Vda. Goria

ALL REAL TORS



**House Committee on Judiciary II
Tuesday, April 11, 2017 at 1:00 PM
Room 421 of the Legislative Office Building**

MINUTES

The House Committee on Judiciary II met at 1:00 PM on April 11, 2017 in Room 421 of the Legislative Office Building. Representatives Blust, Faircloth, Hurley, McGrady, Michaux, Bumgardner, Fisher, Hall, Harrison, John, and Sauls attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:04 PM. He recognized the Sergeants-at-Arms.

The following bills were considered:

HB 297 Amend Habitual DWI. (Representatives Jackson, Hurley, Bert Jones, Saine)

Representative Jackson was recognized to explain the bill. Representative Michaux made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 298 0.00 Alcohol Restriction - All DWI. (Representatives Jackson, Conrad, Adcock, Warren)

Representative Jackson was recognized to explain the bill. After a brief discussion, Representative McGrady made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report. HB 298 was re-referred to the House Committee on Appropriations.

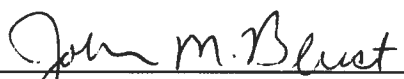
HB 399 Stop Images Taken W/O Consent From Dissemin. (Representatives Malone, Adcock, Faircloth, R. Turner)

Representative Malone was recognized to explain the bill. After a short discussion, Ms. Kimberly Overton, Conference of District Attorneys, spoke on the bill. Mr. Alexander (Alex) C. Miller, representing the NC Coalition Against Domestic Violence, answered questions from the committee members. Representative Faircloth made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 471 Fail to Obtain DL/Increase Punishment. (Representatives Millis, Destin Hall, Cleveland, Burr)

Representative Millis was recognized to explain the bill. After a lengthy discussion, Representative Faircloth made the motion for a favorable report for the bill. Ms. Nathalia Diego, a Raleigh high school student, spoke against the bill. A voice vote of the committee members was not decisive, and Chairman Blust called for a show of hands. The vote was 6-4 for a favorable report. The bill received a favorable report. HB 471 was re-referred to the House Committee on Finance.

There being no further business, Chairman Blust adjourned the meeting at 1:40 PM.



Representative John M. Blust, Chairman
Presiding



Gennie L. Thurlow, Committee Clerk



Corrected #1: HB 364 has been removed.

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, April 11, 2017

TIME: 1:00 PM

LOCATION: 421 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>HB 297</u>	Amend Habitual DWI.	Representative Jackson Representative Hurley Representative Bert Jones Representative Saine
<u>HB 298</u>	0.00 Alcohol Restriction - All DWI.	Representative Jackson Representative Conrad Representative Adcock Representative Warren
<u>HB 399</u>	Stop Images Taken W/O Consent From Dissemin.	Representative Malone Representative Adcock Representative Faircloth Representative R. Turner
<u>HB 471</u>	Fail to Obtain DL/Increase Punishment.	Representative Millis Representative Destin Hall Representative Cleveland Representative Burr



Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 4:31 PM on Monday, April 10, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, April 11, 2017
TIME: 1:00 PM
LOCATION: 421 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>HB 297</u>	Amend Habitual DWI.	Representative Jackson Representative Hurley Representative Bert Jones Representative Saine
<u>HB 298</u>	0.00 Alcohol Restriction - All DWI.	Representative Jackson Representative Conrad Representative Adcock Representative Warren
<u>HB 364</u>	Tolling of Misdemeanor Statutes.	Representative R. Turner
<u>HB 399</u>	Stop Images Taken W/O Consent From Dissemin.	Representative Malone Representative Adcock Representative Faircloth Representative R. Turner
<u>HB 471</u>	Fail to Obtain DL/Increase Punishment.	Representative Millis Representative Destin Hall Representative Cleveland Representative Burr

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:07 PM on Thursday, April 06, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Tuesday, April 11, 2017, 1:00 PM
421 Legislative Office Building**

AGENDA

**Welcome and Opening Remarks
Representative John M. Blust**

Introduction of Pages and Sergeants-at-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 297	Amend Habitual DWI.	Representative Jackson Representative Hurley Representative Bert Jones Representative Saine
HB 298	0.00 Alcohol Restriction - All DWI.	Representative Jackson Representative Conrad Representative Adcock Representative Warren
HB 399	Stop Images Taken W/O Consent From Dissemin.	Representative Malone Representative Adcock Representative Faircloth Representative R. Turner
HB 471	Fail to Obtain DL/Increase Punishment.	Representative Millis Representative Destin Hall Representative Cleveland Representative Burr

Other Business

Adjournment



NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair

FAVORABLE

HB 297

Amend Habitual DWI.

Draft Number:	None
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Jackson

HB 399

Stop Images Taken W/O Consent From Dissemin.

Draft Number:	None
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Malone

FAVORABLE AND RE-REFERRED

HB 298

0.00 Alcohol Restriction - All DWI.

Draft Number:	None
Serial Referral:	APPROPRIATIONS
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Jackson

HB 471

Fail to Obtain DL/Increase Punishment.

Draft Number:	None
Serial Referral:	FINANCE
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Millis

TOTAL REPORTED: 4



* C M R 1 9 8 - V - 1 *



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 297

Short Title: Amend Habitual DWI. (Public)

Sponsors: Representatives Jackson, Hurley, Bert Jones, and Saine (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

March 9, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE OFFENSE OF HABITUAL IMPAIRED DRIVING.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 20-138.5(a) reads as rewritten:
5 "**§ 20-138.5. Habitual impaired driving.**

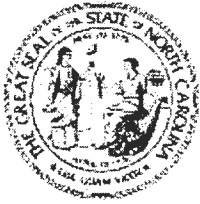
6 (a) A person commits the offense of habitual impaired driving if he drives while impaired
7 as defined in G.S. 20-138.1 and (i) has been convicted of ~~three~~ two or more offenses involving
8 impaired driving as defined in G.S. 20-4.01(24a) within 10 years of the date of this ~~offense~~ offense
9 or (ii) has been previously convicted of the offense of habitual impaired driving."

10 **SECTION 2.** This act becomes effective December 1, 2017, and applies to offenses
11 committed on or after that date.



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HOUSE BILL 297: Amend Habitual DWI.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	April 11, 2017
Introduced by:	Reps. Jackson, Hurley, Bert Jones, Saine	Prepared by:	Susan Sitze
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House Bill 297 would amend the offense of Habitual Impaired Driving by reducing the number of prior offenses required, and providing that once an offender is convicted of Habitual Impaired Driving any future offenses will also be prosecuted as Habitual offenses.*

CURRENT LAW: A person is guilty of habitual impaired driving if they commit the offense of impaired driving and have 3 or more prior convictions of impaired driving within 10 years of the new offense. Habitual impaired driving is punishable as a Class F felony and requires a minimum 12 month active sentence. A conviction under this statute also results in a permanent license revocation.

BILL ANALYSIS: House Bill 297 would amend the number of prior convictions required for habitual impaired driving to only require 2 prior convictions within the 10 years preceding the current offense. Additionally, the bill would provide that if a person has previously been convicted of habitual impaired driving, any new offense shall also be habitual impaired driving.

EFFECTIVE DATE: This act would become effective December 1, 2017, and apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



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Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 298

Short Title: 0.00 Alcohol Restriction - All DWI. (Public)

Sponsors: Representatives Jackson, Conrad, Adcock, and Warren (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II, if favorable, Appropriations

March 9, 2017

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE A 0.00 ALCOHOL CONCENTRATION RESTRICTION ON ALL
3 RESTORATION OF LICENSES REVOKED FOR AN IMPAIRED DRIVING OFFENSE.
4 The General Assembly of North Carolina enacts:
5 **SECTION 1.** G.S. 20-17.8(b) reads as rewritten:
6 "(b) Ignition Interlock Required. – Except as provided in subsection (l) of this section, when
7 the Division restores the license of a person who is subject to this section, in addition to any other
8 restriction or condition, it shall require the person to agree to and shall indicate on the person's
9 drivers license the following restrictions for the period designated in subsection (c):
10 (1) A restriction that the person may operate only a vehicle that is equipped with a
11 functioning ignition interlock system of a type approved by the Commissioner.
12 The Commissioner shall not unreasonably withhold approval of an ignition
13 interlock system and shall consult with the Division of Purchase and Contract
14 in the Department of Administration to ensure that potential vendors are not
15 discriminated against.
16 (2) A requirement that the person personally activate the ignition interlock system
17 before driving the motor vehicle.
18 (3) An alcohol concentration restriction as follows:
19 a. If the ignition interlock system is required pursuant only to subdivision
20 (a)(1) of this section, a requirement that the person not drive with an
21 alcohol concentration of ~~0.04 or greater~~; greater than 0.00;
22 b. If the ignition interlock system is required pursuant to subdivision (a)(2)
23 or (a)(3) of this section, a requirement that the person not drive with an
24 alcohol concentration of greater than 0.00; or
25 c. If the ignition interlock system is required pursuant to subdivision (a)(1)
26 of this section, and the person has also been convicted, based on the
27 same set of circumstances, of: (i) driving while impaired in a
28 commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years
29 old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a violation of
30 G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting
31 from the operation of a motor vehicle when the offense involved
32 impaired driving, a requirement that the person not drive with an
33 alcohol concentration of greater than 0.00."
34 **SECTION 2.** G.S. 20-19(c3) reads as rewritten:



"(c3) Restriction; Revocations. – When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

- (1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of ~~0.04 or more~~ greater than 0.00 at any relevant time after the driving;
- (2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;
- (3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving;
- (4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, a violation of G.S. 20-141.4, or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under

1 this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year
2 revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any
3 remaining period of the original revocation, prior to its reduction, shall be reinstated and the
4 one-year revocation begins after all other periods of revocation have terminated."

5 **SECTION 3.** This act becomes effective July 1, 2017, and applies to offenses
6 committed on or after that date.





HOUSE BILL 298: 0.00 Alcohol Restriction - All DWI.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Appropriations	Date:	April 11, 2017
Introduced by:	Reps. Jackson, Conrad, Adcock, Warren	Prepared by:	Susan Sitze
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House Bill 298 would require a greater than 0.00 alcohol concentration restriction on all restoration of licenses revoked for an impaired driving offense.*

CURRENT LAW: When a person's driver's license is revoked after an impaired driving conviction, upon restoration of the license an alcohol concentration restriction is placed on the person's driver's license. Violation of that restriction results in an additional one year revocation of the license. Under current law that restriction is as follows:

- 0.04 for a first restoration for a "regular" DWI offense (or any substantially similar offense in another state or in federal court).
- Greater than 0.00 for a second or subsequent restoration for a "regular" DWI offense (or any substantially similar offense in another state or in federal court).
- Greater than 0.00 for any restoration for DWI in a commercial vehicle, habitual DWI, driving while less than 21 years old after consuming drugs or alcohol, felony death by vehicle, manslaughter or negligent homicide resulting from impaired driving, or after a revocation for violating an alcohol concentration restriction (any substantially similar offense in another state or in federal court).

Some persons convicted of impaired driving offenses are required to drive only vehicles with an ignition interlock system installed, and as part of that requirement are given an alcohol concentration restriction for the ignition interlock. Violation of that restriction by blowing a greater alcohol concentration on the ignition interlock is charged as driving while license revoked. Under current law that restriction is as follows:

- 0.04 if the only reason an ignition interlock system is required is because the person had an alcohol concentration of 0.15 or more at the time of the underlying impaired driving offense.
- Greater than 0.00 if the ignition interlock is required because the person has previous impaired driving convictions within 7 years or the person was sentenced at the Aggravated Level One punishment level for the underlying impaired driving offense.
- Greater than 0.00 if the ignition interlock is required because the person had an alcohol concentration of 0.15 or more AND the underlying conviction was for DWI in a commercial vehicle, driving while less than 21 years old after consuming alcohol or drugs, felony death, felony aggravated serious injury or felony serious injury by motor vehicle, or manslaughter or negligent homicide resulting from impaired driving.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 298

Page 2

BILL ANALYSIS:

House Bill 298 would amend the two instances where the alcohol concentration restriction is "0.04 or greater" to make the alcohol concentration restrictions for both ignition interlock systems (Section 1 of the bill) and restoration of a driver's license after an impaired driving conviction (Section 2 of the bill) "greater than 0.00" in all cases.

EFFECTIVE DATE: This act would become effective July 1, 2017, and apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 399

Short Title: Stop Images Taken W/O Consent From Dissemin. (Public)

Sponsors: Representatives Malone, Adcock, Faircloth, and R. Turner (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

March 20, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT PERSONS WHO ARE PHOTOGRAPHED, VIDEOTAPED, OR
3 RECORDED WITHOUT THEIR CONSENT FROM HAVING HIS OR HER IMAGE
4 DISCLOSED.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 14-190.5A reads as rewritten:

7 "§ 14-190.5A. Disclosure of private images.

8 (a) Definitions. – The following definitions apply in this section:

9 (1) Disclose. – Transfer, publish, distribute, or reproduce.

10 (2) Image. – A photograph, film, videotape, recording, digital, ~~or other~~
11 ~~reproduction, computer, or computer-generated image or picture, or other~~
12 ~~reproduction that is made or produced by electronic, mechanical, or other~~
13 ~~means.~~

14 (3) Intimate parts. – Any of the following naked human parts: (i) male or female
15 genitals, (ii) male or female pubic area, (iii) male or female anus, or (iv) the
16 nipple of a female over the age of 12.

17 (4) ~~Personal relationship. – As defined in G.S. 50B-1(b).~~

18 (5) ~~Reasonable expectation of privacy. – When a depicted person has consented~~
19 ~~to the disclosure of an image within the context of a personal relationship~~
20 ~~and the depicted person reasonably believes that the disclosure will not go~~
21 ~~beyond that relationship.~~

22 (6) Sexual conduct. – Includes any of the following:

23 a. Vaginal, anal, or oral intercourse, whether actual or simulated,
24 normal or perverted.

25 b. Masturbation, excretory functions, or lewd exhibition of ~~uncovered~~
26 genitals.

27 c. An act or condition that depicts torture, physical restraint by being
28 fettered or bound, or flagellation of or by a nude person or a person
29 clad in undergarments or in revealing or bizarre costume.

30 (b) Offense. – A person is guilty of disclosure of private images if all of the following
31 apply:

32 (1) The person knowingly discloses an image of another person with the intent
33 to do either of the following:

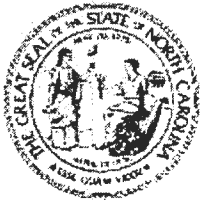
34 a. Coerce, harass, intimidate, demean, humiliate, or cause financial loss
35 to the depicted person.



- 1 b. Cause others to coerce, harass, intimidate, demean, humiliate, or
2 cause financial loss to the depicted person.
- 3 (2) The depicted person is identifiable from the disclosed image itself or
4 information offered in connection with the image.
- 5 (3) The depicted person's intimate parts are exposed or the depicted person is
6 engaged in sexual conduct in the disclosed image.
- 7 (4) The person discloses the image without the affirmative consent of the
8 depicted person.
- 9 (5) The person ~~discloses~~obtained the image without consent of the depicted
10 person or under circumstances such that the person knew or should have
11 known that the depicted person ~~had a reasonable expectation of~~
12 ~~privacy~~expected the images to remain private.
- 13 (c) Penalty. – A violation of this section shall be punishable as follows:
- 14 (1) For an offense by a person who is 18 years of age or older at the time of the
15 offense, the violation is a Class H felony.
- 16 (2) For a first offense by a person who is under 18 years of age at the time of the
17 offense, the violation is a Class 1 misdemeanor.
- 18 (3) For a second or subsequent offense by a person who is under the age of 18 at
19 the time of the offense, the violation is a Class H felony.
- 20 (d) Exceptions. – This section does not apply to any of the following:
- 21 (1) Images involving voluntary exposure in public or commercial settings.
- 22 (2) Disclosures made in the public interest, including, but not limited to, the
23 reporting of unlawful conduct or the lawful and common practices of law
24 enforcement, criminal reporting, legal proceedings, medical treatment, or
25 scientific or educational activities.
- 26 (3) Providers of an interactive computer service, as defined in 47 U.S.C. §
27 230(f), for images provided by another person.

28 "

29 **SECTION 2.** This act becomes effective December 1, 2017, and applies to
30 offenses committed on or after that date.



HOUSE BILL 399: Stop Images Taken W/O Consent From Dissemin.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	April 11, 2017
Introduced by:	Reps. Malone, Adcock, Faircloth, R. Turner	Prepared by:	Susan Sitze
Analysis of:	First Edition		Jessica Sammons Committee Co-Counsel

OVERVIEW: *House Bill 399 would amend the privacy element for disclosure of private images to require the offender to have obtained the image without consent or under circumstances where the offender knew or should have known that the depicted person expected the images to remain private.*

[As introduced, this bill was identical to S255, as introduced by Sens. Bishop, Britt, Bryant, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW: A person is guilty of disclosure of private images if the person knowingly discloses an image of another person whose intimate parts are exposed or who is engaged in sexual conduct, and all of the following elements are met:

- (1) The person disclosed the private images with the intent to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person, or to cause others to do the same.
- (2) The depicted person is identifiable from the image or context surrounding the disclosure.
- (3) The disclosure was made without the affirmative consent of the depicted person.
- (4) The disclosure was made under circumstances such that the person knew or should have known that the depicted person had a reasonable expectation of privacy. *A reasonable expectation of privacy* exists when the depicted person has consented to the disclosure of an image within the context of a personal relationship and the depicted person reasonably believes that the disclosure will not go beyond that relationship.

The offense is a Class 1 misdemeanor for a first-time offender who is under age 18 at the time of the offense. The offense is a Class H felony if the offender is 18 or older at the time of the offense or for any second or subsequent offense by an offender under age 18.

BILL ANALYSIS: House Bill 399 would amend the privacy requirement for the offense of disclosure of private images. Rather than a "reasonable expectation of privacy" standard, disclosure of private images would require that the person had obtained the disclosed image without the consent of the depicted person, or under circumstances such that the person knew or should have known that the depicted person expected the images to remain private.

House Bill 399 would also expand the definition of *image* to include computer or computer-generated images or pictures and other reproductions produced by electronic or mechanical means.

EFFECTIVE DATE: This act would become effective December 1, 2017, and apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 471

Short Title: Fail to Obtain DL/Increase Punishment.

(Public)

Sponsors: Representatives Millis, Destin Hall, Cleveland, and Burr (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II, if favorable, Finance

March 27, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE PUNISHMENT FOR CERTAIN OFFENSES OF FAILING
3 TO OBTAIN A DRIVERS LICENSE BEFORE DRIVING A MOTOR VEHICLE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 20-35 reads as rewritten:

6 "§ 20-35. Penalties for violating Article; defense to driving without a license.

7 (a) Penalty. – Except as otherwise provided in ~~subsection (a1) or (a2)~~ subsections (a1)
8 through (a3) of this section, a violation of this Article is a Class 2 misdemeanor unless a statute
9 in the Article sets a different punishment for the violation. If a statute in this Article sets a
10 different punishment for a violation of the Article, the different punishment applies.

11 (a1) The following offenses are Class 3 misdemeanors:

12 (1) ~~Failure to obtain a license before driving a motor vehicle, in violation of~~
13 ~~G.S. 20-7(a).~~

14 (2) Failure to comply with license restrictions, in violation of G.S. 20-7(e).

15 (3) Permitting a motor vehicle owned by the person to be operated by an
16 unlicensed person, in violation of G.S. 20-34.

17 ...

18 (a3) Failure to obtain a license before driving a motor vehicle, in violation of
19 G.S. 20-7(a), is a Class 3 misdemeanor. In addition to any other penalty authorized by law, a
20 person convicted of a second or subsequent offense shall be fined four hundred dollars
21 (\$400.00). If a person is convicted of a third or subsequent offense, the vehicle that was driven
22 by the person at the time of the offense shall become property subject to forfeiture in
23 accordance with the procedure set out in G.S. 20-28.2, 20-28.3, 20-28.4, and 20-28.5. Nothing
24 in this subsection shall be construed as applying to a person driving a motor vehicle with a
25 revoked or suspended license.

26"

27 SECTION 2. G.S. 20-28.2 reads as rewritten:

28 "§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving
29 license revocation; ~~forfeiture for~~ revocation, felony speeding to elude
30 arrest, or certain offenses of failure to obtain a license before driving a
31 motor vehicle.

32 (a) Meaning of "Impaired Driving License Revocation". – The revocation of a person's
33 drivers license is an impaired driving license revocation if the revocation is pursuant to:

34 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or
35 20-138.5; or



- 1 (2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if
2 the offense involves impaired driving; or
- 3 (3) The laws of another state and the offense for which the person's license is
4 revoked prohibits substantially similar conduct which if committed in this
5 State would result in a revocation listed in subdivisions (1) or (2).
- 6 (a1) Definitions. – As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, 20-28.7,
7 20-28.8, 20-28.9, 20-35(a3), 20-54.1, and 20-141.5, the following terms mean:
- 8 (1) Fair Market Value. – The value of the seized motor vehicle, as determined in
9 accordance with the schedule of values adopted by the Commissioner
10 pursuant to G.S. 105-187.3.
- 11 (1a) Impaired Driving Acknowledgment. – A written document acknowledging
12 that:
- 13 a. The motor vehicle was operated by a person charged with an offense
14 involving impaired driving, and:
- 15 1. That person's drivers license was revoked as a result of a prior
16 impaired drivers license revocation; or
- 17 2. That person did not have a valid drivers license, and did not
18 have liability insurance.
- 19 b. If the motor vehicle is again operated by this particular person, and
20 the person is charged with an offense involving impaired driving,
21 then the vehicle is subject to impoundment and forfeiture if (i) the
22 offense occurs while that person's drivers license is revoked, or (ii)
23 the offense occurs while the person has no valid drivers license, and
24 has no liability insurance.
- 25 c. A lack of knowledge or consent to the operation will not be a defense
26 in the future, unless the motor vehicle owner has taken all reasonable
27 precautions to prevent the use of the motor vehicle by this particular
28 person and immediately reports, upon discovery, any unauthorized
29 use to the appropriate law enforcement agency.
- 30 (2) Innocent Owner. – A motor vehicle owner:
- 31 a. Who, if the offense resulting in seizure was an impaired driving
32 offense, did not know and had no reason to know that (i) the
33 defendant's drivers license was revoked, or (ii) that the defendant did
34 not have a valid drivers license, and that the defendant had no
35 liability insurance; or
- 36 b. Who, if the offense resulting in seizure was an impaired driving
37 offense, knew that (i) the defendant's drivers license was revoked, or
38 (ii) that the defendant had no valid drivers license, and that the
39 defendant had no liability insurance, but the defendant drove the
40 vehicle without the person's expressed or implied permission, and the
41 owner files a police report for unauthorized use of the motor vehicle
42 and agrees to prosecute the unauthorized operator of the motor
43 vehicle, or who, if the offense resulting in seizure was a felony
44 speeding to elude arrest offense, did not give the defendant express
45 or implied permission to drive the vehicle, and the owner files a
46 police report for unauthorized use of the motor vehicle and agrees to
47 prosecute the unauthorized operator of the motor vehicle; or
- 48 c. Whose vehicle was reported stolen; or
- 49 d. Repealed by Session Laws 1999-406, s. 17.
- 50 e. Who is (i) a rental car company as defined in G.S. 66-201(a) and the
51 vehicle was driven by a person who is not listed as an authorized

- 1 driver on the rental agreement as defined in G.S. 66-201; or (ii) a
2 rental car company as defined in G.S. 66-201(a) and the vehicle was
3 driven by a person who is listed as an authorized driver on the rental
4 agreement as defined in G.S. 66-201 and if the offense resulting in
5 seizure was an impaired driving offense, the rental car company has
6 no actual knowledge of the revocation of the renter's drivers' license
7 at the time the rental agreement is entered, or if the offense resulting
8 in seizure was a felony speeding to elude arrest offense, the rental
9 agreement expressly prohibits use of the vehicle while committing a
10 felony; or
- 11 f. Who is in the business of leasing motor vehicles, who holds legal
12 title to the motor vehicle as a lessor at the time of seizure and, if the
13 offense resulting in seizure was an impaired driving offense, who has
14 no actual knowledge of the revocation of the lessee's drivers license
15 at the time the lease is ~~entered~~-entered; or
- 16 g. Who, if the offense resulting in seizure was a failure to obtain a
17 license before driving a motor vehicle punishable by G.S. 20-35(a3),
18 did not know and had no reason to know that the defendant did not
19 have a drivers license; or
- 20 h. Who, if the offense resulting in seizure was a failure to obtain a
21 license before driving a motor vehicle punishable by G.S. 20-35(a3),
22 knew that the defendant did not have a drivers license, but the
23 defendant drove the vehicle without the person's expressed or
24 implied permission, and the owner files a police report for
25 unauthorized operation of the motor vehicle and agrees to prosecute
26 the unauthorized operator of the motor vehicle.
- 27 (2a) Insurance Company. – Any insurance company that has coverage on or is
28 otherwise liable for repairs or damages to the motor vehicle at the time of the
29 seizure.
- 30 (2b) Insurance Proceeds. – Proceeds paid under an insurance policy for damage
31 to a seized motor vehicle less any payments actually paid to valid lienholders
32 and for towing and storage costs incurred for the motor vehicle after the time
33 the motor vehicle became subject to seizure.
- 34 (3) Lienholder. – A person who holds a perfected security interest in a motor
35 vehicle at the time of seizure.
- 36 (3a) Motor Vehicle Owner. – A person in whose name a registration card or
37 certificate of title for a motor vehicle is issued at the time of seizure.
- 38 (3b) No Drivers License Acknowledgment. – A written document acknowledging
39 that:
- 40 a. The motor vehicle was operated by a person charged with an offense
41 of failure to obtain a license before driving a motor vehicle in
42 violation of G.S. 20-7(a) and that person has at least two prior
43 convictions for the same offense.
- 44 b. If the motor vehicle is again operated by this particular person and
45 the person is charged with an offense of failure to obtain a license
46 before driving a motor vehicle in violation of G.S. 20-7(a), then the
47 vehicle is subject to impoundment and forfeiture.
- 48 c. A lack of knowledge or consent to the operation will not be a defense
49 in the future, unless the motor vehicle owner has taken all reasonable
50 precautions to prevent the use of the motor vehicle by this particular

- 1 person and immediately reports, upon discovery, any unauthorized
2 use to the appropriate law enforcement agency.
- 3 (4) Order of Forfeiture. – An order by the court which terminates the rights and
4 ownership interest of a motor vehicle owner in a motor vehicle and any
5 insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.
- 6 (5) Repealed by Session Laws 1998-182, s. 2.
- 7 (6) Registered Owner. – A person in whose name a registration card for a motor
8 vehicle is issued at the time of seizure.
- 9 (7) Repealed by Session Laws 1998-182, s. 2.
- 10 (8) Speeding to Elude Arrest Acknowledgment. – A written document
11 acknowledging that:
- 12 a. The motor vehicle was operated by a person charged with felony
13 speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).
- 14 b. If the motor vehicle is again operated by this particular person and
15 the person is charged with felony speeding to elude arrest pursuant to
16 G.S. 20-141.5(b) or (b1), then the vehicle is subject to impoundment
17 and forfeiture.
- 18 c. A lack of knowledge or consent to the operation will not be a defense
19 in the future unless the motor vehicle owner has taken all reasonable
20 precautions to prevent the use of the motor vehicle by this particular
21 person and immediately reports upon discovery any unauthorized use
22 to the appropriate law enforcement agency.
- 23 ...
- 24 (b3) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; Failure to
25 Obtain a License Before Driving a Motor Vehicle. – A judge may determine whether the
26 vehicle driven by a person without a license at the time of the offense becomes subject to an
27 order of forfeiture. The determination may be made at any of the following times:
- 28 (1) A sentencing hearing for the offense of failure to obtain a license before
29 driving a motor vehicle.
- 30 (2) A separate hearing after conviction of the defendant.
- 31 (3) A forfeiture hearing held at least 60 days after the defendant failed to appear
32 at the scheduled trial for the underlying offense, and the defendant's order of
33 arrest for failing to appear has not been set aside.
- 34 The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence
35 shows that the defendant is guilty of failure to obtain a license before driving a motor vehicle in
36 violation of G.S. 20-7(a) and has at least two prior convictions of the same offense.
- 37 ...
- 38 (e) Release of Vehicle to Innocent Motor Vehicle Owner. – At a forfeiture hearing, if a
39 nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the
40 motor vehicle was being driven by a person who was not the only motor vehicle owner or had
41 no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the
42 petitioner is an "innocent owner", as defined by this section, a judge shall order the motor
43 vehicle released to that owner, conditioned upon payment of all towing and storage charges
44 incurred as a result of the seizure and impoundment of the motor vehicle.
- 45 Release to an innocent owner shall only be ordered upon satisfactory proof of:
- 46 (1) The identity of the person as a motor vehicle owner;
- 47 (2) The existence of financial responsibility to the extent required by Article 13
48 of this Chapter or by the laws of the state in which the vehicle is registered;
49 and
- 50 (3) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.
- 51 (4) The execution of one of the following:

- 1 a. An impaired driving acknowledgment as defined in subdivision
2 (a1)(1a) of this section if the seizure was for an offense involving
3 impaired ~~driving, or driving.~~
4 b. A speeding to elude arrest acknowledgment as defined in subdivision
5 (a1)(8) of this section if the seizure was for violation of
6 G.S. 20-141.5(b) or (b1).
7 c. A no drivers license acknowledgment as defined in subdivision (3b)
8 of subsection (a1) of this section if the seizure was for a violation of
9 G.S. 20-7(a) punishable pursuant to G.S. 20-35(a3).

10 If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor
11 agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the
12 defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or
13 transfer possession of a seized motor vehicle to the defendant or any person acting on the
14 behalf of the defendant shall not be liable for damages arising out of the refusal.

15 No motor vehicle subject to forfeiture under this section shall be released to a nondefendant
16 motor vehicle owner if the records of the Division indicate the motor vehicle owner had
17 previously signed an impaired driving ~~acknowledgment or acknowledgment,~~ a speeding to
18 elude arrest acknowledgment, or a no drivers license acknowledgment, as required by this
19 section, and the same person was operating the motor vehicle at the time of the current seizure
20 unless the innocent owner shows by the greater weight of the evidence that the motor vehicle
21 owner has taken all reasonable precautions to prevent the use of the motor vehicle by this
22 particular person and immediately reports, upon discovery, any unauthorized use to the
23 appropriate law enforcement agency. A determination by the court at the forfeiture hearing held
24 pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final
25 judgment and is immediately appealable to the Court of Appeals.

26"

27 SECTION 3. G.S. 20-28.3 reads as rewritten:

28 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving**
29 **impaired driving while license revoked or without license and insurance, ~~and~~**
30 **for felony speeding to elude arrest, arrest, and for certain offenses of failure to**
31 **obtain a license before driving a motor vehicle.**

32 (a) Motor Vehicles Subject to Seizure for Impaired Driving Offenses. – A motor
33 vehicle that is driven by a person who is charged with an offense involving impaired driving is
34 subject to seizure if:

- 35 (1) At the time of the violation, the drivers license of the person driving the
36 motor vehicle was revoked as a result of a prior impaired driving license
37 revocation as defined in G.S. 20-28.2(a); or
38 (2) At the time of the violation:
39 a. The person was driving without a valid drivers license, and
40 b. The driver was not covered by an automobile liability policy.

41 For the purposes of this subsection, a person who has a complete defense, pursuant to
42 G.S. 20-35, to a charge of driving without a drivers license, shall be considered to have had a
43 valid drivers license at the time of the violation.

44 (a1) Motor Vehicles Subject to Seizure for Felony Speeding to Elude Arrest. – A motor
45 vehicle is subject to seizure if it is driven by a person who is charged with the offense of felony
46 speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).

47 (a2) Motor Vehicles Subject to Seizure for Certain Offenses of Failure to Obtain a
48 License Before Driving a Motor Vehicle. – A motor vehicle is subject to seizure if it is driven
49 by a person who is charged with a third or subsequent offense of failure to obtain a license
50 before driving a motor vehicle that is punishable pursuant to G.S. 20-35(a3).

51 ...

(e) Release of Motor Vehicle Pending Trial. – A motor vehicle owner, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the motor vehicle.

The clerk shall release the motor vehicle to a nondefendant motor vehicle owner conditioned upon payment of all towing and storage charges incurred as a result of seizure and impoundment of the motor vehicle under the following conditions:

- (1) The motor vehicle has been seized for not less than 24 hours;
- (2) Repealed by Session Laws 1998-182, s. 3, effective December 1, 1998.
- (3) A bond in an amount equal to the fair market value of the motor vehicle as defined by G.S. 20-28.2 has been executed and is secured by a cash deposit in the full amount of the bond, by a recordable deed of trust to real property in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at least one solvent surety, payable to the county school fund and conditioned on return of the motor vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released;
- (4) Execution of ~~either one of the following:~~
 - a. An impaired driving acknowledgment as described in G.S. 20-28.2(a1)(1a) if the seizure was for an offense involving impaired driving; ~~or driving.~~
 - b. A speeding to elude arrest acknowledgment as defined in G.S. 20-28.2(a1)(8) if the seizure was for violation of G.S. 20-141.5(b) or (b1).
 - c. A no drivers license acknowledgment as defined in G.S. 20-28.2(a1)(3b) if the seizure was for a violation of G.S. 20-7(a) punishable pursuant to G.S. 20-35(a3).
- (5) A check of the records of the Division indicates that the requesting motor vehicle owner has not previously executed an acknowledgment naming the operator of the seized motor vehicle; and
- (6) A bond posted to secure the release of this motor vehicle under this subsection has not been previously ordered forfeited under G.S. 20-28.5.

In the event a nondefendant motor vehicle owner who obtains temporary possession of a seized motor vehicle pursuant to this subsection does not return the motor vehicle on the day of the forfeiture hearing as noticed by the district attorney under G.S. 20-28.2(c) or otherwise violates a condition of pretrial release of the seized motor vehicle as set forth in this subsection, the bond posted shall be ordered forfeited and an order of seizure shall be issued by the court. Additionally, a nondefendant motor vehicle owner or lienholder who willfully violates any condition of pretrial release may be held in civil or criminal contempt.

...

(e2) Pretrial Release of Motor Vehicle to Defendant Owner. –

- (1) If the seizure was for an offense involving impaired driving, a defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a judge of the division in which the underlying criminal charge is pending for a hearing to be held within 10 business days or as soon thereafter as may be feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the attorney for the

1 county board of education. The clerk shall forward a copy of the petition to
2 the district attorney for the district attorney's review. If, based on available
3 information, the district attorney determines that the defendant's motor
4 vehicle is not subject to forfeiture, the district attorney may note the State's
5 consent to the release of the motor vehicle on the petition and return the
6 petition to the clerk of court who shall enter an order releasing the motor
7 vehicle to the defendant upon payment of all towing and storage charges
8 incurred as a result of the seizure and impoundment of the motor vehicle,
9 subject to the satisfactory proof of the identity of the defendant as a motor
10 vehicle owner and the existence of financial responsibility to the extent
11 required by Article 13 of this Chapter, and no hearing shall be held. The
12 clerk shall send a copy of the order of release to the attorney for the county
13 board of education. At any pretrial hearing conducted pursuant to this
14 subdivision, the court is not required to determine the issue of the underlying
15 offense of impaired driving only the existence of a prior drivers license
16 revocation as an impaired driving license revocation. Accordingly, the State
17 shall not be required to prove the underlying offense of impaired driving. An
18 order issued under this subdivision finding that the defendant failed to
19 establish that the defendant's license was not revoked pursuant to an
20 impaired driving license revocation as defined in G.S. 20-28.2(a) may be
21 reconsidered by the court as part of the forfeiture hearing conducted
22 pursuant to G.S. 20-28.2(d).

23 (2) If the seizure was for a felony speeding to elude arrest offense, a defendant
24 motor vehicle owner may apply to the clerk of superior court in the county
25 where the charges are pending for pretrial release of the motor vehicle. The
26 clerk shall release the motor vehicle to the defendant motor vehicle owner
27 conditioned upon payment of all towing and storage charges incurred as a
28 result of seizure and impoundment of the motor vehicle under the following
29 conditions:

- 30 a. The motor vehicle has been seized for not less than 24 hours;
31 b. A bond in an amount equal to the fair market value of the motor
32 vehicle as defined by G.S. 20-28.2 has been executed and is secured
33 by a cash deposit in the full amount of the bond, by a recordable deed
34 of trust to real property in the full amount of the bond, by a bail bond
35 under G.S. 58-71-1(2), or by at least one solvent surety, payable to
36 the county school fund and conditioned on return of the motor
37 vehicle, in substantially the same condition as it was at the time of
38 seizure and without any new or additional liens or encumbrances, on
39 the day of any hearing scheduled and noticed by the district attorney
40 under G.S. 20-28.2(c), unless the motor vehicle has been
41 permanently released;
42 c. A bond posted to secure the release of this motor vehicle under this
43 subdivision has not been previously ordered forfeited under
44 G.S. 20-28.5.

45 In the event a defendant motor vehicle owner who obtains temporary
46 possession of a seized motor vehicle pursuant to this subdivision does not
47 return the motor vehicle on the day of the forfeiture hearing as noticed by the
48 district attorney under G.S. 20-28.2(c) or otherwise violates a condition of
49 pretrial release of the seized motor vehicle as set forth in this subdivision,
50 the bond posted shall be ordered forfeited, and an order of seizure shall be
51 issued by the court. Additionally, a defendant motor vehicle owner who

1 willfully violates any condition of pretrial release may be held in civil or
2 criminal contempt.

3 (3) If the seizure was for an offense of failure to obtain a license before
4 operating a motor vehicle, a defendant motor vehicle owner may file a
5 petition with the clerk of court seeking a pretrial determination that the
6 defendant does not have at least two prior convictions of failure to obtain a
7 license before operating a motor vehicle. The clerk shall schedule a hearing
8 before a judge of the division in which the underlying criminal charge is
9 pending for a hearing to be held within 10 business days or as soon
10 thereafter as may be feasible. Notice of the hearing shall be given to the
11 defendant, the district attorney, and the attorney for the county board of
12 education. The clerk shall forward a copy of the petition to the district
13 attorney for the district attorney's review. If, based on available information,
14 the district attorney determines that the defendant's motor vehicle is not
15 subject to forfeiture, the district attorney may note the State's consent to the
16 release of the motor vehicle on the petition and return the petition to the
17 clerk of court who shall enter an order releasing the motor vehicle to the
18 defendant upon payment of all towing and storage charges incurred as a
19 result of the seizure and impoundment of the motor vehicle, subject to the
20 satisfactory proof of the identity of the defendant as a motor vehicle owner
21 and the existence of financial responsibility to the extent required by Article
22 13 of this Chapter, and no hearing shall be held. The clerk shall send a copy
23 of the order of release to the attorney for the county board of education. At
24 any pretrial hearing conducted pursuant to this subdivision, the court is not
25 required to determine the issue of the underlying offense of failure to obtain
26 a license before driving a motor vehicle, only the existence of two or more
27 prior convictions of failure to obtain a license before operating a motor
28 vehicle. Accordingly, the State shall not be required to prove the underlying
29 offense of failure to obtain a license before operating a motor vehicle. An
30 order issued under this subdivision finding that the defendant failed to
31 establish that the defendant did not have two or more prior convictions for
32 failure to obtain a license before operating a motor vehicle may be
33 reconsidered by the court as part of the forfeiture hearing conducted
34 pursuant to G.S. 20-28.2(d).

35"

36 **SECTION 4.** G.S. 20-28.8 reads as rewritten:

37 **"§ 20-28.8. Reports to the Division.**

38 In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to any
39 other information that must be reported pursuant to this Chapter, the clerk of superior court
40 shall report to the Division by electronic means the execution of an impaired driving
41 acknowledgment as defined in G.S. 20-28.2(a1)(1a), a speeding to elude arrest
42 acknowledgment as defined in G.S. 20-28.2(a1)(8), a no drivers license acknowledgment as
43 defined in G.S. 20-28.2(a1)(3b), the entry of an order of forfeiture as defined in
44 G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-28.3 and
45 G.S. 20-28.4. Each report shall include any of the following information that has not previously
46 been reported to the Division in the case: the name, address, and drivers license number of the
47 defendant; the name, address, and drivers license number of the nondefendant motor vehicle
48 owner, if known; and the make, model, year, vehicle identification number, state of
49 registration, and vehicle registration plate number of the seized vehicle, if known."

50 **SECTION 5.** G.S. 20-54.1 reads as rewritten:

51 **"§ 20-54.1. Forfeiture of right of registration.**

1 (a) Upon receipt of notice of conviction of a violation of an offense involving impaired
2 driving while the person's license is revoked as a result of a prior impaired driving license
3 revocation as defined in G.S. 20-28.2, the Division shall revoke the registration of all motor
4 vehicles registered in the convicted person's name and shall not register a motor vehicle in the
5 convicted person's name until the convicted person's license is restored, except in such cases to
6 abide by the ignition interlock installation requirements of G.S. 20-17.8. Upon receipt of notice
7 of revocation of registration from the Division, the convicted person shall surrender the
8 registration on all motor vehicles registered in the convicted person's name to the Division
9 within 10 days of the date of the notice.

10 (a1) Upon receipt of notice of conviction of a felony speeding to elude arrest offense
11 under G.S. 20-141.5(b) or (b1), the Division shall revoke the registration of all motor vehicles
12 registered in the convicted person's name and shall not register a motor vehicle in the convicted
13 person's name until the convicted person's license is restored. Upon receipt of notice of
14 revocation of registration from the Division, the convicted person shall surrender the
15 registration on all motor vehicles registered in the convicted person's name to the Division
16 within 10 days of the date of the notice.

17 (a2) Upon receipt of notice of conviction of failure to obtain a license before driving a
18 motor vehicle in violation of G.S. 20-7(a) and notice the convicted person was punished
19 pursuant to G.S. 20-35(a3), the Division shall revoke the registration of all motor vehicles
20 registered in the convicted person's name and shall not register a motor vehicle in the convicted
21 person's name until the convicted person has obtained a valid license. Upon receipt of notice of
22 revocation of registration from the Division, the convicted person shall surrender the
23 registration on all motor vehicles registered in the convicted person's name to the Division
24 within 10 days of the date of the notice.

25 (b) Upon receipt of a notice of conviction under subsection ~~(a) or (a1)~~ (a), (a1), or (a2)
26 of this section, the Division shall revoke the registration of the motor vehicle seized, and the
27 owner shall not be allowed to register the motor vehicle seized until the convicted operator's
28 driver's license has been restored. The Division shall not revoke the registration of the owner of
29 the seized motor vehicle if the owner is determined to be an innocent owner. The Division shall
30 revoke the owner's registration only after the owner is given an opportunity for a hearing to
31 demonstrate that the owner is an innocent owner as defined in G.S. 20-28.2. Upon receipt of
32 notice of revocation of registration from the Division, the owner shall surrender the registration
33 on the motor vehicle seized to the Division within 10 days of the date of the notice."

34 **SECTION 6.** This act becomes effective December 1, 2017, and applies to
35 offenses committed on or after that date.





HOUSE BILL 471: Fail to Obtain DL/Increase Punishment.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Finance	Date:	April 11, 2017
Introduced by:	Reps. Millis, Destin Hall, Cleveland, Burr	Prepared by:	Susan Sitze
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House Bill 471 would increase the punishment for certain offenses of failing to obtain a driver's license before driving a motor vehicle.*

CURRENT LAW: Failure to obtain a driver's license before driving a motor vehicle is a Class 3 misdemeanor for all violations.

BILL ANALYSIS:

Section 1 of the bill would provide that failure to obtain a driver's license before driving a motor vehicle would remain a Class 3 misdemeanor. A second or subsequent offense would a mandatory \$400 fine. A third or subsequent offense of failure to obtain a driver's license before driving a motor vehicle would subject the vehicle that was driven by the person at the time of the offense to forfeiture.

Sections 2 through 5 of the bill would amend the statutes that govern seizure and forfeiture of vehicles seized for impaired driving to provide for the seizure, impoundment, and forfeiture of motor vehicles driven by persons who are convicted of a third or subsequent offense of failure to obtain a driver's license before driving a motor vehicle.

EFFECTIVE DATE: This act would become effective December 1, 2017, and apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 4-11-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Will Crocker
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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



[illegible]

100



Speaker Registration Sheet

House Committee on Judiciary II

4-11-2017

Date

Bill: HB471 Fail to Obtain DL/Increase Punishment

NAME - Please PRINT

FIRM OR AGENCY

NATHALIA DIEGO

~~Sarah Gillock~~

~~ACLU~~

111

112



113



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

4-11-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

WAITEZ GOMEZ	HOLA NOTICIAS
PAOLA JARAMILLO	LA NOTICIA NEWSPAPER
John Herrera	CC Self Help.
Felicia Arriaga	
Jorge R	
Mary E	
Nathalia Diego Cruz	El Pueblo
Angeline Edverría	El Pueblo
Milena Wucum	New Frame
Skylar David	new frame
Jason Spigner	new frame



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

4-11-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kris Parks	DRNC
Kimberly Gaspersm-Justice	Henderson County CSC 200 N. Grove St Hendersonville NC
June L. Ray	285 N. Main St. Waynesville, NC 28786
Jamie Lassiter	Haywood County CSC Conf. of Clerks
Deborah Barker	105 S Main St. Person Co. Clerk of Court Rayboro NC 27575
Joy Adams	NC DOT
Katy Kirby	BP
Suzanne Birtong	KU-NC
Sarah Gillosky	"
Alex Miller	AMGA
Kimberly Davies	NC Conference of District Attorneys



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

4-11-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Brian Lewis	New Frame
Maggie P. Thomas	NC DOT IT
Lena Samson	NC DOT IT
Kevin Lacy	NC DOT
Kella Hatcher	NC CFTF
Phoebe Landon	MWC
Christian Campbell	Rep. Malone

VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

Apr 11- 17

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Rebecca Murdock

NC SPAC

Crystal Feldman

SA

**House Committee on Judiciary II
Tuesday, April 25, 2017 at 12:00 PM
Room 421 of the Legislative Office Building**

MINUTES

The House Committee on Judiciary II met at 12:00 PM on April 25, 2017 in Room 421 of the Legislative Office Building. Representatives Blust, Faircloth, Hurley, McGrady, Michaux, Bumgardner, Fisher, Hall, Harrison, John, Jones, and Sauls attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 12:03 PM. He recognized the Pages and Sergeants-at-Arms.

The following bills were considered:

HB 755 Bankruptcy Amendments. (Representative Blust)

Representative Faircloth made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Blust was recognized to explain the Proposed Committee Substitute. After a brief discussion, Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion passed, and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill.

HB 418 SOS/Save Our Street Signs. (Representative Clampitt)

Representative Clampitt was recognized to explain the Proposed Committee Substitute No. 2. After a brief discussion, Representative John made the motion for a favorable report for the Proposed Committee Substitute No. 2, with an unfavorable report for the Committee Substitute No. 1. The motion passed, and the Proposed Committee Substitute No. 2 received a favorable report, with an unfavorable report for the Committee Substitute No. 1.

HB 483 Vet. Posttraumatic Stress/Mitigating Factor. (Representatives G. Martin, Zachary, Reives, Rogers)

Representative Martin was recognized to explain the Committee Substitute No. 1. After a brief discussion, Representative John made the motion for a favorable report for the Committee Substitute No. 1. The motion carried, and the Committee Substitute No. 1 received a favorable report.

HB 558 Study/Texting While Driving Enforcement. (Representatives Ross, Faircloth, Hardister, McNeill)

Representative Faircloth made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Ross was recognized to explain the Proposed Committee Substitute. Representative Michaux made the motion for a favorable report for the



Proposed Committee Substitute, with an unfavorable report for the original bill. The motion passed, and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill.

HB 274 Increase Penalties for Debt Adjusting. (Representatives Stevens, Davis)

Representative Stevens was recognized to explain the bill. Representative McGrady made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report. HB 274 was re-referred to the House Committee on Commerce and Job Development.

HB 703 Felon W/Gun/B&E/Increased Penalties. (Representatives Brawley, Dollar, Henson)

Representative Faircloth made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Brawley was recognized to explain the Proposed Committee Substitute. Rep. Dollar was also recognized to speak on the Proposed Committee Substitute. After a brief discussion, Representative John made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion passed, and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill.

HB 492 Increase Penalties for Certain Assaults. (Representatives Clampitt, Saine, Dollar)

Representative Faircloth made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Clampitt was recognized to explain the Proposed Committee Substitute. Representative Faircloth offered an amendment, and the amendment was adopted. After a brief discussion, Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion passed, and the Proposed Committee Substitute as amended received a favorable report, with an unfavorable report for the original bill.

HB 597 Willful Injury of Person/Trap in Public Park. (Representatives Bradford, Bert Jones, Zachary, Clampitt)

Representative Zachary and Bradford were recognized to explain the bill. After a brief discussion, Representative McGrady made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 621 Expungement Process Modifications. (Representatives Faircloth, Stevens, McGrady, Reives)

Representative Faircloth was recognized to explain the bill. Representative Faircloth offered an amendment, and the amendment was adopted. After a brief discussion, Representative John made the motion for a favorable report for the bill as amended, with an unfavorable report for the original bill. The motion passed, and the bill as amended received a favorable report, with an unfavorable report for the original bill.



HB 664 Retroactive Sex Offender Registration. (Representative Willingham)

This bill was withdrawn by the sponsor.

HB 796 Study Expunctions Related to 50B Orders. (Representatives Faircloth, McGrady, Reives, Stevens)

Representative Blust made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Faircloth was recognized to explain the Proposed Committee Substitute. Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion passed, and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill.

HB 670 Protect Educational Property. (Representative Faircloth)

Representative Blust made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Faircloth was recognized to explain the Proposed Committee Substitute. Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion passed, and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill.

HB 672 Rear Occupant Seat Belt Use/Enforcement. (Representative Faircloth)

Representative Faircloth was recognized to explain the bill. Representative Faircloth offered an amendment, and the amendment was adopted. After a brief discussion, Representative Faircloth made the motion for a favorable report for the bill as amended, with an unfavorable report for the original bill. Mr. Bill Hall, Senior Researcher, University of North Carolina Highway Safety Research Center, spoke on the bill. The motion passed, and the bill as amended received a favorable report, with an unfavorable report for the original bill. HB 672 was re-referred to the House Committee on Finance.

HB 673 DWLR/Death or Injury by Vehicle. (Representative Faircloth)

Representative Faircloth was recognized to explain the bill. After a brief discussion, Representative McGrady made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 736 Provide Minor Alcohol/Felony if Death Results. (Representatives Destin Hall, Faircloth, Burr, Jackson)

Representative Hall was recognized to explain the bill. After a short discussion, Representative McGrady made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.



HB 708 Require Criminal BGC/Pharmacist Licensure. (Representatives Jordan, Brenden Jones, Wray)

Representative Blust made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Jordan was recognized to explain the Proposed Committee Substitute. Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion passed, and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill.

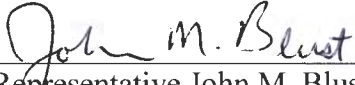
HB 336 Ltd. License/Drive to School Event Past 9:00. (Representatives Butler, Iler, Reives, Torbett)

Representative Harrison made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion did not carry.


HB 249 Economic Terrorism. (Representatives Torbett, Blust, Burr)

Representative Blust made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion did not carry.

The meeting adjourned at 2:34 PM.



Representative John M. Blust, Chair
Presiding



Gennie L. Thurlow, Committee Clerk



Corrected #1: Time Change - Meeting is scheduled for 12:00 PM - 3:00 PM, depending on Session

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, April 25, 2017

TIME: 12:00 PM

LOCATION: 421 LOB

COMMENTS: NOTE TIME CHANGE. This meeting is scheduled for 12:00 PM - 3:00 PM, depending on Session.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>HB 249</u>	Economic Terrorism.	Representative Torbett Representative Blust Representative Burr
<u>HB 274</u>	Increase Penalties for Debt Adjusting.	Representative Stevens Representative Davis
<u>HB 336</u>	Ltd. License/Drive to School Event Past 9:00.	Representative Butler Representative Iler Representative Reives Representative Torbett
<u>HB 418</u>	SOS/Save Our Street Signs.	Representative Clampitt
<u>HB 483</u>	Vet. Posttraumatic Stress/Mitigating Factor.	Representative G. Martin Representative Zachary Representative Reives Representative Rogers
<u>HB 492</u>	Increase Penalties for Certain Assaults.	Representative Clampitt Representative Saine Representative Dollar
<u>HB 558</u>	Study/Texting While Driving Enforcement.	Representative Ross Representative Faircloth Representative Hardister
<u>HB 597</u>	Willful Injury of Person/Trap in Public Park.	Representative McNeill Representative Bradford Representative Bert Jones Representative Zachary
<u>HB 621</u>	Expungement Process Modifications.	Representative Clampitt Representative Faircloth



<u>HB 664</u>	Retroactive Sex Offender Registration.	Representative Stevens
<u>HB 670</u>	Protect Educational Property.	Representative McGrady
<u>HB 672</u>	Rear Occupant Seat Belt Use/Enforcement.	Representative Reives
		Representative Willingham
<u>HB 673</u>	DWLR/Death or Injury by Vehicle.	Representative Faircloth
<u>HB 703</u>	Felon W/Gun/B&E/Increased Penalties.	Representative Faircloth
		Representative Brawley
		Representative Dollar
		Representative Henson
<u>HB 708</u>	Require Criminal BGC/Pharmacist Licensure.	Representative Jordan
		Representative Brenden Jones
		Representative Wray
<u>HB 736</u>	Provide Minor Alcohol/Felony if Death Results.	Representative Destin Hall
		Representative Faircloth
		Representative Burr
		Representative Jackson
<u>HB 755</u>	Bankruptcy and Receivership Amendments.	Representative Blust
<u>HB 785</u>	Duty to Call 911/Violation Misdemeanor.	Representative Iler
<u>HB 796</u>	Expunctions Related to 50B Orders.	Representative Faircloth
		Representative McGrady
		Representative Reives
		Representative Stevens

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:01 PM on Friday, April 21, 2017.

____ Principal Clerk
 ____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, April 25, 2017

TIME: 12:00 PM

LOCATION: 421 LOB

COMMENTS: Note time change. This meeting is scheduled for 12:00 PM - 2:00 PM, depending on Session.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>HB 249</u>	Economic Terrorism.	Representative Torbett Representative Blust Representative Burr
<u>HB 274</u>	Increase Penalties for Debt Adjusting.	Representative Stevens Representative Davis
<u>HB 336</u>	Ltd. License/Drive to School Event Past 9:00.	Representative Butler Representative Iler Representative Reives Representative Torbett
<u>HB 418</u> <u>HB 483</u>	SOS/Save Our Street Signs. Vet. Posttraumatic Stress/Mitigating Factor.	Representative Clampitt Representative G. Martin Representative Zachary Representative Reives Representative Rogers
<u>HB 492</u>	Increase Penalties for Certain Assaults.	Representative Clampitt Representative Saine Representative Dollar
<u>HB 558</u>	Study/Texting While Driving Enforcement.	Representative Ross Representative Faircloth Representative Hardister Representative McNeill
<u>HB 597</u>	Willful Injury of Person/Trap in Public Park.	Representative Bradford Representative Bert Jones Representative Zachary Representative Clampitt
<u>HB 621</u>	Expungement Process Modifications.	Representative Faircloth Representative Stevens Representative McGrady



<u>HB 664</u>	Retroactive Sex Offender Registration.	Representative Reives
<u>HB 670</u>	Protect Educational Property.	Representative Willingham
<u>HB 672</u>	Rear Occupant Seat Belt Use/Enforcement.	Representative Faircloth
<u>HB 673</u>	DWLR/Death or Injury by Vehicle.	Representative Faircloth
<u>HB 703</u>	Felon W/Gun/B&E/Increased Penalties.	Representative Brawley
		Representative Dollar
		Representative Henson
<u>HB 708</u>	Require Criminal BGC/Pharmacist Licensure.	Representative Jordan
		Representative Brenden Jones
		Representative Wray
<u>HB 736</u>	Provide Minor Alcohol/Felony if Death Results.	Representative Destin Hall
		Representative Faircloth
		Representative Burr
		Representative Jackson
<u>HB 755</u>	Bankruptcy and Receivership Amendments.	Representative Blust
<u>HB 785</u>	Duty to Call 911/Violation Misdemeanor.	Representative Iler
<u>HB 796</u>	Expunctions Related to 50B Orders.	Representative Faircloth
		Representative McGrady
		Representative Reives
		Representative Stevens

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 11:11 AM on Thursday, April 20, 2017.

____ Principal Clerk
 ____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Tuesday, April 25, 2017, 12:00 PM
421 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Introduction of Pages and Sergeants-at-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 249	Economic Terrorism.	Representative Torbett Representative Blust Representative Burr
HB 274	Increase Penalties for Debt Adjusting.	Representative Stevens Representative Davis
HB 336	Ltd. License/Drive to School Event Past 9:00.	Representative Butler Representative Iler Representative Reives Representative Torbett
HB 418	SOS/Save Our Street Signs.	Representative Clampitt
HB 483	Vet. Posttraumatic Stress/Mitigating Factor.	Representative G. Martin Representative Zachary Representative Reives Representative Rogers
HB 492	Increase Penalties for Certain Assaults.	Representative Clampitt Representative Saine Representative Dollar
HB 558	Study/Texting While Driving Enforcement.	Representative Ross Representative Faircloth Representative Hardister Representative McNeill
HB 597	Willful Injury of Person/Trap in Public Park.	Representative Bradford Representative Bert Jones Representative Zachary Representative Clampitt



HB 621	Expungement Process Modifications.	Representative Faircloth Representative Stevens Representative McGrady Representative Reives
HB 664	Retroactive Sex Offender Registration.	Representative Willingham
HB 670	Protect Educational Property.	Representative Faircloth
HB 672	Rear Occupant Seat Belt Use/Enforcement.	Representative Faircloth
HB 673	DWLR/Death or Injury by Vehicle.	Representative Faircloth
HB 703	Felon W/Gun/B&E/Increased Penalties.	Representative Brawley Representative Dollar Representative Henson
HB 708	Require Criminal BGC/Pharmacist Licensure.	Representative Jordan Representative Brenden Jones Representative Wray
HB 736	Provide Minor Alcohol/Felony if Death Results.	Representative Destin Hall Representative Faircloth Representative Burr Representative Jackson
HB 755	Bankruptcy and Receivership Amendments.	Representative Blust
<u>HB 785</u>	Duty to Call 911/Violation Misdemeanor. <i>Withdrawn from agenda by Rep. Iler 11:50am, 4-25-2017.</i>	Representative Iler
HB 796	Expunctions Related to 50B Orders.	Representative Faircloth Representative McGrady Representative Reives Representative Stevens

Other Business

Adjournment



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair**

FAVORABLE

HB 483 (CS#1)	Vet. Posttraumatic Stress/Mitigating Factor. Draft Number: None Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: G. Martin
HB 597	Willful Injury of Person/Trap in Public Park. Draft Number: None Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Bradford
HB 673	DWLR/Death or Injury by Vehicle. Draft Number: None Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Faircloth
HB 736	Provide Minor Alcohol/Felony if Death Results. Draft Number: None Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Destin Hall

FAVORABLE AND RE-REFERRED

HB 274	Increase Penalties for Debt Adjusting. Draft Number: None Serial Referral: COMMERCE AND JOB DEVELOPMENT Recommended Referral: None Long Title Amended: No Floor Manager: Stevens
--------	--

TOTAL REPORTED: 5









**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair**

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB 558	Study/Texting While Driving Enforcement.
	Draft Number: H558-PCS40555-BK-18
	Serial Referral: None
	Recommended Referral: None
	Long Title Amended: Yes
	Floor Manager: Ross
HB 670	Protect Educational Property.
	Draft Number: H670-PCS10328-BK-20
	Serial Referral: None
	Recommended Referral: None
	Long Title Amended: No
	Floor Manager: Faircloth
HB 703	Felon W/Gun/B&E/Increased Penalties.
	Draft Number: H703-PCS10331-BG-20
	Serial Referral: None
	Recommended Referral: None
	Long Title Amended: No
	Floor Manager: Brawley
HB 708	Require Criminal BGC/Pharmacist Licensure.
	Draft Number: H708-PCS30408-BG-15
	Serial Referral: None
	Recommended Referral: None
	Long Title Amended: No
	Floor Manager: Jordan

FAVORABLE COM SUB NO. 2, UNFAVORABLE COM SUB NO. 1

HB 418 (CS#1)	SOS/Save Our Street Signs.
	Draft Number: H418-PCS40558-BG-14
	Serial Referral: None
	Recommended Referral: None
	Long Title Amended: No
	Floor Manager: Clampitt





HB 492 (CS#1)

Increase Penalties for Certain Assaults.

Draft Number: H492-PCS40557-SA-20

Serial Referral: None

Recommended Referral: None

Long Title Amended: No

Floor Manager: Clampitt

TOTAL REPORTED: 6





**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair**

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB 621 Expungement Process Modifications.
Draft Number: H621-PCS10333-SA-23
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Faircloth

HB 755 Bankruptcy and Receivership Amendments.
Draft Number: H755-PCS10332-SA-19
Serial Referral: None
Recommended Referral: None
Long Title Amended: Yes
Floor Manager: Blust

HB 796 Expunctions Related to 50B Orders.
Draft Number: H796-PCS40559-SA-21
Serial Referral: None
Recommended Referral: None
Long Title Amended: Yes
Floor Manager: Faircloth

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 672 Rear Occupant Seat Belt Use/Enforcement.
Draft Number: H672-PCS10334-BG-21
Serial Referral: FINANCE
Recommended Referral: None
Long Title Amended: No
Floor Manager: Faircloth

TOTAL REPORTED: 4



* C M R 3 5 9 - V - 1 *



NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H249

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.)

Sen.)

McGRADY

1 moves to amend the bill on page 2, line 47

2 () WHICH CHANGES THE TITLE

3 by deleting "G.S. 14-274.1." and inserting "G.S. 14-174.1."

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED

[Signature]

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 249

Short Title: Economic Terrorism.

(Public)

Sponsors: Representatives Torbett, Blust, and Burr (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

March 6, 2017

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF ECONOMIC TERRORISM, TO ESTABLISH CIVIL LIABILITY FOR ECONOMIC TERRORISM, TO CREATE A DUTY FOR A RESPONSIBLE PUBLIC OFFICIAL TO TAKE ACTION TO CLEAR TRAFFIC OBSTRUCTIONS RESULTING FROM UNLAWFUL ACTIVITIES, TO INCREASE CRIMINAL PENALTIES FOR OBSTRUCTING TRAFFIC WHILE PARTICIPATING IN UNLAWFUL ACTIVITIES, AND TO PROVIDE CIVIL LIABILITY FOR THE COSTS OF RESPONDING TO TRAFFIC OBSTRUCTIONS AND CERTAIN OTHER UNLAWFUL ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-10.1 reads as rewritten:

"§ 14-10.1. Terrorism.

(a) As used in this section, the term "act of violence" means a violation of G.S. 14-17; a felony punishable pursuant to G.S. 14-18; any felony offense in this Chapter that includes an assault, or use of violence or force against a person; any felony offense that includes either the threat or use of any explosive or incendiary device; or any offense that includes the threat or use of a nuclear, biological, or chemical weapon of mass destruction.

(b) A person is guilty of the separate offense of violent terrorism if the person commits an act of violence with the intent to do either of the following:

- (1) Intimidate the civilian population at large, or an identifiable group of the civilian population.
- (2) Influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

(b1) A person is guilty of the separate offense of economic terrorism if the person willfully and maliciously or with reckless disregard commits a criminal offense that impedes or disrupts the regular course of business, the disruption results in damages of more than one thousand dollars (\$1,000), and the offense is committed with the intent to do either of the following:

- (1) Intimidate the civilian population at large, or an identifiable group of the civilian population.
- (2) Influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

(c) A violation of subsection (b) of this section is a felony that is one class higher than the offense which is the underlying act of violence, except that a violation is a Class B1 felony if the underlying act of violence is a Class A or Class B1 felony offense. A violation of subsection (b) of



1 this section is a separate offense from the underlying offense and shall not merge with other
2 offenses.

3 (c1) A violation of subsection (b1) of this section is a Class H felony. A violation of
4 subsection (b1) of this section is a separate offense from the underlying offense and shall not
5 merge with other offenses.

6 (d) All real and personal property of every kind used or intended for use in the course of,
7 derived from, or realized through an offense punishable pursuant to this Article shall be subject to
8 lawful seizure and forfeiture to the State as set forth in G.S. 14-2.3 and G.S. 14-7.20. However, the
9 forfeiture of any real or personal property shall be subordinate to any security interest in the
10 property taken by a lender in good faith as collateral for the extension of credit and recorded as
11 provided by law, and no real or personal property shall be forfeited under this section against an
12 owner who made a bona fide purchase of the property, or a person with rightful possession of the
13 property, without knowledge of a violation of this Article.

14 (e) Any person whose property or person is injured by reason of a violation of this section
15 may sue for and recover treble damages, costs, and attorneys' fees pursuant to G.S. 1-539.2D."

16 **SECTION 2.** G.S. 1-539.2D reads as rewritten:

17 **"§ 1-539.2D. Civil liability for acts of terror.**

18 (a) The following definitions apply in this section:

19 (1) Act of violent terror. – An activity with all of the following characteristics:

- 20 a. Involves violent acts or acts dangerous to human life that violate federal
21 or State law.
22 b. Appears to be intended (i) to intimidate or coerce a civilian population,
23 (ii) to influence the policy of a government by intimidation or coercion,
24 or (iii) to affect the conduct of a government by mass destruction,
25 assassination, or kidnapping.
26 c. Occurs primarily within this State.

27 (1a) Act of economic terror. – An act that is a violation of G.S. 14-10.1(b1).

28 (2) Terrorist. – A person who commits an act of ~~terror~~, violent terror or an act of
29 economic terror, including a person who acts as an accessory before or after the
30 fact, aids or abets, solicits, or conspires to commit an act of terror or who lends
31 material support to an act of terror.

32 (b) Any person whose property or person is injured by a terrorist may sue for and recover
33 damages from the terrorist.

34 (c) Any person who files an action under this section is entitled to recover three times the
35 actual damages sustained or fifty thousand dollars (\$50,000), whichever is greater, as well as court
36 costs and attorneys' fees in the trial and appellate courts if the person prevails in the claim.

37 (d) The rights and remedies provided by this section are in addition to any other rights and
38 remedies provided by law."

39 **SECTION 3.** Chapter 1 of the General Statutes is amended by adding a new Article to
40 read:

41 "Article 53.

42 "Liability for Public Safety Response Costs.

43 **"§ 1-640. Liability for public safety response costs.**

44 (a) A person is civilly liable to a State agency or other political subdivision of the State for
45 public safety response costs incurred by the State agency or other political subdivision of the State
46 if the person is convicted of participation in an unlawful assembly, riot under G.S. 14-288.2, or
47 obstructing traffic under G.S. 14-274.1. For purposes of this section, "public safety costs" means
48 the costs incurred for the purpose of responding to the unlawful assembly, riot, or obstruction of
49 traffic.

50 (b) A State agency or political subdivision of the State may bring a civil action to recover
51 public safety costs and related legal, administrative, and court costs."

1 **SECTION 4.** G.S. 14-159.13 reads as rewritten:

2 **"§ 14-159.13. Second degree trespass.**

3 (a) Offense. – A person commits the offense of second degree trespass if, without
4 authorization, he enters or remains on premises of another:

5 (1) After he has been notified not to enter or remain there by the owner, by a
6 person in charge of the premises, by a lawful occupant, or by another
7 authorized person; or

8 (2) That are posted, in a manner reasonably likely to come to the attention of
9 intruders, with notice not to enter the premises.

10 (b) Classification. – ~~Second~~ Except as provided in subsection (c) of this section, second
11 degree trespass is a Class 3 misdemeanor.

12 (c) Any person, except the owner or lessee of the premises, the family and nonrioting
13 guests of the owner or lessee, and public officers and persons assisting them, who remains at the
14 place of any riot or unlawful assembly after having been lawfully warned to disperse is guilty of a
15 Class 1 misdemeanor."

16 **SECTION 5.** Chapter 20 of the General Statutes is amended by adding a new section
17 to read:

18 **"§ 20-174.3. Duty to clear roads.**

19 (a) The following definitions apply in this section:

20 (1) Mass traffic obstruction. – An incident in which, as part of (or as the result of) a
21 protest, riot, or other assembly, at least 10 persons obstruct vehicular traffic in
22 violation of G.S. 20-174.1.

23 (2) Responsible public official. – The mayor of a town or city with respect to an
24 incident that occurs in a municipality or a sheriff with respect to an incident that
25 occurs in the unincorporated area of a county.

26 (b) A responsible public official shall, after first learning that a mass traffic obstruction
27 exists in the official's jurisdiction, dispatch available law enforcement officers to the mass traffic
28 obstruction with directions to clear the roads of the persons unlawfully obstructing vehicular
29 traffic."

30 **SECTION 6.** G.S. 20-174.1 reads as rewritten:

31 **"§ 20-174.1. Standing, sitting or lying upon highways or streets prohibited.**

32 (a) No person shall willfully stand, sit, or lie upon the highway or street in such a manner
33 as to impede the regular flow of traffic.

34 (b) ~~Violation~~ Except as provided by subsection (c) of this section, a violation of this
35 section is a Class 2 misdemeanor.

36 (c) A violation of subsection (a) of this section by participation in a riot or other unlawful
37 assembly is a Class A1 misdemeanor."

38 **SECTION 7.** This act becomes effective December 1, 2017, and applies to offenses
39 committed on or after that date.





HOUSE BILL 249: Economic Terrorism.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Reps. Torbett, Blust, Burr
Analysis of: First Edition

Date: April 25, 2017
Prepared by: Susan Sitze
Committee Counsel

OVERVIEW: *House Bill 249 would do the following:*

- *Create the criminal offense of economic terrorism.*
- *Establish civil liability for economic terrorism.*
- *Create a duty for a responsible public official to take action to clear traffic obstructions resulting from unlawful activities.*
- *Increase criminal penalties for obstructing traffic while participating in unlawful activities.*
- *Provide civil liability for the costs of responding to traffic obstructions and certain other unlawful activities.*

CURRENT LAW: G.S. 14-288.2 defines a riot as "a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property."

BILL ANALYSIS:

Section 1 would create a new Class H felony for "economic terrorism" if a person commits a crime that impedes or disrupts the regular course of business and results in more than \$1,000 damages, if the person has the intent to either (i) intimidate the civilian population at large, or an identifiable group of the civilian population, or (ii) influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

Section 2 would provide civil liability for committing an act in violation of the economic terrorism offense created in Section 1 of the bill.

Section 3 would provide that a person convicted of participation in an unlawful assembly, riot, or obstructing traffic is civilly liable to a State agency or other political subdivision of the State for public safety costs incurred in responding to the incident.

Section 4 would amend G.S. 14-159.13, Second degree trespass, to create a Class 1 misdemeanor for any person not one of the listed exceptions to remain at the place of a riot or unlawful assembly after having been lawfully warned to disperse.

Section 5 would provide that in the event of a mass traffic obstruction, depending on the location of the obstruction, either the mayor or the sheriff would have a duty to dispatch available law enforcement officer with directions to clear the roads of the persons unlawfully obstructing vehicular traffic. Pursuant to G.S. 20-176, violation of the duty would be an infraction.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 249

Page 2

Section 6 would provide that any person who stands, sits, or lies on the highway or street in way that impedes the regular flow of traffic while participating in a riot or other unlawful assembly would be guilty of a Class A1 misdemeanor

EFFECTIVE DATE: This act would become effective December 1, 2017, and apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 274

Short Title: Increase Penalties for Debt Adjusting. (Public)

Sponsors: Representatives Stevens and Davis (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Commerce and Job Development, if favorable, Judiciary II

March 8, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO FURTHER PROTECT CONSUMERS BY INCREASING THE PENALTIES FOR
3 DEBT ADJUSTING.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 14-424 reads as rewritten:

6 "**§ 14-424. Engaging, etc., in business of debt adjusting a-misdemeanor-illegal.**

7 If any person shall engage in, or offer to or attempt to, engage in the business or practice of
8 debt adjusting, or if any person shall hereafter act, offer to act, or attempt to act as a debt adjuster,
9 ~~he the person~~ shall be guilty of a ~~Class 2~~ Class 1 misdemeanor. However, a violation of this
10 section is a Class H felony if (i) the business or practice involves an aggregate payment of money
11 or property by one or more debtors valued at five thousand dollars (\$5,000) or more or (ii) the
12 business or practice involves five or more debtors."

13 **SECTION 2.** This act becomes effective December 1, 2017, and applies to offenses
14 committed on or after that date.



★ H 2 7 4 - V - 1 ★



HOUSE BILL 274: Increase Penalties for Debt Adjusting.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Commerce and Job Development	Date:	April 25, 2017
Introduced by:	Reps. Stevens, Davis	Prepared by:	Susan Sitze
Analysis of:	First Edition		Howard Marsilio Committee Counsel

OVERVIEW: *House Bill 274 would increase the penalties for engaging in the business or practice of debt adjusting, and create a felony offense for certain levels of debt adjusting.*

CURRENT LAW: Article 56 of Chapter 14 relates to the prohibited business or practice of debt adjusting. Debt adjusting is entering into a contract with a debtor to act as an intermediary between a debtor and creditor (for various purposes) for a fee, as defined in G.S. 14-423(2). G.S. 14-426(1) through (7) lists persons and transactions deemed not to be debt adjusters or in the business or practice of debt adjusting.

It is unlawful for any person to engage in, or offer to or attempt to, engage in the business or practice of debt adjusting, or to act, offer to act, or attempt to act as a debt adjuster, pursuant to G.S. 14-424. A violation of this section is a Class 2 misdemeanor. Stuf

BILL ANALYSIS: This bill would increase the penalty for a violation of G.S. 14-424 from a Class 2 misdemeanor to a Class 1 misdemeanor.

It would also create a Class H felony if either of the following applies:

- The business or practice involves an aggregate payment of money or property by one or more debtors valued at five thousand dollars (\$5,000) or more.
- The business or practice involves five or more debtors.

EFFECTIVE DATE: This act would become effective December 2, 2017 and would apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H336

DATE _____

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE H336-CSBK-21

(to be filled in by
Principal Clerk)

(Rep.)

Sen.)

John

1 moves to amend the bill on page 1, lines 17 and 22

2 () WHICH CHANGES THE TITLE

3 by inserting "directly" between "driving" and "to".

4 _____

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SIGNED

[Signature]

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 336
Committee Substitute Favorable 3/28/17
PROPOSED COMMITTEE SUBSTITUTE H336-CSBK-21 [v.3]
04/24/2017 5:02:22 PM

Short Title: Ltd. License/Drive to School Event Past 9:00.

(Public)

Sponsors:

Referred to:

March 15, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE A HOLDER OF A LIMITED PROVISIONAL LICENSE TO
3 DRIVE PAST 9:00 P.M. WHEN DRIVING TO OR FROM AN EXTRACURRICULAR
4 OR ATHLETIC ACTIVITY THAT THE HOLDER'S HIGH SCHOOL OR
5 POSTSECONDARY SCHOOL IS SPONSORING OR PARTICIPATING IN OR WHEN
6 DRIVING TO OR FROM A CLASS THE HOLDER IS ENROLLED IN THAT IS HELD
7 AT A HIGH SCHOOL OR POSTSECONDARY SCHOOL.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 20-11(e)(2) reads as rewritten:

10 "(2) The license holder may drive without supervision in any of the following
11 circumstances:

- 12 a. From 5:00 a.m. to 9:00 p.m.
13 b. When driving directly to or from work.
14 c. When driving directly to or from an activity of a volunteer fire
15 department, volunteer rescue squad, or volunteer emergency medical
16 service, if the driver is a member of the organization.
17 d. When driving to or from an extracurricular or interscholastic athletic
18 activity that a high school or postsecondary school sponsors or
19 participates in, if the driver is enrolled in the sponsoring or
20 participating high school or postsecondary school and is actively
21 participating in the activity as more than a spectator.
22 e. When driving to or from a class held at a high school or
23 postsecondary school, if the driver is enrolled in the class."

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







HOUSE BILL 336: Ltd. License/Drive to School Event Past 9:00.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	April 25, 2017
Introduced by:	Reps. Butler, Iler, Reives, Torbett	Prepared by:	Susan Sitze
Analysis of:	PCS to Second Edition H336-CSBK-21		Jessica Sammons Committee Co-Counsel

OVERVIEW: *The proposed committee substitute (PCS) for House Bill 336 would amend the graduated driver's license statute for drivers under the age of 18 to allow a Level 2 limited provisional licensee to drive unsupervised at any time of day when driving to or from a school-related extracurricular or athletic activity or a school-held class.*

The PCS specifies that the driver has to be actively participating in the extracurricular or athletic activity as more than a spectator to drive unsupervised at any time of day.

CURRENT LAW: Under the graduated driver's license statute (G.S. 20-11), there are three levels of driving privileges for persons less than 18 years old: (i) Level 1 – Driving with a limited learner's permit; (ii) Level 2 – Driving with a limited provisional license; and (iii) Level 3 – Driving with a full provisional license. (See the chart on page 2 for requirements and restrictions for each level.)

Currently, a Level 2 limited provisional licensee is authorized to drive without supervision only during the following circumstances:

- 1) From 5:00 a.m. to 9:00 p.m.
- 2) When driving directly to or from work.
- 3) When driving directly to or from a volunteer fire department, rescue squad, or emergency medical service activity, if the driver is a member of the organization.

A Level 2 limited provisional licensee may drive with supervision at any time. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license.

BILL ANALYSIS: The PCS for House Bill 336 would authorize a Level 2 limited provisional licensee to drive without supervision before 5:00 a.m. or after 9:00 p.m. in the following additional circumstances:

- 1) When driving to or from an extracurricular or interscholastic athletic activity that a high school or postsecondary school sponsors or participates in, if the driver is enrolled in the sponsoring or participating high school or postsecondary school and is actively participating in the activity as more than a spectator.
- 2) When driving to or from a class held at a high school or postsecondary school, if the driver is enrolled in the class.

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

Wendy Ray, Staff Attorney in the Legislative Analysis Division, substantially contributed to this summary.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

GRADUATED DRIVERS LICENSE PROVISIONS (G.S. 20-11)

	LEVEL 1 – Limited Learner's Permit	LEVEL 2 – Limited Provisional License	LEVEL 3 – Full Provisional License
REQUIREMENTS	<ul style="list-style-type: none"> • 15-17 years old • Passes driver education course • Passes DMV written test. • Has driving eligibility certificate, high school diploma, or equivalent. 	<ul style="list-style-type: none"> • 16-17 years old • Has held a Level 1 permit for at least 12 months. • Has no convictions for moving violations, seat belt infractions, or violations of mobile phone use restrictions within the last 6 months. • Passes DMV road test. • Has driving eligibility certificate, high school diploma, or equivalent. • 60 logged hours driving. 	<ul style="list-style-type: none"> • 16-17 years old. • Has held a Level 2 license for at least 6 months. • Has no convictions for moving violations, seat belt infractions, or violations of mobile phone use restrictions within the last 6 months. • Has driving eligibility certificate, high school diploma, or equivalent. • 12 logged hours driving.
TIME RESTRICTIONS	<ul style="list-style-type: none"> • 5:00 a.m. – 9:00 p.m. for first 6 months. • Anytime after 6 months. 	<ul style="list-style-type: none"> • If supervised, anytime. • If unsupervised: <ul style="list-style-type: none"> ○ 5:00 a.m. – 9:00 p.m.; ○ Driving to or from work; or ○ Driving to or from an activity of a volunteer fire department, rescue squad, or emergency medical service. 	NONE
SUPERVISION	Supervision is required at all times, and the supervising driver must be seated beside the permit holder in the front seat of the vehicle.	When supervision is required, the supervising driver must be seated beside the license holder in the front seat of the vehicle.	NONE
PASSENGER LIMITATIONS	Only the supervising driver may be in the front seat.	If unsupervised: <ul style="list-style-type: none"> • Unlimited number of occupants over the age of 21. • Unlimited number of occupants who are family members or members of the same household. • Only one non-family member occupant under the age of 21, but only if no family member occupant or occupant from the same household is under the age of 21. 	NONE
USE OF MOBILE PHONE	All use prohibited	All use prohibited	Use prohibited except: <ul style="list-style-type: none"> • Emergencies • Calling parent, legal guardian, or spouse

*All drivers must be in possession of license or permit when driving, and every person occupying the vehicle must have a safety belt properly fastened or be restrained by child passenger restraint system when the vehicle is in motion.

*A "supervising driver" is a parent, grandparent, guardian, or responsible person approved by the parent, guardian or DMV, who has been a licensed driver for at least five years.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

2

HOUSE BILL 336
Committee Substitute Favorable 3/28/17

Short Title: Ltd. License/Drive to School Event Past 9:00.

(Public)

Sponsors:

Referred to:

March 15, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE A HOLDER OF A LIMITED PROVISIONAL LICENSE TO
3 DRIVE PAST 9:00 P.M. WHEN DRIVING TO OR FROM AN EXTRACURRICULAR
4 OR ATHLETIC ACTIVITY THAT THE HOLDER'S HIGH SCHOOL OR
5 POSTSECONDARY SCHOOL IS SPONSORING OR PARTICIPATING IN OR WHEN
6 DRIVING TO OR FROM A CLASS THE HOLDER IS ENROLLED IN THAT IS HELD
7 AT A HIGH SCHOOL OR POSTSECONDARY SCHOOL.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 20-11(e)(2) reads as rewritten:

10 "(2) The license holder may drive without supervision in any of the following
11 circumstances:

- 12 a. From 5:00 a.m. to 9:00 p.m.
13 b. When driving directly to or from work.
14 c. When driving directly to or from an activity of a volunteer fire
15 department, volunteer rescue squad, or volunteer emergency medical
16 service, if the driver is a member of the organization.
17 d. When driving to or from an extracurricular or athletic activity that a
18 high school or postsecondary school sponsors or participates in, if the
19 driver is enrolled in the sponsoring or participating high school or
20 postsecondary school.
21 e. When driving to or from a class held at a high school or
22 postsecondary school, if the driver is enrolled in the class."

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



* H 3 3 6 - V - 2 *



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 418
Committee Substitute Favorable 4/13/17
PROPOSED COMMITTEE SUBSTITUTE H418-CSBG-14 [v.1]
04/20/2017 07:12:25 PM

Short Title: SOS/Save Our Street Signs.

(Public)

Sponsors:

Referred to:

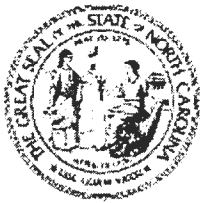
March 22, 2017

1 A BILL TO BE ENTITLED
2 AN ACT INCREASING THE CRIMINAL PENALTY AND DOT REWARD FOR
3 DAMAGING OR REMOVING STREET SIGN OFFENSES.
4 The General Assembly of North Carolina enacts:
5 SECTION 1. G.S. 136-33 reads as rewritten:
6 "§ 136-33. Damaging or removing signs; rewards.
7 (a) No person shall willfully deface, damage, knock down or remove any ~~sign posted~~
8 traffic sign or other traffic control device as provided in G.S. 136-26 or G.S. 136-30.
9 (b) No person, without just cause or excuse, shall have in his possession any ~~highway~~
10 sign-traffic sign or other traffic control device as provided in G.S. 136-26 or G.S. 136-30.
11 (b1) Any person violating the provisions of this section shall be guilty of a ~~Class 2~~
12 misdemeanor. Class 1 misdemeanor and shall pay a fine of one thousand dollars (\$1,000).
13 (c) The Department of Transportation is authorized to offer a reward not to exceed ~~five~~
14 hundred dollars (\$500.00) one thousand dollars (\$1,000) for information leading to the arrest
15 and conviction of persons who violate the provisions of this section, such reward to be paid
16 from funds of the Department of Transportation.
17 (d) The enforcement of this section shall be the specific responsibility and duty of the
18 State Highway Patrol in addition to all other law-enforcement agencies and officers within this
19 State."
20 SECTION 2. This act becomes effective December 1, 2017, and applies to
21 offenses committed on or after that date.



* H 4 1 8 - C S B G - 1 4 *





HOUSE BILL 418: SOS/Save Our Street Signs.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Rep. Clampitt
Analysis of: PCS to Second Edition
H418-CSBG-14

Date: April 25, 2017
Prepared by: Susan Sitze
Howard Marsilio
Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 418 would increase the criminal penalty, and allowable DOT reward for information, related to damaging, removing, or possessing street signs and traffic control devices. It would also clarify that traffic signs include traffic control devices, and modify the amount and disposition of fines for violations.*

The PCS makes a technical correction by substituting the phrase "traffic sign and other traffic control device" with the phrase "traffic sign or other traffic control device."

CURRENT LAW: G.S. 136-33(a) and (b) create violations for willfully defacing, damaging, knocking down, removing, or possessing (without just cause or excuse), signs as provided in G.S. 136-26 (traffic barriers and signs related to construction or maintenance) or G.S. 136-30 (uniform signs and other traffic control devices on highways, streets, and public vehicular areas).

A violation under the provisions of this section is punishable as a Class 2 misdemeanor. A Class 2 misdemeanor may include a fine not to exceed one thousand dollars (\$1,000).

BILL ANALYSIS:

The bill would:

- Clarify that traffic signs include traffic control devices.
- Increase the penalty for a violation under this section from a Class 2 misdemeanor to a Class 1 misdemeanor.
- Impose a \$1,000 fine for a violation.
- Increase the maximum allowable DOT reward for information, leading to an arrest and conviction, from \$500 to \$1000.

EFFECTIVE DATE: This act would become effective December 1, 2017, and would apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

2

HOUSE BILL 418
Committee Substitute Favorable 4/13/17

Short Title: SOS/Save Our Street Signs. (Public)

Sponsors:

Referred to:

March 22, 2017

- 1 A BILL TO BE ENTITLED
2 AN ACT INCREASING THE CRIMINAL PENALTY AND DOT REWARD FOR
3 DAMAGING OR REMOVING STREET SIGN OFFENSES.
4 The General Assembly of North Carolina enacts:
5 **SECTION 1.** G.S. 136-33 reads as rewritten:
6 "**§ 136-33. Damaging or removing signs; rewards.**
7 (a) No person shall willfully deface, damage, knock down or remove any ~~sign posted~~
8 traffic sign and other traffic control device as provided in G.S. 136-26 or G.S. 136-30.
9 (b) No person, without just cause or excuse, shall have in his possession any ~~highway~~
10 sign-traffic sign and other traffic control device as provided in G.S. 136-26 or G.S. 136-30.
11 (b1) Any person violating the provisions of this section shall be guilty of a ~~Class 2~~
12 misdemeanor. Class 1 misdemeanor and shall pay a fine of one thousand dollars (\$1,000).
13 (c) The Department of Transportation is authorized to offer a reward not to exceed ~~five~~
14 hundred dollars (\$500.00) one thousand dollars (\$1,000) for information leading to the arrest
15 and conviction of persons who violate the provisions of this section, such reward to be paid
16 from funds of the Department of Transportation.
17 (d) The enforcement of this section shall be the specific responsibility and duty of the
18 State Highway Patrol in addition to all other law-enforcement agencies and officers within this
19 State."
20 **SECTION 2.** This act becomes effective December 1, 2017, and applies to
21 offenses committed on or after that date.



* H 4 1 8 - V - 2 *



GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 418 (First Edition)

SHORT TITLE: SOS/Save Our Street Signs.

SPONSOR(S): Representative Clampitt

FISCAL IMPACT					
(\$ in millions)					
	Yes	No	✓ No Estimate Available		
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
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, 2017					
TECHNICAL CONSIDERATIONS:					
None					

The proposed bill may have a fiscal impact because of the application of a more stringent penalty for each offense. However, since there is no historical data on this offense, or similar offenses to use as a proxy for predicting the total number of 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:

FISCAL IMPACT SUMMARY:

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

- Administrative Office of the Courts: \$96 per charge
- Indigent Defense Services: No cost
- Department of Public Safety (DPS) - Prisons: No cost
- DPS - Community Corrections: \$148 per conviction resulting in probation

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Subsection (b1) of G.S. 136-33, Damaging or removing signs; rewards, makes it a Class 2 misdemeanor for a person to willfully deface, damage, knock down or remove any sign posted as provided in the statute, or for a person to have in their possession any highway sign as provided in statute, without just cause or excuse. This bill increases the penalty from a Class 2 misdemeanor to a Class 1 misdemeanor.

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 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.

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.

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 increases the penalty for violation of G.S. 136-33(b1) from a Class 2 misdemeanor to a Class 1 misdemeanor. AOC does not have an offense code for these violations. The lack of an offense code is typically an indication that the offense is infrequently charged. Because of the lack of charging data, AOC is unable to estimate how many charges will be increased from the current Class 2 misdemeanor to a Class 1 misdemeanor offense under this bill. 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 a Class 2 misdemeanor, the average cost to the court will be \$96 (\$206 for a Class 1 misdemeanor minus \$110 for a Class 2 misdemeanor).

The difference in cost to Indigent Defense Services (IDS) between Class 1 and Class 2 misdemeanors is only \$1. Therefore the increased penalty included in this bill will not have an impact on IDS.

Department of Public Safety – Prisons

This bill increases the penalty for violation of G.S. 136-33(b1) from a Class 2 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.

Department of Public Safety – Community Corrections

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.

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 (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 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 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Inflation Rate		2.76%	2.90%	2.98%	2.65%	1.89%
Monthly Cost	\$148	\$152	\$157	\$161	\$165	\$169
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (January 2017)</i>						

In FY 2015-16, 31% of Class 1 misdemeanor offenders received active sentences; 69% received probation. The average length of probation imposed for this offense class was 15 months. For the same time period, 34% of Class 2 offenders received active sentences; 66% received probation. The average length of probation imposed for this offense class was 14 months. Therefore, at a minimum, one conviction sentenced to probation under this bill will require at least one additional month of probation. The cost of one additional month of probation is \$148 per offender.¹

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 Trogon, Director
Fiscal Research Division



DATE: April 4, 2017

Signed Copy Located in the NCGA Principal Clerk's Offices

¹ Due to the effective date of December 1, 2016 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2016-17. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2017-18.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

2

HOUSE BILL 483
Committee Substitute Favorable 4/6/17

Short Title: Vet. Posttraumatic Stress/Mitigating Factor.

(Public)

Sponsors:

Referred to:

March 28, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A COURT MAY CONSIDER POSTTRAUMATIC STRESS
3 DISORDER AS A MITIGATING FACTOR WHEN SENTENCING A PERSON WHO IS
4 A VETERAN.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 15A-1340.16(e) is amended by adding a new subdivision to
7 read:

8 "(14a) The defendant has been diagnosed as suffering from posttraumatic stress
9 disorder resulting from his or her military service and is undergoing
10 professional treatment for that condition. As used in this section,
11 "posttraumatic stress disorder" means the same as such term is defined in the
12 Diagnostic and Statistical Manual of Mental Disorders, DSM-5, or
13 subsequent editions published by the American Psychiatric Association, and
14 occurred as a result of events during the service of the defendant in one or
15 more combat zones. The defendant shall provide to the court documentary
16 evidence that the defendant has done all of the following:

17 a. Served in the Armed Forces of the United States of America in a
18 combat zone, as defined in section 112 of the federal Internal
19 Revenue Code of 1986. Proof of such service shall consist of either a
20 certification by the Secretary of Military and Veteran Affairs or a
21 Form DD-214.

22 b. Been diagnosed with a posttraumatic stress disorder connected to his
23 or her service in the Armed Forces of the United States of America."

24 SECTION 2. This act becomes effective October 1, 2017, and applies to offenses
25 committed on or after that date.







HOUSE BILL 483: Vet. Posttraumatic Stress/Mitigating Factor.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	April 25, 2017
Introduced by:	Reps. G. Martin, Zachary, Reives, Rogers	Prepared by:	Susan Sitze
Analysis of:	Second Edition		Jessica Sammons
			Committee Co-Counsel

OVERVIEW: *House Bill 483 would provide that a court may consider a defendant's diagnosis of posttraumatic stress disorder (PTSD) connected to military service in a combat zone as a specific mitigating factor for the purposes of criminal sentencing.*

[As introduced, this bill was identical to S402, as introduced by Sens. Britt, J. Jackson, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW: Under structured sentencing, there are three ranges of punishments for felonies: presumptive, aggravated, and mitigated. To determine the range in which to sentence a defendant, the court must consider any evidence of aggravating and mitigating factors present in the offense. The statutory aggravating and mitigating factors are set out in G.S. 15A-1340.16. The court may find the specified statutory factors, or the court may write in additional factors not otherwise provided in law. If the court finds that mitigating factors are present and outweigh any aggravating factors, it may depart from the presumptive range of punishment and impose a term of punishment in the mitigated range. The offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

Related existing mitigating factors include:

- The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- The defendant has been honorably discharged from the Armed Forces of the United States.

BILL ANALYSIS: House Bill 483 would provide that a court may consider that a defendant is suffering from PTSD resulting from military service as a mitigating factor for purposes of sentencing. To prove this mitigating factor, the defendant must provide evidence that the defendant has done both of the following:

- 1) Served in a combat zone as a member of the United States Armed Forces. Sufficient proof of service consists of either a certification by the Secretary of Military and Veteran Affairs or a Form DD-214.
- 2) Been diagnosed with PTSD connected to his or her military service.

EFFECTIVE DATE: This act would become effective October 1, 2017, and apply to offenses committed on or after that date.

Jennifer Bedford, Staff Attorney in the Legislative Analysis Division, substantially contributed to this summary.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 492

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

~~Chase~~ Faircloth

1 moves to amend the bill on page 2, line 40

2 () WHICH CHANGES THE TITLE

3 by inserting between "punishment," and "a person" the following

4 language: " or the conduct is a result of a verifiable diagnosis

5 of a medical condition, a mental health or a behavioral health

6 disability, "

7 _____

8 _____

9 _____

10 _____

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16 _____

17 _____

18 _____

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 492
Corrected Copy 3/31/17
Committee Substitute Favorable 4/4/17
PROPOSED COMMITTEE SUBSTITUTE H492-CSSA-20 [v.1]
04/24/2017 11:15:38 AM

Short Title: Increase Penalties for Certain Assaults.

(Public)

Sponsors:

Referred to:

March 28, 2017

A BILL TO BE ENTITLED
AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR ASSAULT ON ANY OF THE
FOLLOWING PERSONS WHILE THE PERSON IS DISCHARGING OR ATTEMPTING
TO DISCHARGE OFFICIAL DUTIES: FIREFIGHTERS, LAW ENFORCEMENT
OFFICERS, EMERGENCY MEDICAL TECHNICIANS, MEDICAL RESPONDERS,
HOSPITAL PERSONNEL, LICENSED HEALTH CARE PROVIDERS, STATE AND
LOCAL GOVERNMENT OFFICERS AND EMPLOYEES, EXECUTIVE OFFICERS,
LEGISLATIVE OFFICERS, JUDICIAL OFFICERS, AND ELECTED EXECUTIVE,
LEGISLATIVE, AND JUDICIAL OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-16.6 reads as rewritten:

"§ 14-16.6. Assault on executive, legislative, or court officer.

(a) Any person who assaults any legislative officer, executive officer, or court officer, or assaults another person as retaliation against any legislative officer, executive officer, or court officer because of the exercise of that officer's duties, or any person who makes a violent attack upon the residence, office, temporary accommodation or means of transport of any one of those officers or persons in a manner likely to endanger the officer or person, shall be guilty of a felony and shall be punished as a ~~Class I~~ Class H felon.

(b) Any person who commits an offense under subsection (a) and uses a deadly weapon in the commission of that offense shall be punished as a ~~Class F~~ Class E felon.

(c) Any person who commits an offense under subsection (a) and inflicts serious bodily injury to any legislative officer, executive officer, or court officer, shall be punished as a ~~Class F~~ Class E felon."

SECTION 2. G.S. 14-16.7 reads as rewritten:

"§ 14-16.7. Threats against executive, legislative, or court officers.

(a) Any person who knowingly and willfully makes any threat to inflict serious bodily injury upon or to kill any legislative officer, executive officer, or court officer, or who knowingly and willfully makes any threat to inflict serious bodily injury upon or kill any other person as retaliation against any legislative officer, executive officer, or court officer because of the exercise of that officer's duties, shall be guilty of a felony and shall be punished as a ~~Class I~~ Class H felon.

(b) Any person who knowingly and willfully deposits for conveyance in the mail any letter, writing, or other document or sends an electronic communication containing a threat to commit an offense described in subsection (a) of this section shall be guilty of a felony and



shall be punished as a ~~Class I~~Class H felon. For purposes of this subsection, "electronic communication" includes transmissions through an electronic device, including, but not limited to, a telephone, cellular phone, computer, or pager, which communication includes, but is not limited to, e-mail, instant message, text message, or voice mail."

SECTION 3. G.S. 14-34.2 reads as rewritten:

"§ 14-34.2. Assault with a firearm or other deadly weapon upon governmental officers or employees, firefighters, company police officers, or campus police officers.

Unless a person's conduct is covered under some other provision of law providing greater punishment, any person who commits an assault with a firearm or any other deadly weapon upon an officer or employee of the State or of any political subdivision of the State, a firefighter, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 74G, Chapter 17C or Chapter 116 of the General Statutes, in the performance of his duties shall be guilty of a Class F felony."

SECTION 4. G.S. 14-34.6 reads as rewritten:

"§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel.

(a) A person is guilty of a ~~Class I~~Class H 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) Hospital personnel and licensed healthcare providers who are providing or attempting to provide health care services to a patient in a hospital.
- (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.

(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~~Class F 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~~Class E felony if the person violates subsection (a) of this section and uses a firearm."

SECTION 5. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-34.11. Simple assault on a law enforcement officer, a firefighter, an emergency medical technician, or medical responder.

Unless the conduct is covered under some other provision of law providing greater punishment, a person is guilty of a Class I felony if the person assaults a law enforcement officer, firefighter, emergency medical technician, or medical responder when the law enforcement officer, firefighter, emergency medical technician, or medical responder is discharging or attempting to discharge his or her official duties."

SECTION 6. G.S. 14-288.9 reads as rewritten:

"§ 14-288.9. Assault on emergency personnel; punishments.

(a) An assault upon emergency personnel is an assault upon any person coming within the definition of "emergency personnel" which is committed in an area:

- (1) In which a declared state of emergency exists; or
- (2) Within the immediate vicinity of which a riot is occurring or is imminent.

(b) The term "emergency personnel" includes ~~law enforcement officers, firemen, ambulance attendants,~~ law enforcement officers, firefighters, emergency medical responders,

1 utility workers, doctors, nurses, and other persons lawfully engaged in providing essential
2 services during the emergency.

3 (c) Any person who commits an assault causing physical injury upon emergency
4 personnel is guilty of a ~~Class I~~ Class H felony. Any person who commits an assault upon
5 emergency personnel with or through the use of any dangerous weapon or substance shall be
6 punished as a ~~Class F~~ Class E felon."

7 **SECTION 7.** This act becomes effective December 1, 2017, and applies to
8 offenses committed on or after that date.





HOUSE BILL 492: Increase Penalties for Certain Assaults.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Reps. Clampitt, Saine, Dollar
Analysis of: PCS to Third Edition
H492-CSSA-20

Date: April 25, 2017
Prepared by: Susan Sitze
Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 492 would increase the penalties for assault on specified emergency persons, and public employees and officials.*

CURRENT LAW: Under current law, the following penalties apply for the following offenses:

- G.S. 14-16.6. Assault on an executive, legislative or court officer: Class I felony; Class F if with a deadly weapon, or inflicts serious bodily injury.
- G.S. 14-16.7. Threats to injure or kill against executive, legislative, or court officers: Class I felony.
- G.S. 14-33. Misdemeanor assaults, batteries, and affrays. This statute includes provisions making an assault on an officer or employee of the State or any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official duties, a Class A1 misdemeanor.
- G.S. 14-34.2. Assault with a firearm or other deadly weapon upon government officers or employees, company police officers, or campus police: Class F felony.
- G.S. 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel: Class I felony if the person causing physical injury. Class H felony if the person inflicts serious bodily injury or uses a deadly weapon other than a firearm. Class F felony if the person uses a firearm.
- G.S. 14-288.9. Assault on emergency personnel – Class I felony if injury, Class F felony if with a dangerous weapon or substance.

BILL ANALYSIS:

Section 1 would increase the penalty for assault on an executive, legislative, or court officer to a Class H felony. If the assault is with a deadly weapon, or inflicts serious bodily injury the penalty would be increased to a Class E felony.

Section 2 would increase the penalty for threats to inflict serious bodily injury or to kill any legislative officer, executive officer, or court officer to a Class H felony. This section also contains language clarifying that threats sent by electronic means are included in this statute.

Section 3 would add "firefighters" to the Statute making assault with a deadly weapon upon governmental officers or employees, company police officers, or campus police officers a Class F felony.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House PCS 492

Page 2

Section 4 would increase the penalty for assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel to a Class H felony. If the assault or affray inflicts serious bodily injury or occurs with a deadly weapon other than a firearm, this section would increase the penalty to Class F. If the person charged with this assault or affray uses a firearm, this section would increase the penalty to a Class E felony.

Section 5 would create a new Class I felony for simple assault on a law enforcement officer, firefighter, emergency medical technician, or medical responder while they are discharging or attempting to discharge their duties.

Section 6 would increase the penalty for assault on emergency personnel that is committed in an area in which a declared state of emergency exists, or within the immediate vicinity of which a riot is occurring or is imminent, to a Class H felony. If the assault causes physical injury, this section would increase the penalty to a Class H felony. If the assault is with a dangerous weapon, this section would increase the penalty to a Class E felony.

EFFECTIVE DATE: This act would become effective December 1, 2017, and apply to offenses committed on or after that date.

Giles Perry, Staff Attorney, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

3

HOUSE BILL 492
Corrected Copy 3/31/17
Committee Substitute Favorable 4/4/17

Short Title: Increase Penalties for Certain Assaults.

(Public)

Sponsors:

Referred to:

March 28, 2017

A BILL TO BE ENTITLED
AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR ASSAULT ON ANY OF THE
FOLLOWING PERSONS WHILE THE PERSON IS DISCHARGING OR ATTEMPTING
TO DISCHARGE OFFICIAL DUTIES: FIREFIGHTERS, LAW ENFORCEMENT
OFFICERS, EMERGENCY MEDICAL TECHNICIANS, MEDICAL RESPONDERS,
HOSPITAL PERSONNEL, LICENSED HEALTH CARE PROVIDERS, STATE AND
LOCAL GOVERNMENT OFFICERS AND EMPLOYEES, EXECUTIVE OFFICERS,
LEGISLATIVE OFFICERS, JUDICIAL OFFICERS, AND ELECTED EXECUTIVE,
LEGISLATIVE, AND JUDICIAL OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-16.6 reads as rewritten:

"§ 14-16.6. Assault on executive, legislative, or court officer.

(a) Any person who assaults any legislative officer, executive officer, or court officer, or assaults another person as retaliation against any legislative officer, executive officer, or court officer because of the exercise of that officer's duties, or any person who makes a violent attack upon the residence, office, temporary accommodation or means of transport of any one of those officers or persons in a manner likely to endanger the officer or person, shall be guilty of a felony and shall be punished as a ~~Class I~~ Class H felon.

(b) Any person who commits an offense under subsection (a) and uses a deadly weapon in the commission of that offense shall be punished as a ~~Class F~~ Class E felon.

(c) Any person who commits an offense under subsection (a) and inflicts serious bodily injury to any legislative officer, executive officer, or court officer, shall be punished as a ~~Class F~~ Class E felon."

SECTION 2. G.S. 14-16.7 reads as rewritten:

"§ 14-16.7. Threats against executive, legislative, or court officers.

(a) Any person who knowingly and willfully makes any threat to inflict serious bodily injury upon or to kill any legislative officer, executive officer, or court officer, or who knowingly and willfully makes any threat to inflict serious bodily injury upon or kill any other person as retaliation against any legislative officer, executive officer, or court officer because of the exercise of that officer's duties, shall be guilty of a felony and shall be punished as a ~~Class I~~ Class H felon.

(b) Any person who knowingly and willfully deposits for conveyance in the mail any letter, writing, or other document or sends an electronic communication containing a threat to commit an offense described in subsection (a) of this section shall be guilty of a felony and shall be punished as a ~~Class I~~ Class H felon. For purposes of this subsection, "electronic



communication" includes transmissions through an electronic device, including, but not limited to, a telephone, cellular phone, computer, or pager, which communication includes, but is not limited to, e-mail, instant message, text message, or voice mail."

SECTION 3. G.S. 14-34.2 reads as rewritten:

"§ 14-34.2. Assault with a firearm or other deadly weapon upon governmental officers or employees, firefighters, company police officers, or campus police officers.

Unless a person's conduct is covered under some other provision of law providing greater punishment, any person who commits an assault with a firearm or any other deadly weapon upon an officer or employee of the State or of any political subdivision of the State, a firefighter, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 74G, Chapter 17C or Chapter 116 of the General Statutes, in the performance of his duties shall be guilty of a Class F felony."

SECTION 4. G.S. 14-34.6 reads as rewritten:

"§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel.

(a) A person is guilty of a ~~Class I~~ Class H 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) Hospital personnel and licensed healthcare providers who are providing or attempting to provide health care services to a patient in a hospital.
- (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.

(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~~ Class F 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~~ Class E felony if the person violates subsection (a) of this section and uses a firearm."

SECTION 5. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-34.11. Simple assault on an officer or employee of the State or local government.

Unless the conduct is covered under some other provision of law providing greater punishment, a person is guilty of a Class I felony if the person assaults an officer or employee of the State or any political subdivision of the State when the officer or employee is discharging or attempting to discharge his or her official duties."

SECTION 6. G.S. 14-288.9 reads as rewritten:

"§ 14-288.9. Assault on emergency personnel; punishments.

(a) An assault upon emergency personnel is an assault upon any person coming within the definition of "emergency personnel" which is committed in an area:

- (1) In which a declared state of emergency exists; or
- (2) Within the immediate vicinity of which a riot is occurring or is imminent.

(b) The term "emergency personnel" includes law-enforcement officers, ~~firemen~~, ~~ambulance attendants~~, firefighters, emergency medical responders, utility workers, doctors, nurses, and other persons lawfully engaged in providing essential services during the emergency.

1 (c) Any person who commits an assault causing physical injury upon emergency
2 personnel is guilty of a ~~Class I~~ Class H felony. Any person who commits an assault upon
3 emergency personnel with or through the use of any dangerous weapon or substance shall be
4 punished as a ~~Class F~~ Class E felon."

5 **SECTION 7.** This act becomes effective December 1, 2017, and applies to
6 offenses committed on or after that date.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

II

D

HOUSE BILL 558
PROPOSED COMMITTEE SUBSTITUTE H558-CSBK-18 [v.1]
04/19/2017 06:33:21 PM

Short Title: Study/Texting While Driving Enforcement.

(Public)

Sponsors:

Referred to:

April 5, 2017

- 1 A BILL TO BE ENTITLED
2 AN ACT DIRECTING THE DEPARTMENT OF PUBLIC SAFETY TO STUDY HOW TO
3 IMPROVE ENFORCEMENT OF THE LAWS PROHIBITING THE UNLAWFUL USE
4 OF A MOBILE PHONE WHILE OPERATING A MOTOR VEHICLE.
5 The General Assembly of North Carolina enacts:
6 **SECTION 1.** Study. – The Department of Public Safety, in consultation with the
7 Department of Transportation, the Conference of District Attorneys, the Administrative Office
8 of the Courts, the North Carolina Sheriffs' Association, and the North Carolina Association of
9 Chiefs of Police, shall study how to improve enforcement of the laws prohibiting the unlawful
10 use of a mobile phone while operating a motor vehicle. The study required by this section shall
11 include at least all of the following:
12 (1) For the period from 2009 through 2016, the number of charges, convictions,
13 and dismissals for violations of G.S. 20-137.3, 20-137.4, and 20-137.4A.
14 (2) The issues that are preventing enforcement of the laws identified in
15 subdivision (1) of this section.
16 (3) The issues that are preventing the prosecution for violations of the laws
17 identified in subdivision (1) of this section.
18 (4) The resources, including any legislative revisions, that would aid law
19 enforcement and the courts in addressing (i) the issues identified in
20 subdivisions (2) and (3) of this section and (ii) issues with highway safety in
21 general.
22 (5) A survey of how other states address the unlawful use of a mobile phone
23 while operating a motor vehicle, including an identification of any relevant
24 laws.
25 (6) An identification of any new technologies used by operators of motor
26 vehicles that cause distraction and are not subject to the laws identified in
27 subdivision (1) of this section.
28 (7) Any other issues the Department of Public Safety determines to be relevant
29 to the study required under this section.
30 **SECTION 2.** Report. – The Department of Public Safety shall report its findings,
31 including any legislative recommendations, to the Joint Legislative Oversight Committee on
32 Justice and Public Safety and the Joint Legislative Transportation Oversight Committee by
33 March 1, 2018.
34 **SECTION 3.** Effective Date. – This act is effective when it becomes law.







HOUSE BILL 558: Study/Texting While Driving Enforcement.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	April 25, 2017
Introduced by:	Reps. Ross, Faircloth, Hardister, McNeill	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition		Jessica Sammons
	H558-CSBK-18		Committee Co-Counsel

OVERVIEW: *The proposed committee substitute (PCS) for House Bill 558 would direct the Department of Public Safety, in consultation with others, to study how to improve enforcement of the laws prohibiting the unlawful use of a mobile phone while operating a motor vehicle, with a report due by March 1, 2018.*

CURRENT LAW: North Carolina law currently prohibits the use of a mobile telephone by a person under the age of 18 while operating a motor vehicle (G.S. 20-137.3), by a person operating a school bus (G.S. 20-137.4), and by anyone other than police, fire, or EMS personnel while reading or manually sending emails or text messages (G.S. 20-137.4A), with certain limited exceptions. See chart under Background for additional details.

BILL ANALYSIS: The PCS for House Bill 558 would direct the Department of Public Safety, in consultation with the Department of Transportation, the Conference of District Attorneys, the Administrative Office of the Courts, the North Carolina Sheriffs' Association, and the North Carolina Association of Chiefs of Police, to study how to improve enforcement of the laws prohibiting the unlawful use of a mobile phone while operating a motor vehicle. The study must consider all of the following:

- The number of charges, conviction, and dismissals for violations of G.S. 20-137.3, 20-137.4, and 20-137.4A between 2009 and 2016.
- The issues preventing enforcement of these offenses.
- The issues preventing the prosecution for these offenses.
- The resources (including any legislative resources) that would aid law enforcement and the courts in addressing any identified issues regarding the enforcement of and prosecution for these offenses and any issues with highway safety in general.
- A survey of how other states address the unlawful use of a mobile phone while operating a motor vehicle, including identifying any relevant laws.
- An identification of any new technologies that cause distraction for drivers and that are not included in these violations.
- Any other issues the Department of Public Safety determines to be relevant to the study.

The Department of Public Safety would be required to report its finding, with legislative recommendations, to the Joint Legislative Oversight Committee on Justice and Public Safety and the Joint Legislative Transportation Oversight Committee by March 1, 2018.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House PCS 558

Page 2

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

BACKGROUND:

	Prohibition	Exceptions	Penalty
G.S. 20-137.3	Persons under the age of 18 may not use mobile phone or associated technology while operating a motor vehicle while the vehicle is in motion.	<ul style="list-style-type: none">• In emergency situation to call emergency response operator; hospital, physician, or health clinic; ambulance; law enforcement• To call parent, legal guardian, or spouse	<ul style="list-style-type: none">• Infraction• \$25 fine• No driver's license points, insurance surcharge, or court costs
G.S. 20-137.4	Person operating a school bus, activity bus, or any vehicle transporting school children for compensation may not use mobile phone or associated technology while the vehicle is in motion.	<ul style="list-style-type: none">• In an emergency situation, defined as circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for operator or passengers	<ul style="list-style-type: none">• Class 2 misdemeanor (1-30 days community punishment with no prior convictions)• Minimum \$100 fine• No driver's license points or insurance surcharge
G.S. 20-137.4A	(1) Person may not use mobile phone to manually enter multiple letters or text to communicate or read any electronic mail or text message transmitted to or stored within the device. (2) Person operating a commercial motor vehicle may not use a mobile phone or other electronic device.	<ul style="list-style-type: none">• When vehicle is lawfully parked or stopped• By law enforcement officer, firefighter, and ambulance driver in performance of their official duties• Using GPS or wireless communication device to transmit or receive data• Using voice operated technology	<ul style="list-style-type: none">• School bus operator: Class 2 misdemeanor; minimum \$100 fine• All others: Infraction; minimum \$100 fine plus court costs• No driver's license points or insurance surcharge

Wendy Ray, Staff Attorney in the Legislative Analysis Division, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 558

Short Title: Study/Texting While Driving Enforcement. (Public)

Sponsors: Representatives Ross, Faircloth, Hardister, and McNeill (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

April 5, 2017

1 A BILL TO BE ENTITLED
2 AN ACT DIRECTING THE DEPARTMENT OF JUSTICE AND PUBLIC SAFETY TO
3 STUDY HOW TO IMPROVE ENFORCEMENT OF THE LAWS PROHIBITING THE
4 UNLAWFUL USE OF A MOBILE PHONE WHILE OPERATING A MOTOR
5 VEHICLE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Study. – The Department of Justice and Public Safety, in consultation
8 with the Department of Transportation, the Conference of District Attorneys, the
9 Administrative Office of the Courts, the North Carolina Sheriffs' Association, and the North
10 Carolina Association of Chiefs of Police, shall study how to improve enforcement of the laws
11 prohibiting the unlawful use of a mobile phone while operating a motor vehicle. The study
12 required by this section shall include at least all of the following:

- 13 (1) For the period from 2009 through 2016, the number of charges, convictions,
14 and dismissals for violations of G.S. 20-137.3, 20-137.4, and 20-137.4A.
- 15 (2) The issues that are preventing enforcement of the laws identified in
16 subdivision (1) of this section.
- 17 (3) The issues that are preventing the prosecution for violations of the laws
18 identified in subdivision (1) of this section.
- 19 (4) The resources, including any legislative revisions, that would aid law
20 enforcement and the courts in addressing (i) the issues identified in
21 subdivisions (2) and (3) of this section and (ii) issues with highway safety in
22 general.
- 23 (5) A survey of how other states address the unlawful use of a mobile phone
24 while operating a motor vehicle, including an identification of any relevant
25 laws.
- 26 (6) An identification of any new technologies used by operators of motor
27 vehicles that cause distraction and are not subject to the laws identified in
28 subdivision (1) of this section.
- 29 (7) Any other issues the Department of Justice and Public Safety determines to
30 be relevant to the study required under this section.

31 **SECTION 2.** Report. – The Department of Justice and Public Safety shall report its
32 findings, including any legislative recommendations, to the Joint Legislative Oversight
33 Committee on Justice and Public Safety and the Joint Legislative Transportation Oversight
34 Committee by March 1, 2018.

35 **SECTION 3.** Effective Date. – This act is effective when it becomes law.



* H 5 5 8 - V - 1 *



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 597

Short Title: Willful Injury of Person/Trap in Public Park. (Public)

Sponsors: Representatives Bradford, Bert Jones, Zachary, and Clampitt (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

April 6, 2017

A BILL TO BE ENTITLED
AN ACT TO CREATE THE CRIMINAL OFFENSE OF MALICIOUS INJURY THROUGH
USE OF A TRAP IN PUBLIC PARKS.

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 13C.

"Malicious Injury Through Use of a Trap in Public Parks.

"§ 14-50.50. Malicious injury through use of a trap in public parks; punishment.

(a) The following definitions apply in this section:

(1) Public park. – The term includes public parks, public recreational areas, walking trails, greenways, horse trails, and State forests.

(2) Trap. – Any object or device designed or placed in a manner to cause bodily injury upon contact with the object or device. The term includes all of the following:

a. Guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms.

b. Sharpened stakes, nails, or spikes.

c. Electrical devices.

d. Lines or wires with hooks or other sharp objects attached.

e. Devices that produce toxic fumes or gases.

(b) Except as provided otherwise by this section, any person who willfully and maliciously sets a trap in a public park for the purpose of injuring another person or who willfully and maliciously aids or procures the setting of a trap in a public park for the purpose of injuring another person is guilty of a Class A1 misdemeanor.

(c) A violation of subsection (b) that inflicts physical injury on another person is a Class H felony.

(d) A violation of subsection (b) that inflicts serious injury on another person is a Class E felony.

(e) A person who is convicted of any violation under this section in which the trap was camouflaged or concealed is guilty of an offense that is one class higher than the offense committed. A Class A1 misdemeanor shall be enhanced to a Class I felony under this subsection."



1 **SECTION 2.** This act becomes effective December 1, 2017, and applies to
2 offenses committed on or after that date.



HOUSE BILL 597: Willful Injury of Person/Trap in Public Park.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	April 25, 2017
Introduced by:	Reps. Bradford, Bert Jones, Zachary, Clampitt	Prepared by:	Susan Sitze
Analysis of:	First Edition		Jessica Sammons Committee Co-Counsel

OVERVIEW: *House Bill 597 would create the criminal offense of malicious injury through use of a trap in public parks.*

BILL ANALYSIS: House Bill 597 would create a new criminal offense for maliciously injuring another through the use of a trap in a public park.

- A *public park* would include public parks, public recreational areas, walking trails, greenways, horse trails, and State forests.
- A *trap* would be defined as any object or device designed or placed in a manner to cause bodily injury upon contact with the object or device, and would include all of the following:
 - Guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms.
 - Sharpened stakes, nails, or spikes.
 - Electrical devices.
 - Lines or wires with hooks or other sharp objects attached.
 - Devices that produce toxic fumes or gases.

Willfully and maliciously setting a trap in a public park for the purpose of injuring another person, or willfully and maliciously aiding or procuring the setting of a trap in a public park for the purpose of injuring another person, would be a Class A1 misdemeanor.

A violation of the offense that inflicts physical injury on another person would be a Class H felony.

A violation of the offense that inflicts serious injury on another person would be a Class E felony.

A person convicted of any violation of this offense in which the trap was camouflaged or concealed would be guilty of an offense one class higher than the offense committed. A Class A1 misdemeanor would be enhanced to a Class I felony.

EFFECTIVE DATE: This act would become effective December 1, 2017, and would apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578





H 621

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 621

H621-ASA-32 [v.1]

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

Page 1 of 1

Amends Title [NO]
First Edition

Date _____, 2017

Representative Faircloth

- 1 moves to amend the bill on page 21, line 32
2 by rewriting that line to read:
3 "Courts any orders of expunction, and the names of the";
4

5 And on page 22, lines 3-6

6 By rewriting those lines to read:

- 7 "(4) ~~The Department of Public Safety.~~ The Department of Public Safety,
8 Combined Records Section.
9 (5) The State Bureau of Investigation.".

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____



* H 6 2 1 - A S A - 3 2 - V - 1 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 621

Short Title: Expungement Process Modifications. (Public)

Sponsors: Representatives Faircloth, Stevens, McGrady, and Reives (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

April 10, 2017

A BILL TO BE ENTITLED

AN ACT TO STANDARDIZE THE FILING PROCEDURES FOR EXPUNGEMENTS, TO
AUTHORIZE PROSECUTORS ACCESS TO CERTAIN RECORDS OF
EXPUNGEMENT, TO ALLOW CERTAIN EXPUNGED CRIMINAL ACTS TO BE
CONSIDERED IN CALCULATING PRIOR RECORD LEVELS DURING
SENTENCING FOR SUBSEQUENT OFFENSES, AND TO MAKE OTHER
MODIFICATIONS TO THE EXPUNGEMENT PROCESS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes reads as rewritten:

"Article 5.

"Expunction of Records.

"§ 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, 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, 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 of the county 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, 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.



- 1 (4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and
2 applicable to petitions for expunctions filed on or after that date.
- 3 (4a) An application on a form approved by the Administrative Office of the
4 Courts requesting and authorizing a name-based State and national criminal
5 record check by the Department of Public Safety using any information
6 required by the Administrative Office of the Courts to identify the individual
7 and a search of the confidential record of expunctions maintained by the
8 Administrative Office of the Courts. The application shall be ~~forwarded~~ filed
9 with the clerk of superior court. The clerk of superior court shall obtain the
10 authorizing signature of the judge then presiding in that county and forward
11 the signed application to the Department of Public Safety and to the
12 Administrative Office of the Courts, which shall conduct the searches and
13 report their findings to the court.
- 14 (5) An affidavit by the petitioner that no restitution orders or civil judgments
15 representing amounts ordered for restitution entered against him are
16 outstanding.

17 The petition shall be served upon the district attorney of the court wherein the case was
18 tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file
19 any objection thereto and shall be duly notified as to the date of the hearing of the petition.

20 The judge to whom the petition is presented is authorized to call upon a probation officer
21 for any additional investigation or verification of the petitioner's conduct during the two-year
22 period that he deems desirable.

23 (a1) Nothing in this section shall be interpreted to allow the expunction of any offense
24 involving impaired driving as defined in G.S. 20-4.01(24a).

25 (b) If the court, after hearing, finds that the petitioner had remained of good behavior
26 and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two
27 years from the date of conviction of the misdemeanor in question, the petitioner has no
28 outstanding restitution orders or civil judgments representing amounts ordered for restitution
29 entered against him, and (i) petitioner was not 18 years old at the time of the offense in
30 question, or (ii) petitioner was not 21 years old at the time of the offense of possession of
31 alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the
32 contemplation of the law, to the status he occupied before such arrest or indictment or
33 information.

34 (b1) No person as to whom such order has been entered shall be held thereafter under
35 any provision of any laws to be guilty of perjury or otherwise giving a false statement by
36 reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or
37 response to any inquiry made of him for any purpose. This subsection shall not apply to a
38 sentencing hearing when the person has been convicted of a subsequent criminal offense.

39 (c) The court shall also order that the misdemeanor conviction, or a civil revocation of a
40 drivers license as the result of a criminal charge, be expunged from the records of the court.
41 The court shall direct all law-enforcement agencies, the Division of Adult Correction of the
42 Department of Public Safety, the Division of Motor Vehicles, and any other State or local
43 government agencies identified by the petitioner as bearing record of the same to expunge their
44 records of the petitioner's conviction or a civil revocation of a drivers license as the result of a
45 criminal charge. This subsection does not apply to civil or criminal charges based upon the civil
46 revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and local
47 agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified
48 copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation
49 provided the underlying criminal charge is also expunged. The civil revocation of a drivers
50 license shall not be expunged prior to a final disposition of any pending civil or criminal charge
51 based upon the civil revocation.

(d) The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(d1) Repealed by Session Laws 2012-191, s. 3, effective December 1, 2012.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

"§ 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 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 of the county 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 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-filed with the clerk of superior court. The clerk of superior court shall obtain the authorizing signature of the judge then presiding in that county and forward the signed application 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 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.

(b1) 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. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(b2) 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.

(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

"§ 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 of the county where charged for an order to expunge

1 from all official records, other than the confidential files retained under G.S. 15A-151, all
2 recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and
3 dismissal and discharge pursuant to this section. The applicant shall attach to the ~~application~~
4 petition the following:

- 5 (1) An affidavit by the petitioner that he or she has been of good behavior
6 during the period of probation since the decision to defer further proceedings
7 on the offense in question and has not been convicted of any felony or
8 misdemeanor other than a traffic violation under the laws of the United
9 States or the laws of this State or any other state;
- 10 (2) Verified affidavits by two persons who are not related to the petitioner or to
11 each other by blood or marriage, that they know the character and reputation
12 of the petitioner in the community in which he or she lives, and that the
13 petitioner's character and reputation are good;
- 14 (3) Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and
15 applicable to petitions for expunctions filed on or after that date.
- 16 (3a) An application on a form approved by the Administrative Office of the
17 Courts requesting and authorizing a name-based State and national criminal
18 record check by the Department of Public Safety using any information
19 required by the Administrative Office of the Courts to identify the individual
20 and a search of the confidential record of expunctions maintained by the
21 Administrative Office of the Courts. The application shall be ~~forwarded~~ filed
22 with the clerk of superior court. The clerk of superior court shall obtain the
23 authorizing signature of the judge then presiding in that county and forward
24 the signed application to the Department of Public Safety and to the
25 Administrative Office of the Courts, which shall conduct the searches and
26 report their findings to the court.

27 The judge to whom the petition is presented is authorized to call upon a probation officer
28 for any additional investigation or verification of the petitioner's conduct during the
29 probationary period deemed desirable.

30 If the court determines, after hearing, that such person was discharged and the proceedings
31 against him or her dismissed and that the person was not over 21 years of age at the time of the
32 offense, it shall enter such order. The effect of such order shall be to restore such person in the
33 contemplation of the law to the status the person occupied before such arrest or indictment or
34 information.

35 (a1) No person as to whom such order was entered shall be held thereafter under any
36 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of
37 the person's failures to recite or acknowledge such arrest, or indictment or information, or trial
38 in response to any inquiry made of him or her for any purpose. This subsection shall not apply
39 to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

40 (a2) The court shall also order that all records of the proceeding be expunged from the
41 records of the court and direct all law enforcement agencies, the Division of Adult Correction,
42 the Division of Motor Vehicles, and any other State and local government agencies identified
43 by the petitioner as bearing records of the same to expunge their records of the proceeding. The
44 clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

45 (b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90
46 of the General Statutes by possessing a controlled substance included within Schedules I
47 through VI of Article 5 of Chapter 90 of the General Statutes or a felony under
48 G.S. 90-95(a)(3), upon dismissal by the State of the charges against the person, upon entry of a
49 nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person
50 may apply to the court for an order to expunge from all official records all recordation relating
51 to his or her arrest, indictment or information, or trial. If the court determines, after hearing,

1 that such person was not over 21 years of age at the time the offense for which the person was
2 charged occurred, it shall enter such order. The clerk shall notify State and local agencies of the
3 court's order as provided in G.S. 15A-150. No person as to whom such order has been entered
4 shall be held thereafter under any provision of any law to be guilty of perjury or otherwise
5 giving a false statement by reason of the person's failures to recite or acknowledge such arrest,
6 or indictment or information, or trial in response to any inquiry made of him or her for any
7 purpose.

8 (c) Whenever any person who has not previously been convicted of (i) any felony
9 offense under any state or federal laws; (ii) any offense under Chapter 90 of the General
10 Statutes; or (iii) an offense under any statute of the United States or any state relating to
11 controlled substances included in any schedule of Chapter 90 of the General Statutes or to that
12 paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or
13 has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes
14 by possessing a controlled substance included within Schedules I through VI of Chapter 90, or
15 by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has
16 been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the
17 person not sooner than 12 months after conviction, order cancellation of the judgment of
18 conviction and expunction of the records of the person's arrest, indictment or information, trial,
19 and conviction. A conviction in which the judgment of conviction has been canceled and the
20 records expunged pursuant to this subsection shall not be thereafter deemed a conviction for
21 purposes of this subsection or for purposes of disqualifications or liabilities imposed by law
22 upon conviction of a crime, ~~including the additional penalties imposed for second or~~
23 ~~subsequent convictions of Article 5 of Chapter 90 of the General Statutes except as provided in~~
24 G.S. 15A-151.5. Cancellation and expunction under this subsection may occur only once with
25 respect to any person. Disposition of a case under this subsection at the district court division of
26 the General Court of Justice shall be final for the purpose of appeal.

27 The granting of an application filed under this subsection shall cause the issue of an order to
28 expunge from all official records, other than the confidential files retained under G.S. 15A-151,
29 all recordation relating to the petitioner's arrest, indictment or information, trial, finding of
30 guilty, judgment of conviction, cancellation of the judgment, and expunction of records
31 pursuant to this subsection.

32 The judge to whom the petition is presented is authorized to call upon a probation officer
33 for additional investigation or verification of the petitioner's conduct since conviction. If the
34 court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of
35 Chapter 90 of the General Statutes for possessing a controlled substance included within
36 Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing
37 drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that
38 the petitioner has no disqualifying previous convictions as set forth in this subsection, that the
39 petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of
40 good behavior since his or her conviction, that the petitioner has successfully completed a drug
41 education program approved for this purpose by the Department of Health and Human
42 Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a
43 traffic violation under the laws of this State at any time prior to or since the conviction for the
44 offense in question, it shall enter an order of expunction of the petitioner's court record. The
45 effect of such order shall be to restore the petitioner in the contemplation of the law to the
46 status the petitioner occupied before arrest or indictment or information or conviction. No
47 person as to whom such order was entered shall be held thereafter under any provision of any
48 law to be guilty of perjury or otherwise giving a false statement by reason of the person's
49 failures to recite or acknowledge such arrest, or indictment or information, or conviction, or
50 trial in response to any inquiry made of him or her for any purpose. The judge may waive the
51 condition that the petitioner attend the drug education school if the judge makes a specific

1 finding that there was no drug education school within a reasonable distance of the defendant's
2 residence or that there were specific extenuating circumstances which made it likely that the
3 petitioner would not benefit from the program of instruction.

4 The court shall also order all law enforcement agencies, the Department of ~~Correction,~~
5 Public Safety, the Division of Motor Vehicles, and any other State or local agencies identified
6 by the petitioner as bearing records of the conviction and records relating thereto to expunge
7 their records of the conviction. The clerk shall notify State and local agencies of the court's
8 order as provided in G.S. 15A-150.

9 (d) A person who files a petition for expunction of a criminal record under this section
10 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
11 time the petition is filed. Fees collected under this subsection are payable to the Administrative
12 Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars
13 and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the
14 costs of criminal record checks performed in connection with processing petitions for
15 expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each
16 fee shall be retained by the Administrative Office of the Courts and used to pay the costs of
17 processing petitions for expunctions under this section. This subsection does not apply to
18 petitions filed by an indigent.

19 **"§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the**
20 **time of the offense of certain toxic vapors offenses.**

21 (a) Whenever a person is discharged and the proceedings against the person dismissed
22 under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the
23 time of the offense, may apply to the court of the county where charged for an order to expunge
24 from all official records, other than the confidential files retained under G.S. 15A-151, all
25 recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and
26 dismissal and discharge pursuant to this section. The applicant shall attach to the ~~application~~
27 petition the following:

- 28 (1) An affidavit by the petitioner that the petitioner has been of good behavior
29 during the period of probation since the decision to defer further proceedings
30 on the misdemeanor in question and has not been convicted of any felony or
31 misdemeanor other than a traffic violation under the laws of the United
32 States or the laws of this State or any other state;
- 33 (2) Verified affidavits by two persons who are not related to the petitioner or to
34 each other by blood or marriage, that they know the character and reputation
35 of the petitioner in the community in which the petitioner lives, and that his
36 or her character and reputation are good;
- 37 (3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and
38 applicable to petitions for expunctions filed on or after that date.
- 39 (3a) An application on a form approved by the Administrative Office of the
40 Courts requesting and authorizing a name-based State and national criminal
41 record check by the Department of Public Safety using any information
42 required by the Administrative Office of the Courts to identify the individual
43 and a search of the confidential record of expunctions maintained by the
44 Administrative Office of the Courts. The application shall be ~~forwarded~~ filed
45 with the clerk of superior court. The clerk of superior court shall obtain the
46 authorizing signature of the judge then presiding in that county and forward
47 the signed application to the Department of Public Safety and to the
48 Administrative Office of the Courts, which shall conduct the searches and
49 report their findings to the court.

1 The judge to whom the petition is presented is authorized to call upon a probation officer
2 for any additional investigation or verification of the petitioner's conduct during the
3 probationary period deemed desirable.

4 If the court determines, after hearing, that such person was discharged and the proceedings
5 against the person dismissed and that he or she was not over 21 years of age at the time of the
6 offense, it shall enter such order. The effect of such order shall be to restore such person in the
7 contemplation of the law to the status the person occupied before such arrest or indictment or
8 information. No person as to whom such order was entered shall be held thereafter under any
9 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of
10 the person's failures to recite or acknowledge such arrest, or indictment or information, or trial
11 in response to any inquiry made of him or her for any purpose.

12 The court shall also order that all records of the proceeding be expunged from the records
13 of the court and direct all law enforcement agencies bearing records of the same to expunge
14 their records of the proceeding. The clerk shall notify State and local agencies of the court's
15 order as provided in G.S. 15A-150.

16 (b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter
17 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22,
18 upon dismissal by the State of the charges against the person or upon entry of a nolle prosequi
19 or upon a finding of not guilty or other adjudication of innocence, such person may apply to the
20 court for an order to expunge from all official records all recordation relating to the person's
21 arrest, indictment or information, and trial. If the court determines, after hearing that such
22 person was not over 21 years of age at the time the offense for which the person was charged
23 occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's
24 order as provided in G.S. 15A-150.

25 (b1) No person as to whom such order has been entered shall be held thereafter under
26 any provision of any law to be guilty of perjury or otherwise giving a false statement by reason
27 of the person's failures to recite or acknowledge such arrest, or indictment or information, or
28 trial in response to any inquiry made of him or her for any purpose. This subsection shall not
29 apply to a sentencing hearing when the person has been convicted of a subsequent criminal
30 offense.

31 (c) Whenever any person who has not previously been convicted of an offense under
32 Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States
33 or any state relating to controlled substances included in any schedule of Article 5 of Chapter
34 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the
35 General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A
36 of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner
37 than 12 months after conviction, order cancellation of the judgment of conviction and
38 expunction of the records of the person's arrest, indictment or information, trial, and conviction.
39 A conviction in which the judgment of conviction has been cancelled and the records expunged
40 pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this
41 subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of
42 a crime, ~~including the additional penalties imposed for second or subsequent convictions of~~
43 ~~violation of Article 5A of Chapter 90 of the General Statutes, except as provided in~~
44 G.S. 15A-151.5. Cancellation and expunction under this subsection may occur only once with
45 respect to any person. Disposition of a case under this subsection at the district court division of
46 the General Court of Justice shall be final for the purpose of appeal.

47 The granting of an application filed under this subsection shall cause the issue of an order to
48 expunge from all official records, other than the confidential files retained under G.S. 15A-151,
49 all recordation relating to the person's arrest, indictment or information, trial, finding of guilty,
50 judgment of conviction, cancellation of the judgment, and expunction of records pursuant to
51 this subsection.

1 The judge to whom the petition is presented is authorized to call upon a probation officer
2 for additional investigation or verification of the petitioner's conduct since conviction. If the
3 court determines that the petitioner was convicted of a misdemeanor under Article 5A of
4 Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by
5 G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that
6 the petitioner has been of good behavior since his or her conviction, that the petitioner has
7 successfully completed a drug education program approved for this purpose by the Department
8 of Health and Human Services, and that the petitioner has not been convicted of a felony or
9 misdemeanor other than a traffic violation under the laws of this State at any time prior to or
10 since the conviction for the misdemeanor in question, it shall enter an order of expunction of
11 the petitioner's court record. The effect of such order shall be to restore the petitioner in the
12 contemplation of the law to the status he occupied before such arrest or indictment or
13 information or conviction. No person as to whom such order was entered shall be held
14 thereafter under any provision of any law to be guilty of perjury or otherwise giving a false
15 statement by reason of the person's failures to recite or acknowledge such arrest, or indictment
16 or information, or conviction, or trial in response to any inquiry made of him or her for any
17 purpose. The judge may waive the condition that the petitioner attend the drug education school
18 if the judge makes a specific finding that there was no drug education school within a
19 reasonable distance of the defendant's residence or that there were specific extenuating
20 circumstances which made it likely that the petitioner would not benefit from the program of
21 instruction.

22 The clerk shall notify State and local agencies of the court's order as provided in
23 G.S. 15A-150.

24 (d) A person who files a petition for expunction of a criminal record under this section
25 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
26 time the petition is filed. Fees collected under this subsection are payable to the Administrative
27 Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars
28 and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the
29 costs of criminal record checks performed in connection with processing petitions for
30 expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each
31 fee shall be retained by the Administrative Office of the Courts and used to pay the costs of
32 processing petitions for expunctions under this section. This subsection does not apply to
33 petitions filed by an indigent.

34 **"§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at**
35 **the time of the commission of a nonviolent felony.**

36 (a) For purposes of this section, the term "nonviolent felony" means any felony except
37 the following:

- 38 (1) A Class A through G felony.
- 39 (2) A felony that includes assault as an essential element of the offense.
- 40 (3) A felony that is an offense requiring registration pursuant to Article 27A of
41 Chapter 14 of the General Statutes, whether or not the person is currently
42 required to register.
- 43 (4) Repealed by Session Laws 2012-191, s. 2, effective December 1, 2012.
- 44 (5) Any felony offense under the following sex-related or stalking offenses:
45 G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-202, 14-208.11A,
46 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
- 47 (6) Any felony offense in Chapter 90 of the General Statutes where the offense
48 involves methamphetamines, heroin, or possession with intent to sell or
49 deliver or sell and deliver cocaine; except that if a prayer for judgment
50 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).

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony in the same session of court and none of the nonviolent felonies are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions shall be expunged from the person's record in accordance with this section.

(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 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 of the county 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 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~~ filed with the clerk of superior court. The clerk of superior court shall obtain the authorizing signature of the judge then presiding in that county and forward the signed application 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.

- 1 (5) An affidavit by the petitioner that no restitution orders or civil judgments
2 representing amounts ordered for restitution entered against the petitioner
3 are outstanding.
- 4 (6) An affidavit by the petitioner that the petitioner has performed at least 100
5 hours of community service since the conviction for the nonviolent felony.
6 The affidavit shall include a list of the community services performed, a list
7 of the recipients of the services, and a detailed description of those services.
- 8 (7) An affidavit by the petitioner that the petitioner possesses a high school
9 diploma, a high school graduation equivalency certificate, or a General
10 Education Development degree.

11 The petition shall be served upon the district attorney of the court wherein the case was
12 tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file
13 any objection thereto and shall be duly notified as to the date of the hearing of the petition. The
14 district attorney shall make his or her best efforts to contact the victim, if any, to notify the
15 victim of the request for expunction prior to the date of the hearing.

16 (d) The court in which the petition was filed shall take the following steps and shall
17 consider the following issues in rendering a decision upon a petition for expunction of records
18 of a nonviolent felony under this section:

- 19 (1) Call upon a probation officer for additional investigation or verification of
20 the petitioner's conduct during the four-year period since the date of
21 conviction of the nonviolent felony in question.
- 22 (2) Review the petitioner's juvenile record, ensuring that the petitioner's juvenile
23 records remain separate from adult records and files and are withheld from
24 public inspection as provided under Article 30 of Chapter 7B of the General
25 Statutes.
- 26 (3) Review the amount of restitution made by the petitioner to the victim of the
27 nonviolent felony to be expunged and give consideration to whether or not
28 restitution was paid in full.
- 29 (4) Review any other information the court deems relevant, including, but not
30 limited to, affidavits or other testimony provided by law enforcement
31 officers, district attorneys, and victims of nonviolent felonies committed by
32 the petitioner.

33 (e) The court may order that the person be restored, in the contemplation of the law, to
34 the status the person occupied before the arrest or indictment or information if the court finds
35 all of the following after a hearing:

- 36 (1) The petitioner has remained of good moral character and has been free of
37 conviction of any felony or misdemeanor, other than a traffic violation, for
38 four years from the date of conviction of the nonviolent felony in question or
39 any active sentence, period of probation, or post-release supervision has
40 been served, whichever is later.
- 41 (2) The petitioner has not previously been convicted of any felony or
42 misdemeanor other than a traffic violation under the laws of the United
43 States or the laws of this State or any other state.
- 44 (3) The petitioner has no outstanding warrants or pending criminal cases.
- 45 (4) The petitioner has no outstanding restitution orders or civil judgments
46 representing amounts ordered for restitution entered against the petitioner.
- 47 (5) The petitioner was less than 18 years old at the time of the commission of
48 the offense in question.
- 49 (6) The petitioner has performed at least 100 hours of community service since
50 the time of the conviction and possesses a high school diploma, a high

- 1 school graduation equivalency certificate, or a General Education
2 Development degree.
- 3 (7) The search of the confidential records of expunctions conducted by the
4 Administrative Office of the Courts shows that the petitioner has not been
5 previously granted an expunction.
- 6 (f) No person as to whom an order has been entered pursuant to subsection (e) of this
7 section shall be held thereafter under any provision of any laws to be guilty of perjury or
8 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
9 the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the
10 provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all
11 felony convictions to the certifying Commission regardless of whether or not the felony
12 convictions were expunged pursuant to the provisions of this section. This subsection shall not
13 apply to a sentencing hearing when the person has been convicted of a subsequent criminal
14 offense.
- 15 (f1) Persons required by State law to obtain a criminal history record check on a
16 prospective employee shall not be deemed to have knowledge of any convictions expunged
17 under this section.
- 18 (g) The court shall also order that the nonviolent felony conviction be expunged from
19 the records of the court and direct all law enforcement agencies bearing record of the same to
20 expunge their records of the conviction. The clerk shall notify State and local agencies of the
21 court's order as provided in G.S. 15A-150.
- 22 (h) Any other applicable State or local government agency shall expunge from its
23 records entries made as a result of the conviction ordered expunged under this section. The
24 agency shall also vacate any administrative actions taken against a person whose record is
25 expunged under this section as a result of the charges or convictions expunged. A person whose
26 administrative action has been vacated by an occupational licensing board pursuant to an
27 expunction under this section may then reapply for licensure and must satisfy the board's then
28 current education and preliminary licensing requirements in order to obtain licensure. This
29 subsection shall not apply to the Department of Justice for DNA records and samples stored in
30 the State DNA Database and the State DNA Databank.
- 31 (i) Any person eligible for expunction of a criminal record under this section shall be
32 notified about the provisions of this section by the probation officer assigned to that person. If
33 no probation officer is assigned, notification of the provisions of this section shall be provided
34 by the court at the time of the conviction of the felony which is to be expunged under this
35 section.
- 36 (j) A person who files a petition for expunction of a criminal record under this section
37 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
38 time the petition is filed. Fees collected under this subsection are payable to the Administrative
39 Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars
40 and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the
41 costs of criminal record checks performed in connection with processing petitions for
42 expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each
43 fee shall be retained by the Administrative Office of the Courts and used to pay the costs of
44 processing petitions for expunctions under this section. This subsection does not apply to
45 petitions filed by an indigent.
- 46 **"§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**
- 47 (a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent
48 felony" means any misdemeanor or felony except the following:
- 49 (1) A Class A through G felony or a Class A1 misdemeanor.
- 50 (2) An offense that includes assault as an essential element of the offense.

- 1 (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of
2 the General Statutes, whether or not the person is currently required to
3 register.
- 4 (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b),
5 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18,
6 14-277.3, 14-277.3A, 14-321.1.
- 7 (5) Any felony offense in Chapter 90 of the General Statutes where the offense
8 involves methamphetamines, heroin, or possession with intent to sell or
9 deliver or sell and deliver cocaine.
- 10 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for
11 which punishment was determined pursuant to G.S. 14-3(c).
- 12 (7) An offense under G.S. 14-401.16.
- 13 (7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.
- 14 (8) Any felony offense in which a commercial motor vehicle was used in the
15 commission of the offense.
- 16 (8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).
- 17 (9) Any offense that is an attempt to commit an offense described in
18 subdivisions (1) through (8a) of this subsection.
- 19 (b) Notwithstanding any other provision of law, if the person is convicted of more than
20 one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the
21 nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person
22 had already been served with criminal process for the commission of a nonviolent felony or
23 nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor
24 convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction
25 under this section, and the expunction order issued under this section shall provide that the
26 multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be
27 expunged from the person's record in accordance with this section.
- 28 (c) A person may file a petition, in the court of the county where the person was
29 convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from
30 the person's criminal record if the person has no other misdemeanor or felony convictions,
31 other than a traffic violation. The petition shall not be filed earlier than ~~15~~10 years after the date
32 of the conviction for a nonviolent felony or five years for a nonviolent misdemeanor or when
33 any active sentence, period of probation, and post-release supervision has been served,
34 whichever occurs later. The petition shall contain, but not be limited to, the following:
- 35 (1) An affidavit by the petitioner that the petitioner has been of good moral
36 character since the date of conviction for the nonviolent misdemeanor or
37 nonviolent felony and has not been convicted of any other felony or
38 misdemeanor, other than a traffic violation, under the laws of the United
39 States or the laws of this State or any other state.
- 40 (2) Verified affidavits of two persons who are not related to the petitioner or to
41 each other by blood or marriage, that they know the character and reputation
42 of the petitioner in the community in which the petitioner lives and that the
43 petitioner's character and reputation are good.
- 44 (3) A statement that the petition is a motion in the cause in the case wherein the
45 petitioner was convicted.
- 46 (4) An application on a form approved by the Administrative Office of the
47 Courts requesting and authorizing a name-based State and national criminal
48 history record check by the Department of Public Safety using any
49 information required by the Administrative Office of the Courts to identify
50 the individual, a search by the Department of Public Safety for any
51 outstanding warrants on pending criminal cases, and a search of the

1 confidential record of expunctions maintained by the Administrative Office
2 of the Courts. The application shall be ~~forwarded~~ filed with the clerk of
3 superior court. The clerk of superior court shall obtain the authorizing
4 signature of the judge then presiding in that county and forward the signed
5 application to the Department of Public Safety and to the Administrative
6 Office of the Courts, which shall conduct the searches and report their
7 findings to the court.

- 8 (5) An affidavit by the petitioner that no restitution orders or civil judgments
9 representing amounts ordered for restitution entered against the petitioner
10 are outstanding.

11 Upon filing of the petition, the petition shall be served upon the district attorney of the court
12 wherein the case was tried resulting in conviction. The district attorney shall have 30 days
13 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
14 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
15 additional 30 days to file objection to the petition. The district attorney shall make his or her
16 best efforts to contact the victim, if any, to notify the victim of the request for expunction prior
17 to the date of the hearing.

18 The presiding judge is authorized to call upon a probation officer for any additional
19 investigation or verification of the petitioner's conduct since the conviction. The court shall
20 review any other information the court deems relevant, including, but not limited to, affidavits
21 or other testimony provided by law enforcement officers, district attorneys, and victims of
22 crimes committed by the petitioner.

23 If the court, after hearing, finds that the petitioner has not previously been granted an
24 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or
25 15A-145.4; the petitioner has remained of good moral character; the petitioner has no
26 outstanding warrants or pending criminal cases; the petitioner has no other felony or
27 misdemeanor convictions other than a traffic violation; the petitioner has no outstanding
28 restitution orders or civil judgments representing amounts ordered for restitution entered
29 against the petitioner; and the petitioner was convicted of an offense eligible for expunction
30 under this section and was convicted of, and completed any sentence received ~~for, the~~
31 ~~nonviolent misdemeanor or for, a nonviolent felony at least 10 years prior to the filing of the~~
32 ~~petition, petition or a nonviolent misdemeanor at least five years prior to the filing of the~~
33 ~~petition, it may order that such person be restored, in the contemplation of the law, to the status~~
34 ~~the person occupied before such arrest or indictment or information, information, except as~~
35 ~~provided in G.S. 15A-151.5.~~ If the court denies the petition, the order shall include a finding as
36 to the reason for the denial.

37 (d) No person as to whom an order has been entered pursuant to subsection (c) of this
38 section shall be held thereafter under any provision of any law to be guilty of perjury or
39 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
40 the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a
41 sentencing hearing when the person has been convicted of a subsequent criminal offense.

42 (d1) Persons pursuing certification under the provisions of Chapter 17C or 17E of the
43 General Statutes, however, shall disclose any and all convictions to the certifying Commission,
44 regardless of whether or not the convictions were expunged pursuant to the provisions of this
45 section.

46 Persons required by State law to obtain a criminal history record check on a prospective
47 employee shall not be deemed to have knowledge of any convictions expunged under this
48 section.

49 (e) The court shall also order that the conviction be expunged from the records of the
50 court and direct all law enforcement agencies bearing record of the same to expunge their

1 records of the conviction. The clerk shall notify State and local agencies of the court's order, as
2 provided in G.S. 15A-150.

3 (f) Any other applicable State or local government agency shall expunge from its
4 records entries made as a result of the conviction ordered expunged under this section upon
5 receipt from the petitioner of an order entered pursuant to this section. The agency shall also
6 vacate any administrative actions taken against a person whose record is expunged under this
7 section as a result of the charges or convictions expunged. A person whose administrative
8 action has been vacated by an occupational licensing board pursuant to an expunction under
9 this section may then reapply for licensure and must satisfy the board's then current education
10 and preliminary licensing requirements in order to obtain licensure. This subsection shall not
11 apply to the Department of Justice for DNA records and samples stored in the State DNA
12 Database and the State DNA Databank.

13 (g) A person who files a petition for expunction of a criminal record under this section
14 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
15 time the petition is filed. Fees collected under this subsection shall be deposited in the General
16 Fund. This subsection does not apply to petitions filed by an indigent.

17 **"§ 15A-145.6. Expunctions for certain defendants convicted of prostitution.**

18 (a) The following definitions apply in this section:

- 19 (1) Prostitution offense. – A conviction for (i) violation of G.S. 14-204 or (ii)
20 engaging in prostitution in violation of G.S. 14-204(7) for an offense that
21 occurred prior to October 1, 2013.
22 (2) Violent felony or violent misdemeanor. – A Class A through G felony or a
23 Class A1 misdemeanor that includes assault as an essential element of the
24 offense.

25 (b) A person who has been convicted of a prostitution offense may file a petition in the
26 court of the county where the person was convicted for expunction of the prostitution offense
27 from the person's criminal record provided that all the following criteria are met:

- 28 (1) The person has not previously been convicted of any violent felony or
29 violent misdemeanor under the laws of the United States or the laws of this
30 State or any other state.
31 (2) The person satisfies any one of the following criteria:
32 a. The person's participation in the prostitution offense was a result of
33 having been a trafficking victim under G.S. 14-43.11 (human
34 trafficking) or G.S. 14-43.13 (sexual servitude) or a victim of a
35 severe form of trafficking under the federal Trafficking Victims
36 Protection Act (22 U.S.C. § 7102(13)).
37 b. The person has no prior convictions for a prostitution offense and at
38 least three years have passed since the date of conviction or the
39 completion of any active sentence, period of probation, and
40 post-release supervision, whichever occurs later.
41 c. The person received a conditional discharge pursuant to
42 G.S. 14-204(b).

43 (c) The petition shall contain all of the following:

- 44 (1) An affidavit by the petitioner that the petitioner (i) has no prior conviction of
45 a violent felony or violent misdemeanor, (ii) has been of good moral
46 character since the date of conviction of the prostitution offense in question,
47 and (iii) has not been convicted of any felony or misdemeanor under the
48 laws of the United States or the laws of this State or any other state since the
49 date of the conviction of the prostitution offense in question.
50 (2) Verified affidavits of two persons, who are not related to the petitioner or to
51 each other by blood or marriage, that they know the character and reputation

- 1 of the petitioner in the community in which the petitioner lives and that the
2 petitioner's character and reputation are good.
- 3 (3) A statement that the petition is a motion in the cause in the case wherein the
4 petitioner was convicted.
- 5 (4) An application on a form approved by the Administrative Office of the
6 Courts requesting and authorizing (i) a State and national criminal history
7 record check by the Department of Public Safety using any information
8 required by the Administrative Office of the Courts to identify the
9 individual; (ii) a search by the Department of Public Safety for any
10 outstanding warrants or pending criminal cases; and (iii) a search of the
11 confidential record of expunctions maintained by the Administrative Office
12 of the Courts. The application shall be ~~forwarded~~ filed with the clerk of
13 superior court. The clerk of superior court shall obtain the authorizing
14 signature of the judge then presiding in that county and forward the signed
15 application to the Department of Public Safety and to the Administrative
16 Office of the Courts, which shall conduct the searches and report their
17 findings to the court.
- 18 (5) An affidavit by the petitioner that no restitution orders or civil judgments
19 representing amounts ordered for restitution entered against the petitioner
20 are outstanding.
- 21 (d) The petition shall be served upon the district attorney of the court wherein the case
22 was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to
23 file any objection thereto and shall be duly notified as to the date of the hearing of the petition.
- 24 (e) The court in which the petition was filed shall take the following steps and shall
25 consider the following issues in rendering a decision upon a petition for expunction of records
26 of a prostitution offense under this section:
- 27 (1) Call upon a probation officer for additional investigation or verification of
28 the petitioner's conduct during the period since the date of conviction of the
29 prostitution offense in question.
- 30 (2) Review any other information the court deems relevant, including, but not
31 limited to, affidavits or other testimony provided by law enforcement
32 officers and district attorneys.
- 33 (f) The court shall order that the person be restored, in the contemplation of the law, to
34 the status the person occupied before the arrest or indictment or information if the court finds
35 all of the following after a hearing:
- 36 (1) The criteria set out in subsection (b) of this section are satisfied.
- 37 (2) The petitioner has remained of good moral character and has been free of
38 conviction of any felony or misdemeanor, other than a traffic violation, since
39 the date of conviction of the prostitution offense in question.
- 40 (3) The petitioner has no outstanding warrants or pending criminal cases.
- 41 (4) The petitioner has no outstanding restitution orders or civil judgments
42 representing amounts ordered for restitution entered against the petitioner.
- 43 (5) The search of the confidential records of expunctions conducted by the
44 Administrative Office of the Courts shows that the petitioner has not been
45 previously granted an expunction, other than an expunction for a prostitution
46 offense.
- 47 (g) No person as to whom an order has been entered pursuant to subsection (f) of this
48 section shall be held thereafter under any provision of any laws to be guilty of perjury or
49 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
50 the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a
51 sentencing hearing when the person has been convicted of a subsequent criminal offense.

1 (g1) Persons pursuing certification under the provisions of Chapter 17C or 17E of the
2 General Statutes, however, shall disclose any and all prostitution convictions to the certifying
3 Commission regardless of whether or not the prostitution convictions were expunged pursuant
4 to the provisions of this section.

5 Persons required by State law to obtain a criminal history record check on a prospective
6 employee shall not be deemed to have knowledge of any convictions expunged under this
7 section.

8 (h) The court shall also order that the conviction of the prostitution offense be expunged
9 from the records of the court and direct all law enforcement agencies bearing record of the
10 same to expunge their records of the conviction. The clerk shall notify State and local agencies
11 of the court's order as provided in G.S. 15A-150.

12 (i) Any other applicable State or local government agency shall expunge from its
13 records entries made as a result of the conviction ordered expunged under this section. The
14 agency shall also reverse any administrative actions taken against a person whose record is
15 expunged under this section as a result of the charges or convictions expunged. This subsection
16 shall not apply to the Department of Justice for DNA records and samples stored in the State
17 DNA Database and the State DNA Databank.

18 (j) Any person eligible for expunction of a criminal record under this section shall be
19 notified about the provisions of this section by the probation officer assigned to that person. If
20 no probation officer is assigned, notification of the provisions of this section shall be provided
21 by the court at the time of the conviction of the prostitution offense which is to be expunged
22 under this section.

23 **"§ 15A-146. Expunction of records when charges are dismissed or there are findings of**
24 **not guilty.**

25 (a) If any person is charged with a crime, either a misdemeanor or a felony, or was
26 charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is
27 dismissed, ~~or a finding of not guilty or not responsible is entered,~~ that person may ~~apply to~~
28 ~~petition~~ the court of the county where the charge was brought for an order to expunge from all
29 official records any entries relating to his apprehension or trial. The court shall hold a hearing
30 on the ~~application-petition~~ and, upon finding that the person ~~had not previously received an~~
31 ~~expungement under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4,~~
32 ~~or 15A-145.5, and that the person had not previously been convicted of any felony under the~~
33 ~~laws of the United States, this State, or any other state, the court shall order the expunction. No~~
34 ~~person as to whom such an order has been entered shall be held thereafter under any provision~~
35 ~~of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or~~
36 ~~response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge~~
37 ~~any expunged entries concerning apprehension or trial.~~

38 (a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple
39 offenses and ~~all the charges are dismissed, or findings of not guilty or not responsible are made,~~
40 then a person may ~~apply-petition~~ to have each of those ~~the dismissed~~ charges ~~expunged~~
41 ~~expunged. if the offenses occurred within the same 12-month period of time or if the charges~~
42 ~~are dismissed or findings are made at the same term of court. Unless circumstances otherwise~~
43 ~~clearly provide, the phrase "term of court" shall mean one week for superior court and one day~~
44 ~~for district court. There is no requirement that the multiple offenses arise out of the same~~
45 ~~transaction or occurrence or that the multiple offenses were consolidated for judgment. The~~
46 ~~court shall hold a hearing on the application-petition. If the court finds (i) that the person had~~
47 ~~not previously received an expungement under this subsection, or that any previous~~
48 ~~expungement received under this subsection occurred prior to October 1, 2005 and was for an~~
49 ~~offense that occurred within the same 12-month period of time, or was dismissed or findings~~
50 ~~made at the same term of court, as the offenses that are the subject of the current application,~~
51 ~~(ii) that the person had not previously received an expungement under G.S. 15A-145,~~

1 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and (iii) that the person had not
2 previously been convicted of any felony under the laws of the United States, this State, or any
3 other state, the court shall order the expunction.

4 (a2) If any person is charged with a crime, either a misdemeanor or a felony, or an
5 infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of not guilty or not
6 responsible is entered, that person may petition the court of the county where the charge was
7 brought for an order to expunge from all official records any entries relating to apprehension or
8 trial of that crime. The court shall hold a hearing on the petition and upon finding that the
9 person had not previously been convicted of any felony under the law of the United States, this
10 State, or any other state, the court shall order the expunction. No person as to whom such an
11 order has been entered shall be held thereafter under any provision of any law to be guilty of
12 perjury or to be guilty of otherwise giving a false statement or response to any inquiry made for
13 any purpose, by reason of failure to recite or acknowledge any expunged entries concerning
14 that crime. If a person is charged with multiple offenses and finding of not guilty or not
15 responsible are made on charges, then a person may petition to have each of the charges
16 disposed by a finding of not guilty or not responsible expunged. The court shall hold a hearing
17 on the petition. If the court finds that the person had not previously been convicted of any
18 felony under the laws of the United States, this State, or any other state, the court shall order
19 the expunction.

20 (a3) No person as to whom such an order has been entered under this section shall be
21 held thereafter under any provision of any law to be guilty of perjury, or to be guilty of
22 otherwise giving a false statement or response to any inquiry made for any purpose, by reason
23 of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

24 (b) The court may also order that the said entries, including civil revocations of drivers
25 licenses as a result of the underlying charge, shall be expunged from the records of the court,
26 and direct all law-enforcement agencies, the Division of Adult Correction of the Department of
27 Public Safety, the Division of Motor Vehicles, and any other State or local government
28 agencies identified by the petitioner as bearing record of the same to expunge their records of
29 the entries, including civil revocations of drivers licenses as a result of the underlying charge
30 being expunged. This subsection does not apply to civil or criminal charges based upon the
31 civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and
32 local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a
33 certified copy of the order to the Division of Motor Vehicles for the expunction of a civil
34 revocation provided the underlying criminal charge is also expunged. The civil revocation of a
35 drivers license shall not be expunged prior to a final disposition of any pending civil or criminal
36 charge based upon the civil revocation. The costs of expunging the records, as required under
37 G.S. 15A-150, shall not be taxed against the petitioner.

38 (b1) Any person entitled to expungement under this section may also apply to the court
39 for an order expunging DNA records when the person's case has been dismissed by the trial
40 court and the person's DNA record or profile has been included in the State DNA Database and
41 the person's DNA sample is stored in the State DNA Databank. A copy of the application for
42 expungement of the DNA record or DNA sample shall be served on the district attorney for the
43 judicial district in which the felony charges were brought not less than 20 days prior to the date
44 of the hearing on the application. If the application for expungement is granted, a certified copy
45 of the trial court's order dismissing the charges shall be attached to an order of expungement.
46 The order of expungement shall include the name and address of the defendant and the
47 defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter
48 documenting expungement as required by subsection (b2) of this section.

49 (b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of this
50 section, the North Carolina State Crime Laboratory shall purge the DNA record and all other
51 identifying information from the State DNA Database and the DNA sample stored in the State

1 DNA Databank covered by the order, except that the order shall not apply to other offenses
2 committed by the individual that qualify for inclusion in the State DNA Database and the State
3 DNA Databank. A letter documenting expungement of the DNA record and destruction of the
4 DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and
5 the defendant's attorney at the address specified by the court in the order of expungement.

6 (c) The Any petition for expungement under this section shall be on a form approved by
7 the Administrative Office of the Courts and be filed with the clerk of superior court. Upon
8 order of expungement, the clerk shall notify State and local agencies of the court's order as
9 provided in G.S. 15A-150. G.S. 15A-150 and forward the petition to the Administrative Office
10 of the Courts.

11 (d) A person charged with a crime that is dismissed pursuant to compliance with a
12 deferred prosecution agreement or the terms of a conditional discharge and who files a petition
13 for expunction of a criminal record under this section must pay the clerk of superior court a fee
14 of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected
15 under this subsection are payable to the Administrative Office of the Courts. The clerk of
16 superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee
17 to the North Carolina Department of Public Safety for the costs of criminal record checks
18 performed in connection with processing petitions for expunctions under this section. The
19 remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the
20 Administrative Office of the Courts and used to pay the costs of processing petitions for
21 expunctions under this section. This subsection does not apply to petitions filed by an indigent.

22 **"§ 15A-147. Expunction of records when charges are dismissed or there are findings of**
23 **not guilty as a result of identity theft or mistaken identity.**

24 (a) If any person is named in a charge for an infraction or a crime, either a
25 misdemeanor or a felony, as a result of another person using the identifying information of the
26 named person or mistaken identity and a finding of not guilty is entered, or the conviction is set
27 aside, the named person may ~~apply by petition or written motion to~~ the court where the charge
28 was last pending on a form approved by the Administrative Office of the Courts supplied by the
29 clerk of court for an order to expunge from all official records any entries relating to the
30 person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold
31 a hearing on the ~~motion or petition~~ and, upon finding that the person's identity was used
32 without permission and the charges were dismissed or the person was found not guilty, the
33 court shall order the expunction.

34 (a1) If any person is named in a charge for an infraction or a crime, either a
35 misdemeanor or a felony, as a result of another person using the identifying information of the
36 named person or mistaken identity, and the charge against the named person is dismissed, the
37 prosecutor or other judicial officer who ordered the dismissal shall provide notice to the court
38 of the dismissal, and the court shall order the expunction of all official records containing any
39 entries relating to the person's apprehension, charge, or trial.

40 (a2) Any petition for expungement under this section shall be on a form approved by the
41 Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of
42 expungement, the clerk shall forward the petition to the Administrative Office of the Courts.

43 (b) No person as to whom such an order has been entered under this section shall be
44 held thereafter under any provision of any law to be guilty of perjury, or to be guilty of
45 otherwise giving a false statement or response to any inquiry made for any purpose, by reason
46 of the person's failure to recite or acknowledge any expunged entries concerning apprehension,
47 charge, or trial.

48 (c) The court shall also order that the said entries shall be expunged from the records of
49 the court and direct all law enforcement agencies, the Division of Adult Correction of the
50 Department of Public Safety, the Division of Motor Vehicles, or any other State or local
51 government agencies identified by the petitioner, or the person eligible for automatic

1 expungement under subsection (a1) of this section, as bearing record of the same to expunge
2 their records of the entries. The clerk shall notify State and local agencies of the court's order as
3 provided in G.S. 15A-150. The costs of expunging the records, as required under
4 G.S. 15A-150, shall not be taxed against the petitioner.

5 (d) The Division of Motor Vehicles shall expunge from its records entries made as a
6 result of the charge or conviction ordered expunged under this section. The Division of Motor
7 Vehicles shall also reverse any administrative actions taken against a person whose record is
8 expunged under this section as a result of the charges or convictions expunged, including the
9 assessment of drivers license points and drivers license suspension or revocation.
10 Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall
11 provide to the person whose motor vehicle record is expunged under this section a certified
12 corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or
13 revoked as a result of a charge or conviction expunged under this section.

14 (e) The Division of Adult Correction of the Department of Public Safety and any other
15 applicable State or local government agency shall expunge its records as provided in
16 G.S. 15A-150. The agency shall also reverse any administrative actions taken against a person
17 whose record is expunged under this section as a result of the charges or convictions expunged.
18 Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or
19 privilege resulting under this section shall be waived.

20 (f) Any insurance company that charged any additional premium based on insurance
21 points assessed against a policyholder as a result of a charge or conviction that was expunged
22 under this section shall refund those additional premiums to the policyholder upon notification
23 of the expungement.

24 (g) For purposes of this section, the term "mistaken identity" means the erroneous arrest
25 of a person for a crime as a result of misidentification by a witness or law enforcement,
26 confusion on the part of a witness or law enforcement as to the identity of the person who
27 committed the crime, misinformation provided to law enforcement as to the identity of the
28 person who committed the crime, or some other mistake on the part of a witness or law
29 enforcement as to the identity of the person who committed the crime.

30 **"§ 15A-148. Expunction of DNA records when charges are dismissed on appeal or pardon**
31 **of innocence is granted.**

32 (a) Upon a motion by the defendant following the issuance of a final order by an
33 appellate court reversing and dismissing a conviction of an offense for which a DNA analysis
34 was done in accordance with Article 13 of Chapter 15A of the General Statutes, or upon receipt
35 of a pardon of innocence with respect to any such offense, the court shall issue an order of
36 expungement of the DNA record and samples in accordance with subsection (b) of this section.
37 The order of expungement shall include the name and address of the defendant and the
38 defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter
39 documenting expungement as required by subsection (b) of this section.

40 (b) When an order of expungement has been issued pursuant to subsection (a) of this
41 section, the order of expungement, together with a certified copy of the final appellate court
42 order reversing and dismissing the conviction or a certified copy of the instrument granting the
43 pardon of innocence, shall be provided to the North Carolina State Crime Laboratory by the
44 clerk of court. Upon receiving an order of expungement for an individual whose DNA record or
45 profile has been included in the State DNA Database and whose DNA sample is stored in the
46 State DNA Databank, the DNA profile shall be expunged and the DNA sample destroyed by
47 the North Carolina State Crime Laboratory, except that the order shall not apply to other
48 offenses committed by the individual that qualify for inclusion in the State DNA Database and
49 the State DNA Databank. A letter documenting expungement of the DNA record and
50 destruction of the DNA sample shall be sent by the North Carolina State Crime Laboratory to
51 the defendant and the defendant's attorney at the address specified by the court in the order of

1 expungement. The North Carolina State Crime Laboratory shall adopt procedures to comply
2 with this subsection.

3 Any petition for expungement under this section shall be on a form approved by the
4 Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of
5 expungement, the clerk shall forward the petition to the Administrative Office of the Courts.

6 **"§ 15A-149. Expunction of records when pardon of innocence is granted.**

7 (a) If any person is convicted of a crime and receives a pardon of innocence, the person
8 may ~~apply by petition or written motion to~~ the court in which the person was convicted on a
9 form approved by the Administrative Office of the Courts supplied by the clerk of court for an
10 order to expunge from all official records any entries relating to the person's apprehension,
11 charge, or trial. Upon receipt of the ~~petition or written motion,~~ petition, the clerk of court shall
12 verify that an attested copy of the warrant and return granting a pardon of innocence has been
13 filed with the court in accordance with G.S. 147-25. Upon verification by the clerk that the
14 warrant and return have been filed, the court shall issue an order of expunction.

15 (b) The order of expunction shall include an instruction that any entries relating to the
16 person's apprehension, charge, or trial shall be expunged from the records of the court and
17 direct all law enforcement agencies, the Division of Adult Correction of the Department of
18 Public Safety, the Division of Motor Vehicles, or any other State or local government agencies
19 identified by the petitioner as bearing record of the same to expunge their records of the entries.
20 The clerk shall notify State and local agencies of the court's order as provided in ~~G.S. 15A-150.~~
21 G.S. 15A-150 and shall forward the petition to the Administrative Office of the Courts. The
22 costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the
23 petitioner.

24 (c) No person as to whom such an order has been entered under this section shall be
25 held thereafter under any provision of any law to be guilty of perjury, or to be guilty of
26 otherwise giving a false statement or response to any inquiry made for any purpose, by reason
27 of the person's failure to recite or acknowledge any expunged entries concerning apprehension,
28 charge, or trial.

29 **"§ 15A-150. Notification requirements.**

30 (a) Notification to AOC. – The clerk of superior court in each county in North Carolina
31 shall, as soon as practicable after each term of court, file with the Administrative Office of the
32 Courts the petitions received under this Article, any orders of expunction, and the names of the
33 following:

- 34 (1) Persons granted an expunction under this Article.
35 (2), (3) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015,
36 and applicable to conditional discharges granted on or after that date.
37 (4) Repealed by Session Laws 2010-174, s. 7, effective October 1, 2010.
38 (5) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015, and
39 applicable to conditional discharges granted on or after that date.
40 (6) Persons granted a dismissal upon completion of a conditional discharge
41 under G.S. 14-50.29, 14-204, 14-313(f), 15A-1341(a4), 90-96, or 90-113.14.

42 (b) Notification to Other State and Local Agencies. – Unless otherwise instructed by the
43 Administrative Office of the Courts pursuant to an agreement entered into under subsection (e)
44 of this section for the electronic or facsimile transmission of information, the clerk of superior
45 court in each county in North Carolina shall send a certified copy of an order granting an
46 expunction to a person named in subsection (a) of this section to all of the agencies listed in this
47 ~~subsection.~~ subsection and the person. An agency receiving an order under this subsection shall
48 ~~expunge-purge~~ from its records all entries made as a result of the charge or conviction ordered
49 expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:

- 50 (1) The sheriff, chief of police, or other arresting agency.
51 (2) When applicable, the Division of Motor Vehicles.

- 1 (3) Any State or local agency identified by the petition as bearing record of the
2 offense that has been expunged.
- 3 (4) ~~The Department of Public Safety.~~ Safety, Division of Adult Correction and
4 Juvenile Justice.
- 5 (5) The Department of Public Safety, North Carolina State Bureau of
6 Investigation.
- 7 (c) Notification to FBI. – The Department of Public ~~Safety~~ Safety, North Carolina State
8 Bureau of Investigation, shall forward the order received under this section to the Federal
9 Bureau of Investigation.
- 10 (d) Notification to Private Entities. – A State agency that receives a certified copy of an
11 order under this section shall notify any private entity with which it has a licensing agreement
12 for bulk extracts of data from the agency criminal record database to delete the record in
13 question. The private entity shall notify any other entity to which it subsequently provides in a
14 bulk extract data from the agency criminal database to delete the record in question from its
15 database.
- 16 (e) The Director of the Administrative Office of the Courts may enter into an agreement
17 with any of the State agencies listed in subsection (b) of this section for electronic or facsimile
18 transmission of any information that must be provided under this section.
- 19 **"§ 15A-151. Confidential agency files; exceptions to expunction.**
- 20 (a) The Administrative Office of the Courts shall maintain a confidential file for
21 expungements containing the petitions granted under this Article and the names of those people
22 for whom it received a notice under G.S. 15A-150. The information contained in the file may
23 be disclosed only as follows:
- 24 (1) ~~To~~ Upon request of a judge of the General Court of Justice of North Carolina
25 for the purpose of ascertaining whether a person charged with an offense has
26 been previously granted a discharge or an expunction.
- 27 (2) ~~To~~ Upon request of a person requesting confirmation of the person's own
28 discharge or ~~expunction, as provided in G.S. 15A-152.~~ expunction.
- 29 (3) To the General Court of Justice of North Carolina in response to a subpoena
30 or other court order issued pursuant to a civil action under G.S. 15A-152.
- 31 (4) ~~If~~ Upon request of State or local law enforcement, if the criminal record was
32 expunged pursuant to G.S. 15A-145.4, 15A-145.5, or ~~15A-145.6, to State~~
33 ~~and local law enforcement agencies 15A-145.6~~ for employment purposes
34 only.
- 35 (5) ~~If~~ Upon the request of the North Carolina Criminal Justice Education and
36 Training Standards Commission, if the criminal record was expunged
37 pursuant to G.S. 15A-145.4, 15A-145.5, or ~~[15A-]145.6, to the North~~
38 ~~Carolina Criminal Justice Education and Training Standards Commission~~
39 15A-145.6 for certification purposes only.
- 40 (6) ~~If~~ Upon request of the North Carolina Sheriff's Standards Commission, if the
41 criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or
42 ~~15A-145.6, to the North Carolina Sheriffs' Education and Training Standards~~
43 ~~Commission 15A-145.6~~ for certification purposes only.
- 44 (7) To the District Attorney in accordance with G.S. 15A-151.5.
- 45 (b) All agencies required under G.S. 15A-150 to expunge from records all entries made
46 as a result of a charge or conviction ordered expunged who maintain a licensing agreement to
47 provide record information to a private entity shall maintain a confidential file containing
48 information verifying the expunction and subsequent notification to private entities as required
49 by G.S. 15A-150(d). The information contained in the file shall be disclosed only to a person
50 requesting confirmation of expunction of the record of the person's own discharge or
51 expunction, as provided in G.S. 15A-152.

(c) The Division of Motor Vehicles shall not be required to expunge a record if the expunction of the record is expressly prohibited by the federal Commercial Motor Vehicle Safety Act of 1986, the federal Motor Carrier Safety Improvement Act of 1999, or regulations adopted pursuant to either act.

"§ 15A-151.5. Prosecutor access to expunged files.

(a) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all prosecutors of this State if the criminal record was expunged on or after December 1, 2017, under any of the following:

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) G.S. 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.
- (6) G.S. 15A-145.5. – Expunction of certain misdemeanors and felonies; no age limitation.
- (7) G.S. 15A-145.6. – Expunctions for certain defendants convicted of prostitution.
- (8) G.S. 15A-146(a). – Expunction of records when charges are dismissed or there are findings of not guilty.
- (9) G.S. 15A-146(a1). – Expunction of records when charges are dismissed or there are findings of not guilty.

(b) For any expungement granted on or after December 1, 2017, the expunged criminal records under subdivisions (1) through (7) of subsection (a) of this section may be used to calculate prior record level if the named person is convicted of a subsequent criminal offense.

(c) For any expungement granted on or after December 1, 2017, the information maintained by the Administrative Office of the Courts and made available under subsection (a) of this section shall be prima facie evidence of the expunged conviction for the purposes of calculating prior record level of the named person and shall be admissible into evidence at a subsequent criminal sentencing hearing."

SECTION 2. This act becomes effective December 1, 2017, and applies to petitions filed on or after that date.





HOUSE BILL 621: Expungement Process Modifications.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	April 25, 2017
Introduced by:	Reps. Faircloth, Stevens, McGrady, Reives	Prepared by:	Susan Sitze
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House 621 would standardize the filing procedures for expungements, authorize prosecutors access to certain records of expungement, allow certain expunged criminal acts to be considered in calculating prior record levels during sentencing for subsequent offenses, and make other modifications to the expungement process.*

CURRENT LAW: 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.

The qualified person may file a Petition for Expunction with the court where convicted. Depending on the type of conviction, the petition has various requirements under the specific statute for that conviction, generally including an application for a criminal background check, an affidavit by the petitioner of good behavior, and verified affidavits by two unrelated people of the petitioner's character and reputation. The application for a criminal background check must be on an Administrative Office of the Courts (AOC) approved form. The application is sent to the Department of Public Safety and the AOC for name-based State and national criminal record searches. The petition must also be approved by the District Attorney's office. If, after a hearing, the court determines the petition has met all the requirements, then the court orders the matter be expunged from the records of the court and all law enforcement agencies are directed to do the same.

BILL ANALYSIS: House Bill 621 would do the following:

- Establish a uniform procedure for filing a Petition for Expunction requiring the application for a criminal background check to be filed with the clerk of superior court in the county of conviction, who would then obtain the authorizing signature of the judge then presiding in the county of conviction and forward the signed application to the Department of Public Safety and the AOC.
- Reduce the waiting period to expunge a first-time nonviolent felony from 15 years to 10 years and make the waiting period 5 years for a nonviolent misdemeanor.
- Eliminate the "same 12 month period of time" restriction and the "prior expungement" disqualification for charges that are dismissed or findings of not guilty, as long as the applicant has not been convicted of a felony offense.
- Require any petition for expunction to be on an AOC approved form.

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Director



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House Bill 621

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- Require the AOC to add the petitions sent by the county clerks to the confidential file they currently maintain containing the names of those persons granted expunction, which may only be disclosed as provided by statute.
- Provide electronic access to all State and local law enforcement agencies and all prosecutors to the confidential AOC file for any expungement granted on or after December 1, 2016, for the following expungements:

- First offenders under the age of 18 at the time of conviction of misdemeanor; certain other misdemeanors. G.S. 15A-145.
- First offenders under the age of 18 at the time of conviction of certain gang offenses. G.S. 15A-145.1.
- First offenders not over 21 years of age at the time of the offense of certain drug offenses. G.S. 15A-145.2.
- First offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses. G.S. 15A-145.3.
- First offenders who are under 18 years of age at the time of the commission of a nonviolent felony. G.S. 15A-145.4.
- Certain misdemeanors and felonies – no age limitation. G.S. 15A-145.5.
- Certain defendants convicted of prostitution. G.S. 15A-145.6.
- Dismissed charges. G.S. 15A-146(a) and (a1).

State and local law enforcement and prosecutors would not have access to the record of the following expungements:

- Charges for which the person was found not guilty or not responsible. G.S. 15A-146(a2).
 - Dismissed charges or findings of not guilty as a result of identity theft or mistaken identity. G.S. 15A-147.
 - Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted. G.S. 15A-148.
 - Pardon of innocence. G.S. 15A-149.
- With the exception of expungements for dismissed charges or findings of not guilty, if available to State and local law enforcement and prosecutors, the underlying criminal conviction that was expunged may be used to calculate prior record level at sentencing.

EFFECTIVE DATE: This bill would become effective December 1, 2016, and apply to petitions for expunction filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 664

Short Title: Retroactive Sex Offender Registration.

(Public)

Sponsors: Representative Willingham.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II, if favorable, Rules, Calendar, and Operations of the House

April 11, 2017

A BILL TO BE ENTITLED
AN ACT TO MAKE MANDATORY SEX OFFENDER REGISTRATION APPLY TO
OFFENDERS NOT COVERED BY OTHER PROVISIONS OF LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.7 reads as rewritten:

"§ 14-208.7. Registration.

...

(a3) Any person who has ever been convicted of a reportable conviction and has not been required to register for that conviction under any other provision of law shall be required to register for that conviction pursuant to this Article if any of the following apply:

(1) On October 1, 2017, the person is required to register for another offense pursuant to this Article.

(2) On October 1, 2017, the person is serving an active term of imprisonment for any criminal offense.

(3) On October 1, 2017, the person is on probation, parole, or post-release supervision for any criminal offense.

(4) On or after October 1, 2017, the person is convicted of any criminal offense.

A person required to register pursuant to subdivision (1) or (3) of this subsection shall register for the prior reportable conviction on or before October 6, 2017. A person required to register pursuant to subdivision (2) or (4) of this subsection shall register as provided in subsection (a) of this section.

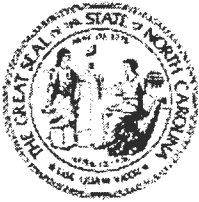
Notwithstanding the provisions of this subsection, if (i) the conviction of a reportable conviction prior to October 1, 2017, was not for an aggravated offense as defined in G.S. 14-208.6(1a), (ii) the conviction occurred 30 years or more prior to the date the person is required to register pursuant to this subsection, and (iii) the person has no other reportable convictions requiring registration under this Article, the person shall not be required to register pursuant to this subsection.

...."

SECTION 2. This act becomes effective October 1, 2017.







HOUSE BILL 664: Retroactive Sex Offender Registration.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 25, 2017
Introduced by:	Rep. Willingham	Prepared by:	Susan Sitze
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House Bill 664 would mandate sex offender registration for offenders that are currently not required to register due to the date of their conviction if (i) the offender is currently required to register for another offense, (ii) the offender is currently incarcerated or under supervision, or (iii) the offender is convicted of another criminal offense.*

CURRENT LAW: Article 27A of Chapter 14 of the General Statutes provides for the Sex Offender and Public Protection Registration Program which requires a person who has been convicted of a "reportable conviction", which includes certain sexual offenses or offenses against a minor, to maintain registration with the sheriff of the county where the person resides. Depending on the offense, the offender is either required to maintain registration for at least 30 years, with the ability to petition the court for early termination after ten years, or for life.

The registry was initially created in 1995 and has been modified several times since then. Generally, each modification has been applied to persons convicted or released from prison on or after the effective date, or for offenses committed on or after the effective date. Therefore, whether or not an offender is required to register is determined in part by the date of their offense, the date of their conviction, or the date of their release from prison, or, if they were convicted in another state, the date they moved to North Carolina. As a result, there are some persons who have convictions for offenses that would generally require registration, but who are not required to register under current law.

For a complete list of the applicable effective dates by offense, the North Carolina Department of Justice provides a publication online at the following address: <http://ncdoj.gov/Protect-Yourself/Find-Sex-Offenders/SexOffenderRegPrograms.aspx>

BILL ANALYSIS: House Bill 664 would apply the sex offender registration requirement retroactively to persons who are not currently required to register for a reportable conviction if any of the following apply:

- On October 1, 2017, the person is currently required to register for another reportable conviction.
- On October 1, 2017, the person is serving an active term of imprisonment for any criminal offense.
- On October 1, 2017, the person is on probation, parole, or post-release supervision for any criminal offense.
- On or after October 1, 2017, the person is convicted of any criminal offense.

A person who is currently registered for another offense, or who is on probation, parole, or post-release supervision would be required to register on or before October 6, 2017. A person who is serving an

Karen Cochrane-Brown
Director



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active sentence or who is convicted of an offense on or after October 1, 2017, would be required to register at the appropriate time as otherwise provided in the registry statutes.

A person with a reportable conviction that occurred at least 30 years ago would not be required to register if the offense is not an aggravated offense (and therefore would not require life time registration) and the person has no other reportable convictions.

EFFECTIVE DATE: This act would become effective October 1, 2017.

BACKGROUND:

"§ 14-208.6. Definitions.

The following definitions apply in this Article:

- (1a) "Aggravated offense" means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.
- ...
- (1m) "Offense against a minor" means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.
- ...
- (4) "Reportable conviction" means:
 - a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.
 - b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section, or a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.
 - c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.
 - d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for a violation of G.S. 14-202(a), (a1), or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register.
 - e. A final conviction for a violation of G.S. 14-43.14, only if the court sentencing the individual issues an order pursuant to G.S. 14-43.14(e) requiring the individual to register.
- (5) "Sexually violent offense" means a violation of 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

House Bill 664

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(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 and where the defendant is at least six years older), G.S. 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 and 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.

...."



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 670
PROPOSED COMMITTEE SUBSTITUTE H670-CSBK-20 [v.1]
04/21/2017 01:22:03 PM

Short Title: Protect Educational Property.

(Public)

Sponsors:

Referred to:

April 11, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE THE THREAT OF MASS VIOLENCE ON EDUCATIONAL
3 PROPERTY OR AT AN EXTRACURRICULAR ACTIVITY A FELONY.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 35 of Chapter 14 of the General Statutes is amended by
6 adding a new section to read:

7 "**§ 14-277.6. Making a threat concerning mass violence on educational property.**

8 (a) The following definitions apply in this section:

9 (1) Educational property. – As defined in G.S. 14-269.2.

10 (2) Mass violence. – As defined in G.S. 14-277.5

11 (3) School. – As defined in G.S. 14-269.2.

12 (b) A person who, by any means of communication to any person or groups of persons,
13 makes a threat that an act of mass violence is going to occur on educational property or at a
14 curricular or extracurricular activity sponsored by a school, is guilty of a Class H felony. The
15 threat must be made in a manner and under circumstances that a reasonable person would
16 believe the threat credible.

17 (c) The court may order a person convicted under this section to pay restitution,
18 including costs and consequential damages resulting from the disruption of the normal activity
19 that would have otherwise occurred on the premises but for the threat, pursuant to Article 81C
20 of Chapter 15A of the General Statutes."

21 SECTION 2. This act becomes effective December 1, 2017, and applies to
22 offenses committed on or after that date.



* H 6 7 0 - C S B K - 2 0 *





HOUSE BILL 670: Protect Educational Property.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Rep. Faircloth
Analysis of: PCS to First Edition
H670-CSBK-20

Date: April 25, 2017
Prepared by: Susan Sitze
Jessica Sammons
Committee Co-Counsel

OVERVIEW: *The proposed committee substitute (PCS) for House Bill 670 would make communicating a threat that an act of mass violence is going to occur on educational property or at a school-sponsored activity a Class H felony.*

CURRENT LAW: Under G.S. 14-277.1 (communicating threats), it is a Class 1 misdemeanor to willfully threaten to physically injure another person or that person's child, sibling, spouse or dependent or willfully threaten to damage another's property, and communicate that threat to the other person in a manner that would make a reasonable person believe it is likely to be carried out, if done without lawful authority and if the threat is believed by the threatened person.

Under G.S. 277.5 (making a false report concerning mass violence on educational property), it is a Class H felony to communicate a false report that an act of mass violence is going to occur on educational property or at an activity sponsored by a school.

- *Educational property* is "any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education or school board of trustees, or directors for the administration of any school."
- *School* includes any "public or private school, community college, college, or university."
- *Mass violence* is a "physical injury that a reasonable person would conclude could lead to permanent injury (including mental or emotional injury) or death to two or more people."

BILL ANALYSIS: The PCS for House Bill 670 would create a new criminal offense for making a threat, by any means of communication to any person or groups of persons, that an act of mass violence is going to occur on educational property or at a curricular or extracurricular activity sponsored by a school. The threat would have to be made in a manner and under circumstances that a reasonable person would believe the threat credible. A violation of this offense would be a Class H felony.

Assuming there are no prior convictions, the presumptive minimum sentence for a Class H felony is 5-6 months community, intermediate, or active punishment.

The PCS for House Bill 670 would also authorize the court to order a person convicted of this offense to pay restitution, including costs and consequential damages resulting from the disruption of the normal activity that would have otherwise occurred on the premises but for the threat.

EFFECTIVE DATE: This act would become effective December 1, 2017, and would apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 670

Short Title: Protect Educational Property.

(Public)

Sponsors: Representative Faircloth.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

April 11, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE THE THREAT OF MASS VIOLENCE ON EDUCATIONAL
3 PROPERTY OR AT AN EXTRACURRICULAR ACTIVITY A FELONY.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 35 of Chapter 14 of the General Statutes is amended by
6 adding a new section to read:

7 "**§ 14-277.6. Making a threat concerning mass violence on educational property.**

8 (a) The following definitions apply in this section:

9 (1) Educational property. – As defined in G.S. 14-269.2.

10 (2) Mass violence. – As defined in G.S. 14-277.5

11 (3) School. – As defined in G.S. 14-269.2.

12 (b) A person who, by any means of communication to any person or groups of persons,
13 makes a threat that an act of mass violence is going to occur on educational property or at a
14 curricular or extracurricular activity sponsored by a school, is guilty of a Class H felony. The
15 threat must be made in a manner and under circumstances that a reasonable person would
16 believe the threat credible.

17 (c) The court may order a person convicted under this section to pay restitution,
18 including costs and consequential damages resulting from the disruption of the normal activity
19 that would have otherwise occurred on the premises but for the false report, pursuant to Article
20 81C of Chapter 15A of the General Statutes."

21 SECTION 2. This act becomes effective December 1, 2017, and applies to
22 offenses committed on or after that date.





NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 672

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) FAIRCLOTH
Sen.)

1 moves to amend the bill on page 1, line 16

2 () WHICH CHANGES THE TITLE

3 by deleting the phrase "ten twenty dollars (~~\$10.00~~)

4 (\$20.00)" and substituting the phrase

5

6 "ten twenty-five dollars (~~\$10.00~~) (\$25.00)",

7

8

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10

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SIGNED

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 672

Short Title: Rear Occupant Seat Belt Use/Enforcement. (Public)

Sponsors: Representative Faircloth.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II, if favorable, Finance

April 11, 2017

A BILL TO BE ENTITLED
AN ACT TO INCREASE ENFORCEMENT OF THE LAW REQUIRING SEAT BELT USE
BY REAR SEAT OCCUPANTS OF A MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-135.2A reads as rewritten:

"§ 20-135.2A. Seat belt use mandatory.

...
~~(d1) Failure of a rear seat occupant of a vehicle to wear a seat belt shall not be justification for the stop of a vehicle.~~

(e) Any driver or front seat passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars and fifty cents (\$25.50) plus the following court costs: the General Court of Justice fee provided for in G.S. 7A-304(a)(4), the telephone facilities fee provided for in G.S. 7A-304(a)(2a), and the law enforcement training and certification fee provided for in G.S. 7A-304(a)(3b). Any rear seat occupant of a vehicle who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of ~~ten~~ twenty dollars ~~(\$10.00)~~ (\$20.00) and no court costs. Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer. Conviction of an infraction under this section has no other consequence.

...."

SECTION 2. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.



* H 6 7 2 - V - 1 *





HOUSE BILL 672: Rear Occupant Seat Belt Use/Enforcement.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Finance	Date:	April 25, 2017
Introduced by:	Rep. Faircloth	Prepared by:	Susan Sitze
Analysis of:	First Edition		Howard Marsilio Committee Counsel

OVERVIEW: *House Bill 672 would increase the fine for a seat belt violation by a rear seat occupant, and would remove the prohibition on stopping a vehicle based on a violation of the rear occupant seat belt requirement.*

CURRENT LAW: G.S. 20-135.2A requires all occupants to wear a seat belt when the vehicle is moving forward on a street or highway. The penalty for a violation by front seat occupants and rear seat occupants are different.

A violation of this section by a rear occupant is an infraction, and a ten-dollar (\$10.00) fine, and no court costs or other consequence.

Subdivision (d1) of this Section prohibits a rear occupant seat belt violation as being used as a justification for a vehicle stop.

BILL ANALYSIS:

This bill would:

- Repeal subdivision (d1), which would remove the prohibition of using a rear occupant seat belt violation as justification for a vehicle stop.
- Increase the fine for a rear occupant seat belt violation from \$10.00 to \$20.00.

EFFECTIVE DATE: This bill would become effective on December 1, 2017 and would apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 673

Short Title: DWLR/Death or Injury by Vehicle.

(Public)

Sponsors: Representative Faircloth.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

April 11, 2017

A BILL TO BE ENTITLED
AN ACT TO PROVIDE THAT A PERSON COMMITS CERTAIN DEATH OR SERIOUS
INJURY BY VEHICLE OFFENSES IF THE PERSON CAUSES THE DEATH OR
SERIOUS INJURY WHILE COMMITTING THE OFFENSE OF DRIVING WHILE
LICENSE REVOKED FOR IMPAIRED DRIVING.

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.**

...

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by
vehicle ~~if~~ if all of the following apply:

- (1) The person unintentionally causes the death of another ~~person~~ person.
- (2) The person was engaged in the offense of (i) impaired driving under
G.S. 20-138.1 or G.S. 20-138.2, and G.S. 20-138.2 or (ii) driving while
license revoked for impaired driving under G.S. 20-28(a1).
- (3) The commission of the offense in subdivision (2) of this subsection is the
proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor
death by vehicle ~~if~~ if all of the following apply:

- (1) The person unintentionally causes the death of another ~~person~~ 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, and the offenses set forth in~~
subdivision (2) of subsection (a1) of this section.
- (3) The commission of the offense in subdivision (2) of this subsection is the
proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious
injury by vehicle ~~if~~ if all of the following apply:

- (1) The person unintentionally causes serious injury to another ~~person~~ person.
- (2) The person was engaged in the offense of (i) impaired driving under
G.S. 20-138.1 or G.S. 20-138.2, and G.S. 20-138.2 or (ii) driving while
license revoked for impaired driving under G.S. 20-28(a1).
- (3) The commission of the offense in subdivision (2) of this subsection is the
proximate cause of the serious injury.



1 (a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of
2 aggravated felony serious injury by vehicle ~~if~~if all of the following apply:

3 (1) The person unintentionally causes serious injury to another ~~person~~person.

4 (2) The person was engaged in the offense of (i) impaired driving under
5 G.S. 20-138.1 or ~~G.S. 20-138.2~~, G.S. 20-138.2 or (ii) driving while license
6 revoked for impaired driving under G.S. 20-28(a1).

7 (3) The commission of the offense in subdivision (2) of this subsection is the
8 proximate cause of the serious ~~injury~~and injury.

9 (4) The person has a previous conviction involving impaired driving, as defined
10 in G.S. 20-4.01(24a), or a previous conviction for driving while license
11 revoked for impaired driving under G.S. 20-28(a1), within seven years of the
12 date of the offense.

13 (a5) Aggravated Felony Death by Vehicle. – A person commits the offense of
14 aggravated felony death by vehicle ~~if~~if all of the following apply:

15 (1) The person unintentionally causes the death of another ~~person~~person.

16 (2) The person was engaged in the offense of (i) impaired driving under
17 G.S. 20-138.1 or ~~G.S. 20-138.2~~, G.S. 20-138.2 or (ii) driving while license
18 revoked for impaired driving under G.S. 20-28(a1).

19 (3) The commission of the offense in subdivision (2) of this subsection is the
20 proximate cause of the ~~death~~and death.

21 (4) The person has a previous conviction involving impaired driving, as defined
22 in G.S. 20-4.01(24a), or a previous conviction for driving while license
23 revoked for impaired driving under G.S. 20-28(a1), within seven years of the
24 date of the offense.

25 (a6) Repeat Felony Death by Vehicle Offender. – A person commits the offense of
26 repeat felony death by vehicle ~~if~~if all of the following apply:

27 (1) The person commits an offense under subsection (a1) or subsection (a5) of
28 this ~~section~~and section.

29 (2) The person has a previous conviction ~~under~~under any of the following:

30 a. Subsection (a1) of this ~~section~~section.

31 b. Subsection (a5) of this ~~section~~or section.

32 c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was the
33 unintentional death of another person while engaged in the offense of
34 impaired driving under G.S. 20-138.1 or G.S. 20-138.2.

35 The pleading and proof of previous convictions shall be in
36 accordance with the provisions of G.S. 15A-928.

37"

38 **SECTION 2.** This act becomes effective December 1, 2017, and applies to
39 offenses committed on or after that date.



HOUSE BILL 673: DWLR/Death or Injury by Vehicle.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Rep. Faircloth
Analysis of: First Edition

Date: April 25, 2017
Prepared by: Susan Sitze
Committee Counsel

OVERVIEW: *House Bill 673 would amend the statute regarding death or serious injury by motor vehicle to include driving while license revoked for impaired driving during the commission of the offense causing death or serious injury as an element increasing the offense to a felony.*

CURRENT LAW: G.S. 20-141.4 provides for the following offenses:

- Misdemeanor death by vehicle – Class A1 misdemeanor
- Felony serious injury by vehicle – Class F felony
- Aggravated felony serious injury by vehicle – Class E felony
- Felony death by vehicle – Class D felony
- Aggravated felony death by vehicle – Class D felony (requires sentencing in aggravated range)
- Repeat felony death by vehicle – Class B2 felony

The felony offenses all require that the person be engaged in the offense of impaired driving at the time of the offense causing the death or serious injury. Additionally, the aggravated felony offenses require that the person also have a previous conviction involving impaired driving within 7 years of the offense.

BILL ANALYSIS: House Bill 673 would amend G.S. 20-141.4 to provide that the felony offenses would also apply if the person is engaged in the offense of driving while license revoked for impaired driving in violation of G.S. 20-28(a1) at the time of the offense causing the death or serious injury. The bill would also provide that a previous conviction of driving while license revoked for impaired driving would raise the offense to one of the aggravated levels.

EFFECTIVE DATE: This act would become effective December 1, 2017, and apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 703
PROPOSED COMMITTEE SUBSTITUTE H703-CSBG-20 [v.2]

04/24/2017 6:50:45 PM

Short Title: Felon W/Gun/B&E/Increased Penalties.

(Public)

Sponsors:

Referred to:

April 11, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE CRIMINAL PENALTY FOR A VIOLATION OF THE
3 FELONY FIREARMS ACT AND TO INCREASE THE CRIMINAL PENALTY FOR
4 BREAKING OR ENTERING.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 14-415.1(a) reads as rewritten:

7 "(a) It shall be unlawful for any person who has been convicted of a felony to purchase,
8 own, possess, or have in his custody, care, or control any firearm or any weapon of mass death
9 and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i)
10 any weapon, including a starter gun, which will or is designed to or may readily be converted to
11 expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm
12 muffler or firearm silencer. This section does not apply to an antique firearm, as defined in
13 G.S. 14-409.11.

14 Every person violating the provisions of this section shall be punished as a Class ~~G~~-felon.
15 felon."

16 SECTION 2. G.S. 14-54 reads as rewritten:

17 "§ 14-54. Breaking or entering buildings generally.

18 (a) Any person who breaks or enters any building with intent to commit any felony or
19 larceny therein shall be punished as a Class ~~H~~-felon H felon; however, if any person is in actual
20 occupation of any part of the building at the time of the commission of the crime, the person
21 committing the crime shall be punished as a Class F felon.

22 (a1) Any person who breaks or enters any building with intent to terrorize or injure an
23 occupant of the building is guilty of a ~~Class H~~ Class F felony.

24 (b) Any person who wrongfully breaks or enters any building is guilty of a Class 1
25 misdemeanor.

26 (c) As used in this section, "building" shall be construed to include any dwelling,
27 dwelling house, uninhabited house, building under construction, building within the curtilage of
28 a dwelling house, and any other structure designed to house or secure within it any activity or
29 property."

30 SECTION 3. This act becomes effective December 1, 2017, and applies to
31 offenses committed on or after that date.







HOUSE BILL 703: Felon W/Gun/B&E/Increased Penalties.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Reps. Brawley, Dollar, Henson
Analysis of: PCS to First Edition
H703-CSBG-20

Date: April 25, 2017
Prepared by: Howard Marsilio
Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 703 would increase the penalty for unlawful possession of a firearm or weapon of mass destruction by a felon. It would also increase the penalty for various breaking and entering (B&E) offenses.*

The PCS amends Section 2 of the bill to incorporate the new offense of B&E into a building actually occupied to commit a felony or larceny therein into subsection (a), and modifies the felony classes for various B&E offenses.

CURRENT LAW: G.S. 14-415.1(a) currently prohibits convicted felons from purchasing, owning, possessing, or having control of a firearm or weapon of mass destruction. A violation of this section is a Class G felony.

There are currently multiple offenses related to breaking and entering into a building in G.S. 14-54.

- B&E into a building with intent to commit any felony or larceny therein is a Class H felony.
- B&E into a building with the intent to terrorize or injure an occupant is a Class H felony.
- B&E into a building wrongfully is a Class 1 misdemeanor.

BILL ANALYSIS:

Section 1 would increase the penalty for the possession of a firearm or weapon of mass destruction by a felon from a Class G felony to a Class C felony.

Section 2 would:

- Create the offense of breaking and entering into an occupied building with intent to commit a felony or larceny therein, which would be a Class F felony.
- Increase the penalty for a B&E with the intent to terrorize or injure an occupant within a building from a Class H felony to a Class F felony.

EFFECTIVE DATE: This act would become effective December 1, 2017, and would apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 703

Short Title: Felon W/Gun/B&E/Increased Penalties.

(Public)

Sponsors: Representatives Brawley, Dollar, and Henson (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

April 11, 2017

A BILL TO BE ENTITLED
AN ACT TO INCREASE THE CRIMINAL PENALTY FOR A VIOLATION OF THE
FELONY FIREARMS ACT AND TO INCREASE THE CRIMINAL PENALTY FOR
BREAKING OR ENTERING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.1(a) reads as rewritten:

"(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class ~~G~~C felon."

SECTION 2. G.S. 14-54 reads as rewritten:

"§ 14-54. Breaking or entering buildings generally.

(a) Any person who breaks or enters any building with intent to commit any felony or larceny therein shall be punished as a Class ~~H~~G felon.

(a1) Any person who breaks or enters any building with intent to terrorize or injure an occupant of the building is guilty of a Class ~~H~~G felony.

(a2) Any person who breaks or enters any building that is occupied with intent to commit any felony or larceny therein shall be punished as a Class D felon.

(b) Any person who wrongfully breaks or enters any building is guilty of a Class 1 misdemeanor.

(c) As used in this section, "building" shall be construed to include any dwelling, dwelling house, uninhabited house, building under construction, building within the curtilage of a dwelling house, and any other structure designed to house or secure within it any activity or property."

SECTION 3. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.



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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 708
PROPOSED COMMITTEE SUBSTITUTE H708-CSBG-15 [v.1]

04/20/2017 07:16:40 PM

Short Title: Require Criminal BGC/Pharmacist Licensure.

(Public)

Sponsors:

Referred to:

April 11, 2017

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING CRIMINAL BACKGROUND CHECKS FOR APPLICANTS FOR
3 PHARMACIST LICENSURE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 90-85.15 reads as rewritten:

6 "§ 90-85.15. Application and examination~~Application, qualifications, and criminal record~~
7 check for licensure as a pharmacist; prerequisites.

8 (a) ~~Any person who desires to be licensed~~Each applicant for licensure under this Article
9 as a pharmacist shall file an application with the Executive Director on the form furnished by
10 the Board, verified under oath, setting forth ~~the~~all of the following:

11 (1) The applicant's name, age, thename.

12 (2) The applicant's age.

13 (3) The place at which and the time that he the applicant has spent in the study
14 of pharmacy, and his pharmacy.

15 (4) The applicant's experience in compounding and dispensing prescriptions
16 under the supervision of a pharmacist.

17 ~~The applicant shall also appear at a time and place designated by the Board and submit to an~~
18 ~~examination as to his qualifications for being licensed. The applicant must demonstrate to the~~
19 ~~Board his physical and mental competency to practice pharmacy.~~

20 (b) ~~On or after July 1, 1982, all applicants shall have received~~The Board shall license
21 an applicant to practice pharmacy if, in addition to completing an application as specified in
22 subsections (a) of this section, the applicant meets all of the following qualifications:

23 (1) Holds an undergraduate degree from a school of pharmacy approved by the
24 Board. Applicants shall be required to have had

25 (2) Has had up to one year of experience, approved by the Board, under the
26 supervision of a pharmacist and shall passpharmacist.

27 (3) Has passed the required examination offered by the Board. Upon completing
28 these requirements and upon paying the required fee, the applicant shall be
29 licensed.

30 (4) Has appeared at a time and place designated by the Board and submitted to
31 an examination as to the applicant's qualifications for being licensed. The
32 applicant must demonstrate to the Board the physical and mental
33 competency to practice pharmacy.

34 (c) ~~The Department of Public Safety may provide a criminal record check to the Board~~
35 ~~for a person who has applied for a license through the Board. The Board shall provide to the~~
36 ~~Department of Public Safety, along with the request, the fingerprints of the applicant, any~~



1 additional information required by the Department of Public Safety, and a form signed by the
2 applicant consenting to the check of the criminal record and to the use of the fingerprints and
3 other identifying information required by the State or national repositories. The applicant's
4 fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's
5 criminal history record file, and the State Bureau of Investigation shall forward a set of the
6 fingerprints to the Federal Bureau of Investigation for a national criminal history check. The
7 Board shall keep all information pursuant to this subsection privileged, in accordance with
8 applicable State law and federal guidelines, and the information shall be confidential and shall
9 not be a public record under Chapter 132 of the General Statutes.

10 The Department of Public Safety may charge each applicant a fee for conducting the checks
11 of criminal history records authorized by this subsection. The Board shall require each
12 applicant to provide the Board with a criminal record report. All applicants shall obtain
13 criminal record reports from one or more reporting services designated by the Board to provide
14 criminal record reports. The Board shall keep all information obtained pursuant to this
15 subsection privileged, in accordance with applicable State law and federal guidelines, and the
16 information shall be confidential and shall not be a public record under Chapter 132 of the
17 General Statutes. Applicants are required to pay the designated reporting service for the cost of
18 these reports."

19 **SECTION 2.** This act becomes effective January 1, 2018, and applies to
20 applications submitted on or after that date.



HOUSE BILL 708: Require Criminal BGC/Pharmacist Licensure.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Reps. Jordan, Brenden Jones, Wray
Analysis of: PCS to First Edition
H708-CSBG-15

Date: April 25, 2017
Prepared by: Susan Sitze
Howard Marsilio
Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 708 would organize the application and qualification requirements, and would require a criminal record report with an application, for licensure as a pharmacist.*

The PCS only adds a clarification that this act would apply to applications submitted on or after the effective date.

[As introduced, this bill was identical to S104, as introduced by Sen. Tillman, which is currently in Senate Judiciary.]

CURRENT LAW: G.S. 90-85.15(a) and (b) contain the pharmacist licensure applicant requirements. To become a licensed pharmacist, the applicant must provide and have the following:

- Name and age;
- Place and amount of time the applicant has spent in the study of pharmacy;
- An applicant's experience in compounding and dispensing prescriptions under the supervision of a pharmacist;
- Completed a personal appearance before the Board of Pharmacy (Board) for examination of their qualifications, and to demonstrate their physical and mental competency to practice pharmacy;
- An undergraduate degree from a Board approved school of pharmacy;
- At least one-year of Board approved experience under the supervision of a pharmacist;
- Passed an examination offered by the Board.

Under G.S. 90-85.15(c), the Board is not required to request a criminal record check, but if it does, it must submit a request to DPS that includes the fingerprints of the applicant and any additional information required by DPS (including a consent form). DPS then must send the applicant's fingerprints to the State and Federal Bureaus of Investigation for criminal history checks. The Board must keep any information pursuant to this law privileged and confidential, in accordance with applicable State law, and the DPS may charge each applicant a fee for conducting the criminal history check.

BILL ANALYSIS: House Bill 708 (PCS) would reorganize G.S. 90-85.15(a) and (b) for clarity.

This bill would also repeal the current procedure for the Board to obtain applicant criminal record checks, and add the requirement that applicants obtain and provide the Board with a criminal record report from a reporting service designated by the Board.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House PCS 708

Page 2

EFFECTIVE DATE: This bill would be effective January 1, 2018, and would apply to applications submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 708*

Short Title: Require Criminal BGC/Pharmacist Licensure. (Public)

Sponsors: Representatives Jordan, Brenden Jones, and Wray (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II, if favorable, Finance

April 11, 2017

A BILL TO BE ENTITLED
AN ACT REQUIRING CRIMINAL BACKGROUND CHECKS FOR APPLICANTS FOR
PHARMACIST LICENSURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-85.15 reads as rewritten:

"§ 90-85.15. ~~Application and examination~~Application, qualifications, and criminal record
check for licensure as a pharmacist; prerequisites.

(a) ~~Any person who desires to be licensed~~Each applicant for licensure under this Article
as a pharmacist shall file an application with the Executive Director on the form furnished by
the Board, verified under oath, setting forth ~~the~~all of the following:

(1) ~~The applicant's name, age, thename.~~The applicant's name.

(2) ~~The applicant's age.~~The applicant's age.

(3) ~~The place at which and the time that he-the applicant has spent in the study~~
~~of pharmacy, and his pharmacy.~~The place at which and the time that the applicant has spent in the study

(4) ~~The applicant's experience in compounding and dispensing prescriptions~~
~~under the supervision of a pharmacist.~~The applicant's experience in compounding and dispensing prescriptions

~~The applicant shall also appear at a time and place designated by the Board and submit to an~~
~~examination as to his qualifications for being licensed. The applicant must demonstrate to the~~
~~Board his physical and mental competency to practice pharmacy.~~

(b) ~~On or after July 1, 1982, all applicants shall have received~~The Board shall license
an applicant to practice pharmacy if, in addition to completing an application as specified in
subsections (a) of this section, the applicant meets all of the following qualifications:

(1) ~~Holds an undergraduate degree from a school of pharmacy approved by the~~
~~Board. Applicants shall be required to have had~~Holds an undergraduate degree from a school of pharmacy approved by the

(2) ~~Has had up to one year of experience, approved by the Board, under the~~
~~supervision of a pharmacist and shall pass pharmacist.~~Has had up to one year of experience, approved by the Board, under the

(3) ~~Has passed the required examination offered by the Board. Upon completing~~
~~these requirements and upon paying the required fee, the applicant shall be~~
~~licensed.~~Has passed the required examination offered by the Board. Upon completing

(4) ~~Has appeared at a time and place designated by the Board and submitted to~~
~~an examination as to the applicant's qualifications for being licensed. The~~
~~applicant must demonstrate to the Board the physical and mental~~
~~competency to practice pharmacy.~~Has appeared at a time and place designated by the Board and submitted to

(c) ~~The Department of Public Safety may provide a criminal record check to the Board~~
~~for a person who has applied for a license through the Board. The Board shall provide to the~~



1 Department of Public Safety, along with the request, the fingerprints of the applicant, any
2 additional information required by the Department of Public Safety, and a form signed by the
3 applicant consenting to the check of the criminal record and to the use of the fingerprints and
4 other identifying information required by the State or national repositories. The applicant's
5 fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's
6 criminal history record file, and the State Bureau of Investigation shall forward a set of the
7 fingerprints to the Federal Bureau of Investigation for a national criminal history check. The
8 Board shall keep all information pursuant to this subsection privileged, in accordance with
9 applicable State law and federal guidelines, and the information shall be confidential and shall
10 not be a public record under Chapter 132 of the General Statutes.

11 The Department of Public Safety may charge each applicant a fee for conducting the checks
12 of criminal history records authorized by this subsection. The Board shall require each
13 applicant to provide the Board with a criminal record report. All applicants shall obtain
14 criminal record reports from one or more reporting services designated by the Board to provide
15 criminal record reports. The Board shall keep all information obtained pursuant to this
16 subsection privileged, in accordance with applicable State law and federal guidelines, and the
17 information shall be confidential and shall not be a public record under Chapter 132 of the
18 General Statutes. Applicants are required to pay the designated reporting service for the cost of
19 these reports."

20 **SECTION 2.** This act becomes effective January 1, 2018.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 736

Short Title: Provide Minor Alcohol/Felony if Death Results. (Public)

Sponsors: Representatives Destin Hall, Faircloth, Burr, and Jackson (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

April 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE PUNISHMENT FOR CERTAIN ALCOHOLIC BEVERAGE
3 OFFENSES RELATED TO UNDERAGE PERSONS IF THE COMMISSION OF THE
4 OFFENSE IS THE PROXIMATE CAUSE OF THE DEATH OF A PERSON.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 18B-302.1 reads as rewritten:

7 "§ 18B-302.1. Penalties for certain offenses related to underage persons.

8 (a) ~~A-Except as otherwise provided in subsection (b1) of this section,~~ a violation of
9 G.S. 18B-302(a) or (a1) is a Class 1 misdemeanor. Notwithstanding the provisions of
10 G.S. 15A-1340.23, if the court imposes a sentence that does not include an active punishment,
11 the court must include among the conditions of probation a requirement that the person pay a
12 fine of at least two hundred fifty dollars (\$250.00) as authorized by G.S. 15A-1343(b)(9) and a
13 requirement that the person complete at least 25 hours of community service, as authorized by
14 G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years
15 immediately preceding the date of the current offense, and the court imposes a sentence that
16 does not include an active punishment, the court must include among the conditions of
17 probation a requirement that the person pay a fine of at least five hundred dollars (\$500.00) as
18 authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 150
19 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

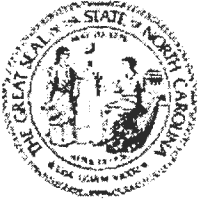
20 (b) ~~A-Except as otherwise provided in subsection (b1) of this section,~~ a violation of
21 G.S. 18B-302(c)(2) is a Class 1 misdemeanor. Notwithstanding the provisions of
22 G.S. 15A-1340.23, if the court imposes a sentence that does not include an active punishment,
23 the court must include among the conditions of probation a requirement that the person pay a
24 fine of at least five hundred dollars (\$500.00) as authorized by G.S. 15A-1343(b)(9) and a
25 requirement that the person complete at least 25 hours of community service, as authorized by
26 G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years
27 immediately preceding the date of the current offense, and the court imposes a sentence that
28 does not include an active punishment, the court must include among the conditions of
29 probation a requirement that the person pay a fine of at least one thousand dollars (\$1,000) as
30 authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 150
31 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

32 (b1) A violation of G.S. 18B-302(a), (a1), or (c)(2) is a Class 1 felony if the commission
33 of the offense is the proximate cause of the death of a person.

34"



1 **SECTION 2.** This act becomes effective December 1, 2017, and applies to
2 offenses committed on or after that date.



HOUSE BILL 736: Provide Minor Alcohol/Felony if Death Results.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	April 25, 2017
Introduced by:	Reps. Destin Hall, Faircloth, Burr, Jackson	Prepared by:	Susan Sitze
Analysis of:	First Edition		Jessica Sammons Committee Co-Counsel

OVERVIEW: *House Bill 736 would increase the punishment for certain offenses related to providing an underage person access to alcoholic beverages to a Class I felony when the commission of the offense is the proximate cause of the death of a person.*

CURRENT LAW: Under G.S. 18B-302.1, it is a Class 1 misdemeanor:

- To sell or give alcoholic beverages to anyone under the age of 21.
- For a person over the age of 21 to aid and abet another to sell or give alcoholic beverages to a person under the age of 21, or to aid and abet a person under the age of 21 to purchase, possess, or consume alcoholic beverages.

G.S. 18B-302.1 currently provides for specific minimum mandatory punishment for these offenses:

- *Selling or giving alcoholic beverages to a person under the age of 21:*
 - For a first offense, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a fine of at least \$250 and at least 25 hours of community service.
 - For an offense occurring within four years of a previous conviction, if the court does not impose an active punishment, the court must include among the conditions of probation a fine of at least \$500 and at least 150 hours of community service.
- *A person of lawful age aiding and abetting in the sale or gift of alcoholic beverages to a person under the age of 21, or in the purchase, possession, or consumption of alcoholic beverages by a person under the age of 21:*
 - For a first offense, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a fine of at least \$500 and at least 25 hours of community service.
 - For an offense occurring within four years of a previous conviction, if the court does not impose an active punishment, the court must include among the conditions of probation a fine of at least \$1,000 and at least 150 hours of community service.

BILL ANALYSIS: House Bill 736 would increase the punishment for these offenses to a Class I felony if the commission of the offense is the proximate cause of the death of a person.

EFFECTIVE DATE: This act would become effective December 1, 2017, and would apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 755
PROPOSED COMMITTEE SUBSTITUTE H755-CSSA-19 [v.3]

04/24/2017 8:27:39 PM

Short Title: Bankruptcy Amendments.

(Public)

Sponsors:

Referred to:

April 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND AUTHORIZATION TO SEEK CHAPTER NINE BANKRUPTCY
3 RELIEF TO ADDITIONAL GOVERNMENTAL UNITS AND TO UPDATE
4 REFERENCES TO BANKRUPTCY LAWS APPEARING THROUGHOUT THE
5 GENERAL STATUTES.

6 The General Assembly of North Carolina enacts:

7
8 PART I. MUNICIPALITIES AND OTHER GOVERNMENTAL UNITS SEEKING
9 BANKRUPTCY RELIEF

10 SECTION 1.(a) Article 7 of Chapter 23 of the General Statutes reads as rewritten:

11 "Article 7.

12 ~~"Bankruptcy of Taxing, etc., Districts, Counties, Cities, Towns and Villages.~~ Municipalities and
13 Other Governmental Units Authorized for Bankruptcy Relief.

14 "§ 23-48. Local units authorized to avail themselves of provisions of bankruptcy
15 law.Municipalities and other governmental units authorized for bankruptcy
16 relief.

17 ~~With the approval of the Local Government Commission of North Carolina and with the~~
18 ~~consent of the holders of such percentage or percentages of its indebtedness as may be required~~
19 ~~by Public Act Number three hundred two of the Seventy-fifth Congress, First Session, entitled~~
20 ~~"An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy~~
21 ~~throughout the United States' approved July first, one thousand eight hundred ninety-eight and~~
22 ~~Acts amendatory thereof and supplementary thereto," approved August sixteenth, one thousand~~
23 ~~nine hundred thirty-seven, as amended, any taxing district, local improvement district, school~~
24 ~~district, county, city, town or village in the State of North Carolina is authorized to avail itself~~
25 ~~of the provisions of said act of Congress as said act now exists or may be hereafter amended.~~

26 (a) The following governmental entities may seek any relief afforded under Chapter 9
27 of Title 11 of the United States Code:

- 28 (1) A taxing district, local improvement district, county, or municipality, with
29 the approval of the Local Government Commission.
30 (2) A correction enterprise as described in Article 14 of Chapter 148 of the
31 General Statutes, with the approval of the Secretary of the Department of
32 Public Safety.
33 (3) A local school administrative unit, with the approval of the State Board of
34 Education.
35 (4) A community college, with the approval of the State Board of Community
36 Colleges. However, a community college shall not seek relief under Chapter



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9 of Title 11 of the United States Code if the filing of a bankruptcy petition would result in the community college's loss of eligibility for federally funded financial aid.

(b) A governmental unit that is denied approval under this section may appeal the decision to the superior court. The superior court shall review whether the decision is arbitrary or capricious.

"§ 23-49. Additional working capital.

Notwithstanding any other provision of the General Statutes, a governmental unit that is authorized to seek bankruptcy relief under G.S. 23-48 may use or borrow additional working capital pursuant to a plan of adjustment confirmed by a United States Bankruptcy Court or pursuant to an order issued by a United States Bankruptcy Court. Nothing in this section prescribes a method of composition of indebtedness, as described in 11 U.S.C. § 903."

SECTION 1.(b) This section becomes effective October 1, 2017.

PART II. UPDATE REFERENCES TO BANKRUPTCY LAWS

SECTION 2. G.S. 1-245 reads as rewritten:

"§ 1-245. ~~Cancellation Notice of judgments discharged through bankruptcy proceedings.~~

(a) When a ~~referee debtor~~ in bankruptcy or other party-in-interest furnishes the clerk of the superior court of any county in this State a written ~~statement form, order, or certificate from~~ a United States Bankruptcy Court to the effect that (i) a ~~bankrupt debtor~~ has been discharged, ~~indicating in said certificate that~~ (ii) the plaintiff or judgment creditor in whose favor judgments against the defendant ~~bankrupt debtor~~ are docketed in the office of the clerk of the superior court have received due notice as provided by law from the ~~said referee, law, and that said~~ (iii) the judgments have been ~~discharged, it shall be the duty of~~ discharged or avoided in whole or in part, the clerk of the superior court ~~to shall file said the form, order, or certificate and enter a notation thereof on the margin of said the judgments.~~

(b) The effect of any form, order, or certificate filed by the clerk pursuant to this section is governed by Title 11 of the United States Code and other applicable federal law. This section shall apply to judgments ~~of this kind already docketed as well as to future judgments of the same kind judgments.~~

SECTION 3. G.S. 44A-12(a) reads as rewritten:

"(a) Place of Filing. – All claims of lien on real property ~~must shall~~ be filed in the office of the clerk of superior court in each county where the real property subject to the claim of lien on real property is located. The clerk of superior court shall note the claim of lien on real property on the judgment docket and shall index the same claim under the name of the record owner of the real property at the time the claim of ~~lien on real property~~ is filed. An additional copy of the claim of lien on real property may also be filed with any receiver, ~~referee in~~ bankruptcy trustee, debtor in possession, or assignee for benefit of creditors who obtains legal authority over the real property."

SECTION 4. G.S. 44A-13(a) reads as rewritten:

"(a) Where and When Action Commenced. – An action to enforce a claim of lien on real property may be commenced in any county where venue is otherwise proper. No ~~such~~ action may be commenced later than 180 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the claim of lien on real property. If the title to the real property against which the claim of lien on real property is asserted is by law vested in a receiver or is subject to the control of ~~the a~~ bankruptcy court, the claim of lien on real property shall be enforced in accordance with the orders of the court having jurisdiction over ~~said the~~ real property. ~~The filing of a proof of claim with a receiver or in bankruptcy and the filing of a notice of lis pendens in each county where the real property subject to the claim of lien on real property is located within the time required by this section satisfies the requirement for the~~

1 ~~commencement of a civil action.~~ The following filings within the time required by this section
2 ~~satisfy the requirement for the commencement of a civil action:~~

- 3 (1) The filing of a proof of claim with a receiver.
4 (2) The filing of a notice of lis pendens in each county where the real property
5 subject to the claim of lien on real property is located.
6 (3) The filing of a proof of claim pursuant to 11 U.S.C. § 501."

7 **SECTION 5.** G.S. 47-29 reads as rewritten:

8 **"§ 47-29. Recording of bankruptcy records.**

9 A copy of the petition with the schedules omitted beginning a proceeding under ~~the United~~
10 ~~States Bankruptcy Act, Title 11 of the United States Code or of the decree of adjudication any~~
11 ~~form, order, or certificate of a United States Bankruptcy Court in such proceeding, or of the~~
12 ~~order approving the bond of the trustee appointed in such proceeding, the proceeding shall be~~
13 ~~recorded in the office of any register of deeds in North Carolina, and it shall be the duty of the~~
14 ~~register of deeds, on request, to record the same. form, order, or certificate.~~ The register of
15 ~~deeds shall be~~ is entitled to the same fees for ~~such the~~ registration as ~~he the~~ register of deeds is
16 ~~now~~ entitled to for recording conveyances."

17 **SECTION 6.** G.S. 59-32(1) reads as rewritten:

18 "(1) "Bankrupt" means ~~bankrupt under the Federal Bankruptcy Act or insolvent~~
19 ~~to be any of the following:~~

- 20 a. A debtor having filed a petition under any applicable chapter of Title
21 11 of the United States Code.
22 b. A debtor against which an order for relief has been entered pursuant
23 to 11 U.S.C. § 303.
24 c. Insolvent under any State insolvent act."

25 **SECTION 7.** G.S. 84-5(a)(2)l. reads as rewritten:

26 "l. Performing legal services in insolvency proceedings or before a
27 ~~referee in bankruptcy or in court.~~ United States Bankruptcy Court."

28 **SECTION 8.** G.S. 96-10(c) reads as rewritten:

29 "(c) Priorities under Legal Dissolution or Distributions. – In the event of any distribution
30 of an employer's assets pursuant to an order of any court under the laws of this State, including
31 any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or
32 similar proceeding, contributions then or thereafter due shall be paid in full prior to all other
33 claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars
34 (\$250.00) to each claimant, earned within six months of the commencement of the proceeding.
35 ~~In the event of an employer's adjudication in bankruptcy, judicially confirmed extension~~
36 ~~proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions~~
37 ~~then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act~~
38 ~~(U.S.C., Title 11, section 104(a)), as amended.~~

39 A receiver of any covered employer placed into an operating receivership pursuant to an
40 order of any court of this State shall pay to the Division any contributions, ~~penalties~~ penalties,
41 or interest then due out of moneys or assets on hand or coming into ~~his the~~ receiver's possession
42 before any ~~such of the~~ moneys or assets may be used in any manner to continue the operation
43 of the business of the employer while it is in receivership."
44

45 **PART III. EFFECTIVE DATE**

46 **SECTION 9.** The headings to the parts of this act are a convenience to the reader
47 and are for reference only. The headings do not expand, limit, or define the text of this act.

48 **SECTION 10.** Except as otherwise provided, this act is effective when it becomes
49 law.





HOUSE BILL 755: Bankruptcy Amendments.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Rep. Blust
Analysis of: PCS to First Edition
H755-CSSA-19

Date: April 25, 2017
Prepared by: Susan Sitze
Committee Counsel

OVERVIEW: *House Bill 755 extends authorization to seek Chapter 9 bankruptcy relief to additional governmental units and updates references to bankruptcy laws appearing throughout the General Statutes.*

BILL ANALYSIS:

Part I. Municipalities and Other Governmental Units Seeking Bankruptcy Relief

Section 1 would provide that the following governmental entities may seek relief under Chapter 9 bankruptcy:

- A taxing district, local improvement district, county, or municipality, with the approval of the Local Government Commission.
- A correction enterprise, with the approval of the Secretary of the Department of Public Safety.
- A local school administrative unit, with the approval of the State Board of Education.
- A community college, with the approval of the State Board of Community Colleges. However, a community college must not seek relief if the filing of a bankruptcy petition would result in the community college's loss of eligibility for federally funded financial aid.

A governmental unit that is denied approval may appeal the decision to superior court. The superior court is to review whether the decision is arbitrary and capricious.

Section 1 also provides that notwithstanding any other provision of the General Statutes, a governmental unit that may seek bankruptcy relief may use or borrow additional working capital as part of a plan of adjustment confirmed by a United States Bankruptcy Court or pursuant to an order issued by a United States Bankruptcy Court.

This section becomes effective October 1, 2017.

Part II. Update References to Bankruptcy Law

Section 2 makes modifications to G.S. 1-245 dealing with notices of judgment discharged through bankruptcy proceedings. The changes correct terminology and make clarifying changes. Section 2 also provides that the effect of any form, order, or certificate filed by the clerk pursuant to the statute is governed by Title 11 of the U.S. Code and other applicable federal law.

Section 3 amends the statute dealing with the filing of a statutory lien on real property. It provides that in addition to claims of lien on real property which must be filed in the office of the clerk of superior court, an additional copy may be filed with the receiver, bankruptcy trustee, debtor in possession, or

Karen Cochrane-Brown
Director



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House PCS 755

Page 2

assignee for the benefit of creditors who obtains legal authority over the property. This section makes other technical changes.

Section 4 amends G.S. 44A-13(a) to provide that the filing of a proof of claim under 11 U.S.C. 501 satisfies the requirement for commencement of a civil action.

Section 5 modifies G.S. 47-29 (Recording of bankruptcy records) to now provide that a copy of the petition with the schedules omitted beginning a proceeding under Title 11 of the U.S. Code or of any form, order, or certificate of a U.S. Bankruptcy Court in the proceeding must be recorded in the office of any register of deeds in North Carolina. It also makes technical changes.

Section 6 modifies the definition of "bankrupt" to include (1) a debtor having filed a petition under any applicable chapter of Title 11 of the United States Code, (2) a debtor against which an order for relief has been entered pursuant to 11 U.S.C. § 303, and (3) insolvent under any State insolvent act (was, bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act).

Section 7 amends G.S. 84-5(a)(2)l, requiring the performance of legal services in insolvency proceedings or before a U.S. Bankruptcy Court (was, before a referee in bankruptcy or in court) to be performed for a corporation by a duly licensed attorney.

Section 8 amends G.S. 96-10(c) to eliminate the provision pertaining to the priority of employer contributions to the Employment Security Administration Fund then or thereafter due in the event of an employer's adjudication in bankruptcy under the Federal Bankruptcy Act of 1898. This section makes other technical changes.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.

Brad Krehely, Staff Attorney, contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 755

Short Title: Bankruptcy and Receivership Amendments.

(Public)

Sponsors: Representative Blust.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: State and Local Government II, if favorable, Banking

April 13, 2017

A BILL TO BE ENTITLED
AN ACT TO EXTEND AUTHORIZATION TO SEEK CHAPTER NINE BANKRUPTCY
RELIEF TO ADDITIONAL GOVERNMENTAL UNITS, TO UPDATE REFERENCES
TO BANKRUPTCY LAWS APPEARING THROUGHOUT THE GENERAL
STATUTES, AND TO ALLOW A RECEIVER TO SELL ASSETS OF THE
RECEIVERSHIP FREE AND CLEAR OF INTERESTS IN THE ASSETS.

The General Assembly of North Carolina enacts:

**PART I. MUNICIPALITIES AND OTHER GOVERNMENTAL UNITS SEEKING
BANKRUPTCY RELIEF**

SECTION 1.(a) Article 7 of Chapter 23 of the General Statutes reads as rewritten:

"Article 7.

~~"Bankruptcy of Taxing, etc., Districts, Counties, Cities, Towns and Villages. Municipalities and
Other Governmental Units Authorized for Bankruptcy Relief.~~

**"§ 23-48. ~~Local units authorized to avail themselves of provisions of bankruptcy
law. Municipalities and other governmental units authorized for bankruptcy
relief.~~**

~~With the approval of the Local Government Commission of North Carolina and with the
consent of the holders of such percentage or percentages of its indebtedness as may be required
by Public Act Number three hundred two of the Seventy-fifth Congress, First Session, entitled
'An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy
throughout the United States' approved July first, one thousand eight hundred ninety-eight and
Acts amendatory thereof and supplementary thereto," approved August sixteenth, one thousand
nine hundred thirty-seven, as amended, any taxing district, local improvement district, school
district, county, city, town or village in the State of North Carolina is authorized to avail itself
of the provisions of said act of Congress as said act now exists or may be hereafter amended.~~

**(a) The following governmental entities may seek any relief afforded under Chapter 9
of Title 11 of the United States Code:**

- (1) A taxing district, local improvement district, county, or municipality, with
the approval of the Local Government Commission.**
- (2) A correction enterprise as described in Article 14 of Chapter 148 of the
General Statutes, with the approval of the Secretary of Public Safety.**
- (3) A local school administrative unit, with the approval of the State Board of
Education.**



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(4) A community college, with the approval of the State Board of Community Colleges. However, a community college shall not seek relief under Chapter 9 of Title 11 of the United States Code if the filing of a bankruptcy petition would result in the community college's loss of eligibility for federally funded financial aid.

(b) A governmental unit that is denied approval under this section may appeal the decision to the superior court. The superior court shall review whether the decision is arbitrary or capricious.

"§ 23-49. Additional working capital.

Notwithstanding any other provision of the General Statutes, a governmental unit that is authorized to seek bankruptcy relief under G.S. 23-48 may use or borrow additional working capital pursuant to a plan of adjustment confirmed by a United States Bankruptcy Court or pursuant to an order issued by a United States Bankruptcy Court. Nothing in this section prescribes a method of composition of indebtedness, as described in 11 U.S.C. § 903."

SECTION 1.(b) This section becomes effective October 1, 2017.

PART II. UPDATE REFERENCES TO BANKRUPTCY LAWS

SECTION 2. G.S. 1-245 reads as rewritten:

"§ 1-245. Cancellation-Notice of judgments discharged through bankruptcy proceedings.

(a) When a referee-debtor in bankruptcy or other party-in-interest furnishes the clerk of the superior court of any county in this State a written statement-form, order, or certificate from a United States Bankruptcy Court to the effect that (i) a bankrupt-debtor has been discharged, indicating in said certificate that (ii) the plaintiff or judgment creditor in whose favor judgments against the defendant bankrupt-debtor are docketed in the office of the clerk of the superior court have received due notice as provided by law from the said referee, law, and that said (iii) the judgments have been discharged, it shall be the duty of discharged or avoided in whole or in part, the clerk of the superior court to shall file said the form, order, or certificate and enter a notation thereof on the margin of said the judgments.

(b) The effect of any form, order, or certificate filed by the clerk pursuant to this section is governed by Title 11 of the United States Code and other applicable federal law. This section shall apply to judgments of this kind already docketed as well as to future judgments of the same kind, judgments."

SECTION 3. G.S. 44A-12(a) reads as rewritten:

(a) Place of Filing. – All claims of lien on real property must shall be filed in the office of the clerk of superior court in each county where the real property subject to the claim of lien on real property is located. The clerk of superior court shall note the claim of lien on real property on the judgment docket and shall index the same claim under the name of the record owner of the real property at the time the claim of lien on real property is filed. An additional copy of the claim of lien on real property may also be filed with any receiver, referee in bankruptcy trustee, debtor in possession, or assignee for benefit of creditors who obtains legal authority over the real property."

SECTION 4. G.S. 44A-13(a) reads as rewritten:

(a) Where and When Action Commenced. – An action to enforce a claim of lien on real property may be commenced in any county where venue is otherwise proper. No such action may be commenced later than 180 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the claim of lien on real property. If the title to the real property against which the claim of lien on real property is asserted is by law vested in a receiver or is subject to the control of the a bankruptcy court, the claim of lien on real property shall be enforced in accordance with the orders of the court having jurisdiction over said the real property. The filing of a proof of claim with a receiver or in bankruptcy and the filing of a notice of lis pendens in each county where the real property subject to the claim of lien on real

property is located within the time required by this section satisfies the requirement for the commencement of a civil action. The following filings within the time required by this section satisfy the requirement for the commencement of a civil action:

- (1) The filing of a proof of claim with a receiver.
- (2) The filing of a notice of lis pendens in each county where the real property subject to the claim of lien on real property is located.
- (3) The filing of a proof of claim pursuant to 11 U.S.C. § 501."

SECTION 5. G.S. 47-29 reads as rewritten:

"§ 47-29. Recording of bankruptcy records.

A copy of the petition with the schedules omitted beginning a proceeding under the United States Bankruptcy Act, Title 11 of the United States Code or of the decree of adjudication any form, order, or certificate of a United States Bankruptcy Court in such proceeding, or of the order approving the bond of the trustee appointed in such proceeding, the proceeding shall be recorded in the office of any register of deeds in North Carolina, and it shall be the duty of the register of deeds, on request, to record the same form, order, or certificate. The register of deeds shall be is entitled to the same fees for such the registration as he the register of deeds is now entitled to for recording conveyances."

SECTION 6. G.S. 59-32(1) reads as rewritten:

"(1) "Bankrupt" means bankrupt under the Federal Bankruptcy Act or insolvent to be any of the following:

- a. A debtor having filed a petition under any applicable chapter of Title 11 of the United States Code.
- b. A debtor against which an order for relief has been entered pursuant to 11 U.S.C. § 303.
- c. Insolvent under any State insolvent act."

SECTION 7. G.S. 84-5(a)(2)l. reads as rewritten:

"l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court United States Bankruptcy Court."

SECTION 8. G.S. 96-10(c) reads as rewritten:

"(c) Priorities under Legal Dissolution or Distributions. – In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars (\$250.00) to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act (U.S.C., Title 11, section 104(a)), as amended.

A receiver of any covered employer placed into an operating receivership pursuant to an order of any court of this State shall pay to the Division any contributions, penalties penalties, or interest then due out of moneys or assets on hand or coming into his the receiver's possession before any such of the moneys or assets may be used in any manner to continue the operation of the business of the employer while it is in receivership."

PART III. SALE OF PROPERTY BY RECEIVER

SECTION 9.(a) Article 38 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"§ 1-505.1. Power of sale with liens attached to proceeds.

In a sale of property ordered under G.S. 1-505, a receiver may sell assets of the receivership free and clear of interests in the assets in the manner provided by 11 U.S.C. § 363."

1 **SECTION 9.(b)** This section becomes effective October 1, 2017, and applies to
2 sales of property ordered on or after that date.

3

4 **PART IV. EFFECTIVE DATE**

5 **SECTION 10.** The headings to the parts of this act are a convenience to the reader
6 and are for reference only. The headings do not expand, limit, or define the text of this act.

7 **SECTION 11.** Except as otherwise provided, this act is effective when it becomes
8 law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 785
PROPOSED COMMITTEE SUBSTITUTE H785-CSBG-13 [v.1]

04/20/2017 07:09:53 PM

Short Title: Duty to Call 911/Violation Misdemeanor.

(Public)

Sponsors:

Referred to:

April 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING THAT ANY PERSON WHO KNOWS OR HAS REASON TO
3 KNOW THAT ANOTHER IS IN NEED OF EMERGENCY ASSISTANCE HAS A
4 DUTY TO DIAL 911 TO SUMMON POLICE, FIRE DEPARTMENT, OR
5 AMBULANCE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 26 of Chapter 14 of the General Statutes is amended by
8 adding a new section to read as follows:

9 **"§ 14-202.7. Duty to summon emergency assistance; liability limitation.**

10 (a) Any person who knows or has reason to know that another is in need of emergency
11 assistance shall dial 911 to summon police, fire department, or ambulance to the scene or shall
12 use another means to summon emergency assistance. A person is not required to summon
13 emergency assistance as provided in this section if doing so would place the person in danger
14 or emergency assistance is being summoned by others. Violation of this section shall be a Class
15 A1 misdemeanor. Violation of this section shall be a Class I felony if the failure to dial 911 is
16 willful or grossly negligent and the person in need of emergency assistance dies as a result of
17 the failure to dial 911. The felony of failure to summon emergency assistance is an offense
18 additional to other civil and criminal provisions and is not intended to repeal or preclude any
19 other sanctions or remedies.

20 (b) Any person who renders first aid or emergency care to a person in need of
21 emergency medical assistance shall not be liable in civil damages for any acts or omissions
22 relating to the services rendered unless the acts or omissions amount to wanton conduct or
23 intentional wrongdoing."

24 **SECTION 2.** This act becomes effective December 1, 2017, and applies to
25 offenses committed on or after that date.



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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 785

Short Title: Duty to Call 911/Violation Misdemeanor.

(Public)

Sponsors: Representative Iler.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

April 13, 2017

A BILL TO BE ENTITLED
AN ACT PROVIDING THAT ANY PERSON WHO KNOWS OR HAS REASON TO
KNOW THAT ANOTHER IS IN NEED OF EMERGENCY ASSISTANCE HAS A
DUTY TO DIAL 911 TO SUMMON POLICE, FIRE DEPARTMENT, OR
AMBULANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 14 of the General Statutes is amended by
adding a new section to read as follows:

"§ 14-202.7. Duty to summon emergency assistance; liability limitation.

(a) Any person who knows or has reason to know that another is in need of emergency assistance shall dial 911 to summon police, fire department, or ambulance to the scene or shall use another means to summon emergency assistance. A person is not required to summon emergency assistance as provided in this section if doing so would place the person in danger or emergency assistance is being summoned by others. Violation of this section shall be a Class A1 misdemeanor. Violation of this section shall be a Class I felony if the failure to dial 911 is willful or grossly negligent and the person in need of emergency assistance dies as a result of the failure to dial 911. The felony of failure to summon emergency assistance is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(b) Any person who renders first aid or emergency care to a person in need of emergency medical assistance shall not be liable in civil damages for any acts or omissions relating to the services rendered unless the acts or omissions amount to wanton conduct or intentional wrongdoing."

SECTION 2. This act becomes effective December 1, 2017.



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HOUSE BILL 785: Duty to Call 911/Violation Misdemeanor.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Rep. Iler
Analysis of: PCS to First Edition
H785-CSBG-13

Date: April 25, 2017
Prepared by: Susan Sitze
Howard Marsilio
Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 785 would require a person to dial 911 to summon the police, fire department, or an ambulance, or use other means to summon emergency assistance, for a person in need of emergency assistance. House Bill 785 (PCS) would also shield a person rendering first aid or emergency care to a person in need of emergency medical assistance from civil damages for acts or omissions, unless they amount to wanton conduct or intentional wrongdoing.*

The PCS only adds a clarification that this act would apply to offenses committed on or after the effective date.

CURRENT LAW:

G.S. 20-166(b) requires a driver involved in a crash resulting in injury to render reasonable assistance, including the calling for medical assistance if it is apparent and necessary or requested by the injured person. A violation of this section is a Class 1 misdemeanor.

G.S. 20-166(d) shields a person rendering first aid or emergency assistance to a person in need of emergency medical assistance at the scene of a motor vehicle crash from civil damages for acts or omissions in assisting, unless they amount to wanton conduct or intentional wrongdoing.

BILL ANALYSIS: House Bill 785 (PCS) would add a new section that would require any person who knows or has reason to know that another person needs emergency assistance to summon emergency assistance, by dialing 911 or using other means, unless doing so would place that person in danger or emergency assistance is being summoned by another.

- A violation of this section would be a Class A1 misdemeanor.
- A violation of this section that is willful or grossly negligent, and the person in need dies as a result of the failure, would be a Class I felony.

A felony violation of this section is an offense additional to other civil and criminal provisions, and would not repeal or preclude any other sanctions or remedies.

EFFECTIVE DATE: This act would become effective December 1, 2017, and would apply to offenses committed on or after that date.

Karen Cochrane-Brown
Director



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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 796
PROPOSED COMMITTEE SUBSTITUTE H796-CSSA-21 [v.5]

04/24/2017 8:30:47 PM

Short Title: Study Expunctions Related to 50B Orders.

(Public)

Sponsors:

Referred to:

April 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO STUDY WHETHER A DEFENDANT IN A 50B ACTION SHOULD BE
3 ALLOWED TO EXPUNGE ORDERS AND OTHER DOCUMENTS RELATED TO THE
4 ACTION IN SOME CIRCUMSTANCES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** The Joint Legislative Oversight Committee on Justice and Public
7 Safety shall study the issue of whether a defendant in a 50B action should be allowed to
8 expunge orders and other documents related to the action and under what circumstances any
9 expunction should be allowed. The Committee shall consider the following:

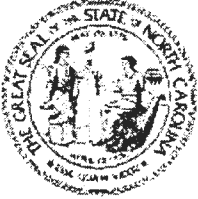
- 10 (1) Expunction when an ex parte or temporary order is issued, but a subsequent
11 voluntary dismissal is filed or taken in favor of the defendant by the plaintiff.
12 (2) Expunction when an ex parte or temporary order is issued, but after a
13 hearing or other regular court proceeding where evidence is presented by
14 one or both parties, the court finds that the defendant did not commit acts of
15 domestic violence.
16 (3) When a domestic violence protective order has been entered, whether there
17 are conditions a defendant could meet to warrant expunction of the order
18 after some period of time with no additional incidents of domestic violence,
19 violent behavior, or substance or alcohol abuse.
20 (4) Any other relevant issue.

21 The Joint Legislative Oversight Committee on Justice and Public Safety shall report its
22 findings and any recommendations to the General Assembly by April 1, 2018.

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







HOUSE BILL 796: Study Expunctions Related to 50B Orders.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	April 25, 2017
Introduced by:	Reps. Faircloth, McGrady, Reives, Stevens	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition H796-CSSA-21		Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 796 would direct the Joint Legislative Oversight Committee on Justice and Public Safety (JPS Oversight) to study whether a defendant in a 50B action should be allowed to expunge orders and other documents related to the action in some circumstances.*

BILL ANALYSIS:

The PCS would direct JPS Oversight to study the issue of whether a defendant in a 50B action should be allowed to expunge orders and other documents related to the action and under what circumstances any expunction should be allowed. JPS Oversight shall report its findings and recommendations to the General Assembly by April 1, 2018.

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

Karen Cochrane-Brown
Director



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919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 796

Short Title: Expunctions Related to 50B Orders. (Public)

Sponsors: Representatives Faircloth, McGrady, Reives, and Stevens (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

April 13, 2017

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR MANDATORY EXPUNCTIONS OF 50B ACTIONS WHERE
A DISMISSAL IS TAKEN BY THE PLAINTIFF OR WHERE A JUDGE FINDS THAT
THE DEFENDANT DID NOT COMMIT ACTS OF DOMESTIC VIOLENCE AND TO
PROVIDE FOR PERMISSIVE EXPUNCTIONS OF 50B ACTIONS UNDER SPECIFIC
CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by
adding a new section to read:

"§ 15A-154. Petitioning for expunction of 50B ex parte order/temporary order.

(a) Mandatory Expunction. – A defendant shall be entitled to an expungement of a 50B
complaint and all materials associated with the 50B civil action when:

(1) After a hearing or other regular court proceeding where evidence is
presented by one or both parties, the judge finds that the defendant did not
commit acts of domestic violence, as alleged in the complaint pursuant to
Chapter 50B of the General Statutes; or

(2) A voluntary dismissal is filed or taken in favor of the defendant by the
plaintiff in an action pursuant to Chapter 50B of the General Statutes.

(b) Permissive Expunction. – A defendant against whom a 50B domestic violence
protective order is extended for some period of time by a judge of competent jurisdiction may
be allowed an expunction upon a showing by the defendant of all of the following factors:

(1) That at least three years have passed since the date that the ex parte order
was entered against the defendant.

(2) That no other 50B orders have been issued against the defendant and no
other violent or domestic related crimes have been charged against the
defendant since the date that the last domestic violence order was entered
against the defendant.

(3) That the defendant has taken a domestic violence intervention program or
similar program.

(4) That the defendant has not been convicted of any substance abuse or alcohol
related offense since the date that the last domestic violence order was
entered against the defendant.

(5) That the defendant has had no further violent incidents with the victim in the
case that the defendant is attempting to expunge.



- 1 (6) Any and all other factors that the court deems appropriate to consider in this
- 2 matter, including any evidence of good character."
- 3 **SECTION 2.** This act becomes effective October 1, 2017, and applies to all actions
- 4 arising on or after that date.

HOUSE PAGES

Judiciary II

Name:	County:	Sponsor:
Duncan Mills	Buncombe	Brian Turner
Claire Morris-Benedict	Durham	Mickey Michaux, Jr.



Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 4-25-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Will Crocker
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

4-25-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kathy Kingsley	BP
Tom VITAGLIONE	NC CHILD
KAREN M. SUEB	BENCHMOR
Kelle Holder	NCCFTF
Robert Foss	UNC Highway Safety Research
Bruce Hall	UNC Highway Safety Research Center
Sarah Eilooly	ACLU
K Parks	DR NC
Julia Adams Sherrich	DR CHYGR
Matthew Herr	DR NC
Tamara Kellera	CU SR



1000



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

4-25-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

JENNIFER RYAN	WAKE COUNTY CLERK OF COURT
Colin Willoughby	N.C. State Bar Council
Whitley Carpenter	Southern Coalition for Social Justice (SCSJ)
Kathleen Lockwood	SCSJ
Laura Holland	SCSJ
Lynne Weaver	NC Attorney General's Office
Harriet Worley	NC DDS
Bill Rame	NC Justice Center
Seth Banks	DA's Office
Joe Killian	NC Policy Watch
Brian Irving	Libertarian Party of NC



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

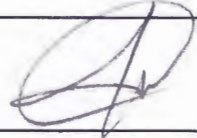
4-25-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

	CA
Chris Broughton	MWC
Carl Hintz	ACLU, Raleigh
Emily Walter	Intern
Corey Williams	Everyone's NC
Anne Clark	OurShot NC
Aylett Colston	Voter, Raleigh NC
MICHAEL EISENBERG	VOTER RALEIGH NC
Skye David	NEWFRAME
Jason Joyner	NEWFRAME
Amily McCool	NC Coalition Against Domestic Violence



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

Date

4-25-2017

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Caroline Miller

AMGA

Sarah Turner

Voter, Chapel Hill

Rebecca Zerlin

Voter Chapel Hill

Patience Vanderbush Voter, Durham

R. Smith

Raleigh, NC

Phaogen Jackson

Focus Carolina

Andrew Cagle

UNC Greensboro

Susan HARRIS

NC DTSEA

Katie Gammon

Office of the Governor

Joy White

NC DT

Lynn L. H.

SOC

Jeri Graham

NC Veterans Council



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VISITOR REGISTRATION SHEET

House Committee on Judiciary II
Name of Committee

4-25-17
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

John Schlebad

— Dague Cy

J. Turner

Duke

Jennifer Bremer

Chapel Hill

Reggie Skinner

NC DMV

hara Cole

DPS



VISITOR REGISTRATION SHEET

House Committee on Judiciary II
Name of Committee

4-25-17
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

[illegible]



House Committee on Judiciary II
Tuesday, May 23, 2017 Immediately After House Session
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met immediately after the House Session on May 23, 2017 in Room 421 of the Legislative Office Building. Representatives Blust, Faircloth, Hurley, Michaux, Bumgardner, Fisher, Hall, Harrison, John, Jones, and Sauls attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 2:02 PM

The following bills were considered:

HB 709 Solicitation for Copies/Reg. of Deeds Fees. (Representatives Jordan, Stevens, Howard)

Representative Jordan was recognized to explain the bill. After a short discussion, Rep. Jones made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report. HB 709 was re-referred to the House Committee on Finance.

HB 918 Post Crime On Social Media/Enhanced Sentence. (Representatives Pierce, John, Setzer, Blust)

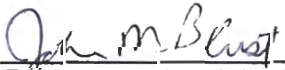
Representative Pierce was recognized to explain the bill. After a brief discussion, Rep. John made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report. HB 709 was re-referred to the House Committee on Appropriations.

SB 470 Personal Injury Bankruptcy Trust Claims. (Senators Lee, Brown, B. Jackson)

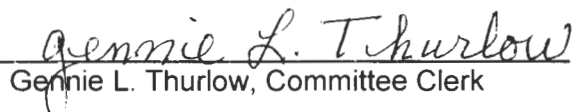
Representative Faircloth made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Senator Lee was recognized to explain the Proposed Committee Substitute. A lengthy discussion followed. Representative John offered an amendment, and the amendment was adopted. Representative Harrison offered an amendment, and the amendment was adopted. Ms. Janet Ward Black, Attorney, Ward Black Law, Greensboro, NC, spoke in opposition to the bill. Mr. Kirk Warner, Attorney, Smith Anderson, representing the NC Chamber of Commerce, Raleigh, NC, and Mr. Mark A. Behrens, Attorney, Shook, Hardy & Bacon L.L.P., Washington, D.C., spoke in support of SB 470.

Representative Bumgardner made the motion for the amendments to be rolled into a Proposed Committee Substitute and the Proposed Committee Substitute be given a favorable report, unfavorable to the original bill. A voice vote of the committee members was not decisive, and Chairman Blust called for a show of hands. The vote was six to four for SB 470 to receive a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill.

The meeting adjourned at 3:08 PM.



Representative John M. Blust, Chairman
Presiding



Gennie L. Thurlow, Committee Clerk



Corrected #1: Time Change: Immediately After Adjournment

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, May 23, 2017

TIME: 1:00 PM

LOCATION: 421 LOB

COMMENTS: Time Change: Immediately After Adjournment

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>HB 709</u>	Solicitation for Copies/Reg. of Deeds Fees.	Representative Jordan Representative Stevens Representative Howard
<u>HB 918</u>	Post Crime On Social Media/Enhanced Sentence.	Representative Pierce Representative John Representative Setzer Representative Blust
<u>SB 470</u>	Personal Injury Bankruptcy Trust Claims.	Senator Lee Senator Brown Senator B. Jackson

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 5:02 PM on Monday, May 22, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, May 23, 2017
TIME: 1:00 PM
LOCATION: 421 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>HB 709</u>	Solicitation for Copies/Reg. of Deeds Fees.	Representative Jordan Representative Stevens Representative Howard
<u>HB 918</u>	Post Crime On Social Media/Enhanced Sentence.	Representative Pierce Representative John Representative Setzer Representative Blust
<u>SB 470</u>	Personal Injury Bankruptcy Trust Claims.	Senator Lee Senator Brown Senator B. Jackson

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:26 PM on Thursday, May 18, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Tuesday, May 23, 2017, Immediately After House Adjournment
421 Legislative Office Building**

AGENDA

**Welcome and Opening Remarks
Representative John M. Blust, Chairman**

Introduction of Pages and Sergeants-at-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 709	Solicitation for Copies/Reg. of Deeds Fees.	Representative Jordan Representative Stevens Representative Howard
HB 918	Post Crime On Social Media/Enhanced Sentence.	Representative Pierce Representative John Representative Setzer Representative Blust
SB 470	Personal Injury Bankruptcy Trust Claims.	Senator Lee Senator Brown Senator B. Jackson

Adjournment



NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair

FAVORABLE AND RE-REFERRED

HB 709

Solicitation for Copies/Reg. of Deeds Fees.

Draft Number: None
Serial Referral: FINANCE
Recommended Referral: None
Long Title Amended: No
Floor Manager: Jordan

HB 918

Post Crime On Social Media/Enhanced Sentence.

Draft Number: None
Serial Referral: APPROPRIATIONS
Recommended Referral: None
Long Title Amended: No
Floor Manager: Pierce

TOTAL REPORTED: 2



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**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair**

FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB

SB 470 (CS#1)

Personal Injury Bankruptcy Trust Claims.

Draft Number: S470-PCS45433-BK-25

Serial Referral: None

Recommended Referral: None

Long Title Amended: No

Floor Manager: Blust

TOTAL REPORTED: 1



* C M R 4 4 O - V - 1 *



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 709

Short Title: Solicitation for Copies/Reg. of Deeds Fees. (Public)

Sponsors: Representatives Jordan, Stevens, and Howard (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II, if favorable, Finance

April 11, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE THE SOLICITATION OF A FEE IN EXCHANGE FOR COPIES
3 OF RECORDED DOCUMENTS AND TO CLARIFY THE FEES CHARGED BY THE
4 REGISTER OF DEEDS FOR RECORDING INSTRUMENTS SUBSEQUENT TO
5 DEEDS OF TRUST AND MORTGAGES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 1 of Chapter 75 of the General Statutes is amended by adding
8 a new section to read:

9 **"§ 75-43. Solicitation of a fee for copy of recorded documents.**

10 (a) Any person, firm, or corporation soliciting a fee in exchange for providing a copy of
11 a record available at the register of deeds office shall state on the top of the document used for
12 the solicitation, in conspicuous type, all of the following:

- 13 (1) That the solicitation is not from a State agency or a local unit of government.
14 (2) That no action is legally required by the person being solicited.
15 (3) The fee for obtaining a copy of the record directly from the register of deeds
16 that has custody of the record.
17 (4) The information necessary to contact the register of deeds that has custody
18 of the record.
19 (5) The name and physical address of the person, firm, or corporation soliciting
20 the fee.

21 (b) A document used for a solicitation governed by this section shall not contain
22 deadline dates or be in a form or contain language designed to make the document appear to be
23 issued by a State agency or local unit of government or to appear to impose a legal duty on the
24 person being solicited.

25 (c) A person, firm, or corporation soliciting a fee in exchange for providing a copy of a
26 record may not charge a fee that is greater than four times the amount the register of deeds with
27 custody of the record would charge for a copy of the same record.

28 (d) A violation of this section constitutes an unfair trade practice under G.S. 75-1.1 and
29 is subject to all of the enforcement and penalty provisions under this Article.

30 (e) For the purposes of this section, the term "solicit" means to advertise or market to a
31 person with whom the solicitor has no preexisting business relationship."

32 **SECTION 2.** G.S. 161-10 reads as rewritten:

33 **"§ 161-10. Uniform fees of registers of deeds.**



* H 7 0 9 - V - 1 *

(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 party listed in the instrument in excess of 20. An instrument contains excessive recording data when there are more than 20 distinct parties 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.

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. – For registering or filing any deed of trust or mortgage the fee shall be sixty-four dollars (\$64.00) for the first 35 pages plus four dollars (\$4.00) for each additional page or fraction thereof.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars (\$10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

~~For There shall be no fee for recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee mortgages. In all other cases, the fees set forth in subdivision (1) of subsection (a) of this section shall apply to the registration or filing of any subsequent instrument that relates to a previously recorded deed of trust or mortgage.~~

...

(d) For the purposes of this section, the term "subsequent instrument" has the same meaning as set forth in G.S. 161-14.1(a)(3)."

SECTION 3. G.S. 161-14.1 reads as rewritten:

"§ 161-14.1. Recording subsequent entries as separate instruments.

(a) As used in this section, the following terms mean:

...

(3) Subsequent instrument. – Any instrument presented for registration that indicates in its title or within the first two pages of its text that it is intended or purports to modify, amend, supplement, assign, satisfy, terminate, revoke,

1 or cancel a previously registered instrument. Examples of subsequent
2 instruments include the following:

3 ...

4 i. An amendment or modification ~~agreement~~ agreement or an amended
5 and restated instrument.

6"

7 **SECTION 4.** Section 1 of this act becomes effective July 1, 2017. The remainder
8 of this act becomes effective October 1, 2017, and applies to instruments submitted for
9 registration on or after that date.





HOUSE BILL 709: Solicitation for Copies/Reg. of Deeds Fees.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Finance	Date:	May 23, 2017
Introduced by:	Reps. Jordan, Stevens, Howard	Prepared by:	Susan Sitze
Analysis of:	First Edition		Howard Marsilio Committee Counsel

OVERVIEW: *House Bill 709 would regulate the solicitation of a fee for copies of documents recorded with registers of deeds offices, and would clarify filing fees for subsequent instruments recorded and related to mortgages and deeds of trust.*

CURRENT LAW:

G.S. 75-1.1 provides that unfair or deceptive acts or practices in or affecting commerce are unlawful. Whether an act or practice is unfair or deceptive usually depends on the facts of each case, but the general test is whether the act or practice has the capacity or tendency to deceive. Chapter 75 provides for the prosecution of such acts by the Attorney General and through private civil actions.

Chapter 161 contains the laws that relate to the register of deeds office, which includes the office's duty to register and index documents presented to it for registration or recording. Filing fees and certified copy fees vary depending on document type, as set by statute in G.S. 161-10.

Currently, the general filing fee for an instrument, not otherwise specified in the statute, is \$26.00 for the first 15 pages, and \$4.00 for each additional page. The general filing fee for a deed of trust or mortgage is \$64.00 for the first 35 pages, and \$4.00 for each additional page.

BILL ANALYSIS:

Section 1 would create a new section in Chapter 75 to regulate the solicitation of a fee for providing copies of recorded instruments. A solicitation, for the purposes of this section, must meet the following requirements:

- The solicitation must contain a conspicuous statement at the top of the solicitation with the following:
 - That the solicitation is not from a State agency or a local unit of government.
 - That no action is legally required by the person being solicited.
 - The fee for obtaining a copy of the record directly from the register of deeds that has custody of the record.
 - The information necessary to contact the register of deeds that has custody of the record.
 - The name and physical address of the person, firm, or corporation soliciting the fee.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 709

Page 2

- The solicitation shall not contain language designed to make the solicitation appear to be issued by a State agency or local unit of government, or to appear to impose a legal duty on the person being solicited.
- The fee shall not be greater than four times the amount the register of deeds would charge for a copy of the same record.

A violation of this new section would be an unfair trade practice under G.S. 75-1.1.

Section 2 would clarify that the fees for filing subsequent instruments specifically related to deeds of trust and mortgages, other than cancellations or satisfactions, would be subject to the same fee structure as general instruments.

Section 3 would include an amendment to an instrument and a restated instrument as examples of a "subsequent instrument" within G.S. 161-14.1.

EFFECTIVE DATE: Section 1 of this act would become effective July 1, 2017. The remainder of this act would become effective October 1, 2017, and apply to instruments submitted for registration on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 918

Short Title: Post Crime On Social Media/Enhanced Sentence. (Public)

Sponsors: Representatives Pierce, John, Setzer, and Blust (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II, if favorable, Appropriations

April 26, 2017

A BILL TO BE ENTITLED
AN ACT TO PROVIDE THAT AN ENHANCED PENALTY SHALL BE IMPOSED ON
ANY PERSON CONVICTED OF A VIOLENT FELONY WHO INTENTIONALLY
POSTS A CLIP DEPICTING THE COMMISSION OF THE FELONY ON THE
INTERNET AND TO APPROPRIATE FUNDS TO BE USED BY THE NORTH
CAROLINA CONFERENCE OF DISTRICT ATTORNEYS TO ESTABLISH A
RESOURCE PROSECUTOR POSITION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 81B of Chapter 15A of the General Statutes is amended by
adding a new section to read:

**"§ 15A-1340.16E. Enhanced sentence if defendant is convicted of a violent felony and the
defendant intentionally posts the crime on the Internet or other similar
communications media.**

(a) The following definitions apply in this section:

(1) Internet. – The term includes social media and other similar applications or
communications media.

(2) Violent felony. – A Class A, B1, B2, C, D, or E felony.

(b) If a person is convicted of a violent felony and it is found as provided in this section
that the person intentionally posted a clip depicting the commission of the felony on the
Internet, then the person shall have the minimum term of imprisonment to which the person is
sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be
the maximum term that corresponds to the minimum term after it is increased by 24 months, as
specified in G.S. 15A-1340.17(e) and (e1).

(c) An indictment or information for the felony shall allege in that indictment or
information the facts set out in subsection (b) of this section. The pleading is sufficient if it
alleges that the defendant intentionally posted a clip of the commission of the felony on the
Internet. One pleading is sufficient for all felonies that are tried at a single trial.

(d) The State shall prove the issues set out in subsection (b) of this section beyond a
reasonable doubt during the same trial in which the defendant is tried for the felony unless the
defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest
to the felony but pleads not guilty to the issues set out in subsection (b) of this section, then a
jury shall be impaneled to determine the issues."

SECTION 2. There is appropriated from the General Fund to the Administrative
Office of the Courts the sum of one hundred twenty thousand one hundred ninety-one dollars
(\$120,191) for the 2017-2018 fiscal year to be allocated to the North Carolina Conference of



* H 9 1 8 - V - 1 *

- 1 District Attorneys to establish and support a resource prosecutor position that would serve as a
2 State resource regarding the prosecution of violent crimes intentionally posted on the Internet,
3 including social media and similar applications.
4 **SECTION 3.** Section 1 of this act becomes effective December 1, 2017, and
5 applies to offenses committed on or after that date. The remainder of this act becomes effective
6 July 1, 2017.



HOUSE BILL 918: Post Crime On Social Media/Enhanced Sentence.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Appropriations	Date:	May 23, 2017
Introduced by:	Reps. Pierce, John, Setzer, Blust	Prepared by:	Susan Sitze
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *House Bill 918 would create a sentence enhancement for any person convicted of a violent felony who intentionally posts a clip depicting the commission of the felony on the internet and would appropriate funds to be used by the North Carolina Conference of District Attorneys (Conference of District Attorneys) to establish a resource prosecutor position.*

BILL ANALYSIS:

Section 1 of the bill would create a new sentence enhancement for anyone convicted of a Class A, B1, B2, C, D, or E felony who intentionally posts a clip depicting the commission of the felony on the Internet. The enhancement would add 24 months to the minimum term of imprisonment to which the person is sentenced. The maximum term of imprisonment would then be determined based on the new minimum term of imprisonment.

Section 2 of the bill would appropriate \$120,191 to the Administrative Office of the Courts for the 2017-2018 fiscal year to be allocated to the Conference of District Attorneys to establish and support a resource prosecutor position that would serve as a State resource regarding the prosecution of violent crimes intentionally posted on the Internet.

EFFECTIVE DATE: Section 1 of this act would become effective December 1, 2017, and apply to offenses committed on or after that date. The remainder of this act would become effective July 1, 2017.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. 470

COMMITTEE SUBSTITUTE ✓

DATE 5/23/17

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

Rep.) Harrison
Sen.) _____

1 moves to amend the bill on page 2, lines 4-16

2 () WHICH CHANGES THE TITLE

3 by deleting the lines;

4 _____

5 And by re-numbering the remaining sections accordingly.

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED [Signature]

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. 470

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE ☒

(Rep.) John
Sen.)

1 moves to amend the bill on page 2, line 49

2 () WHICH CHANGES THE TITLE

3 by deleting the words "or pending".

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED

[Signature]

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

D

SENATE BILL 470
Judiciary Committee Substitute Adopted 4/25/17
PROPOSED HOUSE COMMITTEE SUBSTITUTE S470-CSBK-25 [v.3]
05/22/2017 1:51:59 PM

Short Title: Personal Injury Bankruptcy Trust Claims.

(Public)

Sponsors:

Referred to:

March 30, 2017

A BILL TO BE ENTITLED
AN ACT AMENDING RULE 26 OF THE NORTH CAROLINA RULES OF CIVIL
PROCEDURE RELATING TO DISCOVERY IN BANKRUPTCY TRUST PERSONAL
INJURY CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 26(b) of the Rules of Civil Procedure, is amended by
adding a new subdivision to read:

"Rule 26. General provisions governing discovery.

...
(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:

...
(2a) Bankruptcy Trust Personal Injury Claims. –

- a. Within 30 days after a civil action is filed asserting personal injury
claiming disease based upon exposure to asbestos, the plaintiff shall
provide to all parties a sworn statement indicating that an
investigation of all bankruptcy trust claims has been conducted and
that all bankruptcy trust claims that can be made by the plaintiff have
been filed.
- b. The plaintiff shall provide the parties with the identity of all
bankruptcy trust claims made and all materials submitted to or
received from a bankruptcy trust.
- c. The plaintiff shall supplement the information and materials that
plaintiff provides pursuant to this subsection within 30 days after the
plaintiff files an additional bankruptcy trust claim, supplements an
existing bankruptcy trust claim, or receives additional information or
materials related to any claim against a bankruptcy trust.
- d. If a defendant has a reasonable belief that the plaintiff can file
additional bankruptcy trust claims, the defendant may move the court
to stay the civil action until the plaintiff files the bankruptcy trust
claim.
- e. A defendant in the civil action may seek discovery from a
bankruptcy trust. The plaintiff may not claim privilege or
confidentiality to bar discovery and shall provide consent or other



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expression of permission that may be required by the bankruptcy trust to release information and materials sought by the defendant.

...."

SECTION 2. G.S. 1B-4 reads as rewritten:

"§ 1B-4. Release or covenant not to sue.

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

- (1) It does not discharge any of the other tort-feasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, including the amount of any monies awarded or, for a case not stayed pursuant to G.S. 1-75.12(b), reasonably expected to be awarded from a bankruptcy trust, whichever is the greater; and,
- (2) It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor."

SECTION 3. Article 4 of Chapter 8C of the General Statutes is amended by adding a new section to read:

"Rule 415. Evidence of bankruptcy asbestos trust claims.

In any civil action asserting personal injury claiming disease based upon exposure to asbestos, there shall be a rebuttable presumption that bankruptcy trust claims materials are relevant, authentic, and admissible in evidence in the civil action."

SECTION 4. G.S. 1-75.12 reads as rewritten:

"§ 1-75.12. Stay of proceeding to permit trial in a foreign ~~jurisdiction~~, jurisdiction or filing of a bankruptcy trust claim.

(a) When Stay May be Granted. – If, in any action pending in any court of this State, the judge shall find that it would work substantial injustice for the action to be tried in a court of this State, the judge on motion of any party may enter an order to stay further proceedings in the action in this State. A moving party under this subsection must stipulate his consent to suit in another jurisdiction found by the judge to provide a convenient, reasonable and fair place of trial.

(a1) In any civil action asserting personal injury claiming disease based upon exposure to asbestos, if a defendant has a reasonable belief that the plaintiff can file additional bankruptcy trust claims, the court on motion of the defendant may enter an order to stay the civil action until the plaintiff files the bankruptcy trust claim.

(b) Subsequent Modification of Order to Stay Proceedings. – In a proceeding in which a stay has been ordered under this section, jurisdiction of the court continues for a period of five years from the entry of the last order affecting the stay; and the court may, on motion and notice to the parties, modify the stay order and take such action as the interests of justice require. When jurisdiction of the court terminates by reason of the lapse of five years following the entry of the last order affecting the stay, the clerk shall without notice enter an order dismissing the action.

(c) Review of Rulings on Motion. – Whenever a motion for a stay made pursuant to subsection (a) above is granted, any nonmoving party shall have the right of immediate appeal. Whenever such a motion is denied, the movant may seek review by means of a writ of certiorari and failure to do so shall constitute a waiver of any error the judge may have committed in denying the motion."

SECTION 5. This act is effective when it becomes law and applies to actions filed or pending on or after that date.



SENATE BILL 470: Personal Injury Bankruptcy Trust Claims.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Sens. Lee, Brown, B. Jackson
Analysis of: PCS to Second Edition
S470-CSBK-25

Date: May 23, 2017
Prepared by: Susan Sitze
Jessica Sammons
Committee Co-Counsel

OVERVIEW: *The proposed committee substitute (PCS) to Senate Bill 470 would (i) require the plaintiff to disclose information concerning bankruptcy trust claims in asbestos-related personal injury actions, (ii) include the amount of monies awarded or reasonably expected to be awarded from a bankruptcy trust as consideration paid for a release or covenant not to sue, (iii) create a rebuttable presumption that bankruptcy trust materials are admissible, and (iv) allow the court to enter an order to stay an action upon defendant's reasonable belief that plaintiff can file additional bankruptcy trust claims until the plaintiff files such claims.*

The PCS removes the requirement that the stay on the civil action remain until the bankruptcy trust claim is addressed by the bankruptcy trust.

CURRENT LAW: Rule 26(b) of the North Carolina Rules of Civil Procedure sets forth the scope of discovery applicable to all civil actions and proceedings for which a different procedure is not prescribed by statute.

G.S. 1B-4 provides that when a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons jointly liable in tort for the same injury or wrongful death, that release or covenant does not discharge any of the other tortfeasors from their liability for the injury or wrongful death, but it reduces the claim against the others by the greater of the amount stated in the release or the covenant or the consideration paid for it, whichever is greater.

BILL ANALYSIS:

Section 1 of the PCS would add a new subdivision to Rule 26(b) to amend the scope of discovery in a civil action asserting personal injury based upon exposure to asbestos. In such cases, the plaintiff would be required to make certain disclosures to all parties to the civil action, including:

- Within 30 days of filing the action, a sworn statement provided to all parties that the plaintiff has conducted an investigation of all bankruptcy trust claims and that all such claims that can be made by the plaintiff have been filed.
- The identity of all bankruptcy trust claims made and all materials submitted to or received from the bankruptcy trust.
- Supplemental information and materials within 30 days of filing an additional bankruptcy trust claim, supplementing an existing bankruptcy trust claim, or receiving additional information or materials related to any such claim.

Upon a reasonable belief that the plaintiff can file additional bankruptcy trust claims, the defendant would be permitted to seek a stay in the civil action until the plaintiff files the claim.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

Senate PCS 470

Page 2

In these cases, the defendant would be authorized to seek discovery from the bankruptcy trust, and the plaintiff would be unable to claim privilege or confidentiality to bar discovery. The plaintiff would also be required to provide any required consent to release information and materials sought by the defendant.

Section 2 of the PCS would amend G.S. 1B-4 to provide that the amount of consideration paid for a release or covenant not to sue includes any monies awarded or reasonably expected to be awarded from a bankruptcy trust.

Section 3 of the PCS would enact a new rule of evidence providing that in any civil action asserting personal injury claiming disease based on exposure to asbestos, there is a rebuttable presumption that bankruptcy trust claims materials are relevant, authentic, and admissible in evidence.

Section 4 of the PCS would provide that in any civil action asserting personal injury claiming disease based on exposure to asbestos, if a defendant has a reasonable belief that the plaintiff can file additional bankruptcy claims, the court, on motion of the defendant, can stay the action until the plaintiff files the bankruptcy trust claim.

EFFECTIVE DATE: This act would be effective when it becomes law and applies to actions pending on or after that date.

BACKGROUND: Under federal bankruptcy law, as a part of a reorganization plan under Chapter 11 of the Bankruptcy Code, a debtor with outstanding liability in personal injury, wrongful death, or property-damage actions allegedly caused by the presence of or exposure to asbestos may establish a trust that will fund present and future settlements of claims and lawsuits. 11 U.S.C. 524(g). Once a company emerges from bankruptcy protection having established a bankruptcy trust, all liabilities for asbestos exposure are assigned to the trust.

Most settlements between an injured party and a bankruptcy trust contain a confidentiality provision. Further, many bankruptcy trusts allow an injured party to delay claims against the bankruptcy trust until they have recovered from solvent defendants in the tort system. As a result of asbestos manufacturers filing for bankruptcy and creating bankruptcy trusts, there are fewer available defendants for an injured party to pursue, and because of confidentiality provisions and delayed claims, it is difficult for solvent defendants to prove inconsistencies in the claims of an injured party.¹

In a recent bankruptcy proceeding, the court ordered the debtor and representatives of potential claimants to estimate the liability of the debtor for purposes of establishing a bankruptcy trust. *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71 (W.D.N.C. 2014). Using different approaches, the two groups estimated the liability at very different amounts; the debtor estimated liability at \$125 million while the representatives of potential claimants estimated liability to be as much as \$1.3 billion. In ordering the trust be funded with the lesser amount, the judge noted that plaintiffs in prior lawsuits had failed numerous times to disclose claims of plaintiffs against other defendants and bankruptcy trusts, which had resulted in the plaintiff recovering more than the value of the injury and the debtor paying more than its share of the recovery.

Bill Patterson, Staff Attorney in the Legislative Analysis Division, substantially contributed to this summary.

¹ Ziffer, Bankruptcy Trusts and Asbestos Litigation.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 470
Judiciary Committee Substitute Adopted 4/25/17

Short Title: Personal Injury Bankruptcy Trust Claims.

(Public)

Sponsors:

Referred to:

March 30, 2017

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING RULE 26 OF THE NORTH CAROLINA RULES OF CIVIL
3 PROCEDURE RELATING TO DISCOVERY IN BANKRUPTCY TRUST PERSONAL
4 INJURY CLAIMS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 1A-1, Rule 26(b) of the Rules of Civil Procedure, is amended by
7 adding a new subdivision to read:

8 "Rule 26. General provisions governing discovery.

9 ...

10 (b) Discovery scope and limits. – Unless otherwise limited by order of the court in
11 accordance with these rules, the scope of discovery is as follows:

12 ...

13 (2a) Bankruptcy Trust Personal Injury Claims. –

- 14 a. Within 30 days after a civil action is filed asserting personal injury
15 claiming disease based upon exposure to asbestos, the plaintiff shall
16 provide to all parties a sworn statement indicating that an
17 investigation of all bankruptcy trust claims has been conducted and
18 that all bankruptcy trust claims that can be made by the plaintiff have
19 been filed.
- 20 b. The plaintiff shall provide the parties with the identity of all
21 bankruptcy trust claims made and all materials submitted to or
22 received from a bankruptcy trust.
- 23 c. The plaintiff shall supplement the information and materials that
24 plaintiff provides pursuant to this subsection within 30 days after the
25 plaintiff files an additional bankruptcy trust claim, supplements an
26 existing bankruptcy trust claim, claim, or receives additional
27 information or materials related to any claim against a bankruptcy
28 trust.
- 29 d. If a defendant has a reasonable belief that the plaintiff can file
30 additional bankruptcy trust claims, the defendant may move the court
31 to stay the civil action until the plaintiff files the bankruptcy trust
32 claim.
- 33 e. A defendant in the civil action may seek discovery from a
34 bankruptcy trust. The plaintiff may not claim privilege or
35 confidentiality to bar discovery and shall provide consent or other



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expression of permission that may be required by the bankruptcy trust to release information and materials sought by the defendant.

...."

SECTION 2. G.S. 1B-4 reads as rewritten:

"§ 1B-4. Release or covenant not to sue.

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

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(2) It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor."

SECTION 3. Article 4 of Chapter 8C of the General Statutes is amended by adding a new section to read:

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(a1) In any civil action asserting personal injury claiming disease based upon exposure to asbestos, if a defendant has a reasonable belief that the plaintiff can file additional bankruptcy trust claims, the court on motion of the defendant may enter an order to stay the civil action until the plaintiff files the bankruptcy trust claim and such claim is addressed by the bankruptcy trust.

(b) Subsequent Modification of Order to Stay Proceedings. – In a proceeding in which a stay has been ordered under this section, jurisdiction of the court continues for a period of five years from the entry of the last order affecting the stay; and the court may, on motion and notice to the parties, modify the stay order and take such action as the interests of justice require. When jurisdiction of the court terminates by reason of the lapse of five years following the entry of the last order affecting the stay, the clerk shall without notice enter an order dismissing the action.

(c) Review of Rulings on Motion. – Whenever a motion for a stay made pursuant to subsection (a) above is granted, any nonmoving party shall have the right of immediate appeal. Whenever such a motion is denied, the movant may seek review by means of a writ of certiorari and failure to do so shall constitute a waiver of any error the judge may have committed in denying the motion."

SECTION 5. This act is effective when it becomes law and applies to actions pending on or after that date.

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 5-23-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass

2. Name: Mark Cone

3. Name: Will Crocker

4. Name: David Linthicum

5. Name: _____

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____



U.S. Chamber Institute for Legal Reform



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

5-23-2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Colin Campbell	Nto
Chris Broughton	MWC
Ken Burco	NEC
Joe Bost	Charlotte Chamber
Chris Hayes	NC Chamber
Stephen Kouba	FMA
Wayne Rask	NCARD
Al Schutler	GSP
Jason Deans	JD+H
Elizabeth Robinson	NCRMA
Lexi Arthur	NCRMA

1994



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

5-23-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Lindsey Davis

Rep. Faircloth (intern)

Helen Ratcliff

NCGA

Jonathan Brubaker

Brubaker & Assoc

Sarah Sales

Brubaker & Assoc

Kris Parker

DANK

Gabby Derosier

Intern - Rep. Harrison

Cannon Murphy

St. John +

Seth Williford

NC AOC

Cullen Browder

WRAL

Susan Valauri

NW

Reynold Camp

NC

2018

2018



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

5-23-17

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

GARY SALAM ID

WC Chamber

10/10/10

10/10/10



**House Committee on Judiciary II
Tuesday, June 6, 2017 at 1:00 PM
Room 421 of the Legislative Office Building**

MINUTES

The House Committee on Judiciary II met at 1:00 PM on June 6, 2017 in Room 421 of the Legislative Office Building. Representatives Blust, Faircloth, Hurley, Michaux, Bumgardner, Fisher, Hall, Harrison, John, Jones, and Sauls attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:06 PM.

The following bills were considered:

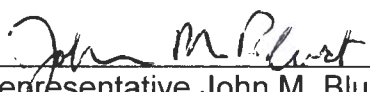
HB 671 Expand Certificate of Relief. (Representative Faircloth)

Representative Faircloth was recognized to explain the bill. Mrs. Susan Sitze, Committee Counsel, explained a Certificate of Relief. Representative Faircloth explained the bill. A lengthy discussion followed. Representative Harrison made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report. HB 671 was re-referred to the House Committee on Finance.


SB 223 Habitual Felons/Clarify Previous Convictions. (Senators J. Jackson, Britt, Newton)

Representative Faircloth made the motion to bring the Proposed House Committee Substitute before the committee, and the motion passed. Senator Jeff Jackson was recognized to explain the Proposed House Committee Substitute. Questions from the committee members were answered. Mr. Andrew Murray, Mecklenburg County District Attorney, spoke in support of the bill. Representative Bumgardner made the motion for a favorable report for the Proposed House Committee Substitute, with an unfavorable report for the Senate Committee Substitute. The motion passed, and the Proposed House Committee Substitute received a favorable report, with an unfavorable report for the Senate Committee Substitute. SB 223 was re-referred to the House Committee on Rules, Calendar, and Operations of the House.

The meeting adjourned at 1:30 PM.



Representative John M. Blust, Chairman
Presiding



Gennie L. Thurlow, Committee Clerk



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, June 6, 2017

TIME: 1:00 PM

LOCATION: 421 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>HB 671</u>	Expand Certificate of Relief.	Representative Faircloth
<u>SB 223</u>	Habitual Felons/Clarify Previous Convictions.	Senator J. Jackson Senator Britt Senator Newton

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 3:02 PM on Thursday, June 01, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Tuesday, June 6, 2017, 1:00 PM
421 Legislative Office Building**

AGENDA

**Welcome and Opening Remarks
Representative John M. Blust, Chairman**

Introduction of Pages and Sergeants-at-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 671	Expand Certificate of Relief.	Representative Faircloth
SB 223	Habitual Felons/Clarify Previous Convictions.	Senator J. Jackson Senator Britt Senator Newton

Adjournment



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair**

FAVORABLE AND RE-REFERRED

HB 671

Expand Certificate of Relief.

Draft Number:	None
Serial Referral:	FINANCE
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Faircloth

TOTAL REPORTED: 1



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NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair

FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB AND RE-REFERRED

SB 223 (CS#1)

Habitual Felons/Clarify Previous Convictions.

Draft Number: S223-PCS45444-SA-32

Serial Referral: RULES, CALENDAR, AND
OPERATIONS OF THE HOUSE

Recommended Referral: None

Long Title Amended: Yes

Floor Manager: Stevens

TOTAL REPORTED: 1



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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 671

Short Title: Expand Certificate of Relief. (Public)

Sponsors: Representative Faircloth.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II, if favorable, Finance

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE AVAILABILITY OF CERTIFICATES OF RELIEF TO
CERTAIN OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-173.2 reads as rewritten:

"§ 15A-173.2. Certificate of Relief.

(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 the most serious offense for a Certificate of Relief relieving collateral consequences as permitted by this Article. If the individual has more than one conviction in the same class of offense as the most serious offense and the convictions are in more than one court, the individual shall petition the court of the most recent conviction. 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.

(b) Except as otherwise provided in G.S. 15A-173.3, the court may issue a Certificate of Relief if, after reviewing the petition, the individual's criminal history, any information provided by a victim under G.S. 15A-173.6 or the district attorney, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence all of the following:

- (1) ~~Twelve~~ If the individual has been convicted of five or fewer eligible offenses, 12 months have passed since the individual has completed his or her sentence. If the individual has been convicted of more than five eligible offenses, 36 months have passed since the individual has completed his or her sentence. For purposes of this subdivision, an individual has not completed his or her sentence until the individual has served all of the active time, if any, imposed for each offense and has also completed any period of probation, post-release supervision, and parole related to the offense that is required by State law or court order.



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- 1 (2) The individual is engaged in, or seeking to engage in, a lawful occupation or
2 activity, including employment, training, education, or rehabilitative
3 programs, or the individual otherwise has a lawful source of support.
- 4 (3) The individual has complied with all requirements of the individual's
5 sentence, including any terms of probation, that may include substance abuse
6 treatment, anger management, and educational requirements.
- 7 (4) The individual is not in violation of the terms of any criminal sentence, or
8 that any failure to comply is justified, excused, involuntary, or insubstantial.
- 9 (5) A criminal charge is not pending against the individual.
- 10 (6) Granting the petition would not pose an unreasonable risk to the safety or
11 welfare of the public or any individual.
- 12 (c) The Certificate of Relief shall specify any restriction imposed and collateral
13 sanction or disqualification from which relief has not been granted under G.S. 15A-173.4(a).
- 14 (d) A Certificate of Relief relieves all collateral sanctions, except those listed in
15 G.S. 15A-173.3, those sanctions imposed by the North Carolina Constitution or federal law,
16 and any others specifically excluded in the certificate. A Certificate of Relief does not
17 automatically relieve a disqualification; however, an administrative agency, governmental
18 official, or court in a civil proceeding may consider a Certificate of Relief favorably in
19 determining whether a conviction should result in disqualification.
- 20 (e) A Certificate of Relief issued under this Article does not result in the expunction of
21 any criminal history record information, nor does it constitute a pardon.
- 22 (f) A Certificate of Relief may be revoked pursuant to G.S. 15A-173.4(b) if the
23 individual is subsequently convicted of a felony or misdemeanor other than a traffic violation
24 or is found to have made any material misrepresentation in his or her petition.
- 25 (g) The denial of a petition for a Certificate of Relief shall state the reasons for the
26 denial, and the petitioner may file a subsequent petition 12 months from the denial and shall
27 demonstrate that the petitioner has remedied the defects in the previous petition and has
28 complied with any conditions for reapplication set by the court pursuant to G.S. 15A-173.4(a)
29 in order to have the petition granted.
- 30 (h) A person who files a petition for a certificate of relief under this section shall pay a
31 fee of fifty dollars (\$50.00) to the clerk of superior court at the time the petition is filed. Fees
32 collected under this subsection shall be deposited in the General Fund. This subsection shall not
33 apply to a petition filed by an indigent."
- 34 **SECTION 2.** This act becomes effective October 1, 2017, and applies to petitions
35 for certificates of relief filed on or after that date.



HOUSE BILL 671: Expand Certificate of Relief.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Finance	Date:	June 6, 2017
Introduced by:	Rep. Faircloth	Prepared by:	Susan Sitze
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House bill 671 would authorize additional offenders to obtain a certificate of relief and would impose a fee for petitioning for a certificate of relief.*

BILL ANALYSIS: House Bill 671 would expand the eligibility for a Certificate of Relief. The bill would remove the current eligibility limitation of no more than 2 convictions in the same session of court, and instead place no limit on the number of convictions that can have occurred and also allow convictions in multiple sessions of court, so long as none of the offenses are higher than a Class G felony. The petition for a Certificate of Relief would be filed in the court where the individual was convicted of the most serious offense. The petition could be filed 12 months after completion of sentence if the person has 5 or fewer eligible offenses, and 36 months after completion of sentence if the person has more than 5 eligible offenses.

The bill would also impose a \$50 fee for filing the petition for a Certificate of Relief unless the person is indigent.

EFFECTIVE DATE: This act would become effective October 1, 2017, and apply to petitions for certificates of relief filed on or after that date.

CURRENT LAW: Article 6 of Chapter 15A provides a process for the issuance of a "Certificate of Relief". A Certificate of Relief relieves the recipient of some collateral consequences of conviction of a crime.

A Certificate of Relief is potentially available to individuals convicted of no more than two Class G, H, or I felonies or misdemeanors in one session of court, and who have no other convictions.

The court has the discretion to issue the Certificate of Relief if it finds all of the following by a preponderance of the evidence:

- 12 months have passed since the person completed their sentence.
- The person is engaged in, or seeking to engage in, a lawful occupation or activity.
- The person has complied with all requirements of their sentence.
- The person is not in violation of the terms of any criminal sentence, or that any failure to comply is justified, excused, involuntary, or insubstantial.
- A criminal charge is not pending against the person.
- Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 671

Page 2

The Certificate of Relief relieves all collateral sanctions (those specifically provided by law), except:

- Requirements imposed by, and any statutory requirements or prohibitions imposed as a result of registration as a sex offender.
- Prohibitions on possession of firearms.
- Motor vehicle license suspension, revocation, limitation or ineligibility.
- Ineligibility for certification as a law enforcement officer.
- Ineligibility for employment as a corrections or probation officer, or as a prosecutor or investigator in a district attorney's office.

The Certificate of Relief does not automatically relieve disqualifications (where the law allows a sanction, but does not require it), but a Certificate of Relief may be considered favorably in determining whether a conviction should result in disqualification.

Certificates of Relief may be issued with restrictions and may specifically state sanctions or disqualifications from which relief has not been granted. A Certificate of Relief does not result in expunction or pardon of offenses. A Certificate of Relief may be revoked or modified upon motion of the court or the district attorney. The district attorney and the victim may appear and be heard at any hearing related to the issuance, modification or revocation of a Certificate of Relief.

Reliance on a Certificate of Relief in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the person for whom the Certificate of Relief was issued, is a bar in a judicial or administrative proceeding alleging negligence, if the person against whom the proceeding is brought knew of the Certificate of Relief at the time of the alleged negligence.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 223
Rules and Operations of the Senate Committee Substitute Adopted 3/23/17
PROPOSED HOUSE COMMITTEE SUBSTITUTE S223-CSSA-32 [v.3]

06/05/2017 4:00:32 PM

Short Title: Habitual Felons/Clarify Previous Convictions.

(Public)

Sponsors:

Referred to:

March 9, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE DEFINITION OF "FELONY OFFENSE" FOR PURPOSES OF
3 THE HABITUAL FELON LAW AND TO REMOVE THE SUNSET ON DRIVERS
4 LICENSE ELIGIBILITY FOR PERSONS CONVICTED OF HABITUAL IMPAIRED
5 DRIVING.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 14-7.1 reads as rewritten:

8 "§ 14-7.1. Persons defined as habitual felons.

9 (a) Any person who has been convicted of or pled guilty to three felony offenses in any
10 federal court or state court in the United States or combination thereof is declared to be an
11 habitual felon and may be charged as a status offender pursuant to this Article.

12 (b) For the purpose of this Article, a felony offense is defined ~~as an~~ to include all of the
13 following:

14 (1) ~~An offense which that~~ is a felony under the laws of the ~~State or other~~
15 ~~sovereign wherein this State.~~

16 (2) An offense that is a felony under the laws of another state or sovereign that
17 is substantially similar to an offense that is a felony in North Carolina, and to
18 which a plea of guilty was entered, or a conviction was returned regardless
19 of the sentence actually imposed.

20 (3) An offense that is a crime under the laws of another state or sovereign that
21 does not classify any crimes as felonies if all of the following apply:

22 a. The offense is substantially similar to an offense that is a felony in
23 North Carolina.

24 b. The offense may be punishable by imprisonment for more than a
25 year in state prison.

26 c. ~~a~~A plea of guilty was entered or a conviction was returned regardless
27 of the sentence actually imposed.

28 (4) An offense that is a felony under federal law. Provided, however, that
29 federal offenses relating to the manufacture, possession, sale and kindred
30 offenses involving intoxicating liquors shall not be considered felonies for
31 the purposes of this Article.

32 (c) For the purposes of this Article, felonies committed before a person attains the age
33 of 18 years shall not constitute more than one felony. The commission of a second felony shall
34 not fall within the purview of this Article unless it is committed after the conviction of or plea
35 of guilty to the first felony. The commission of a third felony shall not fall within the purview



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1 of this Article unless it is committed after the conviction of or plea of guilty to the second
2 felony. Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be
3 felony offenses within the meaning of this Article. Any felony offense to which a pardon has
4 been extended shall not for the purpose of this Article constitute a felony. The burden of
5 proving such pardon shall rest with the defendant and the State shall not be required to disprove
6 a pardon."

7 **SECTION 2.** Section 7 of S.L. 2009-369, as amended by section 61.5 of S.L.
8 2014-115, reads as rewritten:

9 " **SECTION 7.** This act becomes effective December 1, 2009, and applies to applications
10 for reinstatement that occur on or after that date. ~~This act expires December 1, 2016.~~"

11 **SECTION 3.** Section 1 of this act becomes effective December 1, 2017, and
12 applies to offenses committed on or after that date and that is the principal felony offense for a
13 charge of a status offense of habitual felon. Section 2 of this act is retroactively effective
14 December 1, 2016. The remainder of this act is effective when it becomes law. Prosecutions
15 for offenses committed before the effective date of this act are not abated or affected by this
16 act, and the statutes that would be applicable but for this act remain applicable to those
17 prosecutions.



SENATE BILL 223: Habitual Felons/Clarify Previous Convictions.

2017-2018 General Assembly

Committee:	House Judiciary II. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	June 6, 2017
Introduced by:	Sens. J. Jackson, Britt, Newton	Prepared by:	Susan Sitze*
Analysis of:	PCS to Second Edition S223-CSSA-32		Committee Counsel

OVERVIEW: *The PCS for Senate Bill 223 would clarify what prior criminal convictions may be used to establish habitual felon status and remove the sunset on driver's license eligibility for persons convicted of habitual impaired driving.*

CURRENT LAW, BILL ANALYSIS, AND BACKGROUND:

Section 1 of the PCS

Under current law, G.S. 14-7.1 provides that habitual felon is a status declared by a court when a defendant has been convicted of or pled guilty to three felony offenses. In order for a conviction to be used to establish habitual felon status, the prior offense must be for "an offense which is a felony under the laws of the State or other sovereign" where the conviction took place, "regardless of the sentence actually imposed."

The PCS for Senate Bill 223 would clarify the definition of 'felony offense' as it is used to establish habitual felon status.

Aside from specific exceptions, a "felony offense" would include:

- A felony in this State.
- A felony in another state or sovereign, that is substantially similar to a felony in North Carolina.
- An offense substantially similar to a felony in North Carolina, punishable by imprisonment for more than a year in a state or sovereign that does not use the classification of felony.
- A felony under federal law.

This section would become **effective** December 1, 2017, and apply to offenses committed on or after that date and that is the principal felony offense for a charge of a status offense of habitual felon. Prosecutions for offenses committed before the effective date of this act would not be abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

Senate PCS 223

Page 2

Section 2 of the PCS

Background: In S.L. 2009-369, the General Assembly enacted statutes authorizing a person convicted of habitual impaired driving to petition to have their driver's license conditionally reinstated. Under that law, the person could petition 10 years after completion of their sentence for habitual impaired driving, and was eligible to obtain a license if the Division of Motor Vehicles found both of the following:

- In the 10 years preceding the application the person had not been convicted of any motor vehicle, alcohol, drug, or other criminal offense.
- The person was not currently a user of alcohol, unlawfully using any controlled substance, or an excessive user of prescription drugs.

S.L. 2009-369 was enacted with a sunset of **December 1, 2014**. In section 61.5 of S.L. 2014-115 the sunset was extended to **December 1, 2016**. That sunset expired on December 1, 2016 without further action by the General Assembly.

The PCS for Senate Bill 223 would remove the December 1, 2016 sunset **effective retroactively to December 1, 2016**. This would have the effect of reviving those statutes that allowed the reinstatement of a driver's license for habitual impaired driving offenders. No new sunset would be placed on these statutes by the PCS.

**Jennifer Bedford, Staff Attorney, contributed substantially to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

2

SENATE BILL 223
Rules and Operations of the Senate Committee Substitute Adopted 3/23/17

Short Title: Habitual Felons/Clarify Previous Convictions. (Public)

Sponsors:

Referred to:

March 9, 2017

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF "FELONY OFFENSE" FOR PURPOSES OF
THE HABITUAL FELON LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-7.1 reads as rewritten:

"§ 14-7.1. Persons defined as habitual felons.

(a) Any person who has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States or combination thereof is declared to be an habitual felon and may be charged as a status offender pursuant to this Article.

(b) For the purpose of this Article, a felony offense is defined ~~as an~~ to include all of the following:

(1) ~~An offense which that is a felony under the laws of the State or other sovereign wherein this State.~~

(2) An offense that is a felony under the laws of another state that is substantially similar to an offense that is a felony in North Carolina, and to which a plea of guilty was entered, or a conviction was returned regardless of the sentence actually imposed.

(3) An offense that is a crime under the laws of another state that does not classify any crimes as felonies if all of the following apply:

a. The offense is substantially similar to an offense that is a felony in North Carolina.

b. The offense may be punishable by imprisonment for more than a year in state prison.

c. ~~a~~A plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed.

(4) An offense that is a felony under federal law. Provided, however, that federal offenses relating to the manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not be considered felonies for the purposes of this Article.

(c) For the purposes of this Article, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this Article. Any felony offense to which a pardon has



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1 been extended shall not for the purpose of this Article constitute a felony. The burden of
2 proving such pardon shall rest with the defendant and the State shall not be required to disprove
3 a pardon."

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

**House Pages
Assignments
Tuesday, June 06, 2017
Session: 10:00 AM**

Committee	Room	Time	Staff	Comments	Member
Judiciary II	421	1:00 PM	Gavin Gwaltney		Rep. Andy Dulin
			Madelyn Holman		Rep. Rena Turner
			Audrey Lucas		Rep. Michael Speciale
			John Nicholson		Rep. Speaker Tim Moore
			Lawson Rink		Rep. D. Craig Horn
Wildlife Resources	1228/1327	3:00 PM	Lauren Barber		Rep. Joe John
			Alexius Bates		Rep. Yvonne Lewis Holley
			Casey Kruger		Rep. Justin Burr
			Kylee Mann		Rep. Beverly Boswell
			Luke Satisfsky		Rep. Cynthia Ball



Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 6-06-2017 Room: 421

House Sgt-At Arms:

1. Name: Young Bae
2. Name: Bill Bass
3. Name: Will Crocker
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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



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VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

6-6-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kris Paulk	DRNK
Connor Murphy	Student
Phoebe Yandon	MWC
Danielle Jackson	BCBSNC
Theresa Lammak	BCBSNC
Au	Au
Flint Benson	SEANC
Josh McClain	NC Justice Center
Sara M. Stohler	528 N. Bloodworth St, Raleigh 27604
Caitlin Little	UNC SOG
Daniel Bowes	NC Justice Center



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VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Rowe	NC Justice Center
LAURA MARTIN	UpUp Ministry
Miea Walker	NC Justice Center
Dawn Collins	SEAWC
Andrew Murray	Mecklenburg PA
Reggie	Conf of DAs
Coby Crandall	The Pro Se Reentry Recovery



8.

8.



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

4-6-2017

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Audrey Brandon

NC DPS

MICHAEL EISENBETH

CITIZEN

Dawn Bagione

CTPC

Mildred Spearman

NEHOL

Callen Kochavek

KL6



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**House Committee on Judiciary II
Tuesday, June 20, 2017 at 1:00 PM
Room 421 of the Legislative Office Building**

MINUTES

The House Committee on Judiciary II met at 1:00 PM on June 20, 2017 in Room 421 of the Legislative Office Building. Representatives Blust, Faircloth, Hurley, McGrady, Michaux, Bumgardner, Fisher, Hall, Harrison, and John attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:05 PM

The following bills were considered:

SB 350 Amend Drug Laws/Ellison v. Treadway. (Senators Britt, Tucker, J. Jackson)

This bill was removed from the committee agenda.

SB 299 Habitual Impaired Driving/10-Year Period. (Senators J. Jackson, Newton, Britt)

Senator J. Jackson was recognized to explain the bill. A brief discussion followed. Representative McGrady made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

SB 308 Amend Various DWI Statutes. (Senator J. Davis)

Senator Davis was recognized to explain the bill. Mrs. Susan Sitze answered questions from the committee members. After a lengthy discussion, Representative McGrady made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

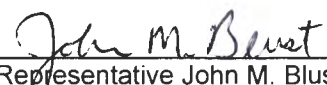
SB 445 Expungement Process Modifications. (Senators Tucker, Bryant, McKissick)


Representative Hurley made the motion to bring the Proposed House Committee Substitute before the committee, and the motion passed. Senator McKissick was recognized to explain the bill. Representative Michaux made the motion for a favorable report for the Proposed House Committee Substitute, with an unfavorable report for the Senate Committee Substitute. The motion passed, and the Proposed House Committee Substitute received a favorable report, with an unfavorable report for the Senate Committee Substitute.

SB 600 Britny's Law: IPV Homicide. (Senators Barefoot, J. Jackson, Britt)

Senator Barefoot was recognized to explain the bill. Senator Britt was recognized, and he asked for a favorable report for the bill. Representative John was recognized to offer an amendment and to explain it. There was a lengthy discussion. Senator Barefoot asked that the amendment be withdrawn. Mr. Alex Miller, North Carolina Coalition Against Domestic Violence, Alex Miller Government Affairs, spoke against the amendment. Ms. Amily McCool, MSW, JD, Legal and Policy Director, North Carolina Coalition Against Domestic Violence, spoke against the amendment. She asked that the amendment be voted down. Representative Joe John withdrew his amendment. Mr. Stephen Puryear, Britny's Father, spoke on the bill. Representative McGrady made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

The meeting adjourned at 1:47 PM.


Representative John M. Blust, Chair
Presiding


Gennie L. Thurlow, Committee Clerk



Corrected #1: SB 162 has been removed from the agenda.

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, June 20, 2017

TIME: 1:00 PM

LOCATION: 421 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>SB 299</u>	Habitual Impaired Driving/10-Year Period.	Senator J. Jackson Senator Newton Senator Britt
<u>SB 308</u>	Amend Various DWI Statutes.	Senator J. Davis
<u>SB 350</u>	Amend Drug Laws/Ellison v. Treadway.	Senator Britt Senator Tucker Senator J. Jackson
<u>SB 445</u>	Expungement Process Modifications.	Senator Tucker Senator Bryant Senator McKissick
<u>SB 600</u>	Britny's Law: IPV Homicide.	Senator Barefoot Senator J. Jackson Senator Britt

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 9:17 AM on Tuesday, June 20, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Tuesday, June 20, 2017
TIME: 1:00 PM
LOCATION: 421 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>SB 162</u>	LEO Assistance and Protection Act of 2017.	Senator Daniel Senator Brock Senator Randleman
<u>SB 299</u>	Habitual Impaired Driving/10-Year Period.	Senator J. Jackson Senator Newton Senator Britt
<u>SB 308</u>	Amend Various DWI Statutes.	Senator J. Davis
<u>SB 350</u>	Amend Drug Laws/Ellison v. Treadway.	Senator Britt Senator Tucker Senator J. Jackson
<u>SB 445</u>	Expungement Process Modifications.	Senator Tucker Senator Bryant Senator McKissick
<u>SB 600</u>	Britny's Law: IPV Homicide.	Senator Barefoot Senator J. Jackson Senator Britt

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:15 PM on Thursday, June 15, 2017.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Tuesday, June 20, 2017, 1:00 PM
421 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Representative John M. Blust

Introduction of Pages and Sergeants-at-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 299	Habitual Impaired Driving/10-Year Period.	Senator J. Jackson Senator Newton Senator Britt
SB 308	Amend Various DWI Statutes.	Senator J. Davis
SB 350	Amend Drug Laws/Ellison v. Treadway.	Senator Britt Senator Tucker Senator J. Jackson
SB 445	Expungement Process Modifications.	Senator Tucker Senator Bryant Senator McKissick
SB 600	Britny's Law: IPV Homicide.	Senator Barefoot Senator J. Jackson Senator Britt

Adjournment



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair**

FAVORABLE

SB 299 (CS#1)	Habitual Impaired Driving/10-Year Period. Draft Number: None Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Jackson
SB 308 (CS#1)	Amend Various DWI Statutes. Draft Number: None Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Destin Hall
SB 600 (CS#1)	Britny's Law: IPV Homicide. Draft Number: None Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Faircloth

TOTAL REPORTED: 3



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**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair**

FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB

SB 445 (CS#1)

Expungement Process Modifications.

Draft Number:	S445-PCS15224-SA-35
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Jordan

TOTAL REPORTED: 1



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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

2

SENATE BILL 299
Judiciary Committee Substitute Adopted 4/4/17

Short Title: Habitual Impaired Driving/10-Year Period. (Public)

Sponsors:

Referred to:

March 16, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO ADJUST HOW THE TEN-YEAR PERIOD FOR DETERMINING WHETHER
3 A PERSON COMMITTED THE OFFENSE OF HABITUAL IMPAIRED DRIVING IS
4 CALCULATED.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 20-138.5 reads as rewritten:

7 "§ 20-138.5. Habitual impaired driving.

8 (a) A person commits the offense of habitual impaired driving if ~~he~~ the person drives
9 while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses
10 involving impaired driving as defined in G.S. 20-4.01(24a) within 10 years of the date of this
11 offense. Any period of time that the person spent incarcerated in a local, State, or federal
12 detention center, jail, or prison for an offense involving impaired driving, as defined in
13 G.S. 20-4.01(24a), shall be excluded in calculating the 10-year period under this subsection.

14 ...

15 (d) A person convicted under this section shall have his or her license permanently
16 revoked.

17"

18 SECTION 2. This act becomes effective December 1, 2017, and applies to
19 offenses committed on or after that date.



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SENATE BILL 299: Habitual Impaired Driving/10-Year Period.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	June 20, 2017
Introduced by:	Sens. J. Jackson, Newton, Britt	Prepared by:	Susan Sitze
Analysis of:	Second Edition		Committee Counsel

OVERVIEW: *Senate Bill 299 would amend the habitual impaired driving law to exclude any period of confinement for an offense involving impaired driving when determining whether a defendant has had three or more convictions within 10 years.*

CURRENT LAW: G.S. 20-138.5 provides that a person is guilty of habitual impaired driving on their fourth or subsequent offense of impaired driving if they have three or more prior convictions of impaired driving within 10 years of the new offense. Habitual impaired driving is punishable as a Class F felony and requires a minimum 12 month active sentence.

BILL ANALYSIS: **Senate Bill 299** would toll, or extend, the 10 year look-back period used to determine if a defendant has committed the fourth or subsequent offense of habitual impaired driving. Tolling in this context would stop the 10 year clock from running during any period that the defendant is incarcerated for an offense involving impaired driving. The clock would resume when the defendant is released.

EFFECTIVE DATE: This act would become effective December 1, 2017, and apply to any offense committed on or after that date.

Jennifer Bedford, Staff Attorney, contributed substantially to this summary.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

2

SENATE BILL 308
Judiciary Committee Substitute Adopted 4/4/17

Short Title: Amend Various DWI Statutes.

(Public)

Sponsors:

Referred to:

March 20, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE STATUTE OF LIMITATIONS FOR MISDEMEANORS
3 IS SATISFIED IF CHARGED WITHIN TWO YEARS OF THE OFFENSE AND TO
4 PROVIDE THAT THE RESULTS OF HGN TESTS SHALL BE ADMISSIBLE WHEN
5 GIVEN BY A PERSON WHO HAS SUCCESSFULLY COMPLETED HGN TRAINING
6 AND THE TEST IS ADMINISTERED IN ACCORDANCE WITH THE PERSON'S
7 TRAINING.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 15-1 reads as rewritten:

10 "§ 15-1. Statute of limitations for misdemeanors.

11 The crimes of deceit and malicious mischief, and the crime of petit larceny where the value
12 of the property does not exceed five dollars (\$5.00), and all misdemeanors except malicious
13 misdemeanors, shall be ~~presented or found by the grand jury charged~~ within two years after the
14 commission of the same, and not afterwards: Provided, that if any ~~indictment found within that~~
15 ~~time pleading~~ shall be defective, so that no judgment can be given thereon, another prosecution
16 may be instituted for the same offense, within one year after the first shall have been
17 abandoned by the State."

18 SECTION 2. G.S. 8C-1, Rule 702(a1), reads as rewritten:

19 "Rule 702. Testimony by experts.

20 ...

21 (a1) ~~A witness, qualified under subsection (a) of this section and with proper foundation,~~
22 Notwithstanding any other provision of law, a witness may give expert testimony solely on the
23 issue of impairment and not on the issue of specific alcohol concentration level relating to the
24 following:

25 (1) The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is
26 administered in accordance with the person's training by a person who has
27 successfully completed training in HGN.

28 (2) Whether a person was under the influence of one or more impairing
29 substances, and the category of such impairing substance or ~~substances. A~~
30 ~~witness who has received training and substances by a person who~~ holds a
31 current certification as a Drug Recognition Expert, issued by the State
32 Department of Health and Human Services, ~~shall be qualified to give the~~
33 testimony under this subdivision. Services.

34 SECTION 3. Section 1 of this act becomes effective December 1, 2017, and
35 applies to offenses committed on or after that date. The remainder of the act is effective when it
36 becomes law.







SENATE BILL 308: Amend Various DWI Statutes.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Sen. J. Davis
Analysis of: Second Edition

Date: June 20, 2017
Prepared by: Susan Sitze
Committee Counsel

OVERVIEW: *Senate Bill 308 would amend the statute of limitations for misdemeanor crimes and amend the Rules of Evidence pertaining to expert testimony based on a Horizontal Gaze Nystagmus (HGN) Test in matters of impairment.*

Section 1

CURRENT LAW: G.S. 15-1 currently requires misdemeanors be presented or found by the grand jury within 2 years of the commission of the offense. In 1956, the Supreme Court opinion recognized an extension of this requirement by holding in State v. Underwood that a defendant may also be tried upon a misdemeanor charged by a warrant within 2 years of the offense. Thus, to satisfy the statute of limitations for misdemeanors, an indictment, presentment, or warrant must have been issued within two years of the date of the offense.

BILL ANALYSIS: Senate Bill 308 would amend the statute of limitations for misdemeanors to change the phrase requiring that the misdemeanor be "presented or found by the grand jury" within two years after commission of the offense to state that the misdemeanor must be "charged" within two years of the offense in order to encompass the charging methods that are sufficient under current law, as well as any other methods of charging misdemeanors such as by magistrate's order or citation.

BACKGROUND: On December 6, 2016 the North Carolina Court of Appeals decided State v. Turner, in which a defendant cited for driving while impaired was charged by way of a magistrate's order moved to have his case dismissed pursuant to the statute of limitations after two years had passed from the date of the offense. The Court of Appeals upheld the trial court's dismissal on the grounds that the defendant had not been charged by indictment, presentment, or warrant within two years of the offense. On March 16, 2017, the North Carolina Supreme Court granted discretionary review of the Court of Appeals decision and the appeal remains pending in the Supreme Court.

Section 2

CURRENT LAW: Pursuant to North Carolina Rule of Evidence (NCRE) 702(a), in order to qualify as an expert witness for the purpose of giving expert opinion on a matter during a trial, all of the following must apply:

- The testimony must be based upon sufficient facts of data.
- The testimony is the product of reliable principles and methods.
- The witness has applied the principles and methods reliably to the facts of the case.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

Senate Bill 308

Page 2

NCRE 702(a1) provides that as long as a witness has been qualified under the above criteria in subsection (a), the witness may give an expert opinion on the issue of impairment relating to the following:

- The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered by a person who has successfully completed training in HGN.
- Whether a person was under the influence of one or more impairing substances. A witness who has received training and holds a current certification as a Drug Recognition Expert, issued by the State Department of Health and Human Services is qualified to give testimony in this area.

ANALYSIS: Senate Bill 308 would remove the preliminary requirements that the witness be qualified under the typical foundational requirements for expert witness testimony if the testimony offers an opinion on the issue of impairment based on the results of an HGN test or the person's certification as a Drug Recognition Expert. Testimony based on an HGN test, only when the test was administered in accordance with the person's training.

EFFECTIVE DATE: Section 1 would become effective December 1, 2017 and apply to offenses committed on or after that date. The remainder of the act would be effective when it becomes law.

Augustus D. Willis, Staff Attorney, contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

D

SENATE BILL 445
Judiciary Committee Substitute Adopted 4/25/17
PROPOSED HOUSE COMMITTEE SUBSTITUTE S445-CSSA-35 [v.2]
06/19/2017 6:18:04 PM

Short Title: Expungement Process Modifications.

(Public)

Sponsors:

Referred to:

March 29, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO STANDARDIZE THE FILING PROCEDURES FOR EXPUNGEMENTS, TO
3 AUTHORIZE PROSECUTORS ACCESS TO CERTAIN RECORDS OF
4 EXPUNGEMENT, TO ALLOW CERTAIN EXPUNGED CRIMINAL ACTS TO BE
5 CONSIDERED IN CALCULATING PRIOR RECORD LEVELS DURING
6 SENTENCING FOR SUBSEQUENT OFFENSES, AND TO MAKE OTHER
7 MODIFICATIONS TO THE EXPUNGEMENT PROCESS.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Article 5 of Chapter 15A of the General Statutes reads as rewritten:

10 "Article 5.

11 "Expunction of Records.

12 "§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of
13 conviction of misdemeanor; expunction of certain other misdemeanors.

14 (a) Whenever any person who has not previously been convicted of any felony, or
15 misdemeanor other than a traffic violation, under the laws of the United States, the laws of this
16 State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic
17 violation, and the offense was committed before the person attained the age of 18 years, or (ii)
18 pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to
19 G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21
20 years, he may file a petition in the court of the county where he was convicted for expunction
21 of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two
22 years after the date of the conviction, or (ii) the completion of any period of probation,
23 whichever occurs later, and the petition shall contain, but not be limited to, the following:

24 (1) An affidavit by the petitioner that he has been of good behavior for the
25 two-year period since the date of conviction of the misdemeanor in question
26 and has not been convicted of any felony, or misdemeanor other than a
27 traffic violation, under the laws of the United States or the laws of this State
28 or any other state.

29 (2) Verified affidavits of two persons who are not related to the petitioner or to
30 each other by blood or marriage, that they know the character and reputation
31 of the petitioner in the community in which he lives and that his character
32 and reputation are good.

33 (3) A statement that the petition is a motion in the cause in the case wherein the
34 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~~ filed with the clerk of superior court. The clerk of superior court shall forward the application 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.

(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).

(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, 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.

(b1) 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. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(c) The court shall also order that the misdemeanor conviction, or a civil revocation of a drivers license as the result of a criminal charge, be expunged from the records of the court. The court shall 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 conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation.

(d) The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(d1) Repealed by Session Laws 2012-191, s. 3, effective December 1, 2012.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

"§ 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 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 of the county 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 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-filed with the clerk of superior court. The clerk of superior court shall forward the application 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 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.

(b1) 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. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(b2) 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.

(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

"§ 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 of the county where charged for an order to expunge

1 from all official records, other than the confidential files retained under G.S. 15A-151, all
2 recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and
3 dismissal and discharge pursuant to this section. The applicant shall attach to the application
4 petition the following:

- 5 (1) An affidavit by the petitioner that he or she has been of good behavior
6 during the period of probation since the decision to defer further proceedings
7 on the offense in question and has not been convicted of any felony or
8 misdemeanor other than a traffic violation under the laws of the United
9 States or the laws of this State or any other state;
- 10 (2) Verified affidavits by two persons who are not related to the petitioner or to
11 each other by blood or marriage, that they know the character and reputation
12 of the petitioner in the community in which he or she lives, and that the
13 petitioner's character and reputation are good;
- 14 (3) Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and
15 applicable to petitions for expunctions filed on or after that date.
- 16 (3a) An application on a form approved by the Administrative Office of the
17 Courts requesting and authorizing a name-based State and national criminal
18 record check by the Department of Public Safety using any information
19 required by the Administrative Office of the Courts to identify the individual
20 and a search of the confidential record of expunctions maintained by the
21 Administrative Office of the Courts. The application shall be forwarded filed
22 with the clerk of superior court. The clerk of superior court shall forward the
23 application to the Department of Public Safety and to the Administrative
24 Office of the Courts, which shall conduct the searches and report their
25 findings to the court.

26 The judge to whom the petition is presented is authorized to call upon a probation officer
27 for any additional investigation or verification of the petitioner's conduct during the
28 probationary period deemed desirable.

29 If the court determines, after hearing, that such person was discharged and the proceedings
30 against him or her dismissed and that the person was not over 21 years of age at the time of the
31 offense, it shall enter such order. The effect of such order shall be to restore such person in the
32 contemplation of the law to the status the person occupied before such arrest or indictment or
33 information.

34 (a1) No person as to whom such order was entered shall be held thereafter under any
35 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of
36 the person's failures to recite or acknowledge such arrest, or indictment or information, or trial
37 in response to any inquiry made of him or her for any purpose. This subsection shall not apply
38 to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

39 (a2) The court shall also order that all records of the proceeding be expunged from the
40 records of the court and direct all law enforcement agencies, the Division of Adult Correction,
41 the Division of Motor Vehicles, and any other State and local government agencies identified
42 by the petitioner as bearing records of the same to expunge their records of the proceeding. The
43 clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

44 (b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90
45 of the General Statutes by possessing a controlled substance included within Schedules I
46 through VI of Article 5 of Chapter 90 of the General Statutes or a felony under
47 G.S. 90-95(a)(3), upon dismissal by the State of the charges against the person, upon entry of a
48 nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person
49 may apply to the court for an order to expunge from all official records all recordation relating
50 to his or her arrest, indictment or information, or trial. If the court determines, after hearing,
51 that such person was not over 21 years of age at the time the offense for which the person was

1 charged occurred, it shall enter such order. The clerk shall notify State and local agencies of the
2 court's order as provided in G.S. 15A-150. No person as to whom such order has been entered
3 shall be held thereafter under any provision of any law to be guilty of perjury or otherwise
4 giving a false statement by reason of the person's failures to recite or acknowledge such arrest,
5 or indictment or information, or trial in response to any inquiry made of him or her for any
6 purpose.

7 (c) Whenever any person who has not previously been convicted of (i) any felony
8 offense under any state or federal laws; (ii) any offense under Chapter 90 of the General
9 Statutes; or (iii) an offense under any statute of the United States or any state relating to
10 controlled substances included in any schedule of Chapter 90 of the General Statutes or to that
11 paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or
12 has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes
13 by possessing a controlled substance included within Schedules I through VI of Chapter 90, or
14 by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has
15 been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the
16 person not sooner than 12 months after conviction, order cancellation of the judgment of
17 conviction and expunction of the records of the person's arrest, indictment or information, trial,
18 and conviction. A conviction in which the judgment of conviction has been canceled and the
19 records expunged pursuant to this subsection shall not be thereafter deemed a conviction for
20 purposes of this subsection or for purposes of disqualifications or liabilities imposed by law
21 upon conviction of a crime, ~~including the additional penalties imposed for second or~~
22 ~~subsequent convictions of Article 5 of Chapter 90 of the General Statutes except as provided in~~
23 G.S. 15A-151.5. Cancellation and expunction under this subsection may occur only once with
24 respect to any person. Disposition of a case under this subsection at the district court division of
25 the General Court of Justice shall be final for the purpose of appeal.

26 The granting of an application filed under this subsection shall cause the issue of an order to
27 expunge from all official records, other than the confidential files retained under G.S. 15A-151,
28 all recordation relating to the petitioner's arrest, indictment or information, trial, finding of
29 guilty, judgment of conviction, cancellation of the judgment, and expunction of records
30 pursuant to this subsection.

31 The judge to whom the petition is presented is authorized to call upon a probation officer
32 for additional investigation or verification of the petitioner's conduct since conviction. If the
33 court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of
34 Chapter 90 of the General Statutes for possessing a controlled substance included within
35 Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing
36 drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that
37 the petitioner has no disqualifying previous convictions as set forth in this subsection, that the
38 petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of
39 good behavior since his or her conviction, that the petitioner has successfully completed a drug
40 education program approved for this purpose by the Department of Health and Human
41 Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a
42 traffic violation under the laws of this State at any time prior to or since the conviction for the
43 offense in question, it shall enter an order of expunction of the petitioner's court record. The
44 effect of such order shall be to restore the petitioner in the contemplation of the law to the
45 status the petitioner occupied before arrest or indictment or information or conviction. No
46 person as to whom such order was entered shall be held thereafter under any provision of any
47 law to be guilty of perjury or otherwise giving a false statement by reason of the person's
48 failures to recite or acknowledge such arrest, or indictment or information, or conviction, or
49 trial in response to any inquiry made of him or her for any purpose. The judge may waive the
50 condition that the petitioner attend the drug education school if the judge makes a specific
51 finding that there was no drug education school within a reasonable distance of the defendant's

1 residence or that there were specific extenuating circumstances which made it likely that the
2 petitioner would not benefit from the program of instruction.

3 The court shall also order all law enforcement agencies, the Department of ~~Correction,~~
4 Public Safety, the Division of Motor Vehicles, and any other State or local agencies identified
5 by the petitioner as bearing records of the conviction and records relating thereto to expunge
6 their records of the conviction. The clerk shall notify State and local agencies of the court's
7 order as provided in G.S. 15A-150.

8 (d) A person who files a petition for expunction of a criminal record under this section
9 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
10 time the petition is filed. Fees collected under this subsection are payable to the Administrative
11 Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars
12 and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the
13 costs of criminal record checks performed in connection with processing petitions for
14 expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each
15 fee shall be retained by the Administrative Office of the Courts and used to pay the costs of
16 processing petitions for expunctions under this section. This subsection does not apply to
17 petitions filed by an indigent.

18 **"§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the**
19 **time of the offense of certain toxic vapors offenses.**

20 (a) Whenever a person is discharged and the proceedings against the person dismissed
21 under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the
22 time of the offense, may apply to the court of the county where charged for an order to expunge
23 from all official records, other than the confidential files retained under G.S. 15A-151, all
24 recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and
25 dismissal and discharge pursuant to this section. The applicant shall attach to the ~~application~~
26 petition the following:

- 27 (1) An affidavit by the petitioner that the petitioner has been of good behavior
28 during the period of probation since the decision to defer further proceedings
29 on the misdemeanor in question and has not been convicted of any felony or
30 misdemeanor other than a traffic violation under the laws of the United
31 States or the laws of this State or any other state;
- 32 (2) Verified affidavits by two persons who are not related to the petitioner or to
33 each other by blood or marriage, that they know the character and reputation
34 of the petitioner in the community in which the petitioner lives, and that his
35 or her character and reputation are good;
- 36 (3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and
37 applicable to petitions for expunctions filed on or after that date.
- 38 (3a) An application on a form approved by the Administrative Office of the
39 Courts requesting and authorizing a name-based State and national criminal
40 record check by the Department of Public Safety using any information
41 required by the Administrative Office of the Courts to identify the individual
42 and a search of the confidential record of expunctions maintained by the
43 Administrative Office of the Courts. The application shall be ~~forwarded~~ filed
44 with the clerk of superior court. The clerk of superior court shall forward the
45 application to the Department of Public Safety and to the Administrative
46 Office of the Courts, which shall conduct the searches and report their
47 findings to the court.

48 The judge to whom the petition is presented is authorized to call upon a probation officer
49 for any additional investigation or verification of the petitioner's conduct during the
50 probationary period deemed desirable.

1 If the court determines, after hearing, that such person was discharged and the proceedings
2 against the person dismissed and that he or she was not over 21 years of age at the time of the
3 offense, it shall enter such order. The effect of such order shall be to restore such person in the
4 contemplation of the law to the status the person occupied before such arrest or indictment or
5 information. No person as to whom such order was entered shall be held thereafter under any
6 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of
7 the person's failures to recite or acknowledge such arrest, or indictment or information, or trial
8 in response to any inquiry made of him or her for any purpose.

9 The court shall also order that all records of the proceeding be expunged from the records
10 of the court and direct all law enforcement agencies bearing records of the same to expunge
11 their records of the proceeding. The clerk shall notify State and local agencies of the court's
12 order as provided in G.S. 15A-150.

13 (b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter
14 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22,
15 upon dismissal by the State of the charges against the person or upon entry of a nolle prosequi
16 or upon a finding of not guilty or other adjudication of innocence, such person may apply to the
17 court for an order to expunge from all official records all recordation relating to the person's
18 arrest, indictment or information, and trial. If the court determines, after hearing that such
19 person was not over 21 years of age at the time the offense for which the person was charged
20 occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's
21 order as provided in G.S. 15A-150.

22 (b1) No person as to whom such order has been entered shall be held thereafter under
23 any provision of any law to be guilty of perjury or otherwise giving a false statement by reason
24 of the person's failures to recite or acknowledge such arrest, or indictment or information, or
25 trial in response to any inquiry made of him or her for any purpose. This subsection shall not
26 apply to a sentencing hearing when the person has been convicted of a subsequent criminal
27 offense.

28 (c) Whenever any person who has not previously been convicted of an offense under
29 Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States
30 or any state relating to controlled substances included in any schedule of Article 5 of Chapter
31 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the
32 General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A
33 of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner
34 than 12 months after conviction, order cancellation of the judgment of conviction and
35 expunction of the records of the person's arrest, indictment or information, trial, and conviction.
36 A conviction in which the judgment of conviction has been cancelled and the records expunged
37 pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this
38 subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of
39 a crime, ~~including the additional penalties imposed for second or subsequent convictions of~~
40 ~~violation of Article 5A of Chapter 90 of the General Statutes, except as provided in~~
41 G.S. 15A-151.5. Cancellation and expunction under this subsection may occur only once with
42 respect to any person. Disposition of a case under this subsection at the district court division of
43 the General Court of Justice shall be final for the purpose of appeal.

44 The granting of an application filed under this subsection shall cause the issue of an order to
45 expunge from all official records, other than the confidential files retained under G.S. 15A-151,
46 all recordation relating to the person's arrest, indictment or information, trial, finding of guilty,
47 judgment of conviction, cancellation of the judgment, and expunction of records pursuant to
48 this subsection.

49 The judge to whom the petition is presented is authorized to call upon a probation officer
50 for additional investigation or verification of the petitioner's conduct since conviction. If the
51 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 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.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

"§ 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.

(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. 14-27.25(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.
- (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.

- 1 (7) A felony offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any
2 felony offense for which punishment was determined pursuant to
3 G.S. 14-3(c).
- 4 (8) A felony offense under G.S. 14-401.16.
- 5 (9) Any felony offense in which a commercial motor vehicle was used in the
6 commission of the offense.
- 7 (10) Any felony offense involving impaired driving as defined in
8 G.S. 20-4.01(24a).
- 9 (b) Notwithstanding any other provision of law, if the person is convicted of more than
10 one nonviolent felony in the same session of court and none of the nonviolent felonies are
11 alleged to have occurred after the person had already been served with criminal process for the
12 commission of a nonviolent felony, then the multiple nonviolent felony convictions shall be
13 treated as one nonviolent felony conviction under this section, and the expunction order issued
14 under this section shall provide that the multiple nonviolent felony convictions shall be
15 expunged from the person's record in accordance with this section.
- 16 (c) Whenever any person who had not yet attained the age of 18 years at the time of the
17 commission of the offense and has not previously been convicted of any felony or
18 misdemeanor other than a traffic violation under the laws of the United States or the laws of
19 this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may
20 file a petition in the court of the county where the person was convicted for expunction of the
21 nonviolent felony from the person's criminal record. The petition shall not be filed earlier than
22 four years after the date of the conviction or when any active sentence, period of probation, and
23 post-release supervision has been served, whichever occurs later. The person shall also perform
24 at least 100 hours of community service, preferably related to the conviction, before filing a
25 petition for expunction under this section. The petition shall contain the following:
- 26 (1) An affidavit by the petitioner that the petitioner has been of good moral
27 character since the date of conviction of the nonviolent felony in question
28 and has not been convicted of any other felony or any misdemeanor other
29 than a traffic violation under the laws of the United States or the laws of this
30 State or any other state.
- 31 (2) Verified affidavits of two persons who are not related to the petitioner or to
32 each other by blood or marriage, that they know the character and reputation
33 of the petitioner in the community in which the petitioner lives and that the
34 petitioner's character and reputation are good.
- 35 (3) A statement that the petition is a motion in the cause in the case wherein the
36 petitioner was convicted.
- 37 (4) An application on a form approved by the Administrative Office of the
38 Courts requesting and authorizing (i) a State and national criminal history
39 record check by the Department of Public Safety using any information
40 required by the Administrative Office of the Courts to identify the
41 individual; (ii) a search by the Department of Public Safety for any
42 outstanding warrants or pending criminal cases; and (iii) a search of the
43 confidential record of expunctions maintained by the Administrative Office
44 of the Courts. The application shall be ~~forwarded~~ filed with the clerk of
45 superior court. The clerk of superior court shall forward the application to
46 the Department of Public Safety and to the Administrative Office of the
47 Courts, which shall conduct the searches and report their findings to the
48 court.
- 49 (5) An affidavit by the petitioner that no restitution orders or civil judgments
50 representing amounts ordered for restitution entered against the petitioner
51 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.

(d) The court in which the petition was filed shall take the following steps and shall consider the following issues in rendering a decision upon a petition for expunction of records of a nonviolent felony under this section:

- (1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the four-year period since the date of conviction of the nonviolent felony in question.
- (2) Review the petitioner's juvenile record, ensuring that the petitioner's juvenile records remain separate from adult records and files and are withheld from public inspection as provided under Article 30 of Chapter 7B of the General Statutes.
- (3) Review the amount of restitution made by the petitioner to the victim of the nonviolent felony to be expunged and give consideration to whether or not restitution was paid in full.
- (4) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of nonviolent felonies committed by the petitioner.

(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 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 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.

(f) No person as to whom an order has been entered pursuant to subsection (e) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all felony convictions to the certifying Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of this section. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(f1) Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(g) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(h) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(i) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(j) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

"§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.

(a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following:

(1) A Class A through G felony or a Class A1 misdemeanor.

(2) An offense that includes assault as an essential element of the offense.

(3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.

- 1 (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b),
2 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18,
3 14-277.3, 14-277.3A, 14-321.1.
4 (5) Any felony offense in Chapter 90 of the General Statutes where the offense
5 involves methamphetamines, heroin, or possession with intent to sell or
6 deliver or sell and deliver cocaine.
7 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for
8 which punishment was determined pursuant to G.S. 14-3(c).
9 (7) An offense under G.S. 14-401.16.
10 (7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.
11 (8) Any felony offense in which a commercial motor vehicle was used in the
12 commission of the offense.
13 (8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).
14 (9) Any offense that is an attempt to commit an offense described in
15 subdivisions (1) through (8a) of this subsection.

16 (b) Notwithstanding any other provision of law, if the person is convicted of more than
17 one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the
18 nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person
19 had already been served with criminal process for the commission of a nonviolent felony or
20 nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor
21 convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction
22 under this section, and the expunction order issued under this section shall provide that the
23 multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be
24 expunged from the person's record in accordance with this section.

25 (c) A person may file a petition, in the court of the county where the person was
26 convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from
27 the person's criminal record if the person has no other misdemeanor or felony convictions,
28 other than a traffic violation. The petition shall not be filed earlier than ~~15~~10 years after the
29 date of the conviction for a nonviolent felony or five years for a nonviolent misdemeanor or
30 when any active sentence, period of probation, and post-release supervision has been served,
31 whichever occurs later. The petition shall contain, but not be limited to, the following:

- 32 (1) An affidavit by the petitioner that the petitioner has been of good moral
33 character since the date of conviction for the nonviolent misdemeanor or
34 nonviolent felony and has not been convicted of any other felony or
35 misdemeanor, other than a traffic violation, under the laws of the United
36 States or the laws of this State or any other state.
37 (2) Verified affidavits of two persons who are not related to the petitioner or to
38 each other by blood or marriage, that they know the character and reputation
39 of the petitioner in the community in which the petitioner lives and that the
40 petitioner's character and reputation are good.
41 (3) A statement that the petition is a motion in the cause in the case wherein the
42 petitioner was convicted.
43 (4) An application on a form approved by the Administrative Office of the
44 Courts requesting and authorizing a name-based State and national criminal
45 history record check by the Department of Public Safety using any
46 information required by the Administrative Office of the Courts to identify
47 the individual, a search by the Department of Public Safety for any
48 outstanding warrants on pending criminal cases, and a search of the
49 confidential record of expunctions maintained by the Administrative Office
50 of the Courts. The application shall be ~~forwarded~~filed with the clerk of
51 superior court. The clerk of superior court shall forward the application 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; 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 a nonviolent felony at least 15-10 years prior to the filing of the petition,~~ petition or a nonviolent misdemeanor at least five 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-~~ information, except as provided in G.S. 15A-151.5. If the court denies the petition, the order shall include a finding as to the reason for the denial.

(d) No person as to whom an order has been entered pursuant to subsection (c) of this section shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(d1) Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all convictions to the certifying Commission, regardless of whether or not the convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(e) The court shall also order that the conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order, as provided in G.S. 15A-150.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also

vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(g) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.

"§ 15A-145.6. Expunctions for certain defendants convicted of prostitution.

(a) The following definitions apply in this section:

- (1) Prostitution offense. – A conviction for (i) violation of G.S. 14-204 or (ii) engaging in prostitution in violation of G.S. 14-204(7) for an offense that occurred prior to October 1, 2013.
- (2) Violent felony or violent misdemeanor. – A Class A through G felony or a Class A1 misdemeanor that includes assault as an essential element of the offense.

(b) A person who has been convicted of a prostitution offense may file a petition in the court of the county where the person was convicted for expunction of the prostitution offense from the person's criminal record provided that all the following criteria are met:

- (1) The person has not previously been convicted of any violent felony or violent misdemeanor under the laws of the United States or the laws of this State or any other state.
- (2) The person satisfies any one of the following criteria:
 - a. The person's participation in the prostitution offense was a result of having been a trafficking victim under G.S. 14-43.11 (human trafficking) or G.S. 14-43.13 (sexual servitude) or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).
 - b. The person has no prior convictions for a prostitution offense and at least three years have passed since the date of conviction or the completion of any active sentence, period of probation, and post-release supervision, whichever occurs later.
 - c. The person received a conditional discharge pursuant to G.S. 14-204(b).

(c) The petition shall contain all of the following:

- (1) An affidavit by the petitioner that the petitioner (i) has no prior conviction of a violent felony or violent misdemeanor, (ii) has been of good moral character since the date of conviction of the prostitution offense in question, and (iii) has not been convicted of any felony or misdemeanor under the laws of the United States or the laws of this State or any other state since the date of the conviction of the prostitution offense in question.
- (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.

- 1 (4) An application on a form approved by the Administrative Office of the
2 Courts requesting and authorizing (i) a State and national criminal history
3 record check by the Department of Public Safety using any information
4 required by the Administrative Office of the Courts to identify the
5 individual; (ii) a search by the Department of Public Safety for any
6 outstanding warrants or pending criminal cases; and (iii) a search of the
7 confidential record of expunctions maintained by the Administrative Office
8 of the Courts. The application shall be ~~forwarded~~ filed with the clerk of
9 superior court. The clerk of superior court shall forward the application to
10 the Department of Public Safety and to the Administrative Office of the
11 Courts, which shall conduct the searches and report their findings to the
12 court.
- 13 (5) An affidavit by the petitioner that no restitution orders or civil judgments
14 representing amounts ordered for restitution entered against the petitioner
15 are outstanding.
- 16 (d) The petition shall be served upon the district attorney of the court wherein the case
17 was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to
18 file any objection thereto and shall be duly notified as to the date of the hearing of the petition.
- 19 (e) The court in which the petition was filed shall take the following steps and shall
20 consider the following issues in rendering a decision upon a petition for expunction of records
21 of a prostitution offense under this section:
- 22 (1) Call upon a probation officer for additional investigation or verification of
23 the petitioner's conduct during the period since the date of conviction of the
24 prostitution offense in question.
- 25 (2) Review any other information the court deems relevant, including, but not
26 limited to, affidavits or other testimony provided by law enforcement
27 officers and district attorneys.
- 28 (f) The court shall order that the person be restored, in the contemplation of the law, to
29 the status the person occupied before the arrest or indictment or information if the court finds
30 all of the following after a hearing:
- 31 (1) The criteria set out in subsection (b) of this section are satisfied.
- 32 (2) The petitioner has remained of good moral character and has been free of
33 conviction of any felony or misdemeanor, other than a traffic violation, since
34 the date of conviction of the prostitution offense in question.
- 35 (3) The petitioner has no outstanding warrants or pending criminal cases.
- 36 (4) The petitioner has no outstanding restitution orders or civil judgments
37 representing amounts ordered for restitution entered against the petitioner.
- 38 (5) The search of the confidential records of expunctions conducted by the
39 Administrative Office of the Courts shows that the petitioner has not been
40 previously granted an expunction, other than an expunction for a prostitution
41 offense.
- 42 (g) No person as to whom an order has been entered pursuant to subsection (f) of this
43 section shall be held thereafter under any provision of any laws to be guilty of perjury or
44 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
45 the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a
46 sentencing hearing when the person has been convicted of a subsequent criminal offense.
- 47 (g1) Persons pursuing certification under the provisions of Chapter 17C or 17E of the
48 General Statutes, however, shall disclose any and all prostitution convictions to the certifying
49 Commission regardless of whether or not the prostitution convictions were expunged pursuant
50 to the provisions of this section.

Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(h) The court shall also order that the conviction of the prostitution offense be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(i) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(j) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the prostitution offense which is to be expunged under this section.

"§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.

(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, ~~or a finding of not guilty or not responsible is entered,~~ that person may ~~apply to~~ petition the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the ~~application-petition~~ petition and, upon finding that the person ~~had not previously received an expungement under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state,~~ the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and ~~all the charges are dismissed, or findings of not guilty or not responsible are made,~~ then a person may ~~apply-petition~~ petition to have each of ~~those the dismissed charges expunged if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment.~~ expunged. The court shall hold a hearing on the ~~application-petition~~ petition. If the court finds (i) ~~that the person had not previously received an expungement under this subsection, or that any previous expungement received under this subsection occurred prior to October 1, 2005 and was for an offense that occurred within the same 12-month period of time, or was dismissed or findings made at the same term of court, as the offenses that are the subject of the current application,~~ (ii) ~~that the person had not previously received an expungement under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and~~ (iii) ~~that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state,~~ the court shall order the expunction.

1 (a2) If any person is charged with a crime, either a misdemeanor or a felony, or an
2 infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of not guilty or not
3 responsible is entered, that person may petition the court of the county where the charge was
4 brought for an order to expunge from all official records any entries relating to apprehension or
5 trial of that crime. The court shall hold a hearing on the petition and upon finding that the
6 person had not previously been convicted of any felony under the laws of the United States,
7 this State, or any other state, the court shall order the expunction. No person as to whom such
8 an order has been entered shall be held thereafter under any provision of any law to be guilty of
9 perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made
10 for any purpose, by reason of failure to recite or acknowledge any expunged entries concerning
11 that crime. If a person is charged with multiple offenses and findings of not guilty or not
12 responsible are made on charges, then a person may petition to have each of the charges
13 disposed by a finding of not guilty or not responsible expunged. The court shall hold a hearing
14 on the petition. If the court finds that the person had not previously been convicted of any
15 felony under the laws of the United States, this State, or any other state, the court shall order
16 the expunction.

17 (a3) No person as to whom such an order has been entered under this section shall be
18 held thereafter under any provision of any law to be guilty of perjury, or to be guilty of
19 otherwise giving a false statement or response to any inquiry made for any purpose, by reason
20 of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

21 (b) The court may also order that the said entries, including civil revocations of drivers
22 licenses as a result of the underlying charge, shall be expunged from the records of the court,
23 and direct all law-enforcement agencies, the Division of Adult Correction of the Department of
24 Public Safety, the Division of Motor Vehicles, and any other State or local government
25 agencies identified by the petitioner as bearing record of the same to expunge their records of
26 the entries, including civil revocations of drivers licenses as a result of the underlying charge
27 being expunged. This subsection does not apply to civil or criminal charges based upon the
28 civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and
29 local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a
30 certified copy of the order to the Division of Motor Vehicles for the expunction of a civil
31 revocation provided the underlying criminal charge is also expunged. The civil revocation of a
32 drivers license shall not be expunged prior to a final disposition of any pending civil or criminal
33 charge based upon the civil revocation. The costs of expunging the records, as required under
34 G.S. 15A-150, shall not be taxed against the petitioner.

35 (b1) Any person entitled to expungement under this section may also apply to the court
36 for an order expunging DNA records when the person's case has been dismissed by the trial
37 court and the person's DNA record or profile has been included in the State DNA Database and
38 the person's DNA sample is stored in the State DNA Databank. A copy of the application for
39 expungement of the DNA record or DNA sample shall be served on the district attorney for the
40 judicial district in which the felony charges were brought not less than 20 days prior to the date
41 of the hearing on the application. If the application for expungement is granted, a certified copy
42 of the trial court's order dismissing the charges shall be attached to an order of expungement.
43 The order of expungement shall include the name and address of the defendant and the
44 defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter
45 documenting expungement as required by subsection (b2) of this section.

46 (b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of this
47 section, the North Carolina State Crime Laboratory shall purge the DNA record and all other
48 identifying information from the State DNA Database and the DNA sample stored in the State
49 DNA Databank covered by the order, except that the order shall not apply to other offenses
50 committed by the individual that qualify for inclusion in the State DNA Database and the State
51 DNA Databank. A letter documenting expungement of the DNA record and destruction of the

1 DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and
2 the defendant's attorney at the address specified by the court in the order of expungement.

3 (c) The Any petition for expungement under this section shall be on a form approved by
4 the Administrative Office of the Courts and be filed with the clerk of superior court. Upon
5 order of expungement, the clerk shall notify State and local agencies of the court's order as
6 provided in G.S. 15A-150, G.S. 15A-150 and forward the petition to the Administrative Office
7 of the Courts.

8 (d) A person charged with a crime that is dismissed pursuant to compliance with a
9 deferred prosecution agreement or the terms of a conditional discharge and who files a petition
10 for expunction of a criminal record under this section must pay the clerk of superior court a fee
11 of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected
12 under this subsection are payable to the Administrative Office of the Courts. The clerk of
13 superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee
14 to the North Carolina Department of Public Safety for the costs of criminal record checks
15 performed in connection with processing petitions for expunctions under this section. The
16 remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the
17 Administrative Office of the Courts and used to pay the costs of processing petitions for
18 expunctions under this section. This subsection does not apply to petitions filed by an indigent.

19 **"§ 15A-147. Expunction of records when charges are dismissed or there are findings of**
20 **not guilty as a result of identity theft or mistaken identity.**

21 (a) If any person is named in a charge for an infraction or a crime, either a
22 misdemeanor or a felony, as a result of another person using the identifying information of the
23 named person or mistaken identity and a finding of not guilty is entered, or the conviction is set
24 aside, the named person may ~~apply by petition or written motion to~~ the court where the charge
25 was last pending on a form approved by the Administrative Office of the Courts supplied by the
26 clerk of court for an order to expunge from all official records any entries relating to the
27 person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold
28 a hearing on the ~~motion or~~ petition and, upon finding that the person's identity was used
29 without permission and the charges were dismissed or the person was found not guilty, the
30 court shall order the expunction.

31 (a1) If any person is named in a charge for an infraction or a crime, either a
32 misdemeanor or a felony, as a result of another person using the identifying information of the
33 named person or mistaken identity, and the charge against the named person is dismissed, the
34 prosecutor or other judicial officer who ordered the dismissal shall provide notice to the court
35 of the dismissal, and the court shall order the expunction of all official records containing any
36 entries relating to the person's apprehension, charge, or trial.

37 (a2) Any petition for expungement under this section shall be on a form approved by the
38 Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of
39 expungement, the clerk shall forward the petition to the Administrative Office of the Courts.

40 (b) No person as to whom such an order has been entered under this section shall be
41 held thereafter under any provision of any law to be guilty of perjury, or to be guilty of
42 otherwise giving a false statement or response to any inquiry made for any purpose, by reason
43 of the person's failure to recite or acknowledge any expunged entries concerning apprehension,
44 charge, or trial.

45 (c) The court shall also order that the said entries shall be expunged from the records of
46 the court and direct all law enforcement agencies, the Division of Adult Correction of the
47 Department of Public Safety, the Division of Motor Vehicles, or any other State or local
48 government agencies identified by the petitioner, or the person eligible for automatic
49 expungement under subsection (a1) of this section, as bearing record of the same to expunge
50 their records of the entries. The clerk shall notify State and local agencies of the court's order as

provided in G.S. 15A-150. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

(d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or revoked as a result of a charge or conviction expunged under this section.

(e) The Division of Adult Correction of the Department of Public Safety and any other applicable State or local government agency shall expunge its records as provided in G.S. 15A-150. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

(f) Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund those additional premiums to the policyholder upon notification of the expungement.

(g) For purposes of this section, the term "mistaken identity" means the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime.

"§ 15A-148. Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted.

(a) Upon a motion by the defendant following the issuance of a final order by an appellate court reversing and dismissing a conviction of an offense for which a DNA analysis was done in accordance with Article 13 of Chapter 15A of the General Statutes, or upon receipt of a pardon of innocence with respect to any such offense, the court shall issue an order of expungement of the DNA record and samples in accordance with subsection (b) of this section. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter documenting expungement as required by subsection (b) of this section.

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

(c) Any petition for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of expungement, the clerk shall forward the petition to the Administrative Office of the Courts.

"§ 15A-149. Expunction of records when pardon of innocence is granted.

(a) If any person is convicted of a crime and receives a pardon of innocence, the person may ~~apply by petition or written motion to the court in which the person was convicted on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. Upon receipt of the petition or written motion, petition,~~ the clerk of court shall verify that an attested copy of the warrant and return granting a pardon of innocence has been filed with the court in accordance with G.S. 147-25. Upon verification by the clerk that the warrant and return have been filed, the court shall issue an order of expunction.

(b) The order of expunction shall include an instruction that any entries relating to the person's apprehension, charge, or trial shall be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall notify State and local agencies of the court's order as provided in ~~G.S. 15A-150.~~ G.S. 15A-150 and shall forward the petition to the Administrative Office of the Courts. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

(c) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

"§ 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 petitions granted under this Article, any orders of expunction, and the names of the following:

- (1) Persons granted an expunction under this Article.
- (2), (3) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015, and applicable to conditional discharges granted on or after that date.
- (4) Repealed by Session Laws 2010-174, s. 7, effective October 1, 2010.
- (5) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015, and applicable to conditional discharges granted on or after that date.
- (6) Persons granted a dismissal upon completion of a conditional discharge under G.S. 14-50.29, 14-204, 14-313(f), 15A-1341(a4), 90-96, or 90-113.14.

(b) Notification to Other State and Local Agencies. – 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.~~ subsection and the person. An agency receiving an order under this subsection shall ~~expunge-purge~~ 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.
- (3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.

- 1 (4) The Department of Public Safety, ~~Safety, Combined Records Section.~~
2 (5) The State Bureau of Investigation.
- 3 (c) Notification to FBI. – The ~~Department of Public Safety~~ State Bureau of Investigation
4 shall forward the order received under this section to the Federal Bureau of Investigation.
- 5 (d) Notification to Private Entities. – A State agency that receives a certified copy of an
6 order under this section shall notify any private entity with which it has a licensing agreement
7 for bulk extracts of data from the agency criminal record database to delete the record in
8 question. The private entity shall notify any other entity to which it subsequently provides in a
9 bulk extract data from the agency criminal database to delete the record in question from its
10 database.
- 11 (e) The Director of the Administrative Office of the Courts may enter into an agreement
12 with any of the State agencies listed in subsection (b) of this section for electronic or facsimile
13 transmission of any information that must be provided under this section.
- 14 **"§ 15A-151. Confidential agency files; exceptions to expunction.**
- 15 (a) The Administrative Office of the Courts shall maintain a confidential file for
16 expungements containing the petitions granted under this Article and the names of those people
17 for whom it received a notice under G.S. 15A-150. The information contained in the file may
18 be disclosed only as follows:
- 19 (1) ~~To~~ Upon request of a judge of the General Court of Justice of North Carolina
20 for the purpose of ascertaining whether a person charged with an offense has
21 been previously granted a discharge or an expunction.
- 22 (2) ~~To~~ Upon request of a person requesting confirmation of the person's own
23 discharge or ~~expunction, as provided in G.S. 15A-152.~~ expunction.
- 24 (3) To the General Court of Justice of North Carolina in response to a subpoena
25 or other court order issued pursuant to a civil action under G.S. 15A-152.
- 26 (4) ~~If~~ Upon request of State or local law enforcement, if the criminal record was
27 expunged pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6, to State
28 and local law enforcement agencies 15A-145.6 for employment purposes
29 only.
- 30 (5) ~~If~~ Upon the request of the North Carolina Criminal Justice Education and
31 Training Standards Commission, if the criminal record was expunged
32 pursuant to G.S. 15A-145.4, 15A-145.5, or [15A-]145.6, to the North
33 Carolina Criminal Justice Education and Training Standards Commission
34 15A-145.6 for certification purposes only.
- 35 (6) ~~If~~ Upon request of the North Carolina Sheriff's Standards Commission, if the
36 criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or
37 15A-145.6, to the North Carolina Sheriffs' Education and Training Standards
38 Commission 15A-145.6 for certification purposes only.
- 39 (7) To the district attorney in accordance with G.S. 15A-151.5.
- 40 (b) All agencies required under G.S. 15A-150 to expunge from records all entries made
41 as a result of a charge or conviction ordered expunged who maintain a licensing agreement to
42 provide record information to a private entity shall maintain a confidential file containing
43 information verifying the expunction and subsequent notification to private entities as required
44 by G.S. 15A-150(d). The information contained in the file shall be disclosed only to a person
45 requesting confirmation of expunction of the record of the person's own discharge or
46 expunction, as provided in G.S. 15A-152.
- 47 (c) The Division of Motor Vehicles shall not be required to expunge a record if the
48 expunction of the record is expressly prohibited by the federal Commercial Motor Vehicle
49 Safety Act of 1986, the federal Motor Carrier Safety Improvement Act of 1999, or regulations
50 adopted pursuant to either act.
- 51 **"§ 15A-151.5. Prosecutor access to expunged files.**

(a) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under any of the following:

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) G.S. 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.
- (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.
- (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
- (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
- (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed.

(b) For any expungement granted on or after July 1, 2018, the expunged criminal records under subdivisions (1) through (7) of subsection (a) of this section may be used to calculate prior record level if the named person is convicted of a subsequent criminal offense.

(c) For any expungement granted on or after July 1, 2018, the information maintained by the Administrative Office of the Courts, and made available under subsection (a) of this section, shall be prima facie evidence of the expunged conviction for the purposes of calculating prior record level of the named person and shall be admissible into evidence at a subsequent criminal sentencing hearing.

...."

SECTION 2. This act becomes effective December 1, 2017, and applies to petitions filed on or after that date.





SENATE BILL 445: Expungement Process Modifications.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	June 20, 2017
Introduced by:	Sens. Tucker, Bryant, McKissick	Prepared by:	Susan Sitze
Analysis of:	PCS to Second Edition S445-CSSA-35		Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for Senate Bill 445 would standardize the filing procedures for expungements, authorize prosecutors to access certain records of expungement, allow certain expunged criminal acts to be considered in calculating prior record levels during sentencing for subsequent offenses, and make other modifications to the expungement process.*

CURRENT LAW: 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.

The qualified person may file a Petition for Expunction with the court where convicted. Depending on the type of conviction, the petition has various requirements under the specific statute for that conviction, generally including an application for a criminal background check, an affidavit by the petitioner of good behavior, and verified affidavits by two unrelated people of the petitioner's character and reputation. The application for a criminal background check must be on an Administrative Office of the Courts (AOC) approved form. The application is sent to the Department of Public Safety and the AOC for name-based State and national criminal record searches. The petition must also be approved by the District Attorney's office. If, after a hearing, the court determines the petition has met all the requirements, then the court orders the matter be expunged from the records of the court and all law enforcement agencies are directed to do the same.

BILL ANALYSIS: The PCS for Senate Bill 445 would do the following:

- Establish a uniform procedure for filing a Petition for Expunction requiring the application for a criminal background check to be filed with the clerk of superior court in the county of conviction, who would then forward the application to the Department of Public Safety and the AOC.
- Reduce the waiting period to expunge a first-time nonviolent felony from 15 years to 10 years and make the waiting period 5 years for a nonviolent misdemeanor.
- Eliminate the "same 12 month period of time" restriction and the "prior expungement" disqualification for charges that are dismissed or charges that are disposed of by findings of not guilty or not responsible, as long as the applicant has not been convicted of a felony offense.
- Require any petition for expunction to be on an AOC approved form.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
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Senate PCS 445

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- Require the AOC to add the petitions sent by the county clerks to the confidential file they currently maintain containing the names of those persons granted expunction, which may only be disclosed as provided by statute.
- Provide all prosecutors electronic access to the confidential AOC file for any expungement granted on or after July 1, 2018, for the following expungements:
 - First offenders under the age of 18 at the time of conviction of misdemeanor; certain other misdemeanors. G.S. 15A-145.
 - First offenders under the age of 18 at the time of conviction of certain gang offenses. G.S. 15A-145.1.
 - First offenders not over 21 years of age at the time of the offense of certain drug offenses. G.S. 15A-145.2.
 - First offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses. G.S. 15A-145.3.
 - First offenders who are under 18 years of age at the time of the commission of a nonviolent felony. G.S. 15A-145.4.
 - Certain misdemeanors and felonies – no age limitation. G.S. 15A-145.5.
 - Certain defendants convicted of prostitution. G.S. 15A-145.6.
 - Dismissed charges. G.S. 15A-146(a) and (a1).

Prosecutors would not have access to the record of the following expungements:

- Charges for which the person was found not guilty or not responsible. G.S. 15A-146(a2).
 - Dismissed charges or findings of not guilty as a result of identity theft or mistaken identity. G.S. 15A-147.
 - Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted. G.S. 15A-148.
 - Expunction of records when a pardon of innocence is granted. G.S. 15A-149.
- The underlying criminal conviction that was expunged may be used to calculate prior record level at sentencing.

EFFECTIVE DATE: This bill would become effective December 1, 2017, and apply to petitions for expunction filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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2

SENATE BILL 445
Judiciary Committee Substitute Adopted 4/25/17

Short Title: Expungement Process Modifications.

(Public)

Sponsors:

Referred to:

March 29, 2017

A BILL TO BE ENTITLED
AN ACT TO STANDARDIZE THE FILING PROCEDURES FOR EXPUNGEMENTS, TO
AUTHORIZE PROSECUTORS ACCESS TO CERTAIN RECORDS OF
EXPUNGEMENT, TO ALLOW CERTAIN EXPUNGED CRIMINAL ACTS TO BE
CONSIDERED IN CALCULATING PRIOR RECORD LEVELS DURING
SENTENCING FOR SUBSEQUENT OFFENSES, AND TO MAKE OTHER
MODIFICATIONS TO THE EXPUNGEMENT PROCESS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes reads as rewritten:

"Article 5.

"Expunction of Records.

"§ 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, 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, 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 of the county 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, 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.



- 1 (4a) An application on a form approved by the Administrative Office of the
2 Courts requesting and authorizing a name-based State and national criminal
3 record check by the Department of Public Safety using any information
4 required by the Administrative Office of the Courts to identify the individual
5 and a search of the confidential record of expunctions maintained by the
6 Administrative Office of the Courts. The application shall be ~~forwarded~~ filed
7 with the clerk of superior court. The clerk of superior court shall forward the
8 application to the Department of Public Safety and to the Administrative
9 Office of the Courts, which shall conduct the searches and report their
10 findings to the court.
- 11 (5) An affidavit by the petitioner that no restitution orders or civil judgments
12 representing amounts ordered for restitution entered against him are
13 outstanding.

14 The petition shall be served upon the district attorney of the court wherein the case was
15 tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file
16 any objection thereto and shall be duly notified as to the date of the hearing of the petition.

17 The judge to whom the petition is presented is authorized to call upon a probation officer
18 for any additional investigation or verification of the petitioner's conduct during the two-year
19 period that he deems desirable.

20 (a1) Nothing in this section shall be interpreted to allow the expunction of any offense
21 involving impaired driving as defined in G.S. 20-4.01(24a).

22 (b) If the court, after hearing, finds that the petitioner had remained of good behavior
23 and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two
24 years from the date of conviction of the misdemeanor in question, the petitioner has no
25 outstanding restitution orders or civil judgments representing amounts ordered for restitution
26 entered against him, and (i) petitioner was not 18 years old at the time of the offense in
27 question, or (ii) petitioner was not 21 years old at the time of the offense of possession of
28 alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the
29 contemplation of the law, to the status he occupied before such arrest or indictment or
30 information.

31 (b1) No person as to whom such order has been entered shall be held thereafter under
32 any provision of any laws to be guilty of perjury or otherwise giving a false statement by
33 reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or
34 response to any inquiry made of him for any purpose. This subsection shall not apply to a
35 sentencing hearing when the person has been convicted of a subsequent criminal offense.

36 (c) The court shall also order that the misdemeanor conviction, or a civil revocation of a
37 drivers license as the result of a criminal charge, be expunged from the records of the court.
38 The court shall direct all law-enforcement agencies, the Division of Adult Correction of the
39 Department of Public Safety, the Division of Motor Vehicles, and any other State or local
40 government agencies identified by the petitioner as bearing record of the same to expunge their
41 records of the petitioner's conviction or a civil revocation of a drivers license as the result of a
42 criminal charge. This subsection does not apply to civil or criminal charges based upon the civil
43 revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and local
44 agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified
45 copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation
46 provided the underlying criminal charge is also expunged. The civil revocation of a drivers
47 license shall not be expunged prior to a final disposition of any pending civil or criminal charge
48 based upon the civil revocation.

49 (d) The clerk shall notify State and local agencies of the court's order as provided in
50 G.S. 15A-150.

51 (d1) Repealed by Session Laws 2012-191, s. 3, effective December 1, 2012.

(c) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

"§ 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 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 of the county 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 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-filed with the clerk of superior court. The clerk of superior court shall forward the application 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 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.

(b1) 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. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(b2) 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.

(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

"§ 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 of the county where charged 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~~ petition 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 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 filed with the clerk of superior court. The clerk of superior court shall forward the application 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.

(a1) 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. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(a2) 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.

(b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or a felony under G.S. 90-95(a)(3), upon dismissal by the State of the charges against the person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his or her arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as to whom such order has been entered

1 shall be held thereafter under any provision of any law to be guilty of perjury or otherwise
2 giving a false statement by reason of the person's failures to recite or acknowledge such arrest,
3 or indictment or information, or trial in response to any inquiry made of him or her for any
4 purpose.

5 (c) Whenever any person who has not previously been convicted of (i) any felony
6 offense under any state or federal laws; (ii) any offense under Chapter 90 of the General
7 Statutes; or (iii) an offense under any statute of the United States or any state relating to
8 controlled substances included in any schedule of Chapter 90 of the General Statutes or to that
9 paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or
10 has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes
11 by possessing a controlled substance included within Schedules I through VI of Chapter 90, or
12 by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has
13 been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the
14 person not sooner than 12 months after conviction, order cancellation of the judgment of
15 conviction and expunction of the records of the person's arrest, indictment or information, trial,
16 and conviction. A conviction in which the judgment of conviction has been canceled and the
17 records expunged pursuant to this subsection shall not be thereafter deemed a conviction for
18 purposes of this subsection or for purposes of disqualifications or liabilities imposed by law
19 upon conviction of a crime, ~~including the additional penalties imposed for second or~~
20 ~~subsequent convictions of Article 5 of Chapter 90 of the General Statutes, except as provided in~~
21 G.S. 15A-151.5. Cancellation and expunction under this subsection may occur only once with
22 respect to any person. Disposition of a case under this subsection at the district court division of
23 the General Court of Justice shall be final for the purpose of appeal.

24 The granting of an application filed under this subsection shall cause the issue of an order to
25 expunge from all official records, other than the confidential files retained under G.S. 15A-151,
26 all recordation relating to the petitioner's arrest, indictment or information, trial, finding of
27 guilty, judgment of conviction, cancellation of the judgment, and expunction of records
28 pursuant to this subsection.

29 The judge to whom the petition is presented is authorized to call upon a probation officer
30 for additional investigation or verification of the petitioner's conduct since conviction. If the
31 court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of
32 Chapter 90 of the General Statutes for possessing a controlled substance included within
33 Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing
34 drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that
35 the petitioner has no disqualifying previous convictions as set forth in this subsection, that the
36 petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of
37 good behavior since his or her conviction, that the petitioner has successfully completed a drug
38 education program approved for this purpose by the Department of Health and Human
39 Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a
40 traffic violation under the laws of this State at any time prior to or since the conviction for the
41 offense in question, it shall enter an order of expunction of the petitioner's court record. The
42 effect of such order shall be to restore the petitioner in the contemplation of the law to the
43 status the petitioner occupied before arrest or indictment or information or conviction. No
44 person as to whom such order was entered shall be held thereafter under any provision of any
45 law to be guilty of perjury or otherwise giving a false statement by reason of the person's
46 failures to recite or acknowledge such arrest, or indictment or information, or conviction, or
47 trial in response to any inquiry made of him or her for any purpose. The judge may waive the
48 condition that the petitioner attend the drug education school if the judge makes a specific
49 finding that there was no drug education school within a reasonable distance of the defendant's
50 residence or that there were specific extenuating circumstances which made it likely that the
51 petitioner would not benefit from the program of instruction.

1 The court shall also order all law enforcement agencies, the Department of ~~Correction,~~
2 Public Safety, the Division of Motor Vehicles, and any other State or local agencies identified
3 by the petitioner as bearing records of the conviction and records relating thereto to expunge
4 their records of the conviction. The clerk shall notify State and local agencies of the court's
5 order as provided in G.S. 15A-150.

6 (d) A person who files a petition for expunction of a criminal record under this section
7 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
8 time the petition is filed. Fees collected under this subsection are payable to the Administrative
9 Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars
10 and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the
11 costs of criminal record checks performed in connection with processing petitions for
12 expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each
13 fee shall be retained by the Administrative Office of the Courts and used to pay the costs of
14 processing petitions for expunctions under this section. This subsection does not apply to
15 petitions filed by an indigent.

16 **"§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the**
17 **time of the offense of certain toxic vapors offenses.**

18 (a) Whenever a person is discharged and the proceedings against the person dismissed
19 under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the
20 time of the offense, may apply to the court of the county where charged for an order to expunge
21 from all official records, other than the confidential files retained under G.S. 15A-151, all
22 recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and
23 dismissal and discharge pursuant to this section. The applicant shall attach to the ~~application~~
24 petition the following:

- 25 (1) An affidavit by the petitioner that the petitioner has been of good behavior
26 during the period of probation since the decision to defer further proceedings
27 on the misdemeanor in question and has not been convicted of any felony or
28 misdemeanor other than a traffic violation under the laws of the United
29 States or the laws of this State or any other state;
- 30 (2) Verified affidavits by two persons who are not related to the petitioner or to
31 each other by blood or marriage, that they know the character and reputation
32 of the petitioner in the community in which the petitioner lives, and that his
33 or her character and reputation are good;
- 34 (3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and
35 applicable to petitions for expunctions filed on or after that date.
- 36 (3a) An application on a form approved by the Administrative Office of the
37 Courts requesting and authorizing a name-based State and national criminal
38 record check by the Department of Public Safety using any information
39 required by the Administrative Office of the Courts to identify the individual
40 and a search of the confidential record of expunctions maintained by the
41 Administrative Office of the Courts. The application shall be ~~forwarded filed~~
42 with the clerk of superior court. The clerk of superior court shall forward the
43 application to the Department of Public Safety and to the Administrative
44 Office of the Courts, which shall conduct the searches and report their
45 findings to the court.

46 The judge to whom the petition is presented is authorized to call upon a probation officer
47 for any additional investigation or verification of the petitioner's conduct during the
48 probationary period deemed desirable.

49 If the court determines, after hearing, that such person was discharged and the proceedings
50 against the person dismissed and that he or she was not over 21 years of age at the time of the
51 offense, it shall enter such order. The effect of such order shall be to restore such person in the

1 contemplation of the law to the status the person occupied before such arrest or indictment or
2 information. No person as to whom such order was entered shall be held thereafter under any
3 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of
4 the person's failures to recite or acknowledge such arrest, or indictment or information, or trial
5 in response to any inquiry made of him or her for any purpose.

6 The court shall also order that all records of the proceeding be expunged from the records
7 of the court and direct all law enforcement agencies bearing records of the same to expunge
8 their records of the proceeding. The clerk shall notify State and local agencies of the court's
9 order as provided in G.S. 15A-150.

10 (b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter
11 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22,
12 upon dismissal by the State of the charges against the person or upon entry of a nolle prosequi
13 or upon a finding of not guilty or other adjudication of innocence, such person may apply to the
14 court for an order to expunge from all official records all recordation relating to the person's
15 arrest, indictment or information, and trial. If the court determines, after hearing that such
16 person was not over 21 years of age at the time the offense for which the person was charged
17 occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's
18 order as provided in G.S. 15A-150.

19 (b1) No person as to whom such order has been entered shall be held thereafter under
20 any provision of any law to be guilty of perjury or otherwise giving a false statement by reason
21 of the person's failures to recite or acknowledge such arrest, or indictment or information, or
22 trial in response to any inquiry made of him or her for any purpose. This subsection shall not
23 apply to a sentencing hearing when the person has been convicted of a subsequent criminal
24 offense.

25 (c) Whenever any person who has not previously been convicted of an offense under
26 Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States
27 or any state relating to controlled substances included in any schedule of Article 5 of Chapter
28 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the
29 General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A
30 of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner
31 than 12 months after conviction, order cancellation of the judgment of conviction and
32 expunction of the records of the person's arrest, indictment or information, trial, and conviction.
33 A conviction in which the judgment of conviction has been cancelled and the records expunged
34 pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this
35 subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of
36 a crime, ~~including the additional penalties imposed for second or subsequent convictions of~~
37 ~~violation of Article 5A of Chapter 90 of the General Statutes, except as provided in~~
38 G.S. 15A-151.5. Cancellation and expunction under this subsection may occur only once with
39 respect to any person. Disposition of a case under this subsection at the district court division of
40 the General Court of Justice shall be final for the purpose of appeal.

41 The granting of an application filed under this subsection shall cause the issue of an order to
42 expunge from all official records, other than the confidential files retained under G.S. 15A-151,
43 all recordation relating to the person's arrest, indictment or information, trial, finding of guilty,
44 judgment of conviction, cancellation of the judgment, and expunction of records pursuant to
45 this subsection.

46 The judge to whom the petition is presented is authorized to call upon a probation officer
47 for additional investigation or verification of the petitioner's conduct since conviction. If the
48 court determines that the petitioner was convicted of a misdemeanor under Article 5A of
49 Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by
50 G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that
51 the petitioner has been of good behavior since his or her conviction, that the petitioner has

1 successfully completed a drug education program approved for this purpose by the Department
2 of Health and Human Services, and that the petitioner has not been convicted of a felony or
3 misdemeanor other than a traffic violation under the laws of this State at any time prior to or
4 since the conviction for the misdemeanor in question, it shall enter an order of expunction of
5 the petitioner's court record. The effect of such order shall be to restore the petitioner in the
6 contemplation of the law to the status he occupied before such arrest or indictment or
7 information or conviction. No person as to whom such order was entered shall be held
8 thereafter under any provision of any law to be guilty of perjury or otherwise giving a false
9 statement by reason of the person's failures to recite or acknowledge such arrest, or indictment
10 or information, or conviction, or trial in response to any inquiry made of him or her for any
11 purpose. The judge may waive the condition that the petitioner attend the drug education school
12 if the judge makes a specific finding that there was no drug education school within a
13 reasonable distance of the defendant's residence or that there were specific extenuating
14 circumstances which made it likely that the petitioner would not benefit from the program of
15 instruction.

16 The clerk shall notify State and local agencies of the court's order as provided in
17 G.S. 15A-150.

18 (d) A person who files a petition for expunction of a criminal record under this section
19 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
20 time the petition is filed. Fees collected under this subsection are payable to the Administrative
21 Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars
22 and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the
23 costs of criminal record checks performed in connection with processing petitions for
24 expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each
25 fee shall be retained by the Administrative Office of the Courts and used to pay the costs of
26 processing petitions for expunctions under this section. This subsection does not apply to
27 petitions filed by an indigent.

28 **"§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at**
29 **the time of the commission of a nonviolent felony.**

30 (a) For purposes of this section, the term "nonviolent felony" means any felony except
31 the following:

- 32 (1) A Class A through G felony.
- 33 (2) A felony that includes assault as an essential element of the offense.
- 34 (3) A felony that is an offense requiring registration pursuant to Article 27A of
35 Chapter 14 of the General Statutes, whether or not the person is currently
36 required to register.
- 37 (4) Repealed by Session Laws 2012-191, s. 2, effective December 1, 2012.
- 38 (5) Any felony offense under the following sex-related or stalking offenses:
39 G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-202, 14-208.11A,
40 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
- 41 (6) Any felony offense in Chapter 90 of the General Statutes where the offense
42 involves methamphetamines, heroin, or possession with intent to sell or
43 deliver or sell and deliver cocaine; except that if a prayer for judgment
44 continued has been entered for an offense classified as either a Class G, H,
45 or I felony, the prayer for judgment continued shall be subject to expunction
46 under the procedures in this section.
- 47 (7) A felony offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any
48 felony offense for which punishment was determined pursuant to
49 G.S. 14-3(c).
- 50 (8) A felony offense under G.S. 14-401.16.

1 (9) Any felony offense in which a commercial motor vehicle was used in the
2 commission of the offense.

3 (10) Any felony offense involving impaired driving as defined in
4 G.S. 20-4.01(24a).

5 (b) Notwithstanding any other provision of law, if the person is convicted of more than
6 one nonviolent felony in the same session of court and none of the nonviolent felonies are
7 alleged to have occurred after the person had already been served with criminal process for the
8 commission of a nonviolent felony, then the multiple nonviolent felony convictions shall be
9 treated as one nonviolent felony conviction under this section, and the expunction order issued
10 under this section shall provide that the multiple nonviolent felony convictions shall be
11 expunged from the person's record in accordance with this section.

12 (c) Whenever any person who had not yet attained the age of 18 years at the time of the
13 commission of the offense and has not previously been convicted of any felony or
14 misdemeanor other than a traffic violation under the laws of the United States or the laws of
15 this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may
16 file a petition in the court of the county where the person was convicted for expunction of the
17 nonviolent felony from the person's criminal record. The petition shall not be filed earlier than
18 four years after the date of the conviction or when any active sentence, period of probation, and
19 post-release supervision has been served, whichever occurs later. The person shall also perform
20 at least 100 hours of community service, preferably related to the conviction, before filing a
21 petition for expunction under this section. The petition shall contain the following:

22 (1) An affidavit by the petitioner that the petitioner has been of good moral
23 character since the date of conviction of the nonviolent felony in question
24 and has not been convicted of any other felony or any misdemeanor other
25 than a traffic violation under the laws of the United States or the laws of this
26 State or any other state.

27 (2) Verified affidavits of two persons who are not related to the petitioner or to
28 each other by blood or marriage, that they know the character and reputation
29 of the petitioner in the community in which the petitioner lives and that the
30 petitioner's character and reputation are good.

31 (3) A statement that the petition is a motion in the cause in the case wherein the
32 petitioner was convicted.

33 (4) An application on a form approved by the Administrative Office of the
34 Courts requesting and authorizing (i) a State and national criminal history
35 record check by the Department of Public Safety using any information
36 required by the Administrative Office of the Courts to identify the
37 individual; (ii) a search by the Department of Public Safety for any
38 outstanding warrants or pending criminal cases; and (iii) a search of the
39 confidential record of expunctions maintained by the Administrative Office
40 of the Courts. The application shall be ~~forwarded~~ filed with the clerk of
41 superior court. The clerk of superior court shall forward the application to
42 the Department of Public Safety and to the Administrative Office of the
43 Courts, which shall conduct the searches and report their findings to the
44 court.

45 (5) An affidavit by the petitioner that no restitution orders or civil judgments
46 representing amounts ordered for restitution entered against the petitioner
47 are outstanding.

48 (6) An affidavit by the petitioner that the petitioner has performed at least 100
49 hours of community service since the conviction for the nonviolent felony.
50 The affidavit shall include a list of the community services performed, a list
51 of the recipients of the services, and a detailed description of those services.

- 1 (7) An affidavit by the petitioner that the petitioner possesses a high school
2 diploma, a high school graduation equivalency certificate, or a General
3 Education Development degree.

4 The petition shall be served upon the district attorney of the court wherein the case was
5 tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file
6 any objection thereto and shall be duly notified as to the date of the hearing of the petition. The
7 district attorney shall make his or her best efforts to contact the victim, if any, to notify the
8 victim of the request for expunction prior to the date of the hearing.

9 (d) The court in which the petition was filed shall take the following steps and shall
10 consider the following issues in rendering a decision upon a petition for expunction of records
11 of a nonviolent felony under this section:

- 12 (1) Call upon a probation officer for additional investigation or verification of
13 the petitioner's conduct during the four-year period since the date of
14 conviction of the nonviolent felony in question.
15 (2) Review the petitioner's juvenile record, ensuring that the petitioner's juvenile
16 records remain separate from adult records and files and are withheld from
17 public inspection as provided under Article 30 of Chapter 7B of the General
18 Statutes.
19 (3) Review the amount of restitution made by the petitioner to the victim of the
20 nonviolent felony to be expunged and give consideration to whether or not
21 restitution was paid in full.
22 (4) Review any other information the court deems relevant, including, but not
23 limited to, affidavits or other testimony provided by law enforcement
24 officers, district attorneys, and victims of nonviolent felonies committed by
25 the petitioner.

26 (e) The court may order that the person be restored, in the contemplation of the law, to
27 the status the person occupied before the arrest or indictment or information if the court finds
28 all of the following after a hearing:

- 29 (1) The petitioner has remained of good moral character and has been free of
30 conviction of any felony or misdemeanor, other than a traffic violation, for
31 four years from the date of conviction of the nonviolent felony in question or
32 any active sentence, period of probation, or post-release supervision has
33 been served, whichever is later.
34 (2) The petitioner has not previously been convicted of any felony or
35 misdemeanor other than a traffic violation under the laws of the United
36 States or the laws of this State or any other state.
37 (3) The petitioner has no outstanding warrants or pending criminal cases.
38 (4) The petitioner has no outstanding restitution orders or civil judgments
39 representing amounts ordered for restitution entered against the petitioner.
40 (5) The petitioner was less than 18 years old at the time of the commission of
41 the offense in question.
42 (6) The petitioner has performed at least 100 hours of community service since
43 the time of the conviction and possesses a high school diploma, a high
44 school graduation equivalency certificate, or a General Education
45 Development degree.
46 (7) The search of the confidential records of expunctions conducted by the
47 Administrative Office of the Courts shows that the petitioner has not been
48 previously granted an expunction.

49 (f) No person as to whom an order has been entered pursuant to subsection (e) of this
50 section shall be held thereafter under any provision of any laws to be guilty of perjury or
51 otherwise giving a false statement by reason of that person's failure to recite or acknowledge

1 the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the
2 provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all
3 felony convictions to the certifying Commission regardless of whether or not the felony
4 convictions were expunged pursuant to the provisions of this section. This subsection shall not
5 apply to a sentencing hearing when the person has been convicted of a subsequent criminal
6 offense.

7 (f1) Persons required by State law to obtain a criminal history record check on a
8 prospective employee shall not be deemed to have knowledge of any convictions expunged
9 under this section.

10 (g) The court shall also order that the nonviolent felony conviction be expunged from
11 the records of the court and direct all law enforcement agencies bearing record of the same to
12 expunge their records of the conviction. The clerk shall notify State and local agencies of the
13 court's order as provided in G.S. 15A-150.

14 (h) Any other applicable State or local government agency shall expunge from its
15 records entries made as a result of the conviction ordered expunged under this section. The
16 agency shall also vacate any administrative actions taken against a person whose record is
17 expunged under this section as a result of the charges or convictions expunged. A person whose
18 administrative action has been vacated by an occupational licensing board pursuant to an
19 expunction under this section may then reapply for licensure and must satisfy the board's then
20 current education and preliminary licensing requirements in order to obtain licensure. This
21 subsection shall not apply to the Department of Justice for DNA records and samples stored in
22 the State DNA Database and the State DNA Databank.

23 (i) Any person eligible for expunction of a criminal record under this section shall be
24 notified about the provisions of this section by the probation officer assigned to that person. If
25 no probation officer is assigned, notification of the provisions of this section shall be provided
26 by the court at the time of the conviction of the felony which is to be expunged under this
27 section.

28 (j) A person who files a petition for expunction of a criminal record under this section
29 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
30 time the petition is filed. Fees collected under this subsection are payable to the Administrative
31 Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars
32 and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the
33 costs of criminal record checks performed in connection with processing petitions for
34 expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each
35 fee shall be retained by the Administrative Office of the Courts and used to pay the costs of
36 processing petitions for expunctions under this section. This subsection does not apply to
37 petitions filed by an indigent.

38 **"§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

39 (a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent
40 felony" means any misdemeanor or felony except the following:

- 41 (1) A Class A through G felony or a Class A1 misdemeanor.
- 42 (2) An offense that includes assault as an essential element of the offense.
- 43 (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of
44 the General Statutes, whether or not the person is currently required to
45 register.
- 46 (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b),
47 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18,
48 14-277.3, 14-277.3A, 14-321.1.
- 49 (5) Any felony offense in Chapter 90 of the General Statutes where the offense
50 involves methamphetamines, heroin, or possession with intent to sell or
51 deliver or sell and deliver cocaine.

- 1 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for
2 which punishment was determined pursuant to G.S. 14-3(c).
3 (7) An offense under G.S. 14-401.16.
4 (7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.
5 (8) Any felony offense in which a commercial motor vehicle was used in the
6 commission of the offense.
7 (8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).
8 (9) Any offense that is an attempt to commit an offense described in
9 subdivisions (1) through (8a) of this subsection.
- 10 (b) Notwithstanding any other provision of law, if the person is convicted of more than
11 one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the
12 nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person
13 had already been served with criminal process for the commission of a nonviolent felony or
14 nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor
15 convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction
16 under this section, and the expunction order issued under this section shall provide that the
17 multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be
18 expunged from the person's record in accordance with this section.
- 19 (c) A person may file a petition, in the court of the county where the person was
20 convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from
21 the person's criminal record if the person has no other misdemeanor or felony convictions,
22 other than a traffic violation. The petition shall not be filed earlier than ~~15~~10 years after the
23 date of the conviction for a nonviolent felony or five years for a nonviolent misdemeanor or
24 when any active sentence, period of probation, and post-release supervision has been served,
25 whichever occurs later. The petition shall contain, but not be limited to, the following:
- 26 (1) An affidavit by the petitioner that the petitioner has been of good moral
27 character since the date of conviction for the nonviolent misdemeanor or
28 nonviolent felony and has not been convicted of any other felony or
29 misdemeanor, other than a traffic violation, under the laws of the United
30 States or the laws of this State or any other state.
- 31 (2) Verified affidavits of two persons who are not related to the petitioner or to
32 each other by blood or marriage, that they know the character and reputation
33 of the petitioner in the community in which the petitioner lives and that the
34 petitioner's character and reputation are good.
- 35 (3) A statement that the petition is a motion in the cause in the case wherein the
36 petitioner was convicted.
- 37 (4) An application on a form approved by the Administrative Office of the
38 Courts requesting and authorizing a name-based State and national criminal
39 history record check by the Department of Public Safety using any
40 information required by the Administrative Office of the Courts to identify
41 the individual, a search by the Department of Public Safety for any
42 outstanding warrants on pending criminal cases, and a search of the
43 confidential record of expunctions maintained by the Administrative Office
44 of the Courts. The application shall be ~~forwarded~~ filed with the clerk of
45 superior court. The clerk of superior court shall forward the application to
46 the Department of Public Safety and to the Administrative Office of the
47 Courts, which shall conduct the searches and report their findings to the
48 court.
- 49 (5) An affidavit by the petitioner that no restitution orders or civil judgments
50 representing amounts ordered for restitution entered against the petitioner
51 are outstanding.

1 Upon filing of the petition, the petition shall be served upon the district attorney of the court
2 wherein the case was tried resulting in conviction. The district attorney shall have 30 days
3 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
4 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
5 additional 30 days to file objection to the petition. The district attorney shall make his or her
6 best efforts to contact the victim, if any, to notify the victim of the request for expunction prior
7 to the date of the hearing.

8 The presiding judge is authorized to call upon a probation officer for any additional
9 investigation or verification of the petitioner's conduct since the conviction. The court shall
10 review any other information the court deems relevant, including, but not limited to, affidavits
11 or other testimony provided by law enforcement officers, district attorneys, and victims of
12 crimes committed by the petitioner.

13 If the court, after hearing, finds that the petitioner has not previously been granted an
14 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or
15 15A-145.4; the petitioner has remained of good moral character; the petitioner has no
16 outstanding warrants or pending criminal cases; the petitioner has no other felony or
17 misdemeanor convictions other than a traffic violation; the petitioner has no outstanding
18 restitution orders or civil judgments representing amounts ordered for restitution entered
19 against the petitioner; and the petitioner was convicted of an offense eligible for expunction
20 under this section and was convicted of, and completed any sentence received for, ~~the~~
21 ~~nonviolent misdemeanor or a nonviolent felony at least 15-10 years prior to the filing of the~~
22 ~~petition, petition or a nonviolent misdemeanor at least five years prior to the filing of the~~
23 ~~petition, it may order that such person be restored, in the contemplation of the law, to the status~~
24 ~~the person occupied before such arrest or indictment or information, information, except as~~
25 ~~provided in G.S. 15A-151.5.~~ If the court denies the petition, the order shall include a finding as
26 to the reason for the denial.

27 (d) No person as to whom an order has been entered pursuant to subsection (c) of this
28 section shall be held thereafter under any provision of any law to be guilty of perjury or
29 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
30 the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a
31 sentencing hearing when the person has been convicted of a subsequent criminal offense.

32 (d1) Persons pursuing certification under the provisions of Chapter 17C or 17E of the
33 General Statutes, however, shall disclose any and all convictions to the certifying Commission,
34 regardless of whether or not the convictions were expunged pursuant to the provisions of this
35 section.

36 Persons required by State law to obtain a criminal history record check on a prospective
37 employee shall not be deemed to have knowledge of any convictions expunged under this
38 section.

39 (e) The court shall also order that the conviction be expunged from the records of the
40 court and direct all law enforcement agencies bearing record of the same to expunge their
41 records of the conviction. The clerk shall notify State and local agencies of the court's order, as
42 provided in G.S. 15A-150.

43 (f) Any other applicable State or local government agency shall expunge from its
44 records entries made as a result of the conviction ordered expunged under this section upon
45 receipt from the petitioner of an order entered pursuant to this section. The agency shall also
46 vacate any administrative actions taken against a person whose record is expunged under this
47 section as a result of the charges or convictions expunged. A person whose administrative
48 action has been vacated by an occupational licensing board pursuant to an expunction under
49 this section may then reapply for licensure and must satisfy the board's then current education
50 and preliminary licensing requirements in order to obtain licensure. This subsection shall not

1 apply to the Department of Justice for DNA records and samples stored in the State DNA
2 Database and the State DNA Databank.

3 (g) A person who files a petition for expunction of a criminal record under this section
4 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
5 time the petition is filed. Fees collected under this subsection shall be deposited in the General
6 Fund. This subsection does not apply to petitions filed by an indigent.

7 **"§ 15A-145.6. Expunctions for certain defendants convicted of prostitution.**

8 (a) The following definitions apply in this section:

9 (1) Prostitution offense. – A conviction for (i) violation of G.S. 14-204 or (ii)
10 engaging in prostitution in violation of G.S. 14-204(7) for an offense that
11 occurred prior to October 1, 2013.

12 (2) Violent felony or violent misdemeanor. – A Class A through G felony or a
13 Class A1 misdemeanor that includes assault as an essential element of the
14 offense.

15 (b) A person who has been convicted of a prostitution offense may file a petition in the
16 court of the county where the person was convicted for expunction of the prostitution offense
17 from the person's criminal record provided that all the following criteria are met:

18 (1) The person has not previously been convicted of any violent felony or
19 violent misdemeanor under the laws of the United States or the laws of this
20 State or any other state.

21 (2) The person satisfies any one of the following criteria:

22 a. The person's participation in the prostitution offense was a result of
23 having been a trafficking victim under G.S. 14-43.11 (human
24 trafficking) or G.S. 14-43.13 (sexual servitude) or a victim of a
25 severe form of trafficking under the federal Trafficking Victims
26 Protection Act (22 U.S.C. § 7102(13)).

27 b. The person has no prior convictions for a prostitution offense and at
28 least three years have passed since the date of conviction or the
29 completion of any active sentence, period of probation, and
30 post-release supervision, whichever occurs later.

31 c. The person received a conditional discharge pursuant to
32 G.S. 14-204(b).

33 (c) The petition shall contain all of the following:

34 (1) An affidavit by the petitioner that the petitioner (i) has no prior conviction of
35 a violent felony or violent misdemeanor, (ii) has been of good moral
36 character since the date of conviction of the prostitution offense in question,
37 and (iii) has not been convicted of any felony or misdemeanor under the
38 laws of the United States or the laws of this State or any other state since the
39 date of the conviction of the prostitution offense in question.

40 (2) Verified affidavits of two persons, who are not related to the petitioner or to
41 each other by blood or marriage, that they know the character and reputation
42 of the petitioner in the community in which the petitioner lives and that the
43 petitioner's character and reputation are good.

44 (3) A statement that the petition is a motion in the cause in the case wherein the
45 petitioner was convicted.

46 (4) An application on a form approved by the Administrative Office of the
47 Courts requesting and authorizing (i) a State and national criminal history
48 record check by the Department of Public Safety using any information
49 required by the Administrative Office of the Courts to identify the
50 individual; (ii) a search by the Department of Public Safety for any
51 outstanding warrants or pending criminal cases; and (iii) a search of the

1 confidential record of expunctions maintained by the Administrative Office
2 of the Courts. The application shall be ~~forwarded~~ filed with the clerk of
3 superior court. The clerk of superior court shall forward the application to
4 the Department of Public Safety and to the Administrative Office of the
5 Courts, which shall conduct the searches and report their findings to the
6 court.

7 (5) An affidavit by the petitioner that no restitution orders or civil judgments
8 representing amounts ordered for restitution entered against the petitioner
9 are outstanding.

10 (d) The petition shall be served upon the district attorney of the court wherein the case
11 was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to
12 file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

13 (e) The court in which the petition was filed shall take the following steps and shall
14 consider the following issues in rendering a decision upon a petition for expunction of records
15 of a prostitution offense under this section:

16 (1) Call upon a probation officer for additional investigation or verification of
17 the petitioner's conduct during the period since the date of conviction of the
18 prostitution offense in question.

19 (2) Review any other information the court deems relevant, including, but not
20 limited to, affidavits or other testimony provided by law enforcement
21 officers and district attorneys.

22 (f) The court shall order that the person be restored, in the contemplation of the law, to
23 the status the person occupied before the arrest or indictment or information if the court finds
24 all of the following after a hearing:

25 (1) The criteria set out in subsection (b) of this section are satisfied.

26 (2) The petitioner has remained of good moral character and has been free of
27 conviction of any felony or misdemeanor, other than a traffic violation, since
28 the date of conviction of the prostitution offense in question.

29 (3) The petitioner has no outstanding warrants or pending criminal cases.

30 (4) The petitioner has no outstanding restitution orders or civil judgments
31 representing amounts ordered for restitution entered against the petitioner.

32 (5) The search of the confidential records of expunctions conducted by the
33 Administrative Office of the Courts shows that the petitioner has not been
34 previously granted an expunction, other than an expunction for a prostitution
35 offense.

36 (g) No person as to whom an order has been entered pursuant to subsection (f) of this
37 section shall be held thereafter under any provision of any laws to be guilty of perjury or
38 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
39 the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a
40 sentencing hearing when the person has been convicted of a subsequent criminal offense.

41 (g1) Persons pursuing certification under the provisions of Chapter 17C or 17E of the
42 General Statutes, however, shall disclose any and all prostitution convictions to the certifying
43 Commission regardless of whether or not the prostitution convictions were expunged pursuant
44 to the provisions of this section.

45 Persons required by State law to obtain a criminal history record check on a prospective
46 employee shall not be deemed to have knowledge of any convictions expunged under this
47 section.

48 (h) The court shall also order that the conviction of the prostitution offense be expunged
49 from the records of the court and direct all law enforcement agencies bearing record of the
50 same to expunge their records of the conviction. The clerk shall notify State and local agencies
51 of the court's order as provided in G.S. 15A-150.

(i) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(j) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the prostitution offense which is to be expunged under this section.

"§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.

(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, ~~or a finding of not guilty or not responsible is entered,~~ that person may ~~apply to~~ petition the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the ~~application-petition and~~, upon finding that the person ~~had not previously received an expungement under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state,~~ the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and ~~all the charges are dismissed, or findings of not guilty or not responsible are made,~~ then a person may ~~apply-petition to have each of those the dismissed charges expunged if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment.~~ expunged. The court shall hold a hearing on the ~~application-petition. If the court finds (i) that the person had not previously received an expungement under this subsection, or that any previous expungement received under this subsection occurred prior to October 1, 2005 and was for an offense that occurred within the same 12-month period of time, or was dismissed or findings made at the same term of court, as the offenses that are the subject of the current application, (ii) that the person had not previously received an expungement under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and (iii) that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state,~~ the court shall order the expunction.

(a2) If any person is charged with a crime, either a misdemeanor or a felony, or an infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of not guilty or not responsible is entered, that person may petition the court of the county where the charge was brought for an order to expunge from all official records any entries relating to apprehension or trial of that crime. The court shall hold a hearing on the petition and upon finding that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of

1 perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made
2 for any purpose, by reason of failure to recite or acknowledge any expunged entries concerning
3 that crime. If a person is charged with multiple offenses and finding of not guilty or not
4 responsible are made on charges, then a person may petition to have each of the charges
5 disposed by a finding of not guilty or not responsible expunged. The court shall hold a hearing
6 on the petition. If the court finds that the person had not previously been convicted of any
7 felony under the laws of the United States, this State, or any other state, the court shall order
8 the expunction.

9 (a3) No person as to whom such an order has been entered under this section shall be
10 held thereafter under any provision of any law to be guilty of perjury, or to be guilty of
11 otherwise giving a false statement or response to any inquiry made for any purpose, by reason
12 of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

13 (b) The court may also order that the said entries, including civil revocations of drivers
14 licenses as a result of the underlying charge, shall be expunged from the records of the court,
15 and direct all law-enforcement agencies, the Division of Adult Correction of the Department of
16 Public Safety, the Division of Motor Vehicles, and any other State or local government
17 agencies identified by the petitioner as bearing record of the same to expunge their records of
18 the entries, including civil revocations of drivers licenses as a result of the underlying charge
19 being expunged. This subsection does not apply to civil or criminal charges based upon the
20 civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and
21 local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a
22 certified copy of the order to the Division of Motor Vehicles for the expunction of a civil
23 revocation provided the underlying criminal charge is also expunged. The civil revocation of a
24 drivers license shall not be expunged prior to a final disposition of any pending civil or criminal
25 charge based upon the civil revocation. The costs of expunging the records, as required under
26 G.S. 15A-150, shall not be taxed against the petitioner.

27 (b1) Any person entitled to expungement under this section may also apply to the court
28 for an order expunging DNA records when the person's case has been dismissed by the trial
29 court and the person's DNA record or profile has been included in the State DNA Database and
30 the person's DNA sample is stored in the State DNA Databank. A copy of the application for
31 expungement of the DNA record or DNA sample shall be served on the district attorney for the
32 judicial district in which the felony charges were brought not less than 20 days prior to the date
33 of the hearing on the application. If the application for expungement is granted, a certified copy
34 of the trial court's order dismissing the charges shall be attached to an order of expungement.
35 The order of expungement shall include the name and address of the defendant and the
36 defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter
37 documenting expungement as required by subsection (b2) of this section.

38 (b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of this
39 section, the North Carolina State Crime Laboratory shall purge the DNA record and all other
40 identifying information from the State DNA Database and the DNA sample stored in the State
41 DNA Databank covered by the order, except that the order shall not apply to other offenses
42 committed by the individual that qualify for inclusion in the State DNA Database and the State
43 DNA Databank. A letter documenting expungement of the DNA record and destruction of the
44 DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and
45 the defendant's attorney at the address specified by the court in the order of expungement.

46 (c) ~~The~~ Any petition for expungement under this section shall be on a form approved by
47 the Administrative Office of the Courts and be filed with the clerk of superior court. Upon
48 order of expungement, the clerk shall notify State and local agencies of the court's order as
49 provided in ~~G.S. 15A-150.~~ G.S. 15A-150 and forward the petition to the Administrative Office
50 of the Courts.

(d) A person charged with a crime that is dismissed pursuant to compliance with a deferred prosecution agreement or the terms of a conditional discharge and who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

"§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity theft or mistaken identity.

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person or mistaken identity and a finding of not guilty is entered, or the conviction is set aside, the named person may ~~apply by petition or written motion to~~ the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the ~~motion or petition~~ and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

(a1) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person or mistaken identity, and the charge against the named person is dismissed, the prosecutor or other judicial officer who ordered the dismissal shall provide notice to the court of the dismissal, and the court shall order the expunction of all official records containing any entries relating to the person's apprehension, charge, or trial.

(a2) Any petition for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of expungement, the clerk shall forward the petition to the Administrative Office of the Courts.

(b) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

(c) The court shall also order that the said entries shall be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner, or the person eligible for automatic expungement under subsection (a1) of this section, as bearing record of the same to expunge their records of the entries. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

(d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall

1 provide to the person whose motor vehicle record is expunged under this section a certified
2 corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or
3 revoked as a result of a charge or conviction expunged under this section.

4 (e) The Division of Adult Correction of the Department of Public Safety and any other
5 applicable State or local government agency shall expunge its records as provided in
6 G.S. 15A-150. The agency shall also reverse any administrative actions taken against a person
7 whose record is expunged under this section as a result of the charges or convictions expunged.
8 Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or
9 privilege resulting under this section shall be waived.

10 (f) Any insurance company that charged any additional premium based on insurance
11 points assessed against a policyholder as a result of a charge or conviction that was expunged
12 under this section shall refund those additional premiums to the policyholder upon notification
13 of the expungement.

14 (g) For purposes of this section, the term "mistaken identity" means the erroneous arrest
15 of a person for a crime as a result of misidentification by a witness or law enforcement,
16 confusion on the part of a witness or law enforcement as to the identity of the person who
17 committed the crime, misinformation provided to law enforcement as to the identity of the
18 person who committed the crime, or some other mistake on the part of a witness or law
19 enforcement as to the identity of the person who committed the crime.

20 **"§ 15A-148. Expunction of DNA records when charges are dismissed on appeal or pardon**
21 **of innocence is granted.**

22 (a) Upon a motion by the defendant following the issuance of a final order by an
23 appellate court reversing and dismissing a conviction of an offense for which a DNA analysis
24 was done in accordance with Article 13 of Chapter 15A of the General Statutes, or upon receipt
25 of a pardon of innocence with respect to any such offense, the court shall issue an order of
26 expungement of the DNA record and samples in accordance with subsection (b) of this section.
27 The order of expungement shall include the name and address of the defendant and the
28 defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter
29 documenting expungement as required by subsection (b) of this section.

30 (b) When an order of expungement has been issued pursuant to subsection (a) of this
31 section, the order of expungement, together with a certified copy of the final appellate court
32 order reversing and dismissing the conviction or a certified copy of the instrument granting the
33 pardon of innocence, shall be provided to the North Carolina State Crime Laboratory by the
34 clerk of court. Upon receiving an order of expungement for an individual whose DNA record or
35 profile has been included in the State DNA Database and whose DNA sample is stored in the
36 State DNA Databank, the DNA profile shall be expunged and the DNA sample destroyed by
37 the North Carolina State Crime Laboratory, except that the order shall not apply to other
38 offenses committed by the individual that qualify for inclusion in the State DNA Database and
39 the State DNA Databank. A letter documenting expungement of the DNA record and
40 destruction of the DNA sample shall be sent by the North Carolina State Crime Laboratory to
41 the defendant and the defendant's attorney at the address specified by the court in the order of
42 expungement. The North Carolina State Crime Laboratory shall adopt procedures to comply
43 with this subsection.

44 (c) Any petition for expungement under this section shall be on a form approved by the
45 Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of
46 expungement, the clerk shall forward the petition to the Administrative Office of the Courts.

47 **"§ 15A-149. Expunction of records when pardon of innocence is granted.**

48 (a) If any person is convicted of a crime and receives a pardon of innocence, the person
49 may ~~apply by petition or written motion to~~ the court in which the person was convicted on a
50 form approved by the Administrative Office of the Courts supplied by the clerk of court for an
51 order to expunge from all official records any entries relating to the person's apprehension,

1 charge, or trial. Upon receipt of the ~~petition or written motion~~, ~~petition~~, the clerk of court shall
2 verify that an attested copy of the warrant and return granting a pardon of innocence has been
3 filed with the court in accordance with G.S. 147-25. Upon verification by the clerk that the
4 warrant and return have been filed, the court shall issue an order of expunction.

5 (b) The order of expunction shall include an instruction that any entries relating to the
6 person's apprehension, charge, or trial shall be expunged from the records of the court and
7 direct all law enforcement agencies, the Division of Adult Correction of the Department of
8 Public Safety, the Division of Motor Vehicles, or any other State or local government agencies
9 identified by the petitioner as bearing record of the same to expunge their records of the entries.
10 The clerk shall notify State and local agencies of the court's order as provided in ~~G.S. 15A-150~~.
11 G.S. 15A-150 and shall forward the petition to the Administrative Office of the Courts. The
12 costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the
13 petitioner.

14 (c) No person as to whom such an order has been entered under this section shall be
15 held thereafter under any provision of any law to be guilty of perjury, or to be guilty of
16 otherwise giving a false statement or response to any inquiry made for any purpose, by reason
17 of the person's failure to recite or acknowledge any expunged entries concerning apprehension,
18 charge, or trial.

19 **"§ 15A-150. Notification requirements.**

20 (a) Notification to AOC. – The clerk of superior court in each county in North Carolina
21 shall, as soon as practicable after each term of court, file with the Administrative Office of the
22 Courts the ~~petitions received under this Article, any orders of expunction, and the~~ names of the
23 following:

- 24 (1) Persons granted an expunction under this Article.
- 25 (2), (3) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015,
26 and applicable to conditional discharges granted on or after that date.
- 27 (4) Repealed by Session Laws 2010-174, s. 7, effective October 1, 2010.
- 28 (5) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015, and
29 applicable to conditional discharges granted on or after that date.
- 30 (6) Persons granted a dismissal upon completion of a conditional discharge
31 under G.S. 14-50.29, 14-204, 14-313(f), 15A-1341(a4), 90-96, or 90-113.14.

32 (b) Notification to Other State and Local Agencies. – Unless otherwise instructed by the
33 Administrative Office of the Courts pursuant to an agreement entered into under subsection (e)
34 of this section for the electronic or facsimile transmission of information, the clerk of superior
35 court in each county in North Carolina shall send a certified copy of an order granting an
36 expunction to a person named in subsection (a) of this section to all of the agencies listed in this
37 ~~subsection~~ subsection and the person. An agency receiving an order under this subsection shall
38 ~~expunge~~ purge from its records all entries made as a result of the charge or conviction ordered
39 expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:

- 40 (1) The sheriff, chief of police, or other arresting agency.
- 41 (2) When applicable, the Division of Motor Vehicles.
- 42 (3) Any State or local agency identified by the petition as bearing record of the
43 offense that has been expunged.
- 44 (4) The Department of Public Safety, Division of Adult Correction and
45 Juvenile Justice.
- 46 (5) The Department of Public Safety, North Carolina State Bureau of
47 Investigation.

48 (c) Notification to FBI. – The Department of Public ~~Safety~~ Safety, North Carolina State
49 Bureau of Investigation, shall forward the order received under this section to the Federal
50 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.

"§ 15A-151. Confidential agency files; exceptions to expunction.

(a) The Administrative Office of the Courts shall maintain a confidential file for expungements containing the petitions granted under this Article and the names of those people for whom it received a notice under G.S. 15A-150. The information contained in the file may be disclosed only as follows:

- (1) ~~To~~ Upon request of a judge of the General Court of Justice of North Carolina for the purpose of ascertaining whether a person charged with an offense has been previously granted a discharge or an expunction.
- (2) ~~To~~ Upon request of a person requesting confirmation of the person's own discharge or expunction, ~~as provided in G.S. 15A-152-expunction.~~
- (3) To the General Court of Justice of North Carolina in response to a subpoena or other court order issued pursuant to a civil action under G.S. 15A-152.
- (4) ~~If~~ Upon request of State or local law enforcement, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or ~~15A-145.6, to State and local law enforcement agencies-15A-145.6~~ for employment purposes only.
- (5) ~~If~~ Upon the request of the North Carolina Criminal Justice Education and Training Standards Commission, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or ~~15A-145.6, to the North Carolina Criminal Justice Education and Training Standards Commission~~ 15A-145.6 for certification purposes only.
- (6) ~~If~~ Upon request of the North Carolina Sheriff's Standards Commission, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or ~~15A-145.6, to the North Carolina Sheriffs' Education and Training Standards Commission~~ 15A-145.6 for certification purposes only.
- (7) ~~To the district attorney in accordance with G.S. 15A-151.5.~~

(b) All agencies required under G.S. 15A-150 to expunge from records all entries made as a result of a charge or conviction ordered expunged who maintain a licensing agreement to provide record information to a private entity shall maintain a confidential file containing information verifying the expunction and subsequent notification to private entities as required by G.S. 15A-150(d). The information contained in the file shall be disclosed only to a person requesting confirmation of expunction of the record of the person's own discharge or expunction, as provided in G.S. 15A-152.

(c) The Division of Motor Vehicles shall not be required to expunge a record if the expunction of the record is expressly prohibited by the federal Commercial Motor Vehicle Safety Act of 1986, the federal Motor Carrier Safety Improvement Act of 1999, or regulations adopted pursuant to either act.

"§ 15A-151.5. Prosecutor access to expunged files.

(a) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all prosecutors of this State if the criminal record was expunged on or after December 1, 2017, under any of the following:

- 1 (1) G.S. 15A-145. Expunction of records for first offenders under the age of 18
2 at the time of conviction of misdemeanor; expunction of certain other
3 misdemeanors.
- 4 (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of
5 18 at the time of conviction of certain gang offenses.
- 6 (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years
7 of age at the time of the offense of certain drug offenses.
- 8 (4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years
9 of age at the time of the offense of certain toxic vapors offenses.
- 10 (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18
11 years of age at the time of the commission of a nonviolent felony.
- 12 (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age
13 limitation.
- 14 (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of
15 prostitution.
- 16 (8) G.S. 15A-146(a). Expunction of records when charges are dismissed or there
17 are findings of not guilty.
- 18 (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed or
19 there are findings of not guilty.
- 20 (b) For any expungement granted on or after December 1, 2017, the expunged criminal
21 records under subdivisions (1) through (7) of subsection (a) of this section may be used to
22 calculate prior record level if the named person is convicted of a subsequent criminal offense.
- 23 (c) For any expungement granted on or after December 1, 2017, the information
24 maintained by the Administrative Office of the Courts, and made available under subsection (a)
25 of this section, shall be prima facie evidence of the expunged conviction for the purposes of
26 calculating prior record level of the named person and shall be admissible into evidence at a
27 subsequent criminal sentencing hearing.
28 "
- 29 **SECTION 2.** This act becomes effective December 1, 2017, and applies to
30 petitions filed on or after that date.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

2

SENATE BILL 600
Judiciary Committee Substitute Adopted 4/25/17

Short Title: Britny's Law: IPV Homicide.

(Public)

Sponsors:

Referred to:

April 5, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO ACKNOWLEDGE AND PROVIDE FOR DOMESTIC VIOLENCE HOMICIDE
3 IN THE STATUTORY SCHEME FOR FIRST AND SECOND DEGREE HOMICIDE.

4 The General Assembly of North Carolina enacts:

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

6 "§ 14-17. Murder in the first and second degree defined; punishment.

7 (a) A murder which shall be perpetrated by means of a nuclear, biological, or chemical
8 weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment,
9 starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which
10 shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex
11 offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of
12 a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any
13 person who commits such murder shall be punished with death or imprisonment in the State's
14 prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except
15 that any such person who was under 18 years of age at the time of the murder shall be punished
16 in accordance with Part 2A of Article 81B of Chapter 15A of the General Statutes.

17 (a1) If a murder was perpetrated with malice as described in subdivision (1) of
18 subsection (b) of this section, and committed against a spouse, former spouse, a person with
19 whom the defendant lives or has lived as if married, a person with whom the defendant is or
20 has been in a dating relationship as defined in G.S. 50B-1(b)(6), or a person with whom the
21 defendant shares a child in common, there shall be a rebuttable presumption that the murder is
22 a "willful, deliberate, and premeditated killing" under subsection (a) of this section and shall be
23 deemed to be murder in the first degree, a Class A felony, if the perpetrator has previously been
24 convicted of one of the following offenses involving the same victim:

25 (1) An act of domestic violence as defined in G.S. 50B-1(a).

26 (2) A violation of a domestic violence protective order under G.S. 50B-4.1(a),
27 (f), (g), or (g1) or G.S. 14-269.8 when the same victim is the subject of the
28 domestic violence protective order.

29 (3) Communicating a threat under G.S. 14-277.1.

30 (4) Stalking as defined in G.S. 14-277.3A.

31 (5) Cyberstalking as defined in G.S. 14-196.3.

32 (6) Domestic criminal trespass as defined in G.S. 14-134.3.

33 (b) A murder other than described in subsection (a) or (a1) of this section or in
34 G.S. 14-23.2 shall be deemed second degree murder. Any person who commits second degree
35 murder shall be punished as a Class B1 felon, except that a person who commits second degree
36 murder shall be punished as a Class B2 felon in either of the following circumstances:



- 1 (1) The malice necessary to prove second degree murder is based on an
2 inherently dangerous act or omission, done in such a reckless and wanton
3 manner as to manifest a mind utterly without regard for human life and
4 social duty and deliberately bent on mischief.
- 5 (2) The murder is one that was proximately caused by the unlawful distribution
6 of opium or any synthetic or natural salt, compound, derivative, or
7 preparation of opium, or cocaine or other substance described in
8 G.S. 90-90(1)d., or methamphetamine, and the ingestion of such substance
9 caused the death of the user.
- 10 (c) For the purposes of this section, it shall constitute murder where a child is born alive
11 but dies as a result of injuries inflicted prior to the child being born alive. The degree of murder
12 shall be determined as described in subsections (a) and (b) of this section."
- 13 **SECTION 2.** This act becomes effective December 1, 2017, and applies to
14 offenses committed on or after that date.



SENATE BILL 600: Britny's Law: IPV Homicide.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	June 20, 2017
Introduced by:	Sens. Barefoot, J. Jackson, Britt	Prepared by:	Howard Marsilio
Analysis of:	Second Edition		Committee Counsel

OVERVIEW: *Senate Bill 600 would create a rebuttable presumption of premeditation, elevating a homicide to a first degree murder, if there is malice and the defendant has a certain prior conviction involving the same victim.*

CURRENT LAW: First degree murder is a Class A felony. The punishment for adults is death, or life in prison without parole. First degree murder is authorized under statute if the killing falls into one of three classifications determined by:

1. The means of the killing. (Weapon of mass destruction, poison, lying in wait, imprisonment, starving, or torture.)
2. The nature of the killing. ("willful, deliberate, and premeditated")
3. Whether the killing occurred in the perpetration or attempted perpetration of one of six specific felonies. (Arson, rape, robbery, kidnapping, burglary, or other felony committed with the use of a deadly weapon.)

BILL ANALYSIS: Section (a1) of Senate Bill 600 would create a rebuttable presumption that a killing was "willful, deliberate, and premeditated" in order to elevate a murder to a first degree murder, if all of the following apply:

- There was the malice¹ necessary to prove second degree murder.
- The victim and perpetrator were spouses, former spouses, living together as if married, in a dating relationship as defined in G.S. 50B-1(b)(6), or have a child in common.
- The perpetrator had previously been convicted of one of the following offenses involving the same victim:
 - (1) An act of domestic violence.
 - (2) A violation of a domestic violence protective order.
 - (3) Communicating a threat.
 - (4) Stalking.
 - (5) Cyberstalking.
 - (6) Domestic criminal trespass.

¹ Malice based on an inherently dangerous act or omission, done in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

Senate Bill 600

Page 2

EFFECTIVE DATE: This act would become effective December 1, 2017, and would apply to offenses committed on or after that date.

BACKGROUND: **Britny Jordan Puryear** was shot to death in 2014 by the father of her child. In 2016, the perpetrator pled guilty to second degree murder in Wake County. He was sentenced to 32 years in prison.



Rep. John withdrew
his Amendment.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 600

S600-ABG-22 [v.3]

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

Page 1 of 1

Amends Title [NO]
Second Edition

Date _____ .2017

Representative John

1 moves to amend the bill on page 1, lines 23-24, by rewriting those lines to read:
2 "deemed to be murder in the first degree, a Class A felony, if the perpetrator has been
3 convicted, within the ten years immediately preceding the date of the current offense, of one of
4 the following offenses involving the same victim:".
5
6

SIGNED _____

Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



* S 6 0 0 - A B G - 2 2 - V - 3 *

**House Pages
Assignments
Tuesday, June 20, 2017**

Committee	Room	Time	Staff	Comments	Member
Judiciary II	421	1:00 PM	Lexy DeVaney		Rep. Jon Hardister
			James Hodges		Rep. Graig Meyer
			Logan Martin		Rep. Verla Insko
			Emily Pate		Rep. John Bell
			Sarah Wallace		Rep. Cynthia Ball



Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 6-20-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Will Crocker
3. Name: Marvin Lee
4. Name: Reggie Sills
5. Name: _____

Senate Sgt-At Arms:

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



Speaker Registration Sheet

House Committee on Judiciary II

6-20-2017
Date

Bill: SB 600

NAME - Please PRINT

FIRM OR AGENCY

Alex Miller

AMGA

Amily McCool

NCCADV

Stephen Pearson

citizen - Britny's Dad



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

6-20-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

David Waters	Seascape Design	Sunset Bch N/C
Dwight Smith		
Low Bay	MWC	
Shawn Sullivan	Tarheel Monitoring	
Ray Murphy	Tarheel Monitoring	
Tom Jeter	FSP	
Andy Brandon	NC SPS	
Alex Schurfelder	FSP	
Deana Fleming	NCAOC	
Mildred Spearman	NCAOC	
Harrison Walker	Speaker's Office	



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

6-20-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Lori Ann Harris	ZMTA
Meaghan	NC DMV
Panda G. L. L.	NC DMV
Jessica J. L.	NC DMV L&P
Holly W.	NC DMV
Jackie M.	NC DMV
Chris Brooks	NC DMV / DOS
ATUL GOEL	NC DMV
Charles Johnson	
James N.	Federal Strategic Partners
Lindsey Dowling	FSP



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

6-20-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Carol Allen White	Clerk of Court Edgecombe ^{Post Drawer 9} Tarboro, NC 27886
Lillie Rhodes	Conf. of Clerks
Jamie Cassity	Conf. of Clerks
Audrey Moncsol	ACLU
Suzanne Bondary	ACLU-NC
Tarah Cellchen	CCTR
Kris Parks	DR NC
Colton Murphy	Student
Nick Younger	Gov. Office
Autumn Owen	ACLU-NC
Sue Ann Forest	NCMS



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

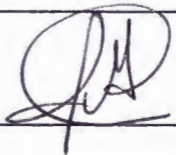
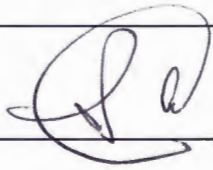
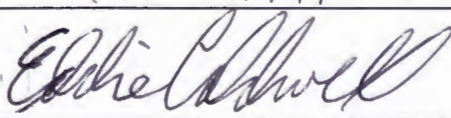
6-20-2017

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

	
Carl Little	UNC SDG
Stephen Puryear	Citizen
Shelly Puryear	Citizen
Amily McCool	NC Coalition Against Domestic Violence
Amie Harris	Dr. Sarah A. Harris
Daniel Bowes	NC Justice Center
Bill Paul	NC Justice Center
Mica Walker	NC Justice Center
Adrienne Little	Communit OCC.
	NC Sheriffs' Assn.



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VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

6-20-2017

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Kaye Ward

Interfaith Prison Ministry for Women, Raleigh NC

Dawn Collins

SEAN C

Jordan Burke

NCAOC

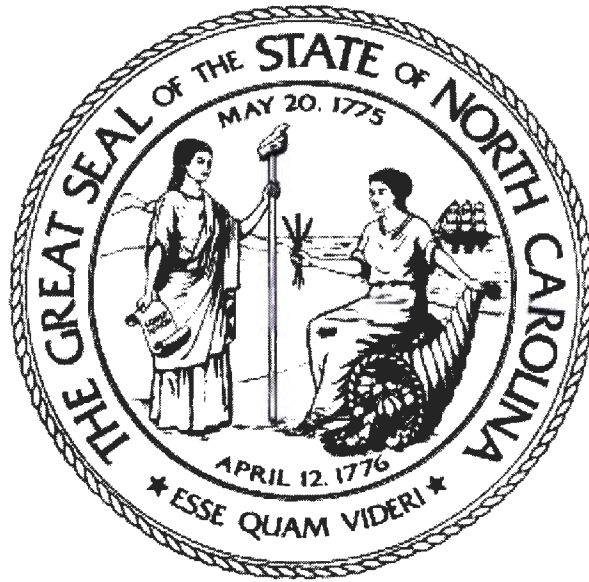
Flint Benson

SEANC

Gene Ryall

NCFPC





House Committee on Judiciary II

**Representative John M. Blust
Chairman**

**Gennie L. Thurlow
Committee Clerk**

2017-2018



HOUSE COMMITTEE ON JUDICIARY II

2017-2018 SESSION



**John Blust
Chair**



**John Faircloth
Vice Chair**



**Pat Hurley
Vice Chair**



**Chuck McGrady
Vice Chair**



**Henry Michaux, Jr.
Vice Chair**



Dana Bumgardner



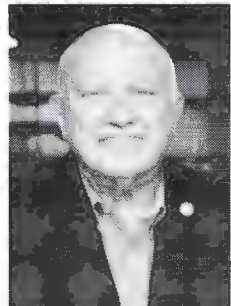
Susan Fisher



Destin Hall



Pricey Harrison



Joe John



Brenden Jones



John Sauls



HOUSE COMMITTEE ON JUDICIARY II

2017 – 2018 SESSION

<u>MEMBER</u>	<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
John M. Blust Chair	Gennie Thurlow Committee Assistant	733-5781	2208 LB	49
John Faircloth Vice Chair	Becky Bauerband	733-5877	613 LOB	28
Pat Hurley Vice Chair	Debbie Holder	733-5865	532 LOB	10
Chuck McGrady Vice Chair	Kimberly Neptune	733-5956	304 LOB	15
Henry Michaux, Jr. Vice Chair	Anita Wilder	715-2528	1227 LB	11
Dana Bumgardner	Margie Penven	733-5809	2119 LB	40
Susan Fisher	Cindy Garrison	715-2013	504 LOB	69
Destin Hall	David Cobb	733-5931	306C LOB	87
Pricey Harrison	Sue Osborne	733-5771	1218 LB	70
Joe John	Dustin Ingalls	733-5530	1013 LB	117
Brenden Jones	Andrew Bailey	733-5821	2217 LB	88
John Sauls	Karen Rosser	715-3026	610 LOB	37

Susan L. Sitze
Howard Marsilio
Shawn Middlebrooks
Committee Counsel
Legislative Analysis Division
545 LOB
Phone: 733-2578

5-23-2018



House Committee on Judiciary II
2017 – 2018 SESSION

[illegible]



House Committee on Judiciary II
Wednesday, June 6, 2018 at 1:00 PM
Room 1425 of the Legislative Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on June 6, 2018 in Room 1425 of the Legislative Building. Representatives Blust, Faircloth, Hurley, McGrady, Michaux, Bumgardner, Fisher, Hall, Harrison, John, Jones, and Sauls attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:25 PM. He introduced the Pages and Sergeants-at-Arms.

The following bills were considered:

HB 960 Local Law Enforcement/Citizens Academies. (Representatives Faircloth, Boles, Speciale)

Representative Faircloth was recognized to explain the bill. Representative Faircloth offered an amendment to the bill, and the amendment was adopted. He explain the bill as amended. Representative Michaux made the motion for the amendment to be rolled into a Proposed Committee Substitute and the Proposed Committee Substitute to be given a favorable report, unfavorable to the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill.

HB 961 Required Training Police Telecommunicators. (Representatives Faircloth, Brenden Jones, Boles, Speciale)

Representative Bumgardner made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Faircloth was recognized to explain the Proposed Committee Substitute. Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion passed, and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill.

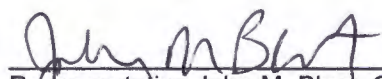
HB 945 Rape Evidence Collection Kit Tracking Act. (Representatives Boles, Davis)

Representative Boles was recognized to explain the bill. Mr. Shawn Middlebrooks, Committee Counsel, Legislative Analysis Division, was asked to speak on the bill. Representative John offered an amendment, and he was recognized to explain the amendment. The amendment was adopted. Several committee members offered comments on the bill as amended. Mr. John Byrd, Director, NC State Crime Laboratory, spoke twice during the discussion and answered questions from the committee members. Mr. Bradford Sneed, Legislative Counsel, Public Protection Section, Department of Justice, offered comments on the bill as amended. Representative McGrady made the motion for the amendment to be rolled into a Proposed Committee Substitute and the Proposed Committee Substitute to be given a favorable report, unfavorable to the original bill. The motion passed, and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill.

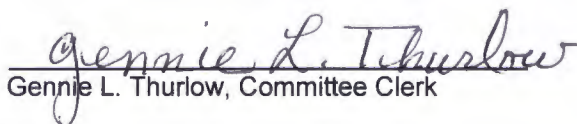
HB 1047 LRC HOA Dispute Resolution/PED Study. (Representative Stevens)

Representative Michaux made the motion to bring the Proposed Committee Substitute before the committee, and the motion carried. Representative Hall was recognized to explain the Proposed Committee Substitute. Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report, with an unfavorable report for the original bill.

The meeting adjourned at 1:50 PM.



Representative John M. Blust, Chairman
Presiding



Gennie L. Thurlow, Committee Clerk



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Wednesday, June 6, 2018

TIME: 1:00 PM

LOCATION: 415 LOB

COMMENTS: Meeting to be held on Wednesday, June 6, 2018 in Room 415 LOB at 1:00 PM.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>HB 945</u>	Rape Evidence Collection Kit Tracking Act.	Representative Boles Representative Davis
<u>HB 960</u>	Local Law Enforcement/Citizens Academies.	Representative Faircloth Representative Boles Representative Speciale
<u>HB 961</u>	Required Training Police Telecommunicators.	Representative Faircloth Representative Brenden Jones Representative Boles Representative Speciale
<u>HB 1047</u>	LRC HOA Dispute Resolution/PED Study.	Representative Stevens

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 5:38 PM on Thursday, May 31, 2018.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



Updated #1: Time Change, Room Change, SB162 Added

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Wednesday, June 6, 2018
TIME: 10:30 AM
LOCATION: 1425 LB
COMMENTS: .

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>HB 945</u>	Rape Evidence Collection Kit Tracking Act.	Representative Boles Representative Davis
<u>HB 960</u>	Local Law Enforcement/Citizens Academies.	Representative Faircloth Representative Boles Representative Speciale
<u>HB 961</u>	Required Training Police Telecommunicators.	Representative Faircloth Representative Brenden Jones Representative Boles Representative Speciale
<u>HB 1047</u>	LRC HOA Dispute Resolution/PED Study.	Representative Stevens
<u>SB 162</u>	LEO Assistance and Protection Act of 2017.	Senator Daniel Senator Brock Senator Randleman

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:35 PM on Monday, June 04, 2018.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



Updated #2: Time Change

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Wednesday, June 6, 2018
TIME: 1:00 PM
LOCATION: 1425 LB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>HB 945</u>	Rape Evidence Collection Kit Tracking Act.	Representative Boles Representative Davis
<u>HB 960</u>	Local Law Enforcement/Citizens Academies.	Representative Faircloth Representative Boles Representative Speciale
<u>HB 961</u>	Required Training Police Telecommunicators.	Representative Faircloth Representative Brenden Jones Representative Boles Representative Speciale
<u>HB 1047</u>	LRC HOA Dispute Resolution/PED Study.	Representative Stevens
<u>SB 162</u>	LEO Assistance and Protection Act of 2017.	Senator Daniel Senator Brock Senator Randleman

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:15 PM on Tuesday, June 05, 2018.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



Updated #3: SB 162 Removed

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Committee on Judiciary II** will meet as follows:

DAY & DATE: Wednesday, June 6, 2018
TIME: 1:00 PM
LOCATION: 1425 LB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
<u>HB 945</u>	Rape Evidence Collection Kit Tracking Act.	Representative Boles Representative Davis
<u>HB 960</u>	Local Law Enforcement/Citizens Academies.	Representative Faircloth Representative Boles Representative Speciale
<u>HB 961</u>	Required Training Police Telecommunicators.	Representative Faircloth Representative Brenden Jones Representative Boles Representative Speciale
<u>HB 1047</u>	LRC HOA Dispute Resolution/PED Study.	Representative Stevens

Respectfully,

Representative John M. Blust, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 3:23 PM on Tuesday, June 05, 2018.

____ Principal Clerk
____ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)



**House Committee on Judiciary II
Wednesday, June 6, 2018, 1:00 PM
1425 Legislative Building**

AGENDA

Welcome and Opening Remarks

Representative John M. Blust

Introduction of Pages and Sergeants-at-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 945	Rape Evidence Collection Kit Tracking Act.	Representative Boles Representative Davis
HB 960	Local Law Enforcement/Citizens Academies.	Representative Faircloth Representative Boles Representative Speciale
HB 961	Required Training Police Telecommunicators.	Representative Faircloth Representative Brenden Jones Representative Boles Representative Speciale
HB 1047	LRC HOA Dispute Resolution/PED Study.	Representative Stevens

Adjournment



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Chair**

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB 945	Rape Evidence Collection Kit Tracking Act. Draft Number: H945-PCS40755-SA-53 Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Boles
HB 960	Local Law Enforcement/Citizens Academies. Draft Number: H960-PCS40754-SA-52 Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Faircloth
HB 961	Required Training Police Telecommunicators. Draft Number: H961-PCS10489-BQ-4 Serial Referral: None Recommended Referral: None Long Title Amended: Yes Floor Manager: Faircloth
HB 1047	LRC HOA Dispute Resolution/PED Study. Draft Number: H1047-PCS30496-BG-32 Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Stevens

TOTAL REPORTED: 4





GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 945*

Short Title: Rape Evidence Collection Kit Tracking Act.

(Public)

Sponsors: Representatives Boles and Davis (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

May 17, 2018

A BILL TO BE ENTITLED

AN ACT TO CREATE THE STATEWIDE SEXUAL ASSAULT EVIDENCE COLLECTION KIT TRACKING SYSTEM AND TO REQUIRE TESTING OF PREVIOUSLY UNTESTED SEXUAL ASSAULT EVIDENCE COLLECTION KITS, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"§ 114-65. Statewide sexual assault evidence collection kit tracking system.

(a) Establishment of System. – There is established in the State Crime Laboratory the Statewide Sexual Assault Evidence Collection Kit Tracking System (the System). All sexual assault evidence collection kits purchased or distributed under G.S. 143B-1201 on or after October 1, 2018, shall be trackable and shall comply with the requirements of the System. The Director of the State Crime Laboratory (Director) shall implement protocols and administer the System and the Secretary of the Department of Public Safety (Secretary) shall adopt rules and guidelines for agencies required to participate in the System under this section. The Director shall ensure that the System protects victim information against disclosure to nonparticipating agencies. Except as otherwise required for reporting under subsection (e) of this section, information maintained in the System is confidential and not a public record as defined in G.S. 132-1.

(b) Required Participation. – All medical providers, law enforcement agencies, forensic laboratories, or other persons or entities having custody or use of any sexual assault evidence collection kit in the State shall participate in the System and comply with the established protocols, rules, and guidelines. A participating entity shall be permitted to access the entity's tracking information through the System.

(c) Victim's Access to View Status of Kit. – It is the policy of the State to ensure that a victim of sexual assault or attempted sexual assault is able to track the location of the sexual assault evidence collection kit used to conduct the victim's forensic medical examination and that the victim is also able to determine whether forensic testing of the kit has been completed.

(d) Tracking of Previously Untested Kits. – The Director shall implement protocols and the Secretary shall adopt rules and guidelines to ensure that previously untested sexual assault evidence collection kits are trackable and are entered into the System. Any law enforcement agency, medical provider, or forensic laboratory that has in its custody a previously untested



1 sexual assault evidence collection kit used for a forensic medical examination shall comply with
2 the established protocols, rules, and guidelines with respect to all untested kits.

3 For purposes of this subsection, a "previously untested sexual assault evidence collection kit"
4 means any kit that has not undergone forensic testing and was identified and included in the 2017
5 statewide inventory of kits in law enforcement custody pursuant to Section 17.7 of S.L. 2017-57.
6 To the extent practicable, and consistent with protecting victim confidentiality for unreported
7 sexual assaults, a law enforcement agency having custody of a kit governed by this subsection
8 shall take reasonable measures to provide appropriate tracking information to the affected victim.

9 (e) Annual Report to the General Assembly. – Beginning October 1, 2019, and annually
10 thereafter, the Director shall report to the Joint Legislative Oversight Committee on Justice and
11 Public Safety the following information for the previous fiscal year:

- 12 (1) The number of tracking-enabled kits shipped to medical facilities or medical
13 providers.
- 14 (2) The number of tracking-enabled kits used by medical facilities or medical
15 providers to conduct forensic medical examinations of sexual assault or
16 attempted sexual assault victims.
- 17 (3) Of the tracking-enabled kits used by medical facilities or medical providers to
18 conduct forensic medical examinations, the number of kits for which a sexual
19 assault has been reported to law enforcement, sorted by law enforcement
20 agency.
- 21 (4) Of the tracking-enabled kits generated for reported cases, the number of kits
22 submitted to a laboratory for forensic testing.
- 23 (5) Of the tracking-enabled kits submitted for forensic testing, the number of kits
24 for which forensic testing has been completed.
- 25 (6) The number of tracking-enabled kits for which a sexual assault has not been
26 reported, including the total submitted to local law enforcement and the total
27 submitted to Department of Public Safety Law Enforcement Support Services.
- 28 (7) Information regarding efforts to track and test previously untested kits
29 described in subsection (d) of this section."

30 **SECTION 2.** G.S. 143B-1201 reads as rewritten:

31 **"§ 143B-1201. Restitution; actions.**

32 (a) The Program shall be an eligible recipient for restitution or reparation under
33 G.S. 15A-1021, 15A-1343, 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

34 (b) When any victim who:

- 35 (1) Has received assistance under this Part;
- 36 (2) Brings an action for damages arising out of the rape, attempted rape, sexual
37 offense, or attempted sexual offense for which she received that assistance;
38 and
- 39 (3) Recovers damages including the expenses for which she was awarded
40 assistance, the court shall make as part of its judgment an order for
41 reimbursement to the Program of the amount of any assistance awarded less
42 reasonable expenses allocated by the court to that recovery.

43 (c) Funds appropriated to the Department of Public Safety for this program may be used
44 to purchase and distribute ~~rape~~ sexual assault evidence collection kits approved by the ~~State~~
45 ~~Bureau of Investigation.~~ Director of the State Crime Laboratory.

46 (d) The Secretary, in consultation with the Director of the State Crime Laboratory, shall
47 require that all sexual assault evidence collection kits purchased or distributed on or after October
48 1, 2018, are compatible with the Statewide Sexual Assault Evidence Collection Kit Tracking
49 System established under G.S. 114-65."

50 **SECTION 3.** The Secretary of the Department of Public Safety shall convene a
51 working group to make recommendations regarding the testing priority of untested sexual assault

1 kits identified in the 2017 Sexual Assault Evidence Collection Kit Law Enforcement Report
2 made pursuant to Section 17.7 of S.L. 2017-57. The working group shall include representatives
3 from law enforcement, victims' advocates such as the North Carolina Victim Assistance Network
4 and the North Carolina Coalition Against Sexual Assault, RTI International, the North Carolina
5 Department of Justice, prosecutors, and criminal defense attorneys. The working group shall
6 develop findings and recommendations, including a strategic plan, that identifies which untested
7 sexual assault evidence collection kits can be tested, the priority order for testing the kits, and a
8 statewide protocol for testing future sexual assault evidence collection kits. The Secretary shall
9 submit the findings and recommendations of the working group to the Joint Legislative Oversight
10 Committee on Justice and Public Safety by December 1, 2018.

11 **SECTION 4.** This act is effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H 945

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. John
Sen.)

1 moves to amend the bill on page 3, line 8

2 () WHICH CHANGES THE TITLE

3 by inserting the following ~~paragraph~~ sentence between

4 "Kits." and "The Secretary":

5 " The working group shall also make findings and

6 recommendations to the Secretary and to the Director with

7 respect to developing the protocols, rules, and guidelines for

8 the System under G.S. 114-65(a). "

9 _____

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SIGNED

[Signature]

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)





HOUSE BILL 945: Rape Evidence Collection Kit Tracking Act.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Reps. Boles, Davis
Analysis of: First Edition

Date: June 6, 2018
Prepared by: Shawn Middlebrooks
Susan L. Sitze
Staff Attorneys

OVERVIEW: *House Bill 945 would establish a statewide sexual assault kit tracking system and require tracking of all untested sexual assault kits as recommended by the Joint Legislative Oversight Committee on Justice and Public Safety (JPS Oversight).*

CURRENT LAW: In 2017, the North Carolina State Crime Laboratory (Crime Lab) issued a report entitled *2017 Sexual Assault Evidence Collection Kit (SAECK) Law Enforcement Inventory Report*, documenting over 15,160 untested sexual assault kits in North Carolina. A copy of the full report can be found [here](http://www.ncdoj.gov/News-and-Alerts/News-Releases-and-Advisories/Attorney-General-Josh-Stein-Announces-Results-of-S.aspx) (<http://www.ncdoj.gov/News-and-Alerts/News-Releases-and-Advisories/Attorney-General-Josh-Stein-Announces-Results-of-S.aspx>).

The Appropriations Act of 2017 (S.L. 2017-57, s. 17.7) required each law enforcement agency across the State to conduct an inventory of all untested sexual assault kits and report the findings to the Crime Lab.

BILL ANALYSIS:

Section 1 of House Bill 945 would:

- Establish the Statewide SAECK Tracking System (System), within the Crime Lab.
- Require the Director of the Crime Lab to implement operation protocols for the System.
- Require the Secretary of the Department of Public Safety (DPS) to adopt rules for System participants.
- Mandate participation for certain entities, including medical providers, law enforcement agencies, forensic laboratories, and other entities having custody or use of sexual assault kits.
- Provide victims the ability to track the location and status of their sexual assault kit.
- Track untested kits.
- Require annual reports from the Director of the Crime Lab to the General Assembly.

Section 2 of House Bill 945 would:

- Change the term "rape" evidence collection kit to "sexual assault" evidence collection kit.
- Require kits purchased and distributed on or after October 1, 2018 to be compatible with the System.

Section 3 would direct the Secretary of DPS to convene a working group regarding testing priority for untested kits.

EFFECTIVE DATE: This bill would be effective when it becomes law.

Karen Cochrane-Brown
Director



Legislative Analysis
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 2017

H

1

HOUSE BILL 960*

Short Title: Local Law Enforcement/Citizens Academies. (Public)

Sponsors: Representatives Faircloth, Boles, and Speciale (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

May 21, 2018

1 A BILL TO BE ENTITLED
2 AN ACT TO ENCOURAGE LOCAL LAW ENFORCEMENT AGENCIES TO OPERATE
3 PROGRAMS THAT EDUCATE CITIZENS REGARDING LAW ENFORCEMENT
4 OPERATIONS, TO RECOGNIZE THE DANGER SIGNS OF POTENTIALLY VIOLENT
5 ACTIVITIES, AND TO PROVIDE TRAINING TO CITIZENS WHO WANT TO
6 PROVIDE VOLUNTEER SERVICES TO LOCAL LAW ENFORCEMENT AGENCIES,
7 AS RECOMMENDED BY THE JOINT LEGISLATIVE EMERGENCY MANAGEMENT
8 OVERSIGHT COMMITTEE.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. Article 13 of Chapter 160A of the General Statutes is amended by
11 adding a new section to read:

12 "**§ 160A-289.3. Citizens academy and volunteer programs.**

13 (a) Findings. – The General Assembly finds the following:

- 14 (1) Acts of terrorism and other forms of violence directed against innocent
15 civilians of all ages are on the increase.
16 (2) Where there are "see something, say something" programs in effect in local
17 communities, the information gained is beneficial to the development of
18 intelligence information that can, to some extent, preempt and ameliorate the
19 effects of these acts of violence.
20 (3) Programs conducted by local law enforcement entities that educate volunteer
21 citizens to recognize the danger signs involved in illegal or potentially violent
22 activities increase the effectiveness of "see something, say something"
23 programs.
24 (4) Such programs are in place and working at the local level in North Carolina.
25 These programs demonstrate the effectiveness of getting more eyes surveilling
26 a situation and help increase the likelihood of reported danger signs.

27 (b) Local Programs. – The chief of police of a local police department or of a county
28 police department may establish a citizens academy (the program) that educates community
29 members on the operations of the department and prepares participants to provide appropriate
30 volunteer services. The program may provide orientation and training with department
31 representatives from a variety of backgrounds and disciplines. The program should follow a
32 pre-established curriculum that includes instruction on the recognition and reporting of
33 suspicious activity indicative of criminal behavior and emphasizes recognition of activities and
34 threats that might lead to acts of terrorism or other violence against innocent civilians. When
35 selecting individuals to participate in the program, the department shall conduct background



1 checks on potential participants and shall exclude individuals based on prior criminal convictions
2 or pending criminal charges or investigations. Any individual who is also a veteran must have
3 received an honorable discharge to be eligible to participate in the program.

4 (c) Volunteer Services. – The department may use graduates of the program to provide
5 appropriate volunteer services that support the operations of the department and increase safety
6 and security within the community. These services may include volunteers participating in
7 community patrols or other observational activities. No individual may be armed while providing
8 volunteer services unless the individual has successfully completed a basic law enforcement
9 training course as approved by the North Carolina Criminal Justice Education and Training
10 Standards Commission and is authorized in writing to do so by the chief of police of the police
11 department sponsoring the program."

12 **SECTION 2.** Article 3 of Chapter 162 of the General Statutes is amended by adding
13 a new section to read:

14 **"§ 162-27. Citizens academy and volunteer programs.**

15 (a) Findings. – The General Assembly finds the following:

- 16 (1) Acts of terrorism and other forms of violence directed against innocent
17 civilians of all ages are on the increase.
- 18 (2) Where there are "see something, say something" programs in effect in local
19 communities, the information gained is beneficial to the development of
20 intelligence information that can, to some extent, preempt and ameliorate the
21 effects of these acts of violence.
- 22 (3) Programs conducted by local law enforcement entities that educate volunteer
23 citizens to recognize the danger signs involved in illegal or potentially violent
24 activities increase the effectiveness of "see something, say something"
25 programs.
- 26 (4) Such programs are in place and working at the local level in North Carolina.
27 These programs demonstrate the effectiveness of getting more eyes surveilling
28 a situation and help increase the likelihood of reported danger signs.

29 (b) Local Programs. – The sheriff may establish a citizens academy (the program) that
30 educates community members on the operations of the department and prepares participants to
31 provide appropriate volunteer services. The program may provide orientation and training with
32 department representatives from a variety of backgrounds and disciplines. The program should
33 follow a pre-established curriculum that includes instruction on the recognition and reporting of
34 suspicious activity indicative of criminal behavior and emphasizes recognition of activities and
35 threats that might lead to acts of terrorism or other violence against innocent civilians. When
36 selecting individuals to participate in the program, the sheriff shall conduct background checks
37 on potential participants and shall exclude individuals based on prior criminal convictions or
38 pending criminal charges or investigations. Any individual who is also a veteran must have
39 received an honorable discharge to be eligible to participate in the program.

40 (c) Volunteer Services. – The sheriff may use graduates of the program to provide
41 appropriate volunteer services that support the operations of the department and increase safety
42 and security within the community. These services may include volunteers participating in
43 community patrols or other observational activities. No individual may be armed while providing
44 volunteer services unless the individual has successfully completed a basic law enforcement
45 training course as approved by the North Carolina Sheriffs' Education and Training Standards
46 Commission and is authorized in writing to do so by the sheriff of the department sponsoring the
47 program."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H960

DATE 6/6/18

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. Faucloth
Sen.)

1 moves to amend the bill on page 2, line 1

2 () WHICH CHANGES THE TITLE

3 by deleting "shall" and inserting "may";

4 _____

5 and on page 2, line 37

6 deleting "shall" and inserting "may".

7 _____

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9 _____

10 _____

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12 _____

13 _____

14 _____

15 _____

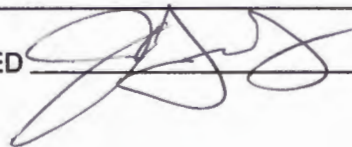
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SIGNED _____



ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)





HOUSE BILL 960: Local Law Enforcement/Citizens Academies.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	May 21, 2018
Introduced by:	Reps. Faircloth, Boles, Speciale	Prepared by:	Shawn Middlebrooks
Analysis of:	First Edition		Susan Sitze Staff Attorney

OVERVIEW: *House Bill 960 would authorize the chief of police of a local police department or a county sheriff to establish a citizen academy program to assist with community safety and security.*

BILL ANALYSIS:

House Bill 960 would authorize the chief of police for a local police department (**Section 1**) or sheriff (**Section 2**) to establish a citizen academy program. The program would educate members about department operations and prepare members to provide volunteer services as approved by the law enforcement agency. All programs established under this act should to follow a pre-established curriculum that includes instruction on the recognition and reporting of criminal behavior, threats, terrorism, and other acts of violence.

The local police department or sheriff's office would be required to conduct criminal background checks on prospective volunteers. Volunteers with prior criminal convictions, pending criminal charges, or who have been dishonorably discharged from the armed services would be excluded from participating in the program.

Graduates of the program may be used to provide operational in-service support to the department for purposes of community safety and security. No volunteer may be armed while providing in-service support unless the volunteer has successfully completed basic law enforcement training and is authorized in writing by the sponsoring law enforcement agency.

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

Karen Cochrane-Brown
Director



H 9 6 0 - S M B a - 4 E 1 - V - 3

Legislative Analysis
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 2017

H

D

HOUSE BILL 961
PROPOSED COMMITTEE SUBSTITUTE H961-CSBQ-4 [v.4]

05/23/2018 09:10:59 AM

Short Title: Required Training Police Telecommunicators.

(Public)

Sponsors:

Referred to:

May 21, 2018

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE TRAINING AND CERTIFICATION OF POLICE
3 TELECOMMUNICATORS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 17E-7 reads as rewritten:

6 "§ 17E-7. Required standards.

7 (a) Justice officers, other than those set forth in subsection (c1) of this section, shall not
8 be required to meet any requirements of subsections (b) and (c) of this section as a condition of
9 continued employment, nor shall failure of a justice officer to fulfill such requirements make him
10 ineligible for any promotional examination for which he is otherwise eligible if the officer held
11 an appointment prior to July 1, 1983, and is a sworn law-enforcement officer with power of
12 arrest. The legislature finds, and it is hereby declared to be the policy of this Chapter, that such
13 officers have satisfied such requirements by their experience. It is the intent of the Chapter that
14 all justice officers employed at the entry level after the Commission has adopted the required
15 standards shall meet the requirements of this Chapter. All justice officers who are exempted from
16 the required entry level standards by this subsection are subject to the requirements of subsections
17 (b) and (c) of this section as well as the requirements of G.S. 17E-4(a) in order to retain
18 certification.

19 (b) The Commission shall provide, by regulation, that no person may be appointed as a
20 justice officer at entry level, except on a temporary or probationary basis, unless such person has
21 satisfactorily completed an initial preparatory program of training at a school certified by the
22 Commission or has been exempted from that requirement by the Commission pursuant to this
23 Chapter. Upon separation of a justice officer from a sheriff's department within the temporary or
24 probationary period of appointment, the probationary certification shall be terminated by the
25 Commission. Upon the reappointment to the same department or appointment to another
26 department of an officer who has separated from a department within the probationary period,
27 the officer shall be charged with the amount of time served during his initial appointment and
28 allowed the remainder of the probationary period to complete the basic training requirement.
29 Upon the reappointment to the same department or appointment to another department of an
30 officer who has separated from a department within the probationary period and who has
31 remained out of service for more than one year from the date of separation, the officer shall be
32 allowed another probationary period to complete such training as the Commission shall require
33 by rule for an officer returning to service.

34 (c) In addition to the requirements of subsection (b) of this section, the Commission, by
35 rules and regulations, may fix other qualifications for the employment and retention of justice
36 officers including minimum age, education, physical and mental standards, citizenship, good



1 moral character, experience, and such other matters as relate to the competence and reliability of
2 persons to assume and discharge the responsibilities of the office, and the Commission shall
3 prescribe the means for presenting evidence of fulfillment of these requirements.

4 Where minimum educational standards are not met, yet the individual shows potential and a
5 willingness to achieve the standards by extra study, they may be waived by the Commission for
6 the reasonable amount of time it will take to achieve the standards required. Upon petition from
7 a sheriff, the Commission may grant a waiver of any provisions of this section (17E-7) for any
8 justice officer serving that sheriff.

9 (c1) Any justice officer appointed as a telecommunicator at the entry level after March 1,
10 1998, shall meet all requirements of this Chapter. Any person employed in the capacity of a
11 telecommunicator as defined by the Commission on or before March 1, 1998, shall not be
12 required to meet any entry-level requirements as a condition of continued employment but shall
13 be reported to the Commission for certification. All justice officers who are exempted from the
14 required entry-level standards by this subsection are subject to the requirements of subsections
15 (b) and (c) of this section as well as the requirements of G.S. 17E-4(a) in order to retain
16 certification.

17 (c2) Effective July 1, 2020, any person employed as a telecommunicator by a municipal
18 police agency shall meet all the requirements for telecommunicators as set forth in this Chapter.

19 (d) The Commission may issue a certificate evidencing satisfaction of the requirements
20 of subsections (b), (c), and (c1) of this section to any applicant who presents such evidence as
21 may be required by its rules and regulations of satisfactory completion of a program or course of
22 instruction in another jurisdiction."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

1

HOUSE BILL 961*

Short Title: Required Training Police Telecommunicators. (Public)

Sponsors: Representatives Faircloth, Brenden Jones, Boles, and Speciale (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

May 21, 2018

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TRAINING AND CERTIFICATION OF POLICE
TELECOMMUNICATORS, AS RECOMMENDED BY THE JOINT LEGISLATIVE
EMERGENCY MANAGEMENT OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 17E-7 reads as rewritten:

"§ 17E-7. Required standards.

(a) Justice officers, other than those set forth in subsection (c1) of this section, shall not be required to meet any requirements of subsections (b) and (c) of this section as a condition of continued employment, nor shall failure of a justice officer to fulfill such requirements make him ineligible for any promotional examination for which he is otherwise eligible if the officer held an appointment prior to July 1, 1983, and is a sworn law-enforcement officer with power of arrest. The legislature finds, and it is hereby declared to be the policy of this Chapter, that such officers have satisfied such requirements by their experience. It is the intent of the Chapter that all justice officers employed at the entry level after the Commission has adopted the required standards shall meet the requirements of this Chapter. All justice officers who are exempted from the required entry level standards by this subsection are subject to the requirements of subsections (b) and (c) of this section as well as the requirements of G.S. 17E-4(a) in order to retain certification.

(b) The Commission shall provide, by regulation, that no person may be appointed as a justice officer at entry level, except on a temporary or probationary basis, unless such person has satisfactorily completed an initial preparatory program of training at a school certified by the Commission or has been exempted from that requirement by the Commission pursuant to this Chapter. Upon separation of a justice officer from a sheriff's department within the temporary or probationary period of appointment, the probationary certification shall be terminated by the Commission. Upon the reappointment to the same department or appointment to another department of an officer who has separated from a department within the probationary period, the officer shall be charged with the amount of time served during his initial appointment and allowed the remainder of the probationary period to complete the basic training requirement. Upon the reappointment to the same department or appointment to another department of an officer who has separated from a department within the probationary period and who has remained out of service for more than one year from the date of separation, the officer shall be allowed another probationary period to complete such training as the Commission shall require by rule for an officer returning to service.



1 (c) In addition to the requirements of subsection (b) of this section, the Commission, by
2 rules and regulations, may fix other qualifications for the employment and retention of justice
3 officers including minimum age, education, physical and mental standards, citizenship, good
4 moral character, experience, and such other matters as relate to the competence and reliability of
5 persons to assume and discharge the responsibilities of the office, and the Commission shall
6 prescribe the means for presenting evidence of fulfillment of these requirements.

7 Where minimum educational standards are not met, yet the individual shows potential and a
8 willingness to achieve the standards by extra study, they may be waived by the Commission for
9 the reasonable amount of time it will take to achieve the standards required. Upon petition from
10 a sheriff, the Commission may grant a waiver of any provisions of this section (17E-7) for any
11 justice officer serving that sheriff.

12 (c1) Any justice officer appointed as a telecommunicator at the entry level after March 1,
13 1998, shall meet all requirements of this Chapter. Any person employed in the capacity of a
14 telecommunicator as defined by the Commission on or before March 1, 1998, shall not be
15 required to meet any entry-level requirements as a condition of continued employment but shall
16 be reported to the Commission for certification. All justice officers who are exempted from the
17 required entry-level standards by this subsection are subject to the requirements of subsections
18 (b) and (c) of this section as well as the requirements of G.S. 17E-4(a) in order to retain
19 certification.

20 (c2) Effective July 1, 2020, any person employed as a telecommunicator by a municipal
21 police agency shall meet all the requirements of this Chapter.

22 (d) The Commission may issue a certificate evidencing satisfaction of the requirements
23 of subsections (b), (c), and (c1) of this section to any applicant who presents such evidence as
24 may be required by its rules and regulations of satisfactory completion of a program or course of
25 instruction in another jurisdiction."

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



HOUSE BILL 961: Required Training Police Telecommunicators.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	June 6, 2018
Introduced by:	Reps. Faircloth, Brenden Jones, Boles, Speciale	Prepared by:	Shawn Middlebrooks Staff Attorney
Analysis of:	PCS to First Edition H961-CSBQ-4		

OVERVIEW: *The Proposed Committee Substitute (PCS) to HB 961 would require all persons employed as a telecommunicator for a municipal police department to meet the eligibility requirements for telecommunicators as established by the North Carolina Sheriffs' Education and Training Standards Commission.*

CURRENT LAW: Standards for deputy sheriffs are established in Chapter 17E of the General Statutes and by the North Carolina Sheriffs' Education and Training Standards Commission. Standards for municipal police personnel are established in Chapter 17C of the General Statutes and by the North Carolina Criminal Justice Education and Training Standards Commission.

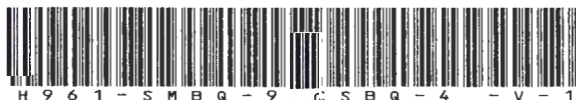
Pursuant to G.S. 17E-7(c1), deputy sheriffs appointed as telecommunicators after March 1, 1998 must comply with entry-level training standards adopted by the Sheriffs' Commission. Telecommunicator means any person performing responsibilities, either full time, part time, permanent or temporary basis, for communication functions to include receiving calls or dispatching for emergency and law enforcement services.

Currently, there are no training standards for persons employed as telecommunicators by municipal police departments.

BILL ANALYSIS: The PCS would require that, effective July 1, 2020, any person employed as a telecommunicator by a municipal police department meet the requirements for telecommunicators as set forth by the Sheriffs' Commission.

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

Karen Cochrane-Brown
Director



Legislative Analysis
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 2017

H

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HOUSE BILL 1047
PROPOSED COMMITTEE SUBSTITUTE H1047-CSBG-32 [v.1]

06/01/2018 09:48:07 PM

Short Title: LRC HOA Dispute Resolution/PED Study.

(Public)

Sponsors:

Referred to:

May 31, 2018

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE PROGRAM EVALUATION DIVISION TO STUDY THE
3 CREATION OF A PROCESS FOR MEDIATION, ARBITRATION, OR OTHER
4 ALTERNATIVE DISPUTE RESOLUTION METHODS FOR DISPUTES ARISING
5 BETWEEN PROPERTY OWNERS AND PROPERTY OWNERS ASSOCIATIONS AND
6 THEIR RESPECTIVE GOVERNING ENTITIES, AS RECOMMENDED BY THE
7 LEGISLATIVE RESEARCH COMMISSION.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** The Joint Legislative Program Evaluation Oversight Committee shall
10 include in the work plan of the Program Evaluation Division an evaluation of possible alternative
11 dispute resolution (ADR) methods, including arbitration and mediation, for disputes arising
12 between property owners and property owners associations and their respective governing
13 entities. The study shall determine the following: (i) the potential financial burdens of ADR
14 methods and which party should bear the burden, (ii) whether the ADR process should be binding
15 upon the parties, (iii) whether a body should be established to administer ADR matters, and (iv)
16 what role the State should have in establishing a framework for managing disputes. The Program
17 Evaluation Division shall report its findings and recommendations to the Joint Legislative
18 Program Evaluation Oversight Committee on or before February 1, 2019.

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



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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

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HOUSE BILL 1047

Short Title: LRC HOA Dispute Resolution/PED Study. (Public)

Sponsors: Representative Stevens.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

May 31, 2018

1 A BILL TO BE ENTITLED
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3 CREATION OF A PROCESS FOR MEDIATION, ARBITRATION, OR OTHER
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16 what role the State should have in establishing a framework for managing disputes. The Program
17 Evaluation Division shall report its findings and recommendations to the Joint Legislative
18 Program Evaluation Oversight Committee on or before October 1, 2018.

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







HOUSE BILL 1047: LRC HOA Dispute Resolution/PED Study.

2017-2018 General Assembly

Committee: House Judiciary II
Introduced by: Rep. Stevens
Analysis of: PCS to First Edition
H1047-CSBG-32

Date: June 4, 2018
Prepared by: Howard Marsilio
Committee Counsel

OVERVIEW: *The Proposed Committee Substitute for House Bill 1047 would direct the Program Evaluation Division (PED) to study the creation of alternative dispute resolution (ADR) processes, as applied to disputes between property owners and owners' associations, as recommended by the Legislative Research Commission.*

- *The PCS changed the deadline for PED to submit its study from October 1, 2018 to February 1, 2019.*

CURRENT LAW: Chapter 47F of the General Statutes, entitled North Carolina Planned Community Act, regulates planned communities and the management of planned communities (Article 3 of Chapter 47F), including owners' associations.

One of the enumerated powers of an owners' association is the power to adopt bylaws and rules and regulations for the planned community. G.S. 47F-102(1). Unless provided for in specific bylaws, there are generally no state level procedural requirements (other than procedures for fines and suspension of planned community privileges or services) for property owner and owners' association disputes. Disputes which cannot be resolved independently, would ultimately require litigation.

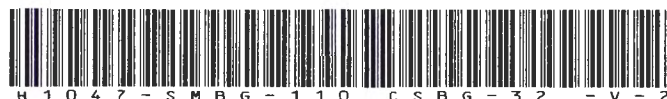
BILL ANALYSIS: The bill would direct PED, through the Joint Legislative Program Evaluation Oversight Committee work plan, to evaluate the creation of a process for alternative dispute resolution methods for property owner and owners' associations, such as mediation and arbitration. The bill further directs that all of the following would need to be included in the study:

- (i) the potential financial burdens of ADR methods, and which party should bear the burden.
- (ii) whether the ADR process should be binding upon the parties.
- (iii) whether a body should be established to administer ADR matters.
- (iv) what role the State should have in establishing a framework for managing disputes.

PED would report its findings to the Joint Legislative Program Evaluation Oversight Committee before February 1, 2019.

EFFECTIVE DATE: The act would be effective when it becomes law.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

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VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

6-6-2018

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Crystal F.	SA
John M.	(SA)
N. Gardner	PPAB
Shye David	NF
Jason Goumer	NF
David Hess	Roxford Police
JEFFREY SMYTHE	BURLINGTON P.D.
Carlton Little	SOG
Susan Mayo	NCICW
SwAm Forest	Nem)
Fred Baggett	Police (help him



VISITOR REGISTRATION SHEET

House Committee on Judiciary II

Name of Committee

6-6-18

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jared Weber	NC Health News
Jillian Tolman	MWC LLC
Sallie James	Governor's Office
William Hart	NC DOT / State Crime Lab
Alicia Davis	NC DPS
Bradford Snowden	NC DOT
John Byrd	NC State Crime Lab
Bill Holmes	NC DIT



Speaker Registration Sheet

House Committee on Judiciary II

6-6-2018

Date

Bill: _____

NAME - Please PRINT

FIRM OR AGENCY

did not
speak on #961 FRED BAGGETT H961 Police Chiefs Assn

John Byrd

H945 DOJ SCL

Bradford Snedden

H945
NCDOJ



**House Pages
Assignments
Wednesday, June 06, 2018
Session: 11:00 AM**

Committee	Room	Time	Staff	Comments	Member
Health	643	10:00 AM	Zoe Nichols		Rep. Darren G. Jackson
			Leila Samiy		Speaker Tim Moore
			Amber Ward		Rep. James L. Boles, Jr.
			Bray Woodard		Rep. Ken Goodman
State and Local Government	544	10:00 AM	Miller Andrews		Speaker Tim Moore
			Anne Asbill		Rep. Cynthia Ball
			Emily Davis		Speaker Tim Moore
			Imari Simmons		Rep. Michael Speciale
Energy Policy Commission, Jt. Leg.	643	1:00 PM	Richard Asbill		Rep. John Autry
			Martin Kinney		Rep. George G. Cleveland
			Payton Martin		Rep. Julia C. Howard
			Leila Samiy		Speaker Tim Moore
Judiciary I	415	1:00 PM	Mitchell Messenger		Rep. George G. Cleveland
			Zoe Nichols		Rep. Darren G. Jackson
			Emerson Replogle		Rep. Grier Martin
			Christian Terrell		Rep. Rosa U. Gill
Judiciary II	1425	1:00 PM	Rebecca Burkhart		Speaker Tim Moore
			Emily Davis		Speaker Tim Moore



House Pages Assignments Wednesday, June 06, 2018

Committee	Room	Time	Staff	Comments	Member
Judiciary III	421	1:00 PM	Miller Andrews		Speaker Tim Moore
			Anne Asbill		Rep. Cynthia Ball
			Alexa Gomez		Speaker Tim Moore
			Amber Ward		Rep. James L. Boles, Jr.
State and Local Government	544	1:00 PM	John Bradford		Rep. John R. Bradford, III
			Anthony Burnette		Speaker Tim Moore
			Bray Woodard		Rep. Ken Goodman
Pensions and Retirement	415	3:00 PM	Anne Asbill		Rep. Cynthia Ball
			Richard Asbill		Rep. John Autry
			Payton Martin		Rep. Julia C. Howard
			Mitchell Messenger		Rep. George G. Cleveland



Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Judiciary II

DATE: 6/6/2018 Room: 1425

House Sgt-At Arms:

1. Name: Warren Hawkins
2. Name: Doug Harris
3. Name: Malachi McCullough, Jr.
4. Name: Glen Wall
5. Name: _____

Senate Sgt-At Arms:

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

