
Legislative Update

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UNC

Total Bills Introduced

- 1975-76 2311
- 1985-86 3463
- 1995-96 3089
- 2005-06 4961
- Most bills since 1913, which was only biennium in 20th century to have more bills filed

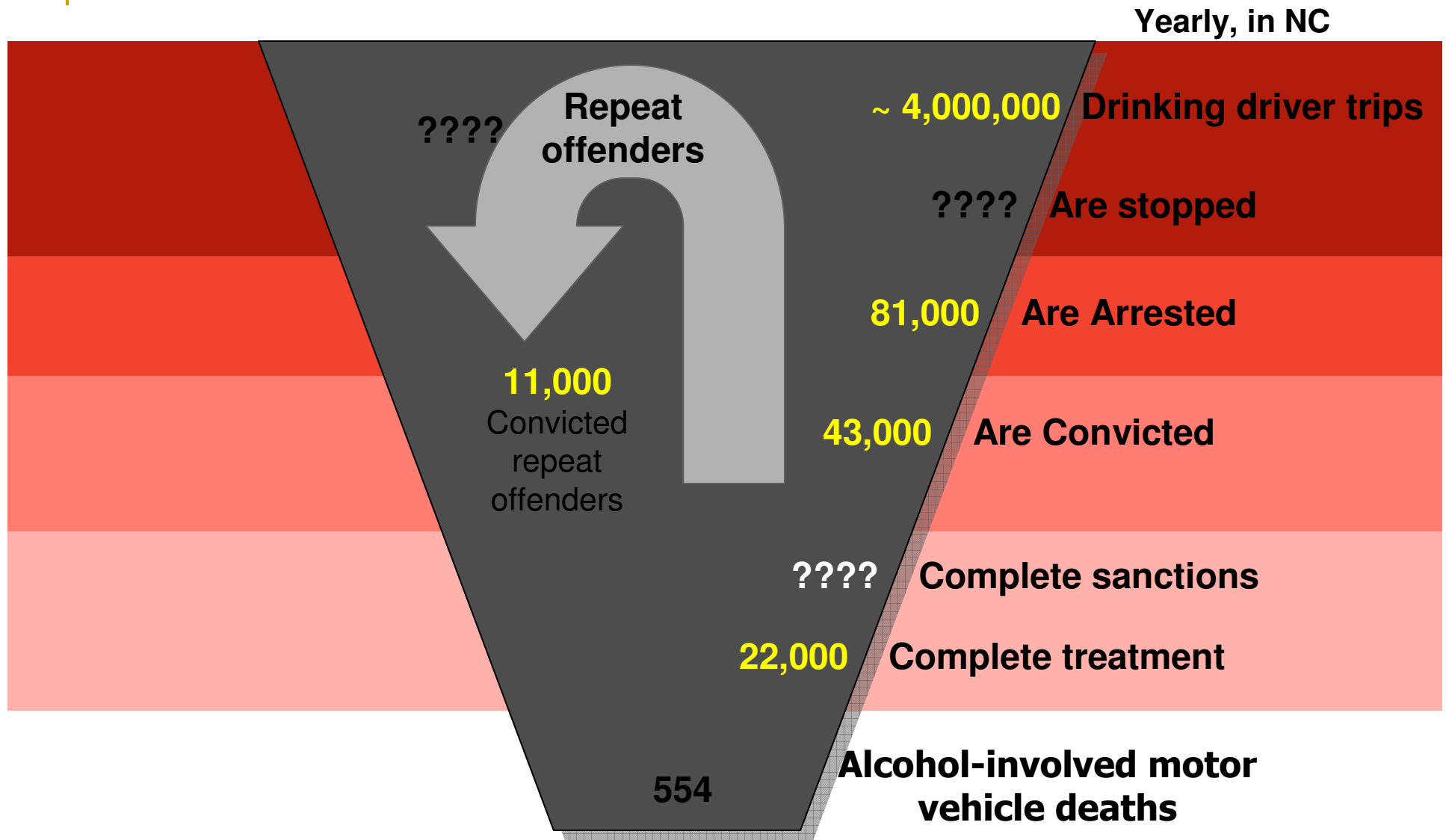
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- A will is:
 - A dead giveaway

- A hangover is:
- The Wrath of Grapes

Criminal Legislation

- Cartridge pistol registration, #9
- School bus passing PJC's, #13
- Rear seat belts, #15
- Teen age cell phones, #17
- Electronic bond registry, #21

DWI Sequence



Impaired Driving—2006

- Changes to Impaired Driving Offense
- New and modified other offenses
- Driver's License changes
- Investigative, chemical analysis changes
- Trial procedures
- Sentencing changes
- Record-keeping changes

Impaired Driving—GS 20-138.1

- 0.08 “deemed sufficient”
- Schedule I zero tolerance
- No “nonoperation” sentences to satisfy mandates
- Lawnmowers and bicycles covered

Have DWI conviction rates changed in the last year?

1. Yes, higher
2. Yes, lower
3. No change

Public Vehicular Area

- Open to public at any time
- Businesses are PVA's even when closed
- Residential subdivisions are included if road leads to or is in subdivision

Death By Vehicle

- E level felony
- With prior DWI--D
- With prior DWI homicide--2nd degree murder punishment for DBV
 - No staleness factor

Injury by Vehicle

- Grades of felonies, based on prior record
 - F for first offense, E if have prior impaired driving record
 - Injury must be “serious”
 - Same standard as used in grossly aggravating factor
 - Not classified as offense involving impaired driving, and no specific license revocation
 - Revocation because it is a felony?

DWLR, Amended (GS 20-28)

- DWLR, when the revocation is an impaired driving revocation, after DMV has sent notice
 - License consequences involve interlock
 - Interlock periods don't match
- Failing to appear for two years “from the date of the charge” for an implied consent charge
 - Same license consequences as above
- Notice amendments, GS 20-48

DWI--Refusal Hearings

- DMV hearing-on record, with findings and conclusions
 - Limited to specified issues
 - Charged with implied consent offense
 - Reasonable grounds
 - Properly notified of rights
 - Willfully refused
 - Improper stop? Fourth Amendment violations?
- Review in superior court limited, not ***DE NOVO***
 - Does evidence to support the findings
 - Do findings support the conclusion
 - Did DMV committed legal error in revoking?

Driver License Issues

- Medical exemption for interlock in license restoration
 - Does not apply to Limited Privilege interlock
- Cherokee nation convictions “count” for prior conviction purposes

Check Points—GS 20-16.3A

- Statute applies to all motor vehicle checkpoints, not just “impaired driving checks”
- Requires written agency policy
 - Policy must have written ‘guidelines’ to establish ‘pattern’ for a specific checkpoint
 - Pattern need not be in writing
- Location had to be random or statistically indicated
 - Violation not basis for suppression

Roadside Screening Tests

- Allows roadside test results to show positive or negative
 - ❑ May not be used to establish specific concentration
 - ❑ May establish zero per se violation
 - ❑ Negative results may be used to show influence of drugs
 - ❑ May be used to show probable cause
 - ❑ Any other relevant purpose?

Blood and Urine Tests

- SBI/Charlotte police lab admissibility
 - No appearance required in superior unless defendant gives notice five days before trial; then admissibility subject to evidence rules
- **Requires** medical personnel to draw blood upon request of officer
- HIPAA compliance—requires medical personnel to provide information upon request or if ordered by court
- Allows “exigent circumstance” blood or urine test without court order or implied consent procedures

Defendant's Alternative Alcohol/Drug Test

- Requires notice of right to test
- Requires procedures for physical access in jail
- Requires custodian to make “timely, reasonable” efforts to allow defendant access to phone
- Does not require transport to alternative site

District Court DWI Motions

- New article 2D, to Ch. 20. Applies to all implied consent offenses
- No motions after trial, except for insufficient evidence or newly discovered material
- Pretrial motion
 - Appeal provisions apply to motions during trial
 - State may appeal, defendant can't; superior court hears de novo if "dispute about findings of fact"
 - Judge makes preliminary indication, which isn't final unless DA decides not to appeal
 - Judge must make findings of fact and conclusions of law, even in preliminary indication

DWI Re-sentencing

- If appeal to superior court, district court judgment vacated
- Remand only with consent of DA and judge
- On remand, new sentencing hearing required
 - ❑ Must consider pending charges or new convictions
 - ❑ Must delay sentencing in the remanded case until all pending cases disposed of

HGN

- Adds GS 8C-1, Rule 702 to allow HGN results to be administered if:
 - ❑ Tester trained
 - ❑ Tester qualified as expert under Rule 702
 - ❑ “With proper foundation”
 - ❑ Tester may not give opinion about specific alcohol concentration

I've allowed HGN evidence

1. 0
2. 1-5
3. 6-25
4. So many times I
can't count

DRE

- Drug Recognition Expert testimony allowed under Rule 702
 - ❑ Must qualify as expert
 - ❑ Must establish foundation
 - ❑ Must be trained and certified by HHS
 - ❑ May testify as to whether a person was under the influence of an impairing substance
 - ❑ May testify as to the category of impairing substance

I've allowed DRE evidence...

1. 0
2. 1-5 times
3. 5-25 times
4. So many I can't count

Opinions as to Speed

- Amends Rule 702 to allow accident reconstruction expert to testify as to speed of a vehicle in a crash, with proper foundation
- Not limited to impaired driving or to criminal cases

Prosecutor Implied Consent Dismissal/Reductions

- Requires detailed records of factors supporting decision to dismiss or reduce implied consent case
 - Formerly limited to impaired driving cases
- Requires alcohol concentration, prior record, license status, pending charges, and specific element state cannot prove

DWI Judicial Notice Rules

- HHS rules
- HHS permittees
- Preventive maintenance records
- HHS required to create website with required records

DWI Sentencing Changes

- Blakeley Compliance in superior court
- Sentencing factors must be proved beyond a reasonable doubt in all courts
- Split sentences must be served hour for hour and in at least 48 hour increments
- If defendant reports to jail impaired, must be ordered to serve entire sentence immediately

DWI Parole Changes

- If not sent to a residential facility must be paroled to community service parole or be subject to electronic monitoring

Vehicle Forfeiture

- Adds new ground for seizure and forfeiture
 - Defendant charged with impaired driving
 - Had no license
 - Vehicle not covered by insurance

DWI Data Collection

- DA's dismissal/reduction records
- Clerk's records to include reasons for court dismissals
- Clerks have to retain DWI records for ten years, with permanent record of defendant, judge, prosecutor, attorney, alcohol concentration, sentence
- Web-based, statewide data
 - Conviction data available by county, prosecutor, defense counsel and judge

DWI Effective Date

- Dec. 1, 2006 for offenses committed on and after that date
- Most electronic record keeping not effective until AOC rewrites its database
 - Report card
 - Reason for dismissal
 - DA justification for dismissal/reduction

Sex Offender Changes

- Registration changes
- Monitoring changes
- Residential restrictions
- Driver license changes
- Sexual servitude
- 18 new felonies

Registration Changes

- Include statutory rape of 13-15 year olds
- Requires all registrations to be in person and every six months; allows sheriff to require new photo
- Requires notice to sheriff if working or in school, and living in temporary residence, for more than 10 days a month or 30 days in a year



Termination of Registration

- Eliminates automatic termination after 10 years
- Hearing before superior court
- Petitioner must show
 - No further arrest for registration offense
 - Does arrest trigger a lifetime ban? What does “arrest” mean?
 - Complies with federal law
 - Not a current or potential threat to public safety
- May petition annually

Residential Restrictions

- Felony to knowingly reside within 1000 feet of school or child care center
 - ❑ Not home schools or universities
 - ❑ Child care centers—three or more children on a regular basis
- Change in status of property after residence established does not require move by sex offender
- Class G Felony

Work Restrictions

- Can't work in any "place" where responsibilities include contact with children
- Can't accept children in residence when a registered sex offender resides there
- Class F felony

Probation Search

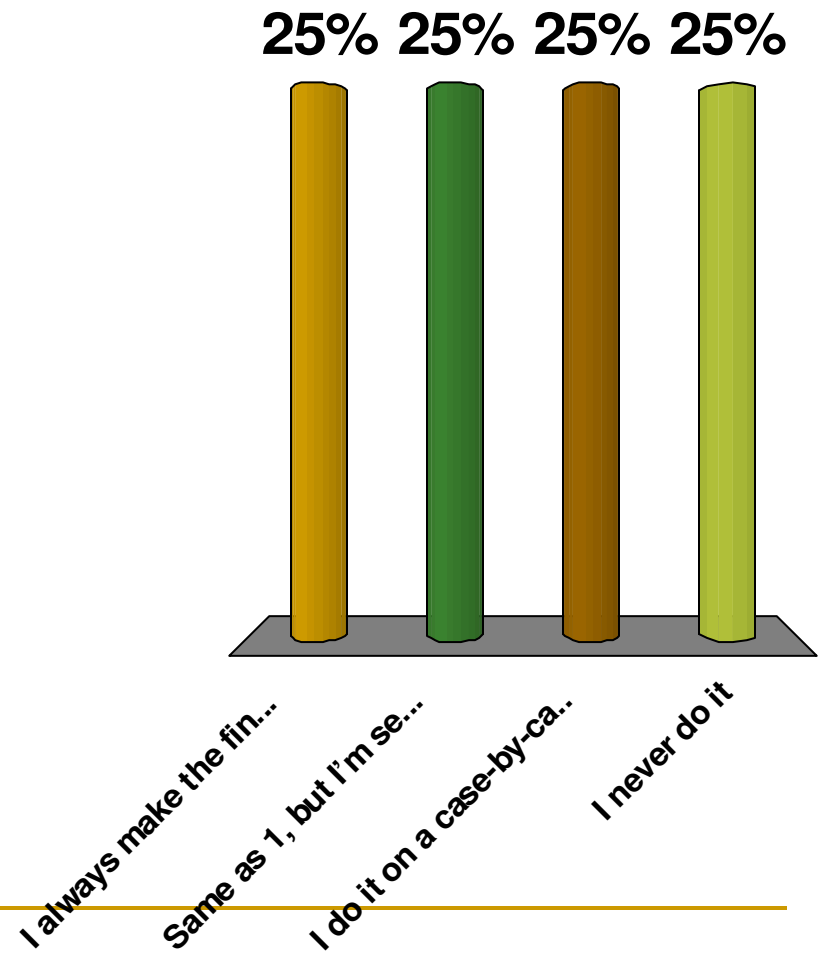
- Probation has to check for sex offender status for every person placed on probation
- Supervised or unsupervised?

Monitoring by GPS

- Lifetime—recidivist, violent predator, aggravated offense
 - Who makes determination?
 - Court must order unsupervised probation for life when sentencing lifetime offender
- Monitoring requirement may be terminated by Parole Comm'n
- May apply one year after complete sentence and any PRS or parole or probation
- Standard is “not likely to pose a threat to safety of others”

For recidivists and aggravated offenses..

1. I always make the finding, if I'm informed about it
2. Same as 1, but I'm seldom told about it
3. I do it on a case-by-case basis
4. I never do it



GPS Monitoring

- Court order—Reportable conviction for offense involving physical, mental or sexual abuse of minor, and DOC determines is high risk
 - ❑ “abuse of minor”; “high risk”
 - ❑ Duration is for period ordered by court
 - ❑ Applies to active and probationary sentences; not clear what limits are

GPS Monitoring

- Mandatory condition of probation to covered offenders
- Mandatory condition if probation extended
- Mandatory condition of post release supervision
- Mandatory condition of parole
- Effective August 16, 2006 for anyone released from prison, placed on probation on or after that date; requirement to submit to monitoring effective 1/1/07

Other Provisions

- DMV to give notice
- DMV to check registry on all applicants in first 12 months in state
- Human Trafficking
- Sexual servitude

Innocence Comm'n, #19

- 8 members
- Claims of factual innocence
- Until Nov. 1, 2008, only claims of people who did not plead guilty
- Waiver of privilege
- Confidential, not appealable
- Five votes to send case to special 3-judge panel
 - Guilty pleas require all 8 members
- Panel must agree unanimously
- Sunsets in 2010

In my career, I've seen cases in which I think an innocent person was convicted...

1. Never
2. Once or twice
3. More than twice

If you answered yes, was the conviction reversed?

1. Yes
2. No
3. Some were and some weren't
4. I don't know what happened

Judicial Administration Changes

- District realignments, #3, 4, 5
- Retiree health insurance, # 8
- Credit cards, # 10
- Cancelling court, # 12

Governmental Ethics, #18

- GS 138-21, et. seq (Financial Disclosure)
 - Annual
 - Renewal likely to be easier
 - Applies to candidates (GS 138-22(d))
 - Public record
 - Not a computer record
 - Fine of \$250 for not filing, then “disciplinary action”

More Ethics

- 138A-12
- Senior Resident Judges receive ethical complaints filed with Commission against elected DA
 - No changes to removal or disciplinary statutes in GS Ch. 7A
 - Chief District Judges receive complaints against clerks

Judicial Standards

- Expands allowable sanctions to include public or private reprimand (by Commission) and suspension (by S. Ct.)
 - If judge declines reprimand, goes to public hearing
- Doubles size of commission and bifurcates procedure
- Allows advisory opinions

Superior Court and Judicial Elections

- Instant runoff method when no primary possible, and election is for remainder of term
- Primary held at time of second primary date if possible when election is for full term
- If no primary possible, instant runoff method used
- Instant runoff—vote for more than one choice at time of election and then count ballots cast for those making runoff

North Carolina's Judicial Branch

The judicial power of the state is outlined in Article IV of the NC Constitution. North Carolina runs a statewide court system, so while some employees of the court may be elected in their local jurisdictions, they are all state employees. The court system is also state funded, and the state incurs all expenses except for facilities and security. The General Court of Justice is composed of three divisions: an Appellate Division, a Superior Court Division, and a District Court Division.

APPELLATE COURT DIVISION

The Appellate Division is made up of the Court of Appeals and the Supreme Court of North Carolina. The Court of Appeals has 15 judges who sit in rotating panels of three; the Supreme Court has a Chief Justice and six associate justices. Both Court of Appeals Judges and Supreme Court Judges are elected to eight-year terms.

Court of Appeals

The Court of Appeals hears cases appealed from Superior and District Courts and decides cases on questions of law ranging from parking tickets to murder cases. This court mostly reviews matters decided by trial courts to determine if there are legal errors in the trial. The Court of Appeals does not have a jury.

Supreme Court

The Supreme Court hears cases appealed from the Court of Appeals and some cases that bypass the Court of Appeals, such as death sentence cases, which must be heard by the Supreme Court. The role of the Supreme Court is to determine legal error or interpretation of the law; the Court does not hear cases to determine fact. The Supreme Court does not have a jury.

DISTRICT COURT DIVISION

The District Court Division is a trial court; it is currently divided into 41 districts, and elections of one or more District Court Judges are held in each district. District Court judges are elected to four-year terms. District Courts handle three types of cases: civil, criminal, and juvenile.

District Courts hear **criminal cases** involving misdemeanors and infractions; criminal cases are the most common of the three categories and are heard without a jury.

Juvenile cases involve children under the age of 18 who are determined to be undisciplined, dependent, neglected or abused. Juvenile court also deals with children under the age of 16 accused of being delinquent.

Civil cases include civil disputes (such as breach of contract) involving less than \$10,000 and all cases related to family matters. Family matters include divorce, custody, child support, adoption, and domestic violence.

Magistrates are judicial officials who hear preliminary matters and dispose of minor civil cases. They are not judges, even though they do possess limited judicial powers. In criminal cases, magistrates issue warrants and set bail. Magistrates also accept guilty pleas and payments of fines for traffic violations and some misdemeanors. Magistrates are appointed to four-year terms by the Senior Resident Superior Court Judge.

CLERKS OF COURT

Clerks of Court are elected in every county in North Carolina and are responsible for all clerical and record-keeping functions of the Superior and District Courts; they are elected to four-year terms. Clerks also act as probate judges, which means they deal with wills and estates; decide guardianship for minors; and determine incompetence. Clerks have the power to issue arrest and search warrants and to accept guilty pleas and payments for minor offenses.

JURORS

Jurors are citizens who listen to cases and determine a person's right to property, right to freedom, or, in capital cases, right to life. To be eligible to serve as a juror in North Carolina, one must fulfill the following requirements: Citizen of the state and a resident of the county, 18 or older, able to speak and understand the English language, physically and mentally competent, and have no felony conviction. Generated lists of jurors come from voter registration lists and drivers' license lists.

SUPERIOR COURT DIVISION

The Superior Court Division is a trial court; it is currently divided into eight divisions and 46 judicial districts, and elections of one or more Superior Court Judges are held in each district.

Superior Court Judges are elected to eight-year terms. Every six months, Superior Court Judges rotate among the districts in their division.

Superior Court

The Superior Court tries civil cases involving more than \$10,000, felony criminal cases, and misdemeanor and infraction appeals from District Court. The Superior Court employs a jury in criminal cases, but not in civil cases.



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Source: "The North Carolina Court System," North Carolina Administrative Office of the Courts, May 18, 2006, www.nccourts.org

Old is WHEN

- You don't care where your spouse goes, just as long as you don't have to go along.
- You are cautioned to slow down by the doctor instead of by the police.
- "Getting a little action" means I don't need to take any fiber today.
- A sexy babe catches your fancy and your pacemaker opens the garage door.