

## 2022 Legislation Affecting Criminal Law and Procedure

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Below are summaries of 2022 legislation affecting criminal law, criminal procedure, and motor vehicle law. To obtain the text of the legislation, click on the link provided below or go to the General Assembly's website, [www.ncleg.gov](http://www.ncleg.gov). Be careful to note the effective date of each piece of legislation.

- 1) **[S.L. 2022-6 \(H 243\)](#): First appearance.** Effective July 1, 2022, section 8.4 of this act amends G.S. 15A-601(e) to allow a magistrate to conduct a first appearance if a district court judge or clerk is not available.
- 2) **[S.L. 2022-8 \(H 315\)](#): Arson law revisions.** This act makes several changes to North Carolina's laws related to arson.

*Arson offenses.* Effective for offenses committed on or after December 1, 2022, section 1 of this act: (1) increases the punishment for second degree arson from a Class G felony to a Class E felony; (2) adds new G.S. 14-59.1 which provides that if any person wantonly and willfully sets fire to, burns, causes to be burned, or aids, counsels, or procures the burning of a penal institution, the person shall be punished as a Class D felon; and (3) expands G.S. 14-62.2 to include synagogues, temples, longhouses, mosques, or any other building that is regularly used and clearly identifiable as a place for religious worship.

This section also adds new G.S. 14-62.3 to provide for the burning of commercial structures. Under this new statute, commercial structures are defined as any building or structure that is designed principally for the manufacture, distribution, or exchange of goods or services, or for any other business or trade purpose. Burning of an occupied commercial structure is punishable as a Class D felony and burning of an unoccupied commercial structure is punishable as a Class E felony.

*Injury to first responders.* Effective for offenses committed on or after December 1, 2022, section 2 of this act expands G.S. 14-69.3 to include offenses involving serious injury to first responders. Under this section of the statute, a person is guilty of a Class F felony if the person commits an arson offense, and a first responder suffers serious injury while discharging official duties on or near the property.

*Disqualification from service.* Effective for applications submitted on or after June 14, 2022, any person who applies for a paid or volunteer position with the fire department will be subject to a criminal background check. Under new G.S. 143B-943(d1), an applicant will be prohibited from serving in a paid or volunteer position with a fire department if the applicant's background

check reveals a conviction of arson or another felony conviction involving burning or setting fire under Article 15, Article 22, or any other Article of Chapter 14 of the General Statutes.

For further discussion, see Brittany Bromell, [Arson Law Revisions](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Jun. 27, 2022).

- 3) **[S.L. 2022-30 \(S 766\): Organized retail theft.](#)** Effective for offenses committed on or after December 1, 2022, this act increases the penalties for organized retail theft. When the retail property has a value exceeding one thousand five hundred dollars (\$1,500) aggregated over a 90-day period, the offense is a Class H felony. When the retail property has a value exceeding twenty thousand dollars (\$20,000) aggregated over a 90-day period, the offense is a Class G felony. When the retail property has a value exceeding fifty thousand dollars (\$50,000) aggregated over a 90-day period, the offense is a Class F felony. When the retail property has a value exceeding one hundred thousand dollars (\$100,000) aggregated over a 90-day period, the offense is a Class C felony.

Section 2 of the act adds new G.S. 14-86.7 which provides additional penalties for damage to property or assault of a person during the commission of organized retail theft. A person commits the offense of damage to property during organized retail theft if the person conspires with another person to commit theft of retail property from a retail establishment with a value exceeding one thousand dollars (\$1,000) and damages, destroys, or defaces real or personal property in excess of one thousand dollars (\$1,000). A person commits the offense of assault during organized retail theft if the person conspires with another person to commit theft of retail property from a retail establishment with a value exceeding one thousand dollars (\$1,000) and commits an act of assault and battery against an employee or independent contractor of the retail establishment or a law enforcement officer in the commission of the theft of retail property. Both offenses are punished as a Class A1 misdemeanor.

Section 4 of the act amends G.S. 15-11.1 by allowing the district attorney (upon request of the lawful owner or upon his own determination) to make an application to the court for an order authorizing the return of the stolen retail property to the lawful owner prior to any trial of the offenses for which the property was seized as evidence. Upon application to the court, the district attorney shall notify the defendant of the request for return of the property and provide the defendant 10 business days to inspect and photograph the property. The court, after notice to all parties and after hearing, shall order any or all of the property returned to the lawful owner or a person, firm, or corporation entitled to possession if the court finds all of the following:

- (1) The defendant has been given notice and an opportunity to inspect and photograph the property prior to the hearing.
- (2) Photographs or other identification or analyses made of the property will provide sufficient evidence at the time of trial.
- (3) The introduction of such substitute evidence is not likely to substantially prejudice the rights of the defendant in the criminal trial.
- (4) There is satisfactory evidence of ownership.

Photographs or other identification or analyses made of any property returned shall be presumed admissible in lieu of the actual property at any subsequent criminal trial for violation of Article 16, Article 16A, or Article 18 of Chapter 14 of the General Statutes, or violation of G.S. 14-100. Any property returned pursuant to this subsection does not need to be made available for evidence at the time of trial and may be sold or disposed of in any lawful manner by the lawful owner or person, firm, or corporation entitled to possession.

For further discussion, see Brittany Bromell, [Additions and Amendments to Organized Retail Theft Laws](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Aug. 2, 2022).

- 4) [S.L. 2022-32 \(S 455\)](#), as amended by section 8 of [S.L. 2022-73 \(H 252\)](#): **Controlled Substance Act amendments.** Effective June 30, 2022, this act makes technical and substantive changes to Chapter 90 of the North Carolina General Statutes by excluding hemp from the Controlled Substances Act. The act amends G.S. 90-87 to include definitions for “hemp” and “hemp products.” The act also amends G.S. 90-87(16) to specify that “marijuana” does not include hemp or hemp products. G.S. 90-94 is amended to exclude tetrahydrocannabinols (THC) found in a product with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis from the list of Schedule VI controlled substances. For further discussion, see Phil Dixon, [Summer 2022 Cannabis Update](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Aug. 22, 2022).
- 5) [S.L. 2022-47 \(H 607\)](#): **Changes affecting the court system.** This act makes several changes to North Carolina’s laws related to expunctions and first appearances.

*Expunction changes.* Effective August 1, 2022, and expiring August 1, 2023, section 1 of this act provides that notwithstanding the provisions of G.S. 15A-146(a4), dismissed charges and not guilty verdicts shall not be expunged by operation of law and the Administrative Office of the Courts (AOC) shall immediately cease all procedures related to the automatic expunction of dismissed charges, not guilty verdicts, and findings of not responsible. The act requires that the AOC maintain a record of any dismissed charges, not guilty verdicts, and findings of not responsible that would be automatically expunged pursuant to G.S. 15A-146(a4) in a manner that will allow those cases to be automatically expunged when this provision of the act expires. When this provision of the act expires or is repealed, whichever occurs first, the AOC shall, within 180 days, expunge all dismissed charges, not guilty verdicts, and findings of not responsible that occurred while the provision was in effect and are eligible for automatic expunction pursuant to G.S. 15A-146(a4).

Effective for petitions filed on or after August 1, 2022, section 3 of the act amends G.S. 15A-145.5 to amend the eligibility criteria in G.S. 15A-145.5(c2)(6), regarding a petitioner’s other prior convictions when petitioning to expunge misdemeanor convictions. Section 3 of the act also amends G.S. 15A-145.5(c4) to (a) extend the filing window of petitions for expunction in multiple counties from 30 days to 120 days, and (b) allow the court to grant a petition filed outside that 120-day window “upon good cause shown.”

*First appearances.* Effective for offenses committed on or after July 7, 2022, section 15 of the act makes clarifying and conforming changes to the first appearance process. Prior to this act, G.S. 15A-601(e) provided that when conducting a first appearance, a clerk or magistrate shall proceed “as would a district court judge.” This act clarifies G.S. 15A-601(e) by providing that “For the limited purpose of conducting a first appearance and notwithstanding any other provision of law, the clerk or magistrate shall proceed under this article as a district court judge would and shall have the same authority that a district court judge would have at a first appearance.”

Effective December 1, 2021, S.L. 2021-138 expanded the scope of G.S. 15A-601(a) to require a first appearance for any defendant charged with a misdemeanor who is held in custody. S.L. 2022-47 enacts a conforming change to G.S. 15A-604 to account for the inclusion of misdemeanor offenses in the first appearance process by providing that a district court judge presiding over a first appearance must determine the sufficiency of charges for charged misdemeanor offenses within the original jurisdiction of the district court.

The act also enacts a conforming change to G.S. 15A-606(a) to clarify that the scheduling of a probable cause hearing only extends to defendants charged with criminal offenses within the original jurisdiction of the superior court. The requirement to schedule a probable cause hearing at the first appearance does not apply to defendants charged only with offenses in the original jurisdiction of the district court.

*Defendant’s signature on citations.* Effective July 7, 2022, section 16 of the act amends G.S. 15A-302(d) to remove the statute’s provision for a defendant to sign a citation issued by a law enforcement officer. Under the amended statute, a copy of the citation must be delivered to the person cited, and a person’s failure to “accept delivery” of a citation does not constitute grounds for arrest or for requiring that the defendant post a bond.

- 6) **S.L. 2022-50 (H 674): DNA for assault and domestic violence offenses.** Effective for convictions or findings of not guilty by reason of insanity on or after December 1, 2022, this act amends G.S. 15A-266.4 to expand the list of crimes for which a person is required to provide a DNA sample upon conviction or a finding of not guilty by reason of insanity. The newly covered offenses are: (1) assault on a female as proscribed by G.S. 14-33(c)(2); (2) assault on a child as proscribed by G.S. 14-33(c)(3); and (3) all offenses described in G.S. 50B-4.1.
- 7) **S.L. 2022-56 (H 619): Elevator safety.** Effective October 1, 2022, the act adds new G.S. 143-143.7, which implements elevator safety requirements for certain residential rental accommodations. Any person who violates the statute by permitting the continued operation of an elevator that does not comply with the requirements set out in the statute is guilty of a Class 2 misdemeanor.
- 8) **S.L. 2022-58 (H 560): Duties and powers of probation officers.** Effective October 1, 2022, the act expands G.S. 15-205 to allow the Secretary of Public Safety to assign probation officers to

perform additional duties during a declared state of emergency or a natural disaster. This authority does not convey to probation officers any additional powers of arrest or other authority beyond that provided in 15-205(a).

- 9) **S.L. 2022-65 (S 339): Violations of emergency rules responding to wildlife disease.** G.S. 113-306(f) allows the Wildlife Resources Commission to adopt rules governing the exercise of emergency powers by the Executive Director when the Commission determines that such powers are necessary to respond to a wildlife disease that threatens irreparable injury to wildlife or the public. Effective for offenses committed on or after December 1, 2022, this act enacts new G.S. 113-306(g), which provides that any person who violates emergency powers or rules adopted pursuant to subsection (f) of this statute is guilty of a Class 3 misdemeanor for a first conviction or a Class 2 misdemeanor for a second or subsequent conviction within three years.
- 10) **S.L. 2022-66 (S 424): Carrying weapons where alcoholic beverages are sold and consumed.** Under G.S. 14-269.3(a), it is a Class 1 misdemeanor for any person to carry a firearm into any assembly where a fee has been charged for admission, or into any establishment in which alcoholic beverages are sold and consumed. This act expands the list of those exempt from this law under G.S. 14-296.3(b), to include a person employed by a business licensed pursuant to G.S. 74C-2, who is hired by the owner, lessee, or person or organization sponsoring the event. This change applies to offenses committed on or after December 1, 2022.
- 11) **S.L. 2022-68 (S 201): Theft of catalytic converters.** Effective December 1, 2022, this act repeals G.S. 14-72.8(b), as enacted by Section 1 of S.L. 2021-154, which created a presumption of felony larceny of a catalytic converter when a person is in possession of a catalytic converter that has been removed from a motor vehicle, unless certain conditions were met. The act enacts new G.S. 14-164.1 to proscribe the offense of possession of a catalytic converter removed from a motor vehicle. Under the new statute, unless the conduct is covered under some other provision of law providing greater punishment, knowingly possessing a catalytic converter that has been removed from a motor vehicle is a Class I felony unless the person in possession is any of the following:
- (1) An employee or agent of a company, or an individual, acting in their official duties for a motor vehicle dealer, motor vehicle repair shop, secondary metals recycler, or salvage yard that is licensed, permitted, or registered pursuant to State law.
  - (2) An individual who possesses vehicle registration documentation indicating that the catalytic converter in the individual's possession is from a vehicle registered in that individual's name and is or will be replaced with another legally obtained catalytic converter.
  - (3) An individual who possesses a catalytic converter lawfully received from an individual in subdivision (2) of this section and proof of vehicle ownership and a copy of the most recent vehicle registration documentation for the vehicle from which the catalytic converter was removed.

**12) [S.L. 2022-73](#) (H 252): Bail bond forfeitures, concurrent juvenile jurisdiction and other changes.**

This act makes several changes to North Carolina's laws related to bail bond forfeitures. This act also recodifies the offense of vehicle tampering, authorizes the state to exercise concurrent jurisdiction for offense committed by juveniles on United States military bases located within the state, and allows all special agents of the Department of Defense to assist state and local law enforcement upon request.

*Bail bond forfeitures.* Effective for forfeitures entered on or after December 1, 2022, section 3 of the act makes the following changes related to bail bond forfeitures:

- *Entry of forfeiture.* G.S. 15A-544.4(e) is amended to repeal the provision which deems a forfeiture to not be a final judgment and prohibits enforcement or reporting of the judgement if the required notice is not given within the prescribed time.
- *Setting aside forfeiture.* G.S. 15A-544.5 is expanded to include two additional reasons to set aside a forfeiture. These reasons are that (i) notice of the forfeiture was not provided pursuant to G.S. 15A-544.4(e); and (ii) the court refused to issue an order for arrest for the defendant's failure to appear, as evidenced by a copy of an official court record, including an electronic record. These reasons are enumerated as G.S. 15-544.5(b)(8) and (9), respectively.

G.S. 15A-544.5 is further amended by adding new subsection (d)(1a), which provides that a motion to set aside a forfeiture for the reason described in G.S. 15-544.5(b)(8) shall be filed within 30 days of the date notice was given pursuant to G.S. 15A-544.4(d). A motion to set aside a forfeiture for any other reason in subsection (b) of this section may be filed at any time before the expiration of 150 days after the date on which notice was given pursuant to G.S. 15A-544.4(d).

G.S. 15A-544.5(e) is amended by allowing a court to consider two separate motions to set aside a specific forfeiture if one is a motion to set aside for the reason described in G.S. 15-544.5(b)(8).

- *Relief from final judgment of forfeiture.* G.S. 15A-544.8 is amended to prohibit a court from granting relief to a defendant or surety named in the judgement on the grounds of notice having not been given as provided in GS 15A-544.4, if the lack of notice was solely due to the court's failure to provide notice within 30 days as required by GS 15A-544.4(e).

*Concurrent juvenile jurisdiction.* Effective for acts committed on or after December 1, 2022, section 5 of the act amends G.S. 104-11.1 by directing the State to exercise concurrent jurisdiction with the United States over a military installation of the United States Department of Defense located within the State in matters relating to violations of federal law by juveniles within the boundaries of those installations, so long as (1) the US Attorney or the US District Court for the applicable NC district waives exclusive jurisdiction, and (2) the federal violation is also a crime or infraction under State law.

Section 5 of the act also enacts new G.S. 7B-1605, granting district courts exclusive original jurisdiction over any case involving a juvenile who is alleged to be delinquent as the result of an act committed within the boundaries of military installation that is a crime or infraction under

State law when concurrent jurisdiction has been established pursuant to GS 104-11.1, as amended.

G.S. 7B-1501 is amended to expand the definition of “venerable juvenile” under subdivision (27b)(b), to include any juvenile who, while less than 10 years of age but at least 6 years of age, commits an act within the boundaries of a military installation that is a crime or infraction under State law, and who is not a delinquent juvenile.

*Injuring or tampering with a vehicle.* Effective for offenses committed on or after December 1, 2022, section 4 of the act recodifies G.S. 20-107, which makes injuring or tampering with a vehicle a Class 2 misdemeanor, as G.S. 14-160.4.

*Assistance by federal officers.* Effective July 1, 2022, section 6 of the act amends G.S. 15A-406, which authorizes federal law enforcement officers to assist in the enforcement of criminal laws in our State upon request, to expands the list of people included in the term “federal law enforcement officer.” These new additions include special agents of the Department of Defense, including the Army Criminal Investigation Division, Air Force Office of Special Investigations, and Defense Criminal Investigative Service.