UNC | SCHOOL OF GOVERNMENT

2025 Public Defender Spring Conference

May 7-9, 2025
Winston-Salem, NC
Sponsored by the UNC-Chapel Hill School of Government,
North Carolina Office of Indigent Defense Services,
North Carolina Association of Public Defenders
****

AGENDA

(This conference will offer approximately 12.25 hours of CLE credit.
All hours are general credit hours unless otherwise noted.)

WEDNESDAY, MAY 7

11:00 am-12:00 pm	**Check-in**
12:00-12:15 pm	**Welcome**
12:15-12:45 pm	**Chief Justice Newby's Professionalism Award** James "Jimbo" Perry, Executive Director The Chief Justice's Commission on Professionalism
12:45-1:30 pm	**IDS Update, Recognitions, and PD Association Elections** Mary Pollard, Executive Director Office of Indigent Defense Services, Durham, NC Deonte' Thomas, Chief Public Defender Wake County Public Defender's Office, Wake County, NC
1:30-2:30 pm	**Conflicts of Interest [60 mins.] [Ethics]** Brian Oten, Associate Director and Chief Ethics Counsel Kelley DeAngelus, Deputy Counsel North Carolina State Bar, Raleigh, NC
2:30-2:45 pm	*Break – Winston 2*
2:45-3:45 pm	**Cultivating Self-Care Practices [60 mins.] [Professional Well-Being]** Carla Huff, IDS Training and Recruitment Coordinator Office of Indigent Defense Services, Durham, NC
3:45-4:45 pm	**CellBrite and Other Digital Investigative Techniques [60 mins.] [Tech]** Edgar Fritz, MSRA, CCME, Forensic Examiner Reliance Forensics, LLC, Charlotte, NC
4:45 pm	*Adjourn*
5:00 pm	**Optional Social Gathering** – *Winston 1 Foyer*

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THURSDAY, MAY 8

	Track #1 – *Winston 2*	**Track #2** – *Winston 1*
8:00-9:00 am	*Breakfast (provided) – Winston Foyer*	
9:15-10:00 am [45 mins.]	**Forensic Standards and Defenders** Dana Delger, Consultant Forensic Standards Program National Institute of Standards and Technology Gaithersburg, MD	**Driving Records Refresher** Meredith Vuotto, Assistant Public Defender Office of the Public Defender, District 43 Waynesville, NC
10:00-11:00 am [60 mins.]	**Changes to Raise the Age** Jacqui Greene, Associate Professor UNC School of Government, Chapel Hill, NC	**Top Ten Evidence Tips** Daniel Spiegel, Assistant Professor UNC School of Government, Chapel Hill, NC
11:00-11:15 am	*Break*	
11:15 am-12:15 pm [60 mins.]	**Extradition Tips and Tricks** Joseph Hollingsworth, Assistant Public Defender Pasquotank Co. Public Defender's Office Elizabeth City, NC	**Crimmigration Update** Elana Fogel, Director, Criminal Defense Clinic Kate Evans, Director, Immigrant Rights Clinic Duke University, Durham, NC
12:15-1:45 pm	*Recess for Lunch*	
1:45-2:45 pm [60 mins.]	**Recognizing and Litigating Whisper Stops** Jessica Carmichael, Attorney Carmichael, Ellis, & Brock, PLLC Alexandria, VA	**DWI Law: Issues and Updates** Belal Elrahal, Assistant Professor UNC School of Government, Chapel Hill, NC
2:45-3:45 pm [60 mins.]	**Confrontation Clause Update** David Andrews, Assistant Appellate Defender Office of the Appellate Defender, Durham, NC	**Human Trafficking Issues** Amanda Gopal, Director, LCSW The Hundred Movement, Skyland, NC
3:45-4:00 pm	*Break – Winston Foyer*	
4:00-4:45 pm [45 mins.]	**Discovery Litigation Strategies** Christine Malumphy, Assistant Capital Defender Office of the Capital Defender, Durham, NC	**Forensic Capacity Evaluations** Emily Byrum, Assistant Public Defender Brunswick Co. Office of the Public Defender Bolivia, NC
4:45-5:30 pm [45 mins.]	**Self-Defense Update** Dan Shatz, Assistant Appellate Defender Sterling Rozear, Assistant Appellate Defender Office of the Appellate Defender, Durham, NC	**Plea Bargaining and Negotiation** Fred Friedman, Associate Professor of Criminology University of Minnesota School of Law, Duluth, MN
5:30 pm	*Adjourn*	

12:15 pm Lunch is on your own, except:

-Chief Public Defenders and IDS Administration meet for lunch (*on-site – Winston 3AB*)

-NC Forensic Consultant Network Attorneys meet for lunch (*off-site*)

-Juvenile Defenders meet for lunch (*off-site*)

FRIDAY, MAY 9

8:00-9:30 am	*Breakfast (provided) – Winston 2*
9:00-10:00 am	**Sentencing and DAC Issues [60 mins.]** Jamie Markham, Professor UNC School of Government, Chapel Hill, NC Shane Tharrington, DAC Classification Manager (Ret'd.) Garner, NC
10:00-10:15 am	*Break*
10:15-11:15 am	**Capacity, Competency, and Ethics [60 mins.] [Ethics]** Timothy Heinle, Assistant Teaching Professor UNC School of Government, Chapel Hill, NC
11:15 am-12:15 pm	**Criminal Case and Legislative Update [60 mins.]** Phil Dixon, Associate Teaching Professor Danny Spiegel, Assistant Professor UNC School of Government, Chapel Hill, NC
12:15 pm	*Adjourn*

CLE HOURS
General: Up to 8.25
Ethics: Up to 2.0
Technology: 1.0
Professional Well-being: 1.0
Total CLE Hours: 12.25

Final CLE hours are subject to change in accordance with NC State Bar Approval

Maintenance Required

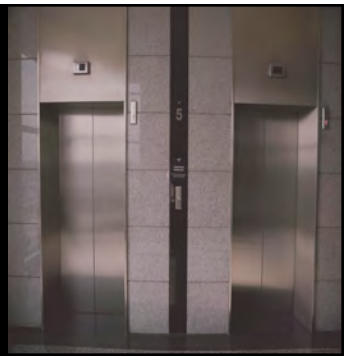
Content Alert:

Loss, Mental Health Diagnosis, PTSD/PTSI, Stress, Suicide, Violence

Carla Huff, MEd, MSW, LCSW
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Recruitment & Training Coordinator
NC Office of Indigent Defense Services

1

The Elevator



2

The Conversation

Me:	How Are Things Going?
Elevator Friend:	Hi Carla! Things Are Great!
Me:	Are They?
Elevator Friend:	Yeah, Yeah! Of Course They Are Great!

3

The Conversation

Me:	Would You Tell Me If Things Weren't Great?
Elevator Friend:	Absolutely Not!
Me:	I Appreciate The Honesty
Elevator Friend:	Of Course → Exits Elevator

4

Me: Internal Dialogue With Myself Thinking About How We Change The Narrative That We Have To Be:

5

- Strong (weak)
- Together (falling apart)
- Perfect (human)
- Machines (rest)
- Self-sacrificing (healthy boundaries)

6

Cost and Consequence of Caring

The expectation that we can be immersed in suffering and loss daily and not be touched by it is as unrealistic as expecting to walk through water without getting wet.

~R.N. Remen

7

DATA ~ In the United States:

2021	**48,183**
2023	**>49,000**
2024	**>50,000**

8

DATA~

Suicide consideration

Adults	4.2%
Attorneys	10-12%
Law School Students	11%
Military Veterans	14%

9

Depression

Matriculating law students	8-9%
After first semester	27%
After second semester	34%
Graduation/Bar exam	40%



10

Substance Use

US general population	6-10%
Attorneys	21%
Attorneys < 30	32%



11



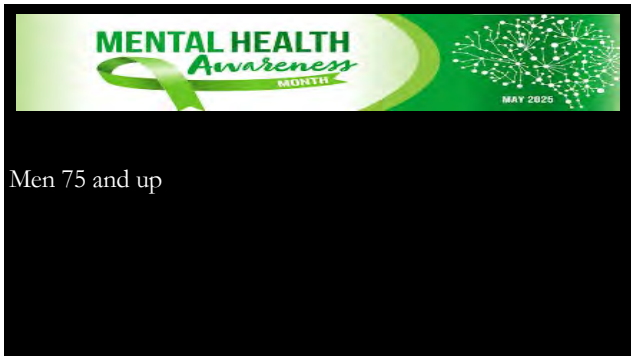
Psychiatric Hospitalization

12



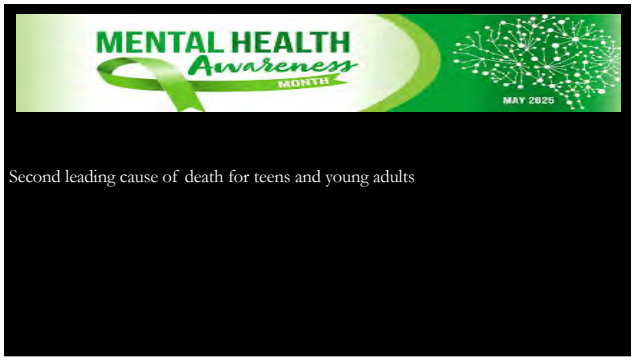
Women 45-64

13



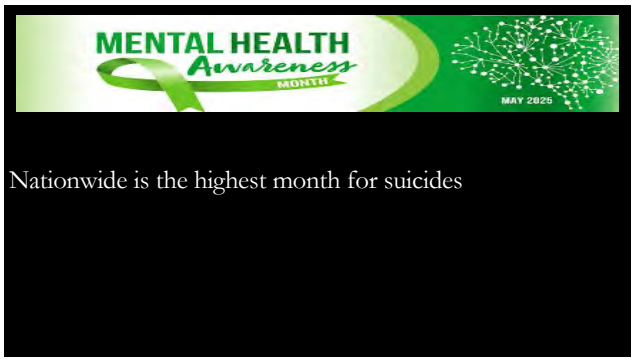
Men 75 and up

14



Second leading cause of death for teens and young adults

15



Nationwide is the highest month for suicides

16



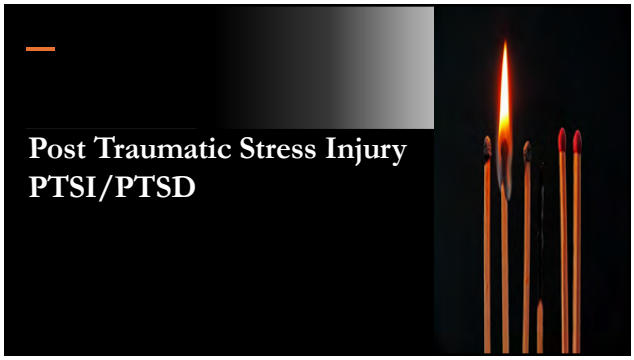
17



18


What did people see?

19


Post Traumatic Stress Injury
PTSI/PTSD

20


7

21



22



23



24



25



26

Conclusion: Helping Has Benefits and Risks

27

- Caring for/Representing clients to the best of our ability without taking on their paths as our paths
- Responding vs. Reacting
- Autopilot and its cost
- Mind Full vs. Mindful
- Releasing Control

28

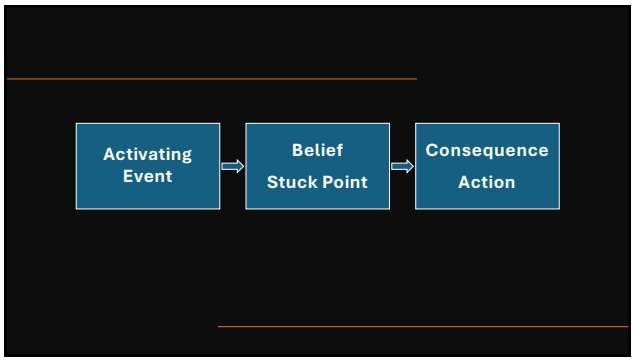
The Masks We Wear



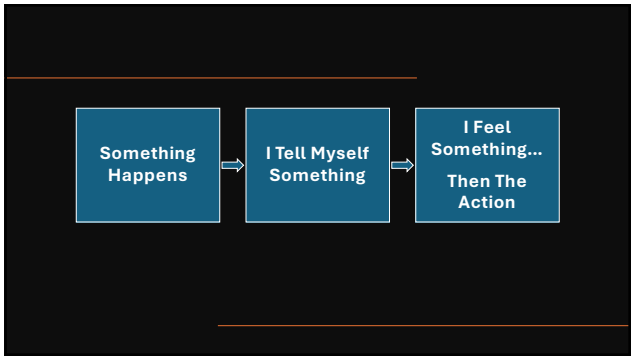
29

Things cover things ⇨ The problem we are trying to fix, are for some, ⇨ the solution

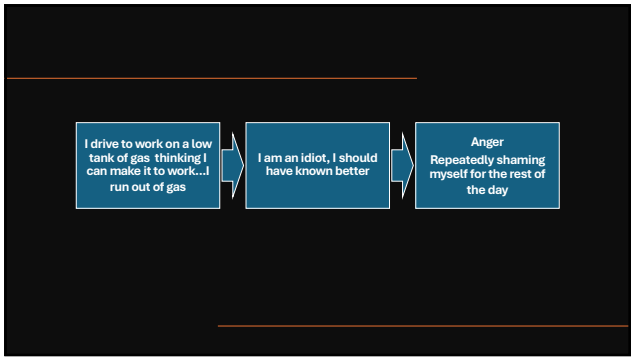
30


Activating Event
Belief
Stuck Point
Consequence
Action

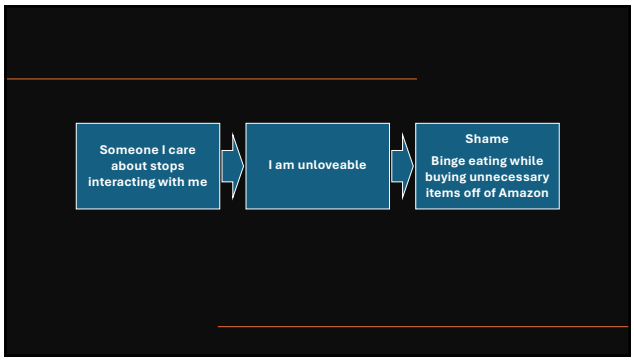
31


Something Happens
I Tell Myself Something
I Feel Something...
Then The Action

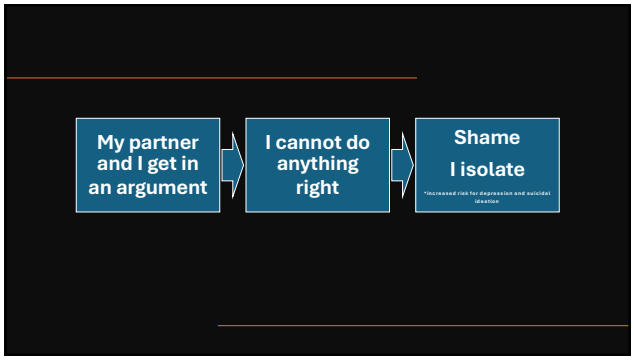
32


I drive to work on a low tank of gas thinking I can make it to work...I run out of gas
I am an idiot, I should have known better
Anger
Repeatedly shaming myself for the rest of the day

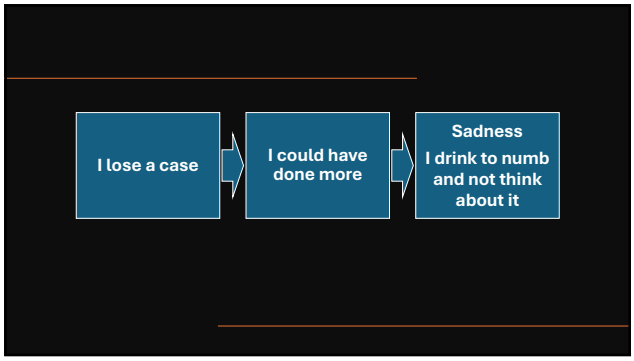
33


Someone I care about stops interacting with me
I am unloveable
Shame
Binge eating while buying unnecessary items off of Amazon

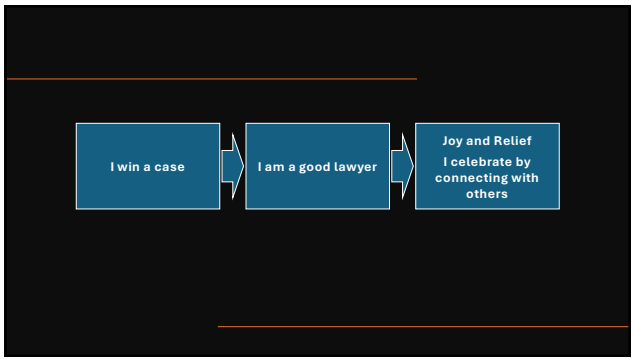
34


My partner and I get in an argument
I cannot do anything right
Shame
I isolate
*Increased risk for depression and suicidal ideation

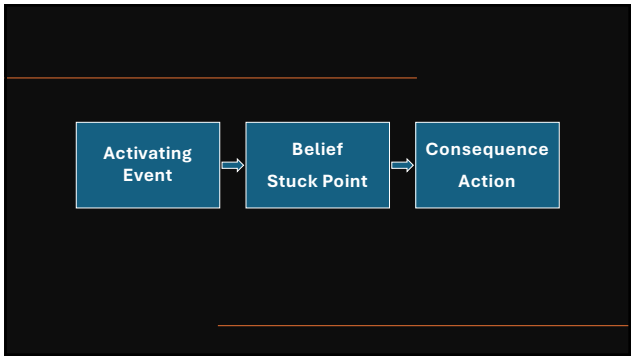
35


I lose a case
I could have done more
Sadness
I drink to numb and not think about it

36


I win a case
I am a good lawyer
Joy and Relief
I celebrate by connecting with others

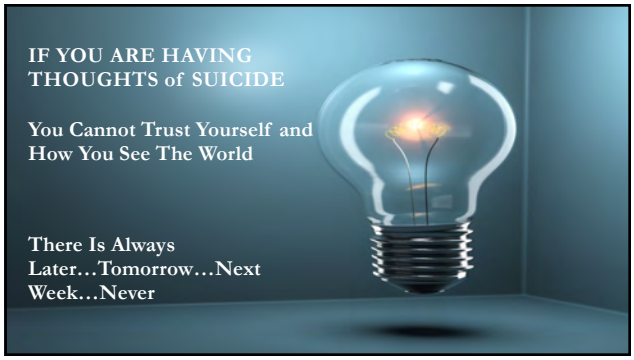
37


Activating Event
Belief
Stuck Point
Consequence
Action

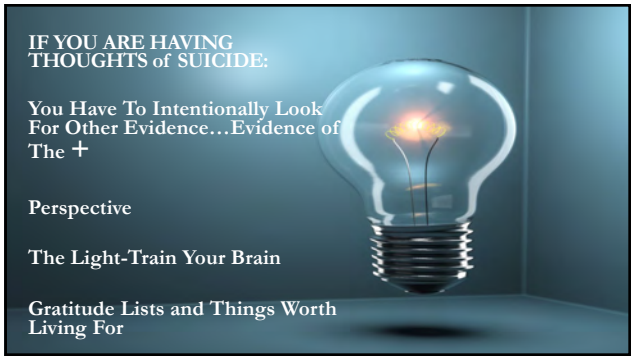
38


IF YOU WERE HAVING THOUGHTS of SUICIDE
How and who would you share this with?
If they did not understand what you were trying to say, how would you rephrase it?
How many times would you try to tell them?
Would you go to someone else?
At what point would you stop trying to communicate your suffering?

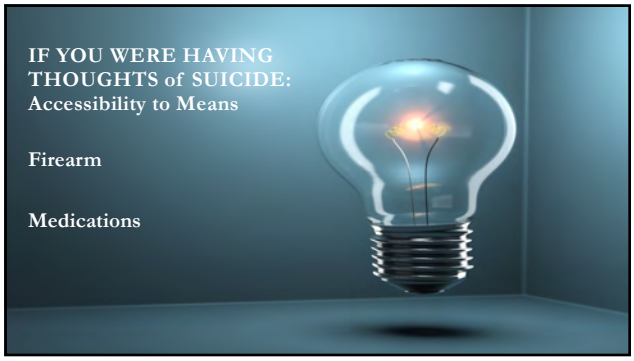
39


IF YOU ARE HAVING
THOUGHTS of SUICIDE
You Cannot Trust Yourself and
How You See The World
There Is Always
Later…Tomorrow…Next
Week…Never

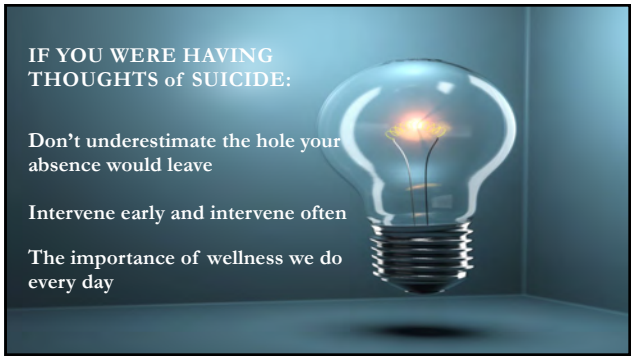
40


IF YOU ARE HAVING
THOUGHTS of SUICIDE:
You Have To Intentionally Look
For Other Evidence…Evidence of
The +
Perspective
The Light-Train Your Brain
Gratitude Lists and Things Worth
Living For

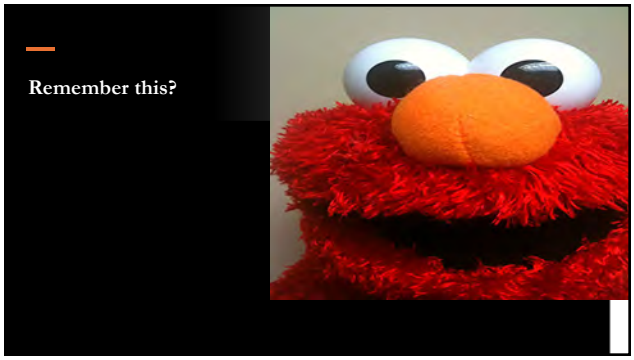
41


IF YOU WERE HAVING
THOUGHTS of SUICIDE:
Accessibility to Means
Firearm
Medications

42


IF YOU WERE HAVING THOUGHTS of SUICIDE:
Don't underestimate the hole your absence would leave
Intervene early and intervene often
The importance of wellness we do every day

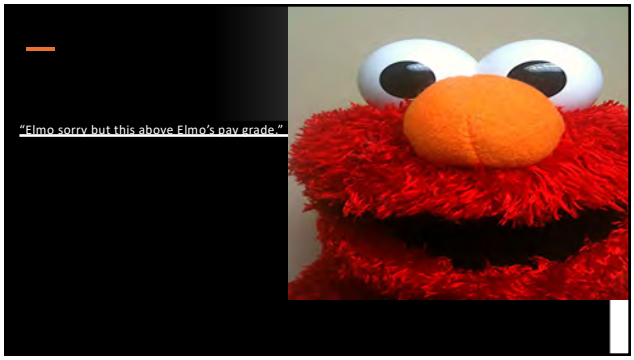
43


Remember this?

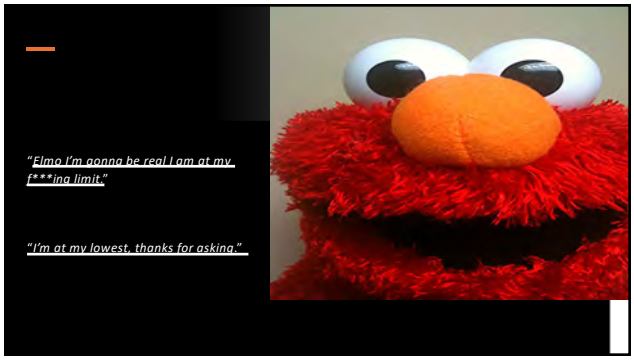
44


"Every morning, I cannot wait to go back to sleep. Every Monday, I cannot wait for Friday to come. Every single day and every single week for life."
"Elmo I'm depressed and broke."

45



46



47

Buddy Check

Check in with your colleagues

…and move away from the "how are you"

48



49

Checking in can look like:

- What has been the theme of your week?
- Is there a particular challenge that has been weighing you down?
- How can I help you?

50

Checking in can look like:

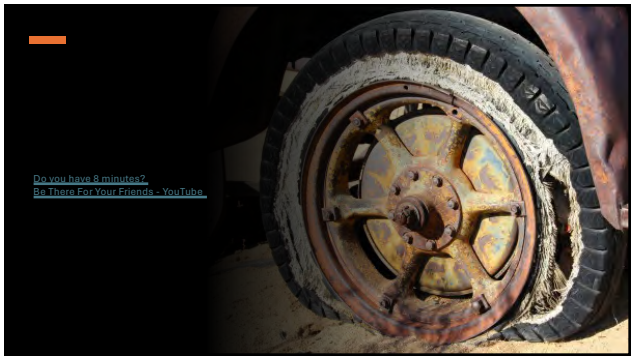
- What is something you are looking forward to?
- Share something that you are proud of.
- How have you taken care of yourself this week?

51

Checking in can look like:

- How are you taking care of yourself?
- Did you eat lunch? Let's go grab lunch
- Let's go get coffee
- Sending a random text or leaving a voicemail

52



53

We cannot necessarily fix things for people we care about

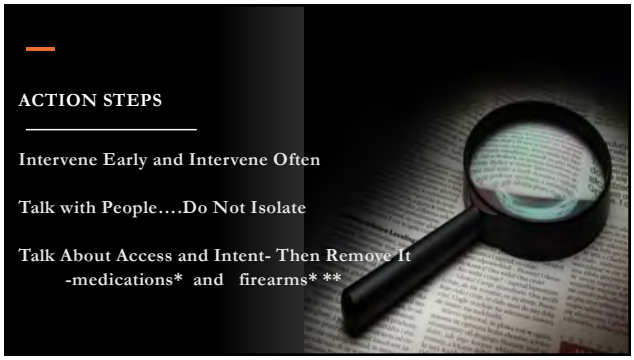
What we *can* do is listen and let them know that they matter

We all can give 8 minutes

54


ACTION STEPS
Think About Your Current Stress Levels…
If Nothing Changes, What Does It Look Like…
For you…and people you care about

55


ACTION STEPS
Intervene Early and Intervene Often
Talk with People….Do Not Isolate
Talk About Access and Intent- Then Remove It
-medications* and firearms* **

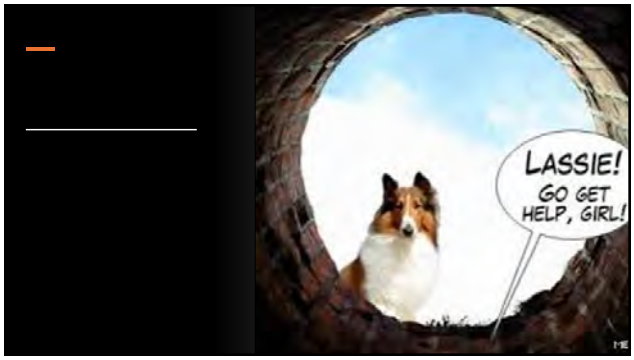
56


Dentist
Annual Physical + Skin
Eye Exam
Mammogram
Colorectal Cancer Screening
Prostate Cancer Screening
Self At "Best"
Track "Leave"
Things To Look Forward To
ProQoL or STS Assessment Tools
4 Core SEFS-Sleep-Exercise-Food-Social

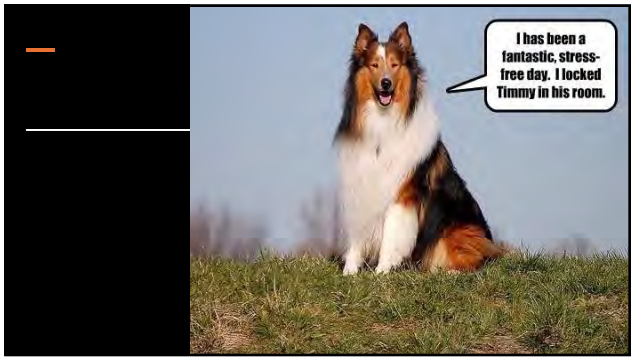
57


ACTION STEPS
How does your office mitigate or exacerbate trauma?
How are you assessing for burnout/vicarious trauma?

58


LASSIE!
GO GET HELP, GIRL!

59


I has been a fantastic, stress-free day. I locked Timmy in his room.

60

BOOK RECOMMENDATIONS



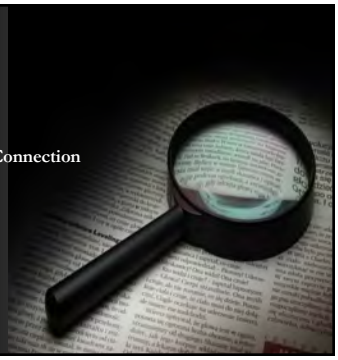
Trauma Stewardship: An Everyday Guide To Caring For Self While Caring For Others
-Laura van Dernoot Lipsky

When The Body Says No: The Cost of Hidden Stress
-Gabor Mate

Healing Secondary Trauma: Proven Strategies for Caregivers
-Trudy Gilbert-Eliot, PhD

62

BOOK RECOMMENDATIONS

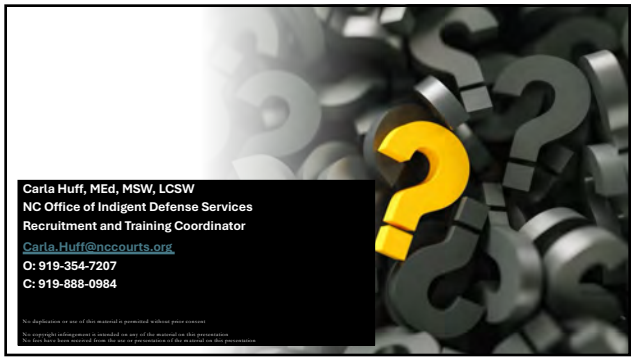


Polyvagal Exercises for Safety and Connection
-Deb Dana

Help For The Helper
-Babette Rothschild

101 Trauma-Informed Interventions
-Linda Curran

63



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64

2025 Mental Health and Education Series starts June 19th

3rd Thursday of the month from 1pm-2pm

Webinar series registration link:

https://nccourts.webex.com/weblink/register/r6a1...

Register Here

65

Sources

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66

ASB Guide 001 Third Edition
2021
(revised 2022)

Manual and Style Guide for ASB Standards, Guidelines, Best Practice Recommendations, and Technical Reports

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ASB Reference Manual and Style Guide for Standards, Guidelines, Best Practice Recommendations, and Technical Reports

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Proper citation of ASB documents includes the designation, title, edition, and year of publication.

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Foreword

The American Academy of Forensic Sciences (AAFS) established the Academy Standards Board (ASB) in 2015 with a vision of safeguarding Justice, Integrity and Fairness through Consensus Based American National Standards. To that end, the ASB develops consensus based forensic standards within a framework accredited by the American National Standards Institute (ANSI), and provides training to support those standards. ASB values integrity, scientific rigor, openness, due process, collaboration, excellence, diversity and inclusion. ASB is dedicated to developing and making freely accessible the highest quality documentary forensic science consensus Standards, Guidelines, Best Practice Recommendations, and Technical Reports in a wide range of forensic science disciplines as a service to forensic practitioners and the legal system.

ASB is accredited by the American National Standards Institute (ANSI) according to ANSI's "Essential Requirements: Due Process Requirements for American National Standards."[1] ASB documents are developed by volunteers working in Consensus Bodies (CBs) and Working Group (WGs) that conform to ANSI requirements of openness, transparency, due process, and consensus.

The Manual establishes basic requirements for the development of ASB deliverables and includes the definition of each type of document, the proper formatting of each document, a writing style guide, and Annexes with additional helpful information.

Questions, comments, and suggestions for the improvement of this document can be sent to ASB Secretariat, asb@aafs.org or 401 N 21st Street, Colorado Springs, CO 80904.

ASB procedures are publicly available, free of cost, at www.aafs.org/academy-standards-board.

Keywords: *style, editing, layout, requirements, patents, standards, technical reports, best practice recommendations*

[1] Copyrighted by the American National Standards Institute, ANSI, New York, NY 2020

Table of Contents

Preface 1

PART I – Introduction to ASB Document Deliverables 2

1 ASB Documents Deliverables 2
1.1 Standard 2
1.2 Guideline 2
1.3 Best Practice Recommendation 3
1.4 Technical Report 3

2 ASB Document Identification 4
2.1 General 4
2.2 Identifiers 4
2.3 Title 4
2.4 Scope 4
2.5 Publication Numbers 4

3 ASB Document Writing Style 4

4 Other Common Components 5
4.1 References 5
4.2 Terms and Definitions 5
4.3 Annexes and Bibliography 5

5 Less Common Components 5
5.1 Conformity Assessment 5
5.2 Copyrights, Trademarks, Commercial Terms, and Patents 5

PART II – Document Subdivisions and Formatting 6

6 General Formatting 6

7 Cover Page with Document Title 7

8 Title Page 7

9 Foreword 8

10 Table of Contents 9

11 Scope (Section 1) 9

12 Normative References (Section 2) 9

13 Terms and Definitions (Section 3) 10

14 Requirements [for Standards] (Section 4) 11

15 Recommendations [for BPRs or Guidelines] (Section 4) 12

16 Technical Content [for Technical Reports] (Section 4) 12

17 Numerical Expressions 12

18 Designating Subsection Divisions 12

19 Tables (Section 5) and Figures (Section 6) 13

20 Annexes 13

21 Bibliography 13
Annex A (normative) Terms and Definitions 15
Annex B (informative) Expression of Provisions 16
Annex C (normative) Conformity Assessment 18
Annex D (normative) Scope Statements 19
Annex E (informative) Numbers, Units of Measurements and Equations 21
Annex F (normative) References and NOTES 23
Annex G (normative) Copyright, Patents, Commercial Terms, and Trademarks 25
Annex H (normative) Annexes and Bibliographies 28
Annex I (informative) Citation of ASB Standards (added 2022) 29
Annex J (informative) Bibliography 31

Tables

B.1—Verbal Forms to Express Requirements 16
B.2—Verbal Forms to Express Recommendations 17
B.3—Verbal Forms to Express Permission 17
B.4—Verbal Forms to Express Possibility and Capability 17

ASB Reference Manual and Style Guide for Standards, Guidelines, Best Practice Recommendations, and Technical Reports

Preface

This Manual sets style and document development requirements for Standards, Guidelines, Best Practice Recommendations, and Technical Reports published by the ASB. The Manual helps ensure brand consistency and aids in readability, implementation, and quality of ASB documents.

The Manual is intended as a prime reference for ASB Consensus Body (CB) and Working Group (WG) volunteers. The Manual introduces document definitions, style, and organizational requirements along with guidance on how to choose the document type suitable for an intended purpose. The Annexes provide additional and more detailed direction and information on select topics. The *ASB Supplemental Guide (SG) 00*1 includes a Sample ASB Document plus a Template for creating a proposed document that can be submitted to ASB for approved development work.

The Manual is divided into three sections:

Part l ***Introduction to Document Deliverables***

- ASB document types
- Guidance on choosing which type to develop
- Document identification
- Writing style

Part II ***Document Subdivisions and Basic Formatting***

- Sectional elements
- Subsection formatting

Annexes

Annex A (normative)	*Terms and Definitions*
Annex B (normative)	*Expression of Provisions*
Annex C (normative)	*Conformity Assessment*
Annex D (normative)	*Scope Statement*
Annex E (informative)	*Numbers, Units of Measurement, and Equations*
Annex F (normative)	*References and NOTES*
Annex G (normative)	*Copyright, Patents, Commercial Terms, and Trademarks*
Annex H (normative)	*Annexes and Bibliographies*
Annex J (informative)	*Bibliography*

The Manual is partially based on requirements and guidance from ANSI[2] and the International Organization for Standardization (ISO)[3].

[2] *Essential Requirements*, ANSI
[3] *Directives Parts 1 & 2*, ISO/IEC

PART I – Introduction to ASB Document Deliverables

1 ASB Documents Deliverables

ASB publishes forensic science-based documents in the form of Standards, Guidelines, Best Practice Recommendations, and Technical Reports. Each document type serves a specific purpose.

1.1 Standard (S)

A standard is established by consensus and approved by a recognized body. It sets objectively verifiable requirements, provides for common and repeated use, rules or characteristics for activities or their results, and is aimed at the achievement of the optimum degree of order in a given context. A standard is written to establish objectively measurable requirements for a given topic or set of actions.

NOTE The document is the standard. It is incorrect to describe a standard as containing or providing standards. A standard provides requirements.

1.1.1 Purpose

A consensus standard reflects the level of agreement, expressed by interested parties, on what is required for a given activity, process, product, or result. Such requirements are measurable. Examples of measurable requirements might include setting specific operational procedures, specifying technical dimensions, establishing verifiable levels of scientific rigor, or setting management responsibilities.

1.1.2 Expression of Content

The requirements in a Standard are expressed as imperative sentences or stated in 'shall' language and can be assessed by one or more forms of conformity assessment procedures.

NOTE When writing a standard, the use of other verb forms, such as 'should', 'may', or 'can', are allowed only when their use is necessary to explain a secondary aspect of a requirement such as an option.

1.2 Guideline (G)

A Guideline provides information and advice on processes and activities contained in a Standard or BPR, or guides users on the implementation of a standard or series of standards. A Guideline may include recommendations but does not establish best practices.

1.2.1 Purpose

A Guideline aids in the understanding of and the application of principles, practices, and activities. A Guideline can facilitate the implementation of requirements expressed over multiple related documents such as a set of standards on a given topic.

1.2.2 Expression of Content

A Guideline is written in 'should' language and is informative rather than directive. A Guideline in and of itself is not appropriate for conformity assessment.

NOTE When desired, a Guideline can be included in a conformity assessment plan based on another standard or standards. For example, a forensic laboratory certified to ISO/IEC 17025 *General requirements for the competence of testing and calibration laboratories* might incorporate a relevant Guideline on certain testing procedures as part of the overall accreditation plan.

1.3 Best Practice Recommendation (BPR)

A Best Practice Recommendation identifies and sets forth the optimal way to carry out an action or actions. A BPR may include choices and the variants between them as a means of demonstrating optimal choices in different circumstances.

1.3.1 Purpose

A BPR provides practical information and recommendations on issues such as preferred technical practices, optimal variations in procedures, necessary personnel training, and the like. Unlike a Standard, a BPR does not set new requirements in a field of endeavor. Rather, the focus of a BPR is to recommend the best way to carry out activities that are already standardized through an official process or are de facto standards through common and accepted use.

1.3.2 Expression of Content

A BPR is written in 'should' language. Imperative or 'shall' language can be used in a secondary context when necessary to clarify a recommended action or approach.

NOTE BPRs can be used as part of an accreditation plan in conjunction with the standards or operation procedures included in the conformity assessment process.

1.4 Technical Report (TR)

A Technical Report is an explanatory, information-only document.

Purpose

A Technical Report provides scientific, technical, terminology, or operational information relevant to a standard, a field of activity, or a profession. A TR can also, for example, identify and discuss applications not yet standardized, and provide relevant research on emerging issues or technologies that may become suitable for standardization. Less commonly, a TR can also be the Terms and Definitions document for a series of standards.

NOTE When a TR is the set of Terms and Definitions for another document, it can be included as a normative reference or annex for that document.

1.4.1 Expression of content

Technical reports do not set requirements or recommendations and are not suitable for conformity assessment. Content is expressed in the most appropriate manner for the subject.

2 ASB Document Identification

2.1 General

Identification is standardized across the industry to facilitate the retrieval of documents and key information on a document. It helps avoid duplication of documents.

2.2 Identifiers

Title, Scope, and Publication Number are the three primary identifiers of documents in the standards development community. In ASB, consensus bodies develop the title and scope. Publication numbers are assigned by the ASB Secretariat.

2.3 Title

A Title includes foundational information about the document including the scientific or technical discipline, the specific topical area covered, and other information that directs a reader's focus regarding the content.

2.4 Scope

Each document has a unique scope that states what the document does, and provides a brief summary of what content to expect so that a reader can distinguish the document from similar sounding documents. **Annex D** contains additional information on Scope statements and how to write them, along with examples.

2.5 Publication Numbers

Standards databases, including those maintained by the government and the private sector, make use of publication numbers as a key retrieval element.

In ASB, publication numbers are assigned by the ASB Secretariat.

3 ASB Document Writing Style

3.1 ASB style and writing requirements are important elements in creating useful and used documents. Plain English is the 'gold standard', so to speak. ASB's directions generally follow those from ISO[4].

3.2 ASB writing style requirements include:

a) use plain language to the extent possible;

b) construct sentences in the active rather than passive voice;

c) minimize use of the past tense as much as possible;

d) keep sentences as short as possible while still conveying their correct meaning;

[4] https://www.iso.org/ISO-house-style.html

e) use consistent terminology, e.g., use either 'palm print' or 'palmprint' throughout the document;

f) define acronyms at first use and include acronyms in "Terms and Definitions";

g) avoid vague expressions such as 'shall not significantly impact' or 'will probably result in' or other such statements;

h) never use personal pronouns;

i) avoid using terms and modifiers such as 'very', 'like', 'all', 'every', 'never', 'excessive', 'slightly', 'nearly', 'significant', 'applicable', 'highly', etc.

4 Other Common Components

4.1 References

References are common in most document and can be normative or informative. References can be made to other parts of the document or to other published documents. For a more detailed description and rules pertaining to references, see **Annex F**.

4.2 Terms and Definitions

Include a Terms and Definition section in every standard, best practice recommendation, and guideline. For a series of documents on the same topic, Terms and Definitions may be written as a separate Standard or a Technical Report for the entire series rather than developing a Terms and Definition section in each document. Most commonly, a separate Standard is developed.

4.3 Annexes and Bibliography

Annexes are either normative - necessary for the implementation of the document - or informative - providing useful information but not required for the implementation of the document. The Bibliography is informative only and lists those documents which are informative and cited in the document. The bibliography does not contain requirements or recommendations and is not meant to be an exhaustive list. See **Annex H.**

5 Less Common Components

5.1 Conformity Assessment

ASB documents only include conformity assessment requirements that are necessary to provide repeatable and reproducible conformity assessment results. See **Annex C.**

5.2 Copyrights, Trademarks, Commercial Terms, and Patents

ANSI's *Essential Requirements* includes normative policies involving patents, copyrights, and commercial terms such as warranties and trademarks.[5] These policies are incumbent on ASB document development and publication. See **Annex G.**

[5] https://ansi.org/american-national-standards/ans-introduction/essential-requirements

PART II – Document Subdivisions and Formatting

6 General Formatting

6.1 Each ASB deliverable is organized according to the formats given in this Manual. Users of ASB documents reasonably expect consistency in format and clarity of content. ASB generally follows ANSI and ISO guides in the organization and formatting of ASB documents.

6.1.1 ASB deliverables include the following divisions. The items in bold are mandatory.

Cover page

Title page

Foreword

Table of Contents

Scope - Section 1

Normative References - Section 2

Terms and Definitions - Section 3

Requirements (or **Recommendations** or **Information) - Section 4** (Additional requirement Sections, are allowed e.g., Section 5, 6, 7, etc.)

Section 5 - Tables - can be included in the document instead of as a separate section

Section 6 - Figures - can be included in the document instead of as a separate section

Annexes (as many normative or informative annexes as needed)

NOTE Consensus bodies can request deviations from ASB format and organization. The Secretariat reviews justifications for deviations and, as appropriate, approves them.

6.1.2 Number the document sections sequentially beginning with the numeral "1" without a period following.

6.1.3 Number the document subsections sequentially beginning with the numeral of the section followed by a decimal and the beginning of a new set of sequential numbers. Each subsequent subsection adds another level of numbers starting with 1.

Example:

1 Topic

1.1 Subtopic one

1.1.1 Sub-subtopic, *etc.*

7 Cover Page with Document Title

7.1 For the draft document, place the ASB numerical designation in the upper right corner. Center the title on the line below the numerical designation. The final cover page formatting will be completed by the ASB Staff.

7.1.1 A Title does not contain requirements or recommendations.

Example: :

a) *Correct:* Standard for Integrated Fire Protection and Life Safety System Testing[6]

b) *Incorrect:* Technical Measurement Requirements for Fire Protection and Life Safety System Testing

7.1.2 The Title is a clear, concise description of the subject matter covered by the document. The title distinguishes the subject matter from that of other documents, without going into unnecessary detail. Details can be included in the Scope statement. Avoid details that unnecessarily limit the Scope of the document.

Example:

a) *Correct:* Toxicological Testing of Urine in Drug-Facilitated Crime Investigations

b) *Incorrect:* Standard for the Analytical Scope and Sensitivity of Forensic Toxicological Testing of Urine in Drug-Facilitated Crime Investigations

7.1.3 For documents dealing with test methods, use titles that begin with "Test method for…" or "Method for determination of…" or similar.

7.1.4 Do not refer to a standard as containing standards. The document itself is the standard.

Example:

a) Correct: Standard for Determination of Lead in Canine Teeth.

b) Incorrect: Setting Testing Standards in Determining Lead in Canine Teeth.

7.2 Do not use ASB and ANSI logos on draft copies. Logos appear only on the approved, final publication.

7.3 Do not include any other logos.

8 Title Page

8.1 The title page immediately follows the cover page and contains the ASB numerical designation of the document in the upper right corner. Center the title on the line below the numerical designation. The final title page formatting will be completed by the ASB Staff. Include the following:

a) Below the title on separate lines, center the ASB approval date, the ANSI approval date (TRs will not have an ANSI approval date), the ASB logo and the ASB name and address;

b) On the line below ASB's name and address, center the following statement:

"This document may be downloaded from: www.aafs.org/academy-standards-board"

c) A statement explaining copyright infringement of ASB's no-cost download follows the above statement.

d) Center the following official copyright statement in italics at the bottom of the page:

This document is copyrighted© by the AAFS Standards Board, LLC, 2022. All rights are reserved. 410 North 21st Street, Colorado Springs, CO 80904, www.aafs.org/academy-standards-board.

*The copyright year is adjusted for publication date of the standard.

8.2 As required, the Secretariat assigns the International Classification for Standards designation immediately following the copyright statements.

9 Foreword

9.1 Describe the document in overall terms. State the purpose of the document along with the intended users and intended application. If the document is part of a series, identify the series and identify any document(s) to use in connection with this one. The Foreword must be in sync with the Scope and can address relevant material beyond the Scope.

9.1.1 If the document is a revision of a previous document, summarize the substantive changes to the previous edition.

9.1.2 Consider including a short statement of the compelling need for the document or the revision, the intended impact of the new or revised document, and other relevant information. If the document does not cover everything in its topic or field, consider explaining why certain things have been left out.

9.1.3 The Foreword cannot contain requirements, i.e., "shall" statements, or recommendations, i.e., "should" statements.

9.1.4 The following shall be included in the Foreword of all ASB documents.

> The American Academy of Forensic Sciences established the Academy Standards Board (ASB) in 2015 with a vision of safeguarding Justice, Integrity and Fairness through Consensus Based American National Standards. To that end, the ASB develops consensus based forensic standards within a framework accredited by the American National Standards Institute (ANSI), and provides training to support those standards. ASB values integrity, scientific rigor, openness, due process, collaboration, excellence, diversity and inclusion. ASB is dedicated to developing and making freely accessible the highest quality documentary forensic science consensus Standards, Guidelines, Best Practice Recommendations, and Technical Reports in a wide range of forensic science disciplines as a service to forensic practitioners and the legal system.

Questions, comments, and suggestions for the improvement of this document can be sent to ASB Secretariat, asb@aafs.org or 401 N 21st Street, Colorado Springs, CO 80904.

All hyperlinks and web addresses shown in this document are current as of the publication date of this standard.

ASB procedures are publicly available, free of cost, at www.aafs.org/academy-standards-board .

9.1.5 The Foreword may include additional material in the form of explanatory scientific and operational underpinnings for requirements or recommendations laid out in the document. Such material is limited to a brief review of principles appropriate for the scope and subject matter of the document.

NOTE More lengthy explanations and full scientific treatises are appropriate for Technical Reports.

9.1.6 If the document was drafted outside the ASB, and the CB feels an acknowledgment is appropriate, the following may also be included below the main content of the Foreword.

This document was revised, prepared, and finalized as a standard by the Friction Ridge Consensus Body of the AAFS Standards Board. The draft of this standard was developed by the Friction Ridge Subcommittee of the Organization of Scientific Area Committees (OSAC) for Forensic Science.

10 Table of Contents

Include all level 1 and level 2 headers, annexes, figures, and tables. Include a page number for each entry. (Word processors may automatically generate the page numbers.)

11 Section 1 - Scope

The Scope describes what the document does. It is a statement of facts and does not include requirements or recommendations. It does not include 'shall' or 'should' language. The scope may include a brief explanation of the application of the content, and, as appropriate, a statement about what is not included. See **Annex D**.

12 Section 2 - Normative References

12.1 Normative references are published documents or parts of published documents that are indispensable for the application of the document, i.e., the document cannot be implemented without them. Cite normative references in the main body of the document and include them in this section as a list. References not cited in the document are not considered normative. See **Annex F**.

12.2 For dated references, only the cited edition applies. For undated references, the latest edition including amendments applies.

NOTE An option is to include information on how to obtain the reference.

12.3 List normative references alphabetically. When the reference is a published standard, use the designation of the standard. List other references according to MLA directions.[6]

Examples:

ANSI/ASB Best Practice Recommendation 037, *Guidelines for Opinions and Testimony in Forensic Toxicology*, 1st ed 2019

ANSI/INCITS 398, ed 2018

13 Section 3 - Terms and Definitions

13.1 All ASB documents include a Terms and Definitions section. Terminology and nomenclature are interchangeable concepts in standards writing. The Terms and Definitions section in an ASB deliverable follows the section on normative references.

13.2 Begin this section with the phrase: 'For purposes of this document, the following terms and definitions apply'.

13.2.1 Terms clarify certain words used in the document, especially words that pertain to a particular technical application, profession, discipline, science, or areas of study. A term is described in sentence-like structure and may consist of more than one sentence. Terms are in bold type.

Examples:

Limit of Detection
LOD
An estimate of the lowest concentration of an analyte in a sample that can be reliably differentiated from blank matrix and meets identification criteria for the analytical method.

mixed DNA sample
Any biological sample containing DNA from more than one individual.

13.2.2 Definitions are written as single phrase~~s~~ not as sentences. Definitions do not contain requirements or recommendations. A definition does not begin with an article ('a', 'the', etc.) and does not end with a period. If necessary, entries can be supplemented by information (including requirements) in the form of *Note to entry*. Definitions are not bolded. Include acronyms in this section and list these entries with special characters appearing first. Where a definition includes specialized terminology, include that definition in this section in bold type.

Examples:

Combined DNA Index System
CODIS
FBI program of support for criminal justice DNA databases as well as the software to run the databases

moisture content mass by volume
mass of evaporable water divided by volume of dry material

NOTE 1 to entry: The method of evaporating water from a moist material shall be stated when "moisture content mass by volume" is used.

[6] *MLA Handbook, 8th edition*

Most Likely Number of Individuals
MLNI
quantification technique to estimate the actual number of individuals based on the number of paired and unpaired bones; a modified Lincoln Index (LI)

saponification
act, process, or result of making soap

13.2.3 Include special terminology (terms) used in the document. Define words necessary for a user to understand the document, do not define commonly understood words unless their meanings differ from common use.

Examples:

Correct. "**mass reference standard**" (plus explanation of term)

Correct. "saponification" (plus definition)

Incorrect. "shall" ("should", "can", "may", etc.) Commonly understood - do not include

Incorrect. "none" Commonly understood, do not include.

13.2.4 The following apply:

a) do not include requirements or recommendations in the Terms and Definitions Section;

b) do not include 'shall', 'should', 'may', 'can' or their negatives in terms or definitions;

c) number and alphabetically list all acronyms used in the standard, with special characters appearing first;

d) list terms in bold;

e) capitalize proper nouns, all other terms will be in lower case.

13.3 If a discipline has a separate terms and definitions document (usually a Technical Report), the Terms and Definitions section may be referenced to that document. The section may also be a hybrid of a reference to the existing terms document and pertinent terms.

14 Section 4 - Requirements or Recommendations

Section 4 is the main substantive content of a document. If needed, additional substantive sections starting with numeral 5 can be added.

NOTE The Section 4 title is optional if another heading is more appropriate.

14.1 Requirements (Standard)

14.2 Requirements are characteristic of Standards and must be stated in a manner that enables conformance assessment. In writing requirements, follow these rules:

a) write all requirements in imperative sentences or using the word 'shall';

b) include as requirements only those elements that can be confirmed;

NOTE Avoid using negative phrasing such as 'shall not' since confirmation can be difficult.

c) clearly identify any options, and write them in 'shall' language;

NOTE In cases where there are multiple options, 'should' is acceptable to describe a secondary explanation under a requirement.

d) include recommendations in Section 4 of a Standard only when necessary for clarification in order that the document can be correctly understood.

NOTE Where appropriate include recommendations for implementing the standard in an annex.

14.3 Recommendations (BPRs and Guidelines)

14.4 Recommendations for Best Practice Recommendations and Guidelines follow these rules:

a) write recommendations as simple declarative statements to the extent possible;

b) use 'should', 'may' or 'can' language;

c) avoid writing negative recommendations (*e.g.,* use language such as 'avoid' in preference to 'should not');

d) avoid lengthy didactic or background writing. (These can be included in an Informative annex if needed.)

14.5 Technical Content (Technical Reports)

Technical Reports contain research, findings, terms & definitions, emerging technologies, or techniques. They do not contain requirements or recommendations. Follow these rules:

a) present the technical content clearly and in a well-organized manner;

b) identify all references and resources;

c) identify any standards associated with the Technical Report;

d) use subsections or topic headings if the document relies on divisions for clarity or ease of reading; these can be numbered but numbering is not required;

e) use language appropriate to the technical content.

15 Numerical Expressions

Express numbers using words or Arabic numerals. Decimal placement is appropriate to the subject. Rounding is not required. See **Annex E.**

16 Designating Subsection Divisions

16.1 As appropriate, consider using other than numerical designations for ease of reading and clarity.

Examples:

a) Alpha designations in the form of a), b), c) can be used for multi-word lists of items, procedural steps, directions, principles, and other elements. If the list has numerous levels, the following is helpful:

b) list level 1 – lower case alphanumeric

   1) list level 2 – numbers 1), 2), 3), 4), 5) etc.

      i) list level 3 – lowercase roman numerals i), ii), iii), iv), v), etc.

16.2 Bullet points can be used for lists of single elements and can also be used for listing a flow of action.

Example:

At a minimum, the written record shall include the following elements:

- name,
- date,
- address.

17 Tables (Section 5) and Figures (Section 6)

17.1 Figures and tables can be an essential part of a document but use them sparingly, and *do not include requirements* in figures and tables.

17.2 Call out tables and figures in the main body of the document such as Table 1 or Figure 1 and number them consecutively based on type.

17.3 For annexes, include the letter of the annex as the first designated identifier for tables or figures, e.g., Figure A.1, Table B.1.

18 Annexes

18.1 Annexes are optional and can be Normative or Informative. See **Annex H**.

18.2 Call out Annexes in the main body of the document.

18.3 The designation of an annex is centered and bolded at the top of the page under the designation of the standard.

18.4 On the line under the annex designation, centered, and in parentheses, specify the type of Annex, i.e., either (Informative) or (Normative).

18.4.1 Designate the first annex of a document with a capital 'A' and any sequential annexes in the same document with sequential lettering.

18.4.2 Designate sections and subsections of annexes by the annex letter followed by a period and a sequence of numbers.

Example:

Annex A

A.1

A.2, etc.

19 Bibliography

19.1 Bibliographies are optional but if included are always informative. See **Annex J**.

19.2 Alphabetically list:

a) all references from which text has been cited in the standard;

b) references helpful in understanding and implementing the standard.

19.3 Do not include all possibly relevant sources of information; the bibliography is not meant to be an exhaustive list.

Annex A
(normative)

Terms and Definitions

A.1 General

ASB documents shall conform to the definitions below.

A.1.1 Terms

A.1.1.1
conformity assessment
A demonstration that specified requirements relating to a product, process, service, person, system, or body are fulfilled.

NOTE ASB documents that do not contain requirements are not intended to be used for conformity assessment.

A.1.2 Definitions

A.1.2.1
recommendation
suggestion or proposal for a course of action

A.1.2.2
requirement
condition or action that must be met

Annex B
(informative)

Expression of Provisions

B.1 Requirements

B.1.1 Table B.1 summarizes verbal forms of expressions that establish requirements necessary to achieve conformance to the document. Use equivalent forms only when the preferred verbal form cannot be used for linguistic reasons.

Table B.1—Verbal Forms to Express Requirements

Verbal Form	Equivalent Expressions for Use in Exceptional Cases
shall *	is to is required to it is required that has to only...is permitted it is necessary
shall not	is not allowed (permitted) (acceptable) (permissible) is required to be not is required that...not be is not to be
NOTE 1 Do not use "may" when "can" is meant. NOTE 2 Do not use "may not" when "shall not" is meant.	
* Do not use "must" as an alternative for "shall" (this will avoid any confusion between the requirements of a document and jurisdictional regulatory obligations).	

B.1.2 Avoid using vague expressions that are not truly informative and might cause the reader to make an incorrect judgment call. Words like "very," "all," "every," "never," "excessive," "slightly," "approximately," "nearly," or "significant" are not useful.

B.2 Recommendations

Table B.2 summarizes the verbal forms used to indicate:

a) that among several possibilities one is recommended as particularly suitable, without mentioning or excluding the others;

b) or that a certain course of action is preferred but not required;

c) or that (in the negative form) a certain possibility or course of action is discouraged.

Table B.2—Verbal Forms to Express Recommendations

Verbal Form	Equivalent Expressions for Use in Exceptional Cases*
should	it is recommended that…or…it ought to…
should not	it is not recommended… or it ought not to…
*The equivalent expressions given the second column are used when the form given in the first column cannot be used for linguistic reasons.	

B.3 Permission

Table B.3 summarizes the verbal forms that shall be used to indicate a course of action permissible within the limits of the document. Use equivalent forms only when the preferred verbal form cannot be used for linguistic reasons.

Table B.3—Verbal Forms to Express Permission

Verbal Form	Equivalent Expressions for Use in Exceptional Cases
may	is permitted to is allowed is permissible
need not	it is not required that no...is required
Do not use "possible" or "impossible" in this context; do not use "can" instead of "may" in this context.	
NOTE "May" signifies permission expressed by the document, whereas "can" refers to the ability of a user of the document or to a possibility open to him/her.	

B.4 Possibility and Capability

Table B.4 summarizes the verbal forms that shall be used for statements of possibility and capability, whether material, physical, or causal. Use equivalent forms only when the preferred verbal form cannot be used for linguistic reasons. Also see NOTE in B.3

Table B.4—Verbal Forms to Express Possibility and Capability

Verbal Form	Equivalent Expressions for Use in Exceptional Cases
can	be able to there is a possibility of it is possible to
cannot	be unable to there is no possibility of it is not possible to

Annex C
(normative)

Conformity Assessment

C.1 General Directions on Including Conformity Assessment Provisions

C.1.1 ASB documents only include conformity assessment requirements that are necessary to provide repeatable and reproducible conformity assessment results.

Examples:

"Conformance shall be determined on the following requirements contained in this standard."

"Sampling, testing, and recording requirements contained in this standard are subject to conformance assessment."

C.1.2 ASB documents do not:

— specify conformity assessment procedures or practices

— dictate or specify conformity assessment schemes or systems

— require any specific conformity assessment results

— identify conformity assessment providers

C.2 Neutrality Principle

C.2.1 All documents containing requirements for products, processes, services, persons, systems, and bodies are written in accordance with the "neutrality principle," such that conformity can be assessed by a manufacturer or supplier (first party), a user or purchaser (second party), or an independent body (third party).

NOTE First-party, second-party and third-party conformity assessment activities are defined in ISO/IEC 17000:2004 *Conformity assessment - Vocabulary and general principles.*

C.2.2 Inclusion of conformance is optional, but if included, shall adhere to **C.2.**

NOTE ISO's House Style located online at https://www.iso.org/ISO-house-style.html contains information on inclusion of conformity assessment in international standards development. The information may be adapted to ASB procedures when an ASB CB determines the necessity of including elements relating to conformity assessment. The CB shall consult with the ASB Secretariat or other staff before undertaking any activity associated with conformity assessment requirements.

Annex D
(normative)

Scope Statements

D.1 Scope Statement

Scopes are one of the three document identifiers for any ASB document. A Scope statement is a Normative element in each ASB document and is numbered as Section I. Scope statements only include statements of fact.

D.2 Purpose of Scope

The following statement applies:

> "The Scope clearly defines the subject of the document and the aspects covered, thereby indicating the limits of applicability of the document or parts of it. If necessary, the Scope should indicate subjects that might reasonably be inferred to be covered but actually are excluded from the document."[7]

D.3 Writing a Scope Statement

In plain English, following the ASB writing style (ASB manual section 3), write a scope statement that tells what the document does. Begin the statement using forms such as the following:

— This document specifies…

— This document establishes…

— This document sets requirements for…

— This document provides guidelines for…

— This document defines terms for…

D.4 Scope complexity[8]

Write a Scope statement that is succinct and still provides the reader accurate summary information on the content the document. Introduce statements of applicability of the document with statements such as:

[7] ISO/IEC Directives Part II Section 14 found at:
https://www.iso.org/sites/directives/current/part2/index.xhtml#_idTextAnchor169

[8] Suggest that users of this Manual periodically refer to ASB's Published Document section on the ASB website and to ANSI's online *Standards Action* to see examples of Scope statements. Not all published Scope statements are of the same quality but reading through such statements alerts the reader to differences between the best and the rest.

— This document is applicable to… or for…

— This document does not apply to…

— This document does not include…

D.5 Exclusions from Scopes

D.5.1 Scope statements do not contain requirements, recommendations, background information or justifications. Write Scope statements as informative only. Scope statements do not contain 'shall' or 'should' language.

Examples:

a) Correct: "This document provides guidance on the development and formatting of ASB documents."

b) Incorrect: "This document shall be used as guidance on the development and formatting of ASB document."

c) Correct: "This document specifies minimum requirements and test methods for rice (Oryza sativa L.). It is applicable to husked rice, husked parboiled rice, milled rice and milled parboiled rice, suitable for human consumption, directly or after reconditioning. It is not applicable to cooked rice products."

d) Incorrect: "This standard is required for DNA markers."

D.5.2 Scopes can be changed after or during document development if the CB determines that the statement needs to be modified to reflect the actual content of the document. If a scope is significantly altered, it needs to go through the CB/ASB approval process to be resubmitted to ANSI as a PIN.

Annex E
(informative)

Numbers, Units of Measurements and Equations

E.1 Use of Numbers

E.1.1 The following are general guidelines for the use of numbers in text:

a) spell out numbers that are less than 10, not precise measurements, and not grouped with numbers over 10 (e.g., eight trials, First Edition);

b) use numerals for numbers 10 and above, or numbers under 10 grouped with numbers 10 and above (e.g., from 6 to 12 cups of water, 20th Edition);

c) use numerals for exact statistical measures, scores, sample sizes, and sums (e.g., multiplied by 3, 6% of the sample);

d) use combinations of written and Arabic numerals for back-to-back numbers (e.g., five 4-point scales);

e) use combinations of numerals and written numbers for large sums (e.g., 6 million people);

f) use a comma in numbers that are $\geq$ 10,000 (e.g., 7000 items, 11,200 units);

g) use the percent symbol (%) only with figures (6%) not with written numbers (six percent);

h) do not use periods within measurements (lb, ft, s) except inches (in.);

E.1.2 Use decimal configurations appropriate to the subject. Rounding is not required by ASB.

E.2 Units of Measurements

E.2.1 ASB has not established a preference for units of measurement. Measured and calculated values may be expressed in metric unite (SI) and in U.S. customary units (USC). The choice of units may be dictated at any point by the general acceptance of one or the other. For example, in the U.S. most gas stations sell fuel based on gallons while soft drinks are now nearly universally sold in liters.

E.2.2 When citing units in dual units, either may be listed first with the corresponding unit listed either in parentheses in the text or on separate tables, figures, datasheets or in separate annexes. List units consistently within a document.

E.3 Equations

E.3.1 Equations should be numbered when two or more are included in the main text of the document. Designate equations with consecutive Arabic numbers beginning with 1. Number each equation in the order that it appears in the standard, regardless of the section number in which it is

referenced. Designate equations in annexes by the designation of the annex followed by consecutive numbers beginning with 1 (for example, A.1, B.4).

E.3.2 The format for a numbered equation includes the expression of the equation and a legend of the individual elements. Example:

$$S = \frac{Mc}{} \quad (1)$$

where:

S = stress, psi, or Pa,

M = bending moment, lbf•in. or N•m,

c = distance from neutral axis to outermost fiber, in., or m, and

I = second moment of area, in.4 or m4.

Annex F
(normative)

References and NOTES

F.1 References: General

References cited in the main body are either **Normative** or **Informative**. An ASB document can include both types. All references must be published and available.

F.2 Normative References

F.2.1 Normative references are cited in the main body of the document in Section 2 and are indispensable for the application or implementation of the document.

NOTE References that provide additional information but are not essential to the application of the standard are not normative.

Examples:

1) "This evaluation shall ensure the CRM supplier meets the competence, measurement traceability, and measurement capability requirements of ISO/IEC 17025:2005."

Here, the ISO/IEC standard is a normative reference.

2) "Substrate measurements shall be determined prior to treatment. Measurement types can be found in TAPPI standard T 565."

In this example, the TAPPI standard is useful but not necessary for completing the required measurement.

F.2.2 List normative references alphabetically in Section 2 of a document.

F.2.3 Do not number normative references.

F.2.4 When standards are cited as references list them completely, not in abbreviated form.

F.2.5 For dated references, only the cited edition applies. For undated references, the latest edition including amendments applies.

F.2.6 Do not place normative references of a document in an Annex.

F.3 Informative References

F.3.1 These references are suitable as background reading, research findings, guidance, or additional information relevant to the document. Informative references are not indispensable for implementation.

Examples:

"ANSI online training sessions for 'How to Develop American National Standards' is consistent with this ASB Manual." The ANSI training sessions are informative.

"Substrate measurements shall be determined prior to treatment. Similar measurement types can be found in TAPPI standard T 565." The TAPPI standard is useful but not necessary for fulfilling the required measurement.

F.3.2 Informal references cited in the text are included in the bibliography annex of a document along with other references deemed to be helpful such as background material, technical assistance, topical information and so forth. A list of informative refences can be included as a separate annex, if necessary (it may be helpful if there are many such references cited in the document), in which case the informative references do not need to be included in the bibliography annex.

F.3.3 Use footnotes to reference *text copied* from another document.

F.4 NOTES

NOTES are used in the text of the document to provide additional clarity or understanding. NOTES do not have a title and they can appear in several of the following ways.

F.4.1 A 'NOTE # to entry' is associated with a term or definition and is always numbered; a NOTE # to entry can include requirements or provisions but only pertaining to the use of the term.

Example:

moisture content mass by volume
mass of evaporable water divided by volume of dry material

Note 1 to entry: The method of evaporating water from a moist material shall be stated when "moisture content mass by volume" is used.

F.4.2 A NOTE in the text is numbered if there is more than one and never contains requirements or provisions ('shall', 'should', 'may', 'can') with respect to the document. NOTES in text do not have to be referred to in the text.

NOTE For an example of a NOTE in text, see entry **G.1.1.2** of this Manual.

F.4.3 NOTEs in footnotes are numbered sequentially throughout the document and do not contain requirements or provisions in respect to the document.

F.4.4 NOTEs in figures and tables are numbered and do not contain requirements or provisions, but NOTES in footnotes to figures and tables can contain requirements or provisions relative to the figures or tables.

Annex G
(normative)

Copyright, Patents, Commercial Terms, and Trademarks

G.1 ANSI and ASB policies

ANSI's *Essential Requirements* includes normative policies involving patents, copyrights, and commercial terms such as warranties and trademarks.[9] These policies are incumbent on ASB document development and publication. ASB document writers are encouraged to read ANSI's full explanation by accessing the URL given below.

G.2 Copyrighted material

ASB adheres to laws guarding copyrighted material and intellectual property. Include copyrighted material only with the full acknowledgement of the copyright information. Where copyright or reproduction of intellectual property is not allowed, do not include the material in an ASB document.

G.3 Patents

G.3.1 The ASB patent policy[10]

G.3.1.1 There is no objection in principle to drafting an American National Standard (ANS) in terms that include the use of an essential patent claim (one whose use would be required for compliance with that standard) if it is considered that technical reasons justify this approach.

G.3.1.2 Participants in the ASB document development process are encouraged to bring patents with claims *believed* to be essential to the attention of ASB's Secretariat.

G.3.1.3 If ASB receives a notice that a proposed, revised, or approved ANS may require the use of such a patent claim that is not already covered by an existing letter of assurance (LOA), the procedures in **G.3.2** shall be followed.

G.3.2 Procedures: Statement from patent holder

G.3.2.1 ASB shall receive from the patent holder, or a party authorized to make assurances on its behalf, in written or electronic form, either:

a) assurance in the form of a general disclaimer to the effect that such party does not hold and does not currently intend holding any essential patent claim(s); or

b) assurance that a license to such essential patent claim(s) will be made available to applicants desiring to utilize the license for the purpose of implementing the standard either:

[9] The 2020 revision of these policies are on the ANSI website at: https://ansi.org/american-national-standards/ans-introduction/essential-requirements
[10] Adapted from section 3 of ANSI's *Essential Requirements*

i) under reasonable terms and conditions that are demonstrably free of any unfair discrimination; or

ii) without compensation and under reasonable terms and conditions that are demonstrably free of any unfair discrimination.

G.3.2.2 Such assurance shall indicate that the patent holder (or third party authorized to make assurances on its behalf) will include in any documents transferring ownership of patents subject to the assurance, provisions sufficient to ensure that the commitments in the assurance are binding on the transferee, and that the transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding each successor-in-interest.

G.3.2.3 The assurance shall also indicate that it is intended to be binding on successors-in-interest regardless of whether such provisions are included in the relevant transfer documents.

G.3.3 Record of Statement

ASB shall retain a record of the patent holder's statement in ASB files, and the record shall be made publicly available at ASB's election of either the ASB website or ANSI's LOA repository.

G.3.4 Notice

G.3.4.1 When ASB receives from a patent holder the assurance set forth in G.3.2 above, the standard shall include a note substantially as follows.

a) NOTE - the user's attention is called to the possibility that compliance with this standard may require use of an invention covered by patent rights.

b) By publication of this standard, no position is taken with respect to the validity of any such claims(s) or of any patent rights in connection therewith. If a patent holder has filed a statement of willingness to grant a license under these rights on reasonable and nondiscriminatory terms and conditions to applicants desiring to obtain such a license, then details may be obtained from ASB.

G.3.4.2 Neither ASB nor ANSI is responsible for identifying patents for which a license may be required by an ANS or for conducting inquiries into the legal validity or scope of those patents that are brought to their attention.

G.4 Commercial Terms and Trademarks

G.4.1 In accordance with ANSI's Essential Requirements, Section 3.2, ANS shall not include terms or conditions that are primarily contractual or commercial in nature, as opposed to technical, engineering, or scientific in nature. In addition, an ANS shall not endorse or require the use of proprietary products or services or endorse or require the use of conformity-assessment bodies, testing facilities or training organizations.

G.4.2 Prohibited material includes manufacturer lists, service provider lists, or text in the document or in an annex.

G.4.3 If there is only one source (not a preferred source but a sole source) for necessary equipment, materials, or services necessary to comply with a standard, then a footnote or informative annex can list the source but ONLY if the reference includes the words "or equivalent."

G.5 Expression of Trade Names and Trademarks

G.5.1 The correct designation or description of a product shall be given rather than a trade name or trademark. Avoid using proprietary trade names or trademarks for a particular product, even if they are in common use.

G.5.2 Exceptionally, when use of a trade name or trademark cannot be avoided, and the successful application of the document depends on the use of a trade name or trademark, correctly indicate their nature using symbol ® for a registered trademark and the symbol ™ for a trademark.

Annex H
(normative)

Annexes and Bibliographies

H.1 Normative and Informative Annexes

Annexes provide relevant information that is not appropriate to include in the body of the document. Annexes can be **Normative** or I**nformative**. A document can have as many Normative and Informative annexes as needed for the purpose of the document.

H.1.1 Lengthy didactic material, or treatise-level information are not appropriate for an annex and belong in an accompanying Technical Report.

H.1.2 A normative annex has information necessary for carrying out the requirements of a document**.** Include in a normative annex information such as specific test methods, metric or mathematical expressions, specific procedures, and so forth. If the normative annex contains references, also include those references in the bibliography of the document.

NOTE References cited in a normative annex are not part of the main document. Such references, then, need to be included in the bibliography.

H.1.3 An informative annex includes information helpful to the understanding or use of the document, but it is not necessary for the actual implementation of the content. Include an informative annex to provide information such as background material or a description of research findings that assist in the comprehension of the document. Informative annexes may contain optional requirements. For example, a test method that is optional may contain requirements, but it is not necessary to follow these requirements to claim conformance with the document.

H.2 Bibliography

The last annex is the Bibliography, and it is an informative annex only. Keep the bibliography as concise as possible—it is not intended to be an exhaustive list. Include informal references cited in the document as well as other useful references that pertain to the document. The Bibliography does not contain normative references, as they are cited in Section 2.

Annex I
(informative)

Citation of ASB Standards
(added, 2022)

Background

Publishers, including research and academic institutions, may require a specific citation style such as MLA or Chicago, and these styles can apply to citing standards as well as other references. The citation style does not affect the designation of a standard, but may require additional information or punctuation. The following is an excerpt from the University of Iowa's section "Citing Standards"[11]:

> How to cite an industry standard varies depending on the style manual required by each journal or discipline. There is no such thing as a separate style guide just for industry standards.
>
> **Guiding principle:** Make sure you provide enough information that anyone interested in further Information can track down the original document.
>
> — Issuing Agency (or publication name)
>
> — Standard Number
>
> — Standard Title
>
> — Publication Date
>
> — Specific Version

Where a citation machine such as the Purdue Owl[12] is used and requires the name of an author, the proper name of the SDO is the author. Purdue provides instruction on using several different format styles. The following is an example of an MLA format for reference citation and in-text citation.

> **General Format for Reference List - Note that 'Standard Issuing Body' is used instead of 'Author'.**
> [Reference Number] **Standard Issuing Body**, year, "Standard Name," Number.
>
> Example
> [1] **AAFS-ASB**, 2022, "Standard for Collection of Known DNA Samples from Domestic Mammals," ANSI/ASB Std. 138", First Edition.

[11] University of Iowa, "Citing Standards" https://guides.lib.uiowa.edu/c.php?g=132283&p=5262019#s-lg-box-16552412
[12] https://owl.purdue.edu

In Text Citation
Use Square Brackets to reference the citation.
Your text about a general reference [1] your text continues after the in text citation to explain why that reference was used.

Standard Issuing Body, year, "Standard Name," Number. [1] AAFS-ASB, 2022, "Standard for Collection of Known DNA Samples from Domestic Mammals," ANSI/ASB Std. 138-2022. Use Square Brackets to reference the citation.

Citation of ANSI/ASB Documents

Cite ANSI/ASB documents as follows:

Base Designation, Title, date of publication and/or Version.

- Base Designation = ANSI/ASB + Document type + alpha-numeric identifier
- Title = *title of document without additional identifiers*
- Publication or version date = year and any accompanying version identifier

Example: ANSI/ASB Standard 035, *Standard for the Examination of Documents for Alterations*. 2020. 1st. Ed.

When additional information, such as the author's name, is required by a publisher's citation style, use the following:

- Author = AAFS-ASB
- Publisher = AAFS-ASB
- Publisher Address = 410 North 21st Street, Colorado Springs, CO 80904

Example: ANSI/ASB Standard 035, *Standard for the Examination of Documents for Alterations*. 2020. 1st. Ed. AAFS-ASB, 410 North 21st Street, Colorado Springs, CO 80904

Annex J
(informative)

Bibliography

The following bibliography is not intended to be an all-inclusive list, review, or endorsement of literature on this topic. The goal of the bibliography is to provide examples of publications addressed in the standard.

1] American National Standards Institute (ANSI). *ANSI Essential Requirements: Due Process Requirements for American National Standards,* 2019.

2] *ANSI Style Guidesheet* - 2003[13].

3] *Conformity Assessment for Standards Writers*. International Organization for Standardization, 2016.

4] *How to Write Standards Update 2016 - EN*[14].

5] *ISO/IEC Directives, Part 2 - Principles and rules for the structure and drafting of ISO and IEC documents*, 8th ed. ISO, 2018.

6] ISO/IEC 17000:20 *Conformity assessment - Vocabulary and general principles.*[15]

7] *MLA Handbook, 8th Edition*. The Modern Language Association of America, 2016.

8] National Fire Protection Association, *NFPA 4*[16].

9] Purdue Writing Lab. "MLA Formatting and Style Guide // Purdue Writing Lab." *Purdue Writing Lab*[17].

10] *Recommended Practice for the Designation and Organization of Standards,* ANSI/SWES 1:2013, The Society for Standards Professionals (SES).

[13] share.ansi.org/shared%20documents/Standards%20Activities/American%20National%20Standards/Procedures,%20Guides,%20and%20Forms/New%20ANSI%20Style%20Guidesheet%202.doc
[14] www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/how-to-write-standards.pdf
[15] https://www.iso.org/obp/ui/#iso:std:iso-iec:17000:ed-2:v2:en
[16] https://catalog.nfpa.org/NFPA-4-Standard-for-Integrated-Fire-Protection-and-Life-Safety-System-Testing-C189.aspx
[17] owl.purdue.edu/owl/research_and_citation/mla_style/mla_formatting_and_style_guide/mla_formatting_and_style_guide.html



Academy Standards Board
410 North 21st Street
Colorado Springs, CO 80904

www.aafs.org/academy-standards-board

ANSI/ASB Best Practice Recommendation 037, First Edition 2019

Guidelines for Opinions and Testimony in Forensic Toxicology

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Guidelines for Opinions and Testimony in Forensic Toxicology

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ANSI Approved January 2019

410 North 21st Street
Colorado Springs, CO 80904

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Foreword

It is common that forensic toxicologists are called to testify in criminal and civil matters to discuss analytical results and offer their expert toxicological opinion. In these legal matters, it is important that expert testimony be constrained to areas that are based upon sufficient facts or data, be a product of reliable principles and methods, and that those principles and methods are consistently applied to the facts of the case at hand. This document provides one way of ensuring that proper toxicological testimony is allowed in legal matters by defining the general areas of forensic toxicology that are viewed as reliable by other experts in the field.

This document was revised, prepared, and finalized as a standard by the Toxicology Consensus Body of the AAFS ASB. The initial draft document was developed by the Toxicology Subcommittee of the Organization of Scientific Area Committees (OSAC).

All hyperlinks and web addresses shown in this document are current as of the publication date of this standard.

Keywords: *Opinions, Testimony, Forensic Toxicology*

Abstract: This document was developed to provide general guidance to expert witnesses called to testify on the topic of forensic toxicology, to include the expert toxicological opinions they may offer.

Table of Contents

1 Scope 1
2 Normative References 1
3 Terms and Definitions 1
4 Written and Oral Opinions 2
5 Expert Toxicological Opinions and Testimony 2
5.1 General 2
5.2 Appropriate Opinions and Testimony by a Toxicologist 3
5.3 Inappropriate Opinions and Testimony by a Toxicologist 3
Annex A (informative) Bibliography 5

Guidelines for Opinions and Testimony in Forensic Toxicology

1 Scope

This document delineates guidelines for best practices in forensic toxicology opinions and testimony. Specifically, it is intended for the subdisciplines of human performance toxicology (e.g., driving-under-the-influence of alcohol or drugs and drug-facilitated crimes), postmortem forensic toxicology, non-regulated employment drug testing, court-ordered toxicology (e.g., probation and parole, drug courts, child services), and general forensic toxicology (e.g., non-lethal poisonings or intoxications).

2 Normative References

The following references are indispensable for the application of the standard. Only the editions cited apply.

Scientific Working Group for Forensic Toxicology (SWGTOX) Standard for Laboratory Personnel. J Anal Toxicology (2015) 39 (3): 241-250

Scientific Working Group for Forensic Toxicology (SWGTOX) Standard for Breath Alcohol Personnel. J Anal Toxicology (2015) 39 (3): 231-240

3 Terms and Definitions

For purposes of this document, the following definitions apply.

3.1
body burden calculation
An estimate of the total drug in the body based on quantitative analysis of blood, urine, and/or tissue samples.

3.2
expert toxicological opinion (or "opinion")
A coherent, scientifically sound statement or statements regarding the meaning of analytical findings in a forensic case that is formulated from a consideration of the synthesis of analytical data, pre-analytical factors, case history, and other relevant information.

3.3
extrapolation calculation
An estimation of a drug concentration (e.g., ethanol) at a time other than the time of the sample collection. There are two types of extrapolation: back (retrograde) and forward (anterograde) extrapolation.

3.4
toxicologist
An individual (however named) who provides factual information and/or interpretive opinions related to the results of toxicological tests for court or investigative purposes. May be further defined by role (e.g., Toxicologist (General), Toxicologist (Alcohol), Toxicologist (Breath Alcohol)).

4 Written and Oral Opinions

4.1 Written expert toxicological opinions regarding the interpretation of analytical toxicology findings should not be part of the basic analytical toxicology report. A separate expert report should be used to convey such opinions.

4.2 Written expert toxicological opinions should include a comment that states that the opinions may be subject to change based upon new information that becomes available (e.g., case history, additional analytical testing, new research findings and publications, etc.).

4.3 An expert toxicological opinion, whether written or oral, should:

a) be expressed in a clear, coherent manner;

b) be based on established scientific principles and foundations;

c) be based on the totality of information available, including case history, observations, circumstances, and other relevant information, and not based solely on analytical results;

d) include information on case specific documents and records reviewed;

e) have references that support the opinion[1];

f) clearly state any assumptions made; and

g) clearly state any known limitations of the opinion

5 Expert Toxicological Opinions and Testimony

5.1 General

5.1.1 See the *SWGTOX Standard for Laboratory Personnel* and *SWGTOX Standard for Breath Alcohol Personnel* for recommended education, certification, and training/work experience for providing interpretive opinions related to the results of toxicological tests for court or investigative purposes.

5.1.2 A toxicologist may be asked to express an expert opinion or to testify as a fact or expert witness.

5.1.2.1 Fact witnesses typically testify to the work performed in the laboratory that includes scientific principles, instrumentation, quality assurance procedures, and/or chain of custody.

5.1.2.2 Expert witnesses typically testify to their own interpretation of results and/or opinions.

[1] References should be provided either in the expert report or made available upon request

5.2 Appropriate Opinions and Testimony by a Toxicologist

Through testimony and offering an expert toxicological opinion, it is generally appropriate for a toxicologist to:

a) discuss a laboratory report and any analytical work that supports that report. Applicable limitations should also be addressed.

b) qualify a reported concentration in the context of a given case as subtherapeutic, therapeutic, toxic or lethal when that statement can be backed by appropriate references, databases and/or other relevant information.

c) address the pharmacokinetics/toxicokinetics, as well as the pharmacodynamics/ toxicodynamics of drugs or other chemicals.

d) discuss the toxicological impact of the presence, absence and/or stability of drugs or other chemicals.

e) address impairment for the average individual to the extent that effects are consistent with documented pharmacodynamic and toxicodynamic properties of the substance and within the context of a given case.

f) perform or discuss toxicological calculations that are generally accepted in the field and can be supported by research and references, provided appropriate limitations are cited. For example, ethanol back extrapolation calculations may be performed.

5.3 Inappropriate Opinions and Testimony by a Toxicologist

The following are considered to generally be inappropriate opinions and/or testimony for a toxicologist to offer, as they currently lack consensus within the scientific community or are generally beyond the scope of the toxicologist's expertise.

a) A toxicologist should not opine as to the absolute cause of death of an individual. This does not preclude a toxicologist from addressing the toxicological impact of any substances found in the toxicological analysis of specimens from the case.

b) A toxicologist should not address behavioral intent based solely upon a drug concentration.

c) A toxicologist should not opine as to a specific individual's degree of impairment based solely on a quantitative result.

d) A toxicologist should not imply impairment of an individual based on analytical findings from urine, hair or other matrices unless supported by the literature.

e) A toxicologist should not opine as to the absolute cause of an accident.

f) A toxicologist should not perform extrapolation calculations for drugs other than ethanol.

g) A toxicologist should not calculate the dose of a drug based on a postmortem drug concentration in blood.

h) A toxicologist should not calculate the dose of a drug (with the exception of ethanol) through body burden calculations.

i) A toxicologist should not opine as to the effects of a drug or combination of drugs on a specific individual without context of a given case. This does not preclude a toxicologist from addressing general effects of drugs at varying concentrations (Section 5.2.).

j) A toxicologist should not use words such as “scientific certainty” or “reasonable degree of scientific certainty”, unless required by jurisdictional regulations.

Annex A
(informative)

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Academy Standards Board
410 North 21st Street
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www.asbstandardsboard.org

ANSI/ASB Standard 137, First Edition
2023

Standard for Examination and Documentation of Footwear and Tire Impression Evidence

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Standard for Examination and Documentation of Footwear and Tire Impression Evidence

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Foreword

The order of examination is intended to be inventory, analysis, comparison, evaluation, and verification. It is recognized that some steps may not have clearly defined starting and ending points and that steps may need to be revisited at various times in the examination.

Completion of a training program and experience in these skills are essential to understanding and applying the principles outlined in this standard.

The American Academy of Forensic Sciences established the Academy Standards Board (ASB) in 2015 with a vision of safeguarding Justice, Integrity and Fairness through Consensus Based American National Standards. To that end, the ASB develops consensus based forensic standards within a framework accredited by the American National Standards Institute (ANSI), and provides training to support those standards. ASB values integrity, scientific rigor, openness, due process, collaboration, excellence, diversity and inclusion. ASB is dedicated to developing and making freely accessible the highest quality documentary forensic science consensus Standards, Guidelines, Best Practices, and Technical Reports in a wide range of forensic science disciplines as a service to forensic practitioners and the legal system.

This document was revised, prepared, and finalized as a standard by the Footwear and Tire Consensus Body of the AAFS Standards Board. The draft of this standard was developed by the Footwear and Tire Subcommittee of the Organization of Scientific Area Committees (OSAC) for Forensic Science.

Questions, comments, and suggestions for the improvement of this document can be sent to AAFS-ASB Secretariat, asb@aafs.org or 401 N 21st Street, Colorado Springs, CO 80904.

All hyperlinks and web addresses shown in this document are current as of the publication date of this standard.

ASB procedures are publicly available, free of cost, at www.aafs.org/academy-standards-board.

Keywords: *methodology, examination, footwear impression, footwear, tire, documentation and conclusions, interpretation.*

Table of Contents

1 Scope 1
2 Normative References 1
3 Terms and Definitions 1
4 Examination and Documentation 2
4.1 General 2
4.2 Inventory 2
4.3 Analysis 3
4.4 Comparison 4
4.5 Evaluation 4
4.6 Report 5
Annex A (informative) Bibliography 6

Standard for Examination and Documentation of Footwear and Tire Impression Evidence

1 Scope

This standard provides the examination process and minimum documentation requirements for relevant observations and conclusions/interpretations encountered during footwear/tire tread examinations. The required documentation as outlined in this standard will allow for an appropriate review.

This document is not all inclusive of the examinations that may be requested or conducted.

2 Normative References

The document contains no normative references. See Annex A, Bibliography for other references.

3 Terms and Definitions

For purposes of this document, the following discipline specific definitions apply. Please refer to ASB Technical Report 097, *Terminology Used for Forensic Footwear and Tire Evidence*, First Edition, 2019 for a comprehensive listing of detailed general footwear and tire definitions.[1]

3.1
analysis
Consists of the assessment and documentation of the quality and quantity of the observed class characteristics and characteristics of use of an unknown impression and known footwear or tire.

3.2
characteristics of use
Consists of both wear and randomly acquired characteristics (RAC).

3.3
comparison
Consists of an examination of correspondence or non-correspondence between items, unknown and known.

3.4
evaluation
Consists of the consideration of data observed in the comparison and the weight of the correspondence and/or non-correspondence between two items, unknown and known.

3.5
suitability
Consists of a determination reached during the analysis phase after considering the quality, quantity, and specificity of features observed; to include class characteristics, characteristics of use, and limiting factors in an unknown impression in order to proceed with the examination process.

[1] Available from www.aafs.org/academy-standards-board.

4 Examination and Documentation

4.1 General

Documentation shall be a complete record of the observations made during the examination process to support conclusions reached. Documentation shall be recorded contemporaneously throughout the examination process. The type of documentation (narrative, photographs, annotations, etc.) that is used to meet this standard may vary based on the complexity of the evidence. Data or features used in the comparison process shall be annotated. The minimum threshold includes narrative and photographic documentation. The documentation shall comply with the requirement in this standard so that another footwear or tire examiner could interpret the data and the basis of the opinion of the original examiner.

NOTE The minimum training requirements for the footwear tire examiner can be found in ANSI/ASB Standard 095, *Standard for Minimum Qualifications and Training for a Footwear/Tire Forensic Science Service Provider*.

Documentation and preservation shall include forensic evidence, other than footwear or tire impressions on examined items.

4.2 Inventory

4.2.1 The inventory of an unknown footwear or tire impression should be conducted prior to the inventory of a known footwear or tire.

4.2.2 Inventory shall include initial observations of items of evidence (to include both unknown impressions and known footwear or tires separately) and include documentation of the following, when available:

a) original packaging;

b) original packaging condition;

c) collection information including, but not limited to:

   1) date of recovery, and

   2) recovery location of impression;

d) inventory of contents and assignment of identifiers to each item of evidence; and

e) description of contents to distinguish from other similar items:

   1) recovery method, and

   2) evidence discrepancies.

4.3 Analysis

4.3.1 The analysis and documentation of an unknown footwear or tire impression shall be conducted prior to the analysis of a known footwear or tire. If the examiner is exposed to a known footwear or tire prior to analysis of the unknown, the exposure shall be recorded in the notes.

4.3.2 The analysis of unknown footwear or tire impressions shall include, but is not limited to, documentation of the following (if needed or utilized):

a) sample preparation (e.g., cleaning the cast);

b) examination quality photographs;

c) processing techniques;

d) account for observed impressions;

e) suitability of observed impressions;

f) for each suitable impression annotate and document:

    1) quality of impressions;

    2) class characteristics:

        i) manufacturing information;

        ii) observed features, shapes and patterns;

    3) interferences/limitations;

    4) characteristics of use.

4.3.3 The analysis of a known footwear or tire shall include documentation of the following (if needed or available):

a) sample preparation (e.g., swabbing, collecting trace evidence, etc.);

b) date of collection;

c) overall and examination quality photographs of known footwear or tire;

d) condition of outsole or tread;

e) class characteristics:

    1) manufacturing information;

    2) observed features, shapes and patterns;

f) characteristics of use.

4.3.4 Documentation of the analysis shall correspond to the complexity of the examination. Factors to consider in evaluating complexity include but are not limited to: distortion, substrate, matrix, quality and quantity of impression.

4.4 Comparison

4.4.1 During the comparison, the unknown impression, known footwear or tire, if available, as well as any and all available test impressions shall be included in the examination.

4.4.2 If significant non-correspondence (e.g., different tread design) is observed during the comparison the examiner may move to the evaluation; test impressions of the known footwear or tire are not necessary.

4.4.3 If correspondence is observed between the unknown impression and the known footwear or tire, one or more test impression(s) should be recorded. Multiple test impressions may be necessary to capture a range of deposition factors.

4.4.4 Documentation of test impressions shall include the following:

a) manner in which they were prepared;

b) matrix; and

c) substrate.

4.4.5 The documentation of comparison shall include, but is not limited to, the following:

a) method of comparison;

b) quality and quantity of data observed:

    1) class characteristics,

    2) characteristics of use (if reproduced).

Inspection of the known can provide valuable information regarding the context of the questioned impression; therefore, contemporaneous documentation should reveal observations formed prior and post-examination of the known.

4.4.6 Documentation of the comparison shall correspond to the complexity of the examination and should include markings of correspondence or non-correspondence of class characteristics and characteristics of use, where applicable.

4.5 Evaluation

An evaluation of the information documented during the comparison of the unknown and known shall be conducted. Documentation of the evaluation shall include, but is not limited to the following:

— identity of examiner;

— date;

— identification of items used; and

— conclusion/interpretation reached.

4.6 Report

A final report shall address all items of evidence examined and state results and conclusions accurately, clearly, unambiguously and in an unbiased manner.

Annex A
(informative)

Bibliography

This is not meant to be an all-inclusive list as the group recognizes other publications on this subject may exist. At the time this standard was drafted, these were the publications available for reference. Additionally, any mention of a particular software tool or vendor as part of this bibliography is purely incidental, and any inclusion does not imply endorsement.

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Standard for Validation of Probabilistic Genotyping Systems

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Standard for Validation of Probabilistic Genotyping Systems

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Foreword

The validation of computer software systems used for the probabilistic evaluation and interpretation of genetic information from forensic casework is a critical component of the validation process any caseworking laboratory using such software undergoes. Validations of such systems provide the study results and conclusions necessary for customers of forensic science service providers to have confidence in the evidence provided.

Validation of a new methodology is typically defined as developmental and internal, and each will be defined in this document along with their individual minimum requirements as it relates to probabilistic genotyping. Developmental validation may be conducted outside the laboratory planning to use it (i.e., by the manufacturer, developer, or other testing laboratory). In these instances, the laboratory validating the system may choose to adopt and reference these studies already performed. However, developmental validation is not meant to replace internal validation. Instead, depending on the particular functions and applications of the system and its planned use in the laboratory, each laboratory will need to perform internal studies to demonstrate the reliability of the software and any potential limitations.

If a laboratory will be incorporating a probabilistic genotyping system in its casework utilizing multiple sets of DNA typing parameters and protocols, the software and individual interpretation protocols will need to be validated with each method (e.g., standard and enhanced detection methods).

This document was revised, prepared, and finalized as a standard by the DNA Consensus Body of the AAFS Standards Board. The draft of this standard was developed by the Biological Data Interpretation and Reporting Subcommittee of the Organization of Scientific Area Committees (OSAC) for Forensic Science.

The AAFS Standards Board (ASB) is an ANSI-accredited Standards Developing Organization with the purpose of providing accessible, high quality science-based consensus forensic standards. The ASB is a wholly owned subsidiary of the American Academy of Forensic Sciences (AAFS), established in 2015 and accredited by the American National Standards Institute (ANSI) in 2016. The ASB consists of Consensus Bodies (CB), which are open to all materially interested and affected individuals, companies, and organizations; a Board of Directors; and Staff.

The following applies to all ASB documents:

the term **'shall'** indicates that a provision is mandatory, and can be audited for compliance

the term **'should'** indicates that a provision is not mandatory, but recommended as good practice.

All hyperlinks and web addresses shown in this document are current as of the publication date of this standard.

Keywords: *validation, probabilistic genotyping, statistics, likelihood ratio, DNA Standards*

Table of Contents

1 Scope 1
2 Normative References 1
3 Terms and Definitions 1
4 Requirements 3
5 Conformance 4
Annex A (normative) Requirements – Supporting Information 5
Annex B (informative) Bibliography 7

Standard for Validation of Probabilistic Genotyping Systems

1 Scope

1.1 This standard sets forth the requirements to be used by laboratories for the validation of probabilistic genotyping systems related to interpreting autosomal STR results. Amelogenin is not covered by this standard.

1.2 Laboratories are advised to review their validation for compliance with this standard, supplement validation where necessary, and modify existing protocols accordingly.

2 Normative References

There are no normative reference documents, Annex B, Bibliography, contains informative references.

3 Terms and Definitions

For purposes of this document, the following definitions apply.

3.1
accuracy studies
Studies performed to assess the degree of conformity of a measured quantity to its actual (true) value. In probabilistic genotyping, these are studies performed to establish that the calculations made by the probabilistic genotyping system are correctly executed, and that the results obtained produce the expected likelihood ratio for situations where the calculations can be performed manually or with an alternate software program or application. Such situations include profile results from single source samples, 2-person mixtures with unambiguous major and minor contributors, and 2-person mixtures with equal mixture proportions. However, profile results where the ground truth is not known are not suitable for accuracy studies.

3.2
case-type profiles
Data exhibiting features that are representative of a plausible range of casework conditions for mixtures and single-source samples. These features include masked/shared alleles and stutter, degradation (including different degradation levels for different contributors to a mixture), allele and locus drop-out, and PCR inhibition.

3.3
developmental validation
The accumulation of test data to demonstrate that established parameters, software settings, formulae, algorithms and mathematical functions perform as expected. Developmental validation should also demonstrate any known limitations of the system. Developmental validation may be conducted outside the laboratory planning to use it (i.e., by the manufacturer, developer, or other testing laboratory) and will precede any internal validations.

3.4
internal validation
The acquisition of test data within the laboratory to verify the functionality of the system, the accuracy of statistical parameters, the appropriateness of analytical and statistical parameters, and the determination of limitations of the system.

3.5
performance check
A quality assurance measure to assess the functionality of the probabilistic genotyping software following a minor change such as reformatting of output reports. This would typically involve functional testing of the software verifying it is performing tasks as expected and comparing results to previously validated versions of the software using the same data or sample set where possible.

3.6
precision studies
Studies performed to evaluate the variation in likelihood ratios calculated from repeated software analyses of the same input data using the same set of conditions/parameters. Probabilistic genotyping systems inherently do not produce the same exact numbers in repeated analysis. These studies should demonstrate the range of values that can be expected from multiple analyses of the same data.

3.7
probabilistic genotyping
The use of biological modeling (i.e., statistical modeling informed by biological data), statistical theory, computer algorithms, and/or probability distributions to infer genotypes and/or calculate likelihood ratios.

3.8
probabilistic genotyping system
Software, or software and hardware, which utilizes a probabilistic genotyping approach to infer genotypes and/or calculate likelihood ratios.

3.9
sensitivity studies
Studies performed to assess the ability of the probabilistic genotyping system to support the presence of a known contributor.

3.10
specificity studies
Studies performed to assess the ability of the probabilistic genotyping system to support the absence of true non-contributors. A true non-contributor is an individual who is known not to contribute.

3.11
validation
The process of performing a set of experiments that establish the efficacy, reliability, and limitations of a method, procedure or modification thereof; establishing recorded documentation that provides assurance based on empirical data that a specific process will consistently produce an outcome meeting its predetermined specifications and quality attributes.

4 Requirements

NOTE Refer to Annex A, Requirements - Supporting Information, for additional information on the requirements in this section.

4.1 The laboratory shall validate a probabilistic genotyping system prior to its use for casework samples in the laboratory.

4.1.1 Validations shall include both developmental and internal studies. Developmental validation may be conducted by the manufacturer/developer of the application or another laboratory/agency. Developmental validation shall not replace internal validation.

4.1.2 Developmental validation studies shall address the following: accuracy, sensitivity, specificity, and precision. These studies shall include case-type profiles of known composition that represent (in terms of number of contributors, mixture ratios, and total DNA template quantities) the range of scenarios that would likely be encountered in casework. Studies shall not be limited to pristine DNA samples but shall also include compromised DNA samples (e.g., low template, degraded, and inhibited samples).

4.1.3 Internal validation studies shall address the following: accuracy, sensitivity, specificity, and precision. These studies shall include internally generated case-type profiles of known composition that represent (in terms of number of contributors, mixture ratios, and total DNA template quantities) the range of actual casework samples intended for analysis with the system at the laboratory. Studies shall not be limited to pristine DNA samples but shall also include compromised DNA samples (e.g., low template, degraded, and inhibited samples). The internal validation shall not exceed the scope of the conditions tested in the developmental validation. Case type profiles that fall outside the range of conditions explored in developmental validation shall require additional developmental validation studies. See Annex A.

4.1.4 Internal validation studies shall include evaluating user input parameters that vary run to run. The effects of artifacts (e.g., stutter) and parameters that relate to the statistical algorithm (e.g., run time parameters for the software system that can vary from system to system) shall also be evaluated. The parameters may vary depending upon the approach or intended use of the software. Therefore, the specific parameters to be tested shall be determined by the laboratory.

4.1.5 Internal validation studies shall also include the evaluation of multiple propositions for case type samples to aid in the development of propositions. Such studies shall also consider the effect of overestimating and underestimating the number of contributors.

4.1.6 For internal validation, the laboratory shall evaluate both the appropriate sample types (i.e., number of contributors, mixture ratios, and template quantities) and the number of samples within each type to demonstrate the potential limitations and reliability of the software. The laboratory shall base this evaluation on the intended application of the software.

4.2 The underlying scientific principle(s) of the probabilistic genotyping model and associative method and software including the mathematical basis and underlying algorithms shall be published in peer-reviewed scientific journal(s).

4.3 Quality assurance parameters, analytical procedures, and interpretation protocols shall be derived from internal validation studies. Developmental and manufacturer recommendations may be used in addition to internal validation studies but shall not replace internal validation.

4.4 Software modifications, changes to computing platform or changes to upstream analytical processes (i.e., amplification processes, detection platforms) that may impact the interpretation or reported result(s) shall be evaluated to determine whether a validation or performance check is required prior to implementation. Such modifications shall require a validation or performance check of the affected software component. If neither is conducted after a software modification, changes to computing platform or changes to upstream analytical processes, the laboratory shall document the justification (e.g., software update simply enhances visual output or displays, therefore no performance check was conducted). See Annex A.

4.5 All validation and performance check studies conducted by the laboratory shall be documented and retained by the laboratory. See Annex A.

4.6 The laboratory shall have a mechanism to record the software settings that are used each time an analysis is performed. See Annex A.

4.7 Prior to implementation, the laboratory shall verify the functionality of its defined software settings and parameters utilizing different data sets than what were originally used to establish those settings and parameters. See Annex A.

5 Conformance

Documentation demonstrating conformance with the standards described in this document will be reviewed and approved by the laboratory's DNA technical leader (or equivalent) and will be made readily available in hard copy and/or electronic form for review.

Annex A
(normative)

Requirements – Supporting Information

The following information is provided to aid personnel responsible for developing the validation and any personnel responsible for carrying out the validation. While each of the standards listed shall be addressed in the development and use of the laboratory validation protocol(s), the approaches used, the type of data evaluated, and the details of the protocols will vary between laboratories.

Requirement 4.1.3 - Repeated testing and data analysis are critical to the understanding of variability. While specific requirements for the minimum number of studies and sample sets used for validation studies are not detailed in this standard, the laboratory shall perform sufficient studies to address the variability inherent to the various aspects of DNA testing, data generation, analysis and interpretation of data and user input parameters.

Requirement 4.4 **-** Software modifications that may impact the analytical process, interpretation, or reported result(s) shall be evaluated as to the extent of the impact to determine whether a validation or performance check is required prior to implementation. All computer programs are subject to code revisions, improvements and release cycles. As such, it is useful to have some concept of which changes made to the software by the developers are likely to have a fundamental impact, and equally how such changes can be recognized. A laboratory does not need to perform additional validation based solely upon changes to software version numbers or build numbers. Additional validation or a performance check shall be based on the list of documented changes provided by the developer that accompany each updated version of the software installed in the laboratory.

Requirement 4.5 - All internal validation and performance check studies shall be documented and retained by the laboratory. Any validation and performance check studies may take a significant amount of time and are likely to result in a considerable amount of documentation output material. It is incumbent upon any laboratory performing these studies to retain these results for the examination and evaluation by third parties. The results should be documented in such a way that the performance checks and validations can be reproduced and decisions made on the basis of these studies documented. Laboratories shall have a summary statement of the sample types of which the developer used to for their developmental validation.

Requirement 4.6 **-** The laboratory shall have a mechanism to record the software settings that are used each time an analysis is performed. Probabilistic genotyping software usually has a number of settings that are either specific to a laboratory, specific to a case, or specific to a run within a case. The latter may occur when a probabilistic genotyping analysis that incorporates elements of randomness is performed multiple times for the same evidentiary items. Settings may include input parameters specific to the algorithm (such as the probability of dropout, or the number of MCMC burn-in iterations), laboratory specific parameters (such as the distribution parameters for stutter peaks based on historical data from that laboratory), or run specific parameters (such as the number of contributors, or the number of MCMC iterations retained for inference). Any parameter/input in the system that the user can change should be recorded for examination, evaluation and reproduction. The recording of these settings will allow the system to be configured in an identical manner and allow a third party to achieve the same (or similar) outputs. The outputs will generally not be identical unless the same random number seed(s) is/are used.

Requirement 4.7 **-** Prior to implementation, the laboratory shall verify the functionality of its defined software settings and parameters utilizing a different data set than what was originally used to establish those settings and parameters. This serves to further verify the established software settings and parameters. Probabilistic genotyping software systems are calibrated using historical data ideally from the same laboratory in which that system is employed. It is therefore important to test the system by exposing it to data that it has not seen in the past. This, in turn, will provide the laboratory with a more realistic assessment of the readiness of the system for casework. The new data should be comprised of samples that represent the variety of casework handled within the validating laboratory.

Annex B
(informative)

Bibliography

This is not meant to be an all-inclusive list as the group recognizes other publications on this subject may exist. At the time these standards were drafted, these were the publications available to the working group members for reference. Additionally, any mention of a particular software tool or vendor as part of this bibliography is purely incidental, and any inclusion does not imply endorsement by the authors of this document.

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[2] Available at .[2] https://www.swgdam.org/publications



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Voluntary Standards and Accreditation: An Introduction for Lawyers

By Dana Delger
December 1, 2024

An understanding of how voluntary standards intersect with accreditation requirements begins with an understanding of the regulatory environment in which those standards and requirements operate. The United States does not have a nationwide forensic science regulator to set and enforce forensic science standards. Instead, outside of a number of state exceptions,[1] forensic science in the United States is largely governed through the adherence of forensic science service providers to voluntary accreditation schemes rather than top-down regulation. Such voluntary accreditation is widespread among large public labs; as of 2020, 90.4% of publicly funded crime labs were accredited.[2] The only federal law mandating forensic regulation in any form is the DNA Identification Act of 1994's requirement that laboratories must comply with the Quality Assurance Standards set by the Federal Bureau of Investigation, undergo external audits every two years demonstrating such compliance, and maintain accreditation, in order to use or participate in the National DNA Index System (NDIS).[3] Note that this law does *not* affirmatively require laboratories to follow the Quality Assurance Standards; it only prevents them from accessing NDIS if they fail to do so.

[1] *See, e.g.,* 37 Tex. Admin. Code § 15 (Tex. Forensic Sci. Comm., Crime Laboratory Accreditation).

[2] Bureau of Justice Statistics, *Publicly Funded Forensic Crime Laboratories,* 2020, at 16, https://bjs.ojp.gov/document/pffcl20.pdf.

[3] 34 USCA § 12592; *see also* Karen Reczek, *Standards and Conformity Assessment, Encyclopedia of Forensic Sciences (Second Edition)* at 636; Federal Bureau of Investigation, *Frequently Asked Questions on CODIS and NDIS,* https://www.fbi.gov/how-we-can-help-you/dna-fingerprint-act-of-2005-expungement-policy/codis-and-ndis-fact-sheet.

Forensic science services providers typically become accredited through one of two private sector accrediting bodies: the ANSI National Accreditation Board (ANAB)[4] or A2LA.[5] These bodies, in turn, assess laboratories for compliance with an accreditation standard. Most forensic laboratories are accredited to ISO/IEC 17025,[6] which sets forth "[g]eneral requirements for the competence of testing and calibration laboratories."[7] Alternatively, ISO/IEC 17020, which sets forth "[r]equirements for the operation of various types of bodies performing inspections"[8] may also be used to accredit some disciplines (e.g., crime scene investigation and less commonly, comparison disciplines.[9]).

Both ISO/IEC 17025 and ISO/IEC 17020 are broad and flexible standards that, in large measure, require adherents to create policies and procedures, but leave significant discretion to laboratories as to what those required policies and procedures will contain and how the standards' other requirements will be met. *See, e.g.,* ISO/IEC 17025 § 7.2.1.1 ("The laboratory

---

[4] For more, *see* ANAB, ANSI National Accreditation Board, https://anab.ansi.org/.

[5] For more, *see* A2LA, https://a2la.org/accreditation/forensics/. Another accrediting body, the American Board of Forensic Toxicology, previously accredited toxicology labs. As of 2022, the ABFT no longer provides accreditation or reaccreditation; its standards may continue be used by ANAB as voluntary supplements to ISO/IEC 17025 until 2027. *See* American Board of Forensic Toxicology, *Laboratory Accreditation*, https://www.abft.org/laboratory-accreditation/.

[6] Sean Doyle. *QHFSS DNA Laboratory – ISO/IEC 17025 Conformance and Accreditation*, Forensic Science International: Synergy (Vo 8, 2024, 100449) https://www.sciencedirect.com/science/article/pii/S2589871X23001365#bib51 ("Most forensic science laboratories worldwide have gained accreditation to this International Standard [ISO/IEC 17025] as a means of demonstrating to forensic science stakeholders, principally criminal justice systems, the competence of the management of the laboratory, its consistent operation, the competence of its staff, the validity of its methods and the reliability of its results.") .

[7] ISO/IEC 17025:2017, https://www.iso.org/ISO-IEC-17025-testing-and-calibration-laboratories.html (hereinafter, ISO/IEC 17025).

[8] ISO/IEC 17020:2012, https://www.iso.org/standard/52994.html (hereinafter, ISO/IEC 17020).

[9] Doyle, *supra* note 6, at 2.

shall use appropriate methods and procedures for all laboratory activities and, where appropriate, for evaluation of the measurement uncertainty as well as statistical techniques for analysis of data.").

The gap between these requirements and how they can be met in practice are filled in a number of ways. In addition to assessing compliance with the overarching accreditation standard, accrediting bodies also have their own additional requirements that must be met to maintain accreditation.[10] The FBI Quality Assurance Standards (QAS) discussed above also provide requirements specific to DNA that at least those labs that want to participate in NDIS must follow.[11] As discussed below, however, these requirements, like IEC/ISO 17025 and 17020, are typically relatively high level and do not dictate many aspects of laboratory policy or procedure. Laboratories then have a choice. They can (and often do) simply determine for themselves discretionary policies and procedures to meet ISO/IEC 17025 or 17020, which results in a wide array of practices and quality across laboratories, or they can implement voluntary consensus

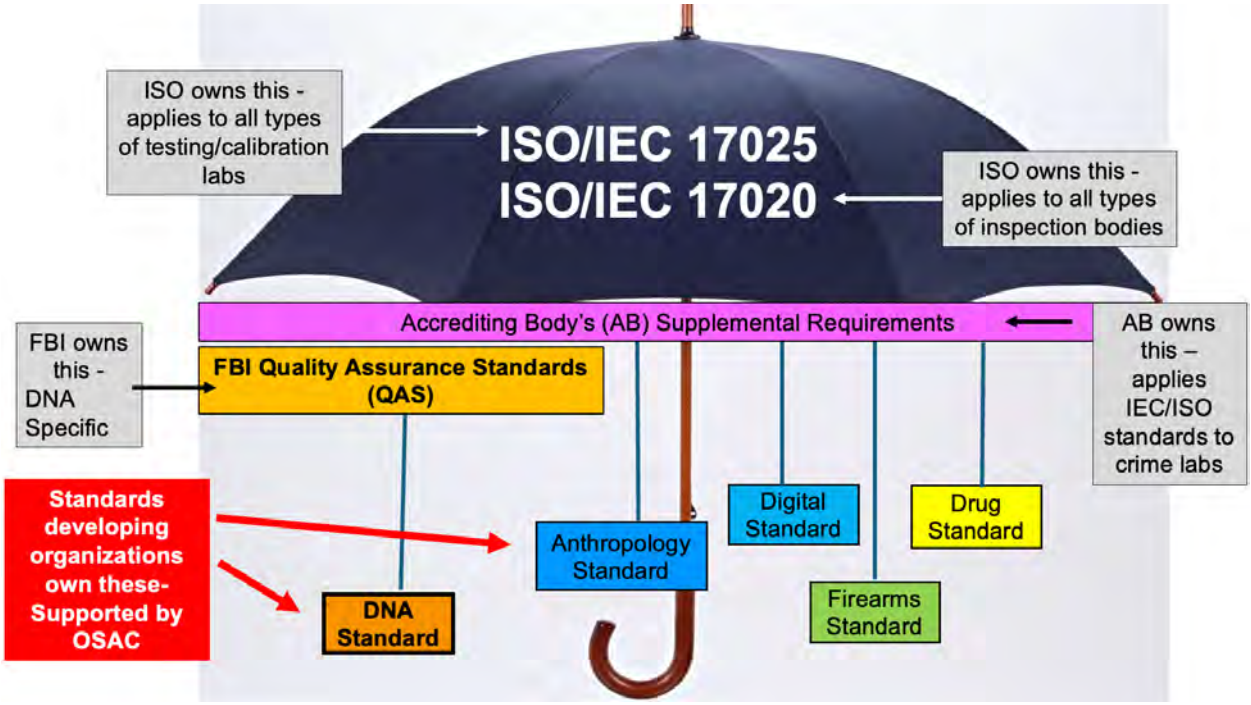
[10] ANAB maintains additional requirements with "applicable requirements from International Laboratory Accreditation Cooperation (ILAC) policies and specific accreditation requirements for forensic laboratories" for both forensic testing/calibration and inspection. *See* ANAB, *Accreditation Requirements for Forensic Testing and Calibration,* AR 3125 at § 1.1 (2023), https://anab.qualtraxcloud.com/ShowDocument.aspx?ID=12371; *ANAB, Accreditation Requirements for Forensic Inspection,* AR 3120 at § 1.1 (2023), https://anab.qualtraxcloud.com/Showdocument.aspx?ID=14476.

A2LA also has additional accreditation requirements, which among other requirements, incorporate some of ILAC's relevant policies. *See* A2LA, *R221 – Specific Requirements – Forensic Examination Accreditation Program: Testing and Calibration*, https://a2la.qualtraxcloud.com/ShowDocument.aspx?ID=5676; *R318 - Specific Requirements - Forensic Examination Accreditation Program-Inspection*, https://a2la.qualtraxcloud.com/ShowDocument.aspx?ID=5675.

[11] Use of the QAS can, as described below in the section on voluntary standards, support the requirements for accreditation to ISO/IEC 17025 in the first instance, but separate audits for the QAS are also required by law every two years for NDIS access. 34 USCA § 12592(b).

standards, like those produced by standards developing organizations (SDOs) and supported by the Organization of Scientific Area Committees (OSAC) for Forensic Science. These additional voluntary standards, discussed in more detail below, not only help provide specificity to ISO/IEC 17025 and ISO/IEC 17020's broad requirements but can help achieve a more consistent (and ideally more scientifically sound) set of practices from laboratory to laboratory.

The relationship of these various standards and requirements can be visualized as below:



Although the voluntary standards from standards developing organizations sit below the overarching requirements of ISO/IEC 17025/17020, they are not superfluous. Take for example a laboratory accredited by ANAB to ISO/IEC 17025 which conducts DNA purification and isolation and is trying to fulfill the training requirements necessary for its accreditation. ISO/IEC 17025 is extremely broad on this point, requiring only that the laboratory have a procedure for which it maintains records: "The laboratory shall have procedure(s) and retain records for: . . .

training of personnel."[12] The laboratory must look next to any supplemental requirements set by its accrediting body, ANAB, which says that "[t]he training program for each function influencing the results of laboratory activities, to the extent necessary based on job function, shall include:

> a) the knowledge, skills, and abilities needed to perform work;
>
> b) general knowledge of forensic science;
>
> c) the application of ethical practices in forensic science;
>
> d) criminal law, civil law, and testimony;
>
> e) provisions for retraining;
>
> f) provisions for maintenance of skills and expertise:
>
> g) criteria for acceptable performance.[13]

This gives somewhat more detail on what must be included in the laboratory's training plan, but it is not discipline specific and does not dictate specific training topics beyond those broad areas relevant to all forensic science.

Next, assuming the laboratory follows the FBI QAS, it must look there to find any relevant training requirements. The *QAS for Forensic DNA Testing Laboratories* is somewhat more specific; for training, it requires, among other things, that:

> The laboratory shall have a training program documented in a training manual for qualifying analysts and technicians. The training program shall:
>
> > 6.1.1 Address all DNA analytical, interpretation, and/or statistical procedures used in the laboratory.

[12] ISO/IEC 17025, *supra* note 7 at § 6.2.5.

[13] ANAB, *Accreditation Requirements for Forensic Testing and Calibration (2023)*, AR 3125, § 6.2.2.2.

> 6.1.2 Include practical exercises encompassing the examination of a range of samples routinely encountered in casework.
>
> 6.1.3 Teach and assess the technical skills and knowledge required to perform DNA analysis.
>
> 6.1.3.1 The training program for analysts shall include the skills and knowledge required to conduct a technical review.
>
> 6.1.4 Include an assessment of oral communication skills and/or a mock court exercise.
>
> 6.1.5 Include requirements for competency testing.[14]

As this standard is specific to DNA analysis, it is less general than the ISO/IEC standards and ANAB requirements and to that extent contains somewhat more detail about what a training program should include. However, it does not describe specific requirements in granular detail, and a laboratory looking to create a training program for DNA purification and isolation would be left to its own devices to determine relevant topics for training— which results in different laboratories training to different topics.

This is where voluntary standards can come to the fore. These standards provide more detailed, actionable guidance to laboratories, and in so doing, promotes consistency and reliability in forensics. The DNA laboratory in this example could look to ANSI/ASB Standard 023, *Training in Forensic DNA Isolation and Purification Methods*, a standard on the OSAC Registry, which requires training in

> a) Composition of DNA within cells…
>
> b) Impact of exposure to heat, humidity, mechanical breakage, and chemicals on DNA stability to include the mechanisms of DNA degradation…
>
> c) Cell lysis and separation of DNA from other materials…

[14] Standard 6.1, *Quality Assurance Standards for Forensic DNA Testing Laboratories*, (effective July 1, 2020), https://www.swgdam.org/_files/ugd/4344b0_d73afdd0007c4ed6a0e7e2ffbd6c4eb8.pdf.

d) Methods for DNA isolation and purification used in the laboratory. . .

e) Methods based on sample type used in the laboratory. . .

f) DNA Yield . . .

g) PCR inhibitors . . .

h) Contamination . . .

1) Quality control in the DNA isolation and purification process to include, reagent blank control(s) and any other extraction controls . . .

j) Storage, preservation, and retention of extracted DNA according to laboratory policy . . .

k) Troubleshooting. . .[15]

Each of these topics is further broken down into subtopics that also must be trained; the standard also includes requirements for practical training and competency.[16] (The full requirements can be found in Annex A, along with a table comparing the training standards.).

Of all the relevant requirements that apply to the laboratory in this example, only this standard gives direct and granular guidance about what a training program in DNA purification and isolation must look like. Without adoption of a standard such as this one, ten laboratories, all accredited to ISO/IEC 17025 by the same accrediting body and all subject to the FBI QAS, might have analysts trained to do DNA purification and isolation under ten very disparate programs. If, by contrast, all ten laboratories have voluntarily implemented ANSI/ASB 023, *Training in Forensic DNA Isolation and Purification Methods*, they will at a minimum have been trained on the same specific topics, and stakeholders who receive such evidence can have some assurance about what it means to have been "trained" in DNA isolation and purification.

---

[15] ANSI/ASB Standard 022, *Standard for Training in Forensic DNA Isolation and Purification Methods* (1st Ed. 2020), https://www.aafs.org/sites/default/files/media/documents/022_Std_e1.pdf.

[16] *Id.*

Voluntary Standards and Accreditation

In some circumstances, these standards, although voluntary, *can* be assessed in an accreditation audit, which involves both a review to see if a required policy or program exists, and, if so, whether it has been followed. As an initial matter, typically only those documents that set forth requirements, as opposed to those that make recommendations, can be assessed as a basis for accreditation. ANAB, for example, provides explicitly that "[a]dditional *requirement* documents that a CAB has incorporated into its management system or is subject to, either voluntarily, by law or by a regulatory body, will also be assessed" as part of accreditation.[17] In the example above, a laboratory that had incorporated ANSI/ASB Standard 023, *Standard for Training in Forensic DNA Isolation and Purification Methods*, into its "management system documents (e.g., policies, procedures, technical methods, training manuals, quality manual"[18]) as part of its accreditation requirements under ISO/IEC 17025 and then failed to provide training on cell lysis and separation of DNA from other materials could, if uncorrected, find its accreditation in jeopardy. This is a requirement of the standard, and the laboratory's choice to voluntarily incorporate it into their management system puts it under the purview of the accrediting body.

For another example, the Houston Forensic Science Center's Toxicology Section's *Analytical Manual- Standard Operating Procedures* (hereafter, Houston Toxicology Manual) requires that "[a]nalytical methods *shall* be validated to meet the requirements of ANSI/ASB

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[17] ANAB, *Accreditation Manual for Forensic Laboratories, Forensic Inspection Bodies, and Property And Evidence Control Units*, MA 3033 (3/12/2024) at § 1.2, https://anab.qualtraxcloud.com/ShowDocument.aspx?ID=7183 (emphasis added) (hereinafter, ANAB Accreditation Manual); *see also Manual and Style Guide for ASB Standards, Guidelines, Best Practice Recommendations, and Technical Reports,* § 1.1.2 (3d Ed. 2022) (hereinafter, ASB Manual) ("The requirements in a Standard are expressed as imperative sentences or stated in 'shall' language and can be assessed by one or more forms of conformity assessment procedures.").

[18] ANAB Accreditation Manual at § 3.5.

Standard 036, *Standard* Practices for Method Validation in Forensic Toxicology." (emphases added). Because the Houston Forensic Science Center has implemented this document as a requirement, the failure to validate analytical methods to its specifications plainly could lead to the laboratory being found in non-conformance and, if uncorrected, eventually jeopardize the laboratory's toxicology accreditation.[19]

The intersection of accreditation and recommendations documents is somewhat more complicated than those dealing with requirements. Recommendations, whether they are found embedded in requirements documents or stand alone, cannot serve themselves as the basis for accreditation, [20] so although recommendations are important for helping laboratories achieve consistent, reliable, and valid scientific practices and results, accreditation is not typically going to be the tool to enforce it.

Recommendations can, however, be incorporated into a laboratory's quality management system as a requirement. For example, the Houston Toxicology Manual provides "requirements" which set out the "acceptable extent and contents of expert opinions and testimony provided by a forensic analyst/toxicologist" in its lab based on ANSI/ASB Best Practice Recommendation 037, First Edition 2019: *Guidelines for Opinions and Testimony in Forensic Toxicology*."[21] Although this ANSI/ASB Best Practice Recommendation could not, on its own, serve as the basis for

---

[19] Houston Forensic Science Center, *Toxicology Section, Analytical Manual- Standard Operating Procedures* (Version 4.0), § 7.3.2, https://records.hfscdiscovery.org/Published/Analytical%20Manual_v4.0_Eff%202024-03-04%20to%20Present.pdf#search=ansi%2Fasb

[20] *E.g.,* ASB Manual, *supra* note 17, § 1.2.2 ("A Guideline is written in 'should' language and is informative rather than directive. A Guideline in and of itself is not appropriate for conformity assessment.").

[21] *Id.* at § 32.1.1.

conformity assessment, the laboratory's choice to raise these recommendations to a requirement for its practitioners allows them to be considered in an accreditation audit.[22]

Ultimately, lawyers need to know what accreditation means— and doesn't. Accreditation alone does not and cannot guarantee good science. Given both the unregulated environment for forensic science in the United States and the broad dictates of ISO/IEC 17025 and 17020, more detailed voluntary consensus standards are critical to supporting the implementation of valid and reliable science that is consistent within and across laboratories. Any lawyer handling forensic evidence must do so with both an understanding of the relationship between accreditation and voluntary standards generally and, even more importantly, about whether and which voluntary standards are at issue in a particular case.

[22] Recommendations "can be used as part of an accreditation plan in conjunction with the standards or operation procedures included in the conformity assessment process,"[22], which in this case is ISO/IEC 17025.

Appendix A

Training Requirement Example

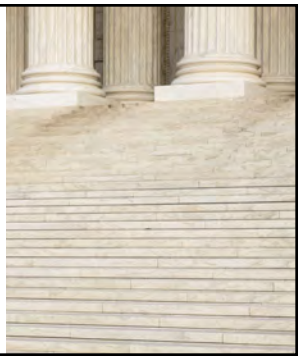
ISO/IEC 17025	The laboratory shall have procedure(s) and retain records for: . . . training of personnel.
ANAB, *Accreditation Requirements* F*or Forensic Testing And Calibration (2023)*, AR 3125, S. 6.2.2.2.	The training program for each function influencing the results of laboratory activities, to the extent necessary based on job function, shall include: a) the knowledge, skills, and abilities needed to perform work; b) general knowledge of forensic science; c) the application of ethical practices in forensic science; d) criminal law, civil law, and testimony; e) provisions for retraining; f) provisions for maintenance of skills and expertise: g) criteria for acceptable performance.
Quality Assurance Standards For Forensic DNA Testing Laboratories, Standard 6.1 (Effective July 1, 2020).	The laboratory shall have a training program documented in a training manual for qualifying analysts and technicians. The training program shall: 6.1.1 Address all DNA analytical, interpretation, and/or statistical procedures used in the laboratory. 6.1.2 Include practical exercises encompassing the examination of a range of samples routinely encountered in casework. 6.1.3 Teach and assess the technical skills and knowledge required to perform DNA analysis. 6.1.3.1 The training program for analysts shall include the skills and knowledge required to conduct a technical review. 6.1.4 Include an assessment of oral communication skills and/or a mock court exercise. 6.1.5 Include requirements for competency testing.
ANSI/ASB Standard 023, *Standard for Training in*	At a minimum, the knowledge-based portion of the training program shall require review of the following:

Forensic DNA Isolation and Purification Methods (1st Ed. 2020).	a) Composition of DNA within cells, including: 1) cell and nuclear membrane structure; 2) structure of DNA and histone packaging of DNA into nucleosomes; 3) nucleases and other enzymes that can act on DNA in the cell. b) Impact of exposure to heat, humidity, mechanical breakage, and chemicals on DNA stability to include the mechanisms of DNA degradation. c) Cell lysis and separation of DNA from other materials: 1) function of chemicals, enzymes, and other reagents used in lysis and separation; 2) impact of pH, salt concentration, heat, molecular weight, and solubility; 3) use of DNA-preservation treated cards; 4) limitations of the technology. d) Methods for DNA isolation and purification used in the laboratory: 1) organic extraction (phenol:chloroform); 2) Chelex®b extraction; 3) solid phase-based purification; 4) differential lysis and extraction; 5) application of automation and robotic platforms; 6) other methods not described; 7) limitations of the above methodologies. e) Methods based on sample type used in the laboratory: 1) selection of suitable isolation method for sample type and condition and DNA test to be performed;

	2) pre-extraction cell separation (e.g., cell sorting, laser capture microdissection); 3) pre-extraction processing (e.g., soak, grinding, demineralization); 4) post-extraction processing (e.g., filtration, concentration, preservation conditions); 5) direct amplification without extraction; 6) other methods not described; 7) limitations of the above methodologies. f) DNA Yield: 1) sources of DNA loss during isolation and purification; 2) mechanisms to reduce DNA loss. g) PCR inhibitors: 1) sources (environmental, chemical); 2) mechanisms of interference with amplification; 3) methods to avoid or reduce effects on amplification. h) Contamination: 1) sources (environmental, procedural); 2) sample handling strategies and preventative methods; 3) decontamination procedures; 4) root cause analysis, corrective action when contamination occurs. i) Quality control in the DNA isolation and purification process to include, reagent blank control(s) and any other extraction controls.

	j) Storage, preservation, and retention of extracted DNA according to laboratory policy. k) Troubleshooting, including: a) forensic DNA isolation and purification errors; b) general equipment failure.

CHANGES TO RAISE THE AGE



2025 Public Defender Spring Conference
May 8, 2025

1

- Tom is your 17-year-old client
- Charged with burglary in the first degree (Class D felony) and larceny pursuant to burglary (Class H felony)
- Law enforcement posted Tom's photo to their website, Facebook. And Instagram in an effort to bring him into custody after he was identified as a suspect in the case
- He was located based on a tip that was received after the public posting of his identity
- His photo and fingerprints were taken after he was in custody
- Conditions of pretrial release were set, and he was not able to post bond
- He is being held in a juvenile detention facility that is two hours from the county where the charges are pending
- The DA tells you that they have new evidence that no one was home at the time of the offense, and they are reducing the charges to burglary in the second degree (Class G felony)

2



AGENDA

- New age/offense jurisdictional boundaries
- Removal
- Indictment return appearances
- Capacity in mandatory transfer
- Implications for investigations

3



Effective Date for Changes

Offenses committed on or after December 1, 2024

4



5

Case Movement Pathways

Offenses on or after 12/1/24

Ch. 20 at 16/17 must start and end as criminal matters

Criminal Jurisdiction
Original: - Class A-E at 16/17 + transactionally related - Ch. 20 at 16/17

Removal
Class A-E, 16/17

Transfer:
- Mandatory: Class A, 13-15
- Mandatory if prosecutor elects to transfer: Class F-G 16/17
- Discretionary: B1 – I, 13-15
  Class H/I, 16/17

Remand
(any transferred case)

Juvenile Jurisdiction
Original: Class F and under at 16/17 (no Ch. 20); everything under 16

6



AGENDA

- New age/offense jurisdictional boundaries
- Removal
- Indictment return appearances
- Capacity in mandatory transfer
- Implications for investigations

7

Removal – G.S. 15A-960

Charges originate in criminal system

Indictment returned or criminal information issued

Joint motion (prosecutor and defense) for removal

Superior court must order removal to juvenile court

8

When Removal is Ordered

Order must be in writing and require DJJ to file a juvenile petition within 10 calendar days

Superior court record must be expunged (per G.S. 15A-145.8)

Superior court may issue a secure custody order if criteria in G.S. 7B-1903 are met

9

Pending Legislation (H483)

7B-1803(b)

- Prosecutor must prepare petition and sign it as the complainant.
- Warrant for arrest, magistrate's order, or indictment serves as the verified allegation to support the complaint and must be in juvenile record

10

Expunction

Required for criminal charges and superior court record at the time of removal

G.S. 15A-145.8

All removed charges	Any related DNA records

Any records related to the juvenile adjudication must be maintained as confidential records pursuant to Article 30 of Chapter 7B

11

Pending Legislation (H483)

15A-906(a)

- Indictment shall accompany the order of removal to juvenile court or
- Criminal information and the warrant for arrest or magistrate's order shall accompany the order of removal to juvenile court

Adds these documents to definition of juvenile court records for purpose of confidentiality (7B-3000(a))

12

Secure Custody Order at Removal

- Issued by superior court if criteria in G.S. 7B-1903 are met
  - Prosecutor must provide a copy to the chief court counselor or his or her designee, as soon as possible and no more than 24 hours after the order is issued
- A hearing to determine the need for continued secure custody must be held no more than 10 calendar days following issuance of secure custody order
  - Cannot be continued or waived.
- Subsequent secure custody hearings must be held according to usual schedule for other delinquency cases.

G.S. 15A-960(b); 7B-1906(b2)

13

Juvenile Procedure Following Removal

DJJ files petition → First appearance → Adjudication

14



AGENDA

- New age/offense jurisdictional boundaries
- Removal
- Indictment return appearances
- Capacity in mandatory transfer
- Implications for investigations

15

Indictment Return Appearance

(Mandatory Transfer Cases)

- Prosecutor must give immediate notice of return of true bill of indictment to district court
- District court must calendar for an appearance within 5 business days of date indictment is returned

16

Indictment Return Appearance

(Mandatory Transfer Cases)

- Court determines if notice was provided on returned indictment for mandatory transfer offense
- If notice was provided, court must order transfer to superior court

17



AGENDA

- New age/offense jurisdictional boundaries
- Removal
- Indictment return appearances
- Capacity in mandatory transfer
- Implications for investigations

18

G.S. 7B-2401(c)

Capacity cannot be raised in mandatory transfer cases until AFTER transfer

19



AGENDA

- New age/offense jurisdictional boundaries
- Removal
- Indictment return appearances
- Capacity in mandatory transfer
- Implications for investigations

20

ISSUES IN TOM'S CASE



Original subject matter jurisdiction ?

21

ISSUES IN TOM'S CASE



Public Release of Identifying Information

22

ISSUES IN TOM'S CASE



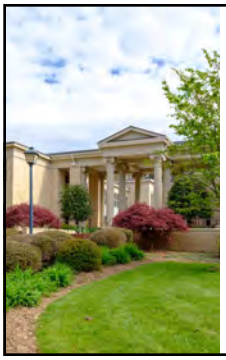
Fingerprints and Photograph

23

OTHER POTENTIAL ISSUES

- Over charging
- Chapter 20 that is also B2, D or E felony + transactionally related offenses…removal?
- What else?

24



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25

UNC SCHOOL OF GOVERNMENT

JUVENILE LAW BULLETIN NO. 2024/01 | AUGUST 2024

Transfer and Removal: Movement of Cases Between Juvenile Court and Superior Court

Jacquelyn Greene

CONTENTS

Part 1

The Legal Effect of Transfer . . . *3*
Cases Subject to Transfer . . . *3*
Case Initiation . . . *4*
Sufficiency of Petitions . . . *4*
First Appearance . . . *5*
Transfer Pathways: An Overview . . . *5*
Age at the Time of Offense . . . *5*
Offense Classification . . . *6*
Transfer Pathways in Detail . . . *6*
Class A Felony Alleged at Age 13, 14, or 15: Mandatory Transfer . . . *6*
Transfer Triggered by a Finding of Probable Cause . . . *7*
Transfer Triggered by a True Bill of Indictment . . . *7*
No Order for Arrest on Return of True Bill of Indictment . . . *8*
Class F or G Felony Alleged at Age 16 or 17: Mandatory Transfer at Prosecutor Discretion . . . *8*
All Other Felonies at Age 13 or Older and Subject to Original Juvenile Jurisdiction: Discretionary Transfer . . . *9*
Transfer Hearings . . . *9*
Procedure when Transfer Is Ordered . . . *11*
Conditions of Pretrial Release . . . *11*
Fingerprinting and DNA Sample . . . *12*
Addressing Counsel for the Juvenile . . . *12*
Remand to District Court and Expungement . . . *13*
Confinement Orders and the Remand Process . . . *14*
Place of Confinement in Transfer Cases . . . *15*
Posting Bond While in a Juvenile Detention Facility . . . *15*
Appeal of Transfer Orders . . . *16*
Preserving Confidentiality Pending Resolution of the Appeal . . . *16*
Standard of Review on Appeal . . . *17*
Preserving the Right to Appeal to the Court of Appeals . . . *17*
Initial Appeal to Superior Court Required . . . *17*
No Appeal After a Guilty Plea . . . *18*

Part 2

Cases Subject to Removal . . . *19*
Removal Procedure . . . *19*
Place of Confinement in Removal Cases . . . *20*
Prior to Removal . . . *20*
Following Removal . . . *20*

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North Carolina law allows, and sometimes requires, movement of cases between juvenile and criminal jurisdiction. Certain cases that originate under juvenile jurisdiction can or must move from juvenile jurisdiction to the jurisdiction of the superior court. This is called transfer. Whether a juvenile case is subject to transfer and how a case subject to transfer is transferred depends on the age of the juvenile at the time of the offense and the offense that is charged. Beginning with offenses committed on or after December 1, 2024, some offenses alleged to have been committed by a minor will begin under the original jurisdiction of the criminal law and may be moved to juvenile court to be processed as a delinquency matter. This is called removal. Part I of this bulletin describes the transfer process, from case origination through appeal of a transfer order. Part II describes the process for removal of a case from superior court to juvenile court.[1]

1. Note: This bulletin is a substantial revision of Jacquelyn Greene, *Transfer of Juvenile Delinquency Cases to Superior Court*, Juv. L. Bull. No. 2022/01 (UNC School of Government, Jan. 2022), and describes the law as it applies to offenses committed on or after December 1, 2024. For a description of the law that applied between December 1, 2021, and November 30, 2024, see the previously published bulletin, a PDF of which is available at https://www.sog.unc.edu/sites/default/files/reports/JLB%2022-01.pdf.

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Part 1

The Legal Effect of Transfer

Article 22 of Chapter 7B of the North Carolina General Statutes (hereinafter G.S.) establishes a procedure to move certain matters that begin under the original jurisdiction of the district court as juvenile delinquency cases to the jurisdiction of the superior court "for trial as in the case of adults."[2] These cases begin under juvenile jurisdiction and, following the procedure provided in the Juvenile Code, shift to become criminal matters under the jurisdiction of superior court. The young people who are subject to these proceedings begin as juveniles who are alleged to be delinquent and then become defendants in criminal proceedings. Once these matters are under the jurisdiction of the superior court, they are indistinguishable from other criminal proceedings.[3]

In 1965, the United States Court of Appeals held that the determination of transfer is "critically important."[4] That importance was reinforced by the U.S. Supreme Court the very next year when, referring to the transfer of a case to criminal court, the Supreme Court stated, "[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons."[5]

The Juvenile Code provides for varying procedures to transfer a case to superior court. However, no matter how the transfer occurs, the legal effect is the same. The juvenile becomes subject to prosecution under the criminal law and faces the possibility of a criminal conviction, a criminal record, and incarceration in the state prison system.

Cases Subject to Transfer

The Juvenile Code allows transfer of cases in which a felony is alleged to have occurred when the juvenile was 13 or older.[6] A subset of those cases *must* be transferred to superior court. That subset includes cases in which

- a Class A felony is alleged to have been committed at age 13, 14, or 15[7] and
- a Class F or G felony is alleged to have been committed at age 16 or 17 and the prosecutor does not decline to prosecute the matter in superior court.[8]

2. G.S. 7B-2200, -2200.5.

3. There is a right to an interlocutory appeal of any order transferring jurisdiction to superior court under G.S. 7B-2603. Beginning with offenses committed on or after December 1, 2024, this right to an interlocutory appeal applies only to cases subject to discretionary transfer. This is the one legal component of a case that is transferred that differs from the criminal law once the superior court obtains jurisdiction. There is nothing that distinguishes a transferred case from any other criminal case after the transfer order is upheld following such an appeal.

4. Black v. United States, 355 F.2d 104 (D.C. Cir. 1965).

5. Kent v. United States, 383 U.S. 541, 554 (1966).

6. G.S. 7B-2200, -2200.5.

7. G.S. 7B-2200.

8. G.S. 7B-2200.5(a), (a1).

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Case Initiation

District court has exclusive, original subject matter jurisdiction of juvenile matters, including most felonies alleged to have been committed by juveniles under the age of 16 and Class F–I felonies alleged to have been committed at ages 16 and 17.[9] These cases must be initiated the way all juvenile cases are initiated: via the filing of a petition.[10] The superior court may obtain subject matter jurisdiction over a matter that is originally subject to juvenile jurisdiction only after it is transferred from the district court according to the procedure prescribed by statute.[11]

Sufficiency of Petitions

A juvenile petition "serves essentially the same function as an indictment in a felony prosecution and is subject to the same requirement that it aver every element of a criminal offense, with sufficient specificity that the accused is clearly apprised of the conduct for which he is being charged."[12] It is not necessary for the petition to include every offense that may be pursued after the case is transferred. Under G.S. 7B-2203(c),

> [w]hen the case is transferred to superior court, the superior court has jurisdiction over that felony, any offense based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of that felony, and any greater or lesser included offense of that felony.

The North Carolina Court of Appeals relied on this statute to hold that a conviction of conspiracy to commit armed robbery following transfer of a case was proper, despite the fact that the case included two juvenile petitions that alleged only murder and attempted armed robbery.[13] The court held that because the conspiracy charge was transactionally related to the transferred armed robbery charge, the superior court also had jurisdiction over the conspiracy offense. It was proper to obtain an indictment of and conviction on the related charge after transfer, despite its never being alleged in a juvenile petition.

Putting these pieces of law together, it is clear that a juvenile petition must be filed to initiate a case subject to transfer. That petition must allege at least one felony that is subject to transfer with sufficient specificity to provide notice to the juvenile of the behavior that is the basis for the charge. At the same time, the petition does not have to include every related offense that may be pursued following transfer. Related offenses can be added after transfer, as long as they are based on the same act or transaction, or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of the felony alleged in the petition and

9. G.S. 7B-1601. *But see* G.S. 7B-1501(7)(b) (no juvenile jurisdiction for violations of Chapter 20 of the General Statutes or Class A–E felonies and their transactionally related offenses when alleged to have been committed at ages 16 or 17); 7B-1604(b) (no juvenile jurisdiction over any offense committed by a juvenile when that juvenile has been convicted previously in criminal court for any offense other than a misdemeanor or infraction motor-vehicle-law violation, other than an offense that involved impaired driving); 7B-1501(17) (youth under the age of 18 who are married, emancipated, or members of the armed forces are excluded from the statutory definition of *juvenile* and are therefore excluded from juvenile jurisdiction). Cases that fall under any of these exceptions correctly begin as criminal matters.

10. G.S. 7B-1804.

11. State v. Dellinger, 343 N.C. 93, 95 (1996).

12. *In re* Griffin, 162 N.C. App. 487, 493 (2004).

13. State v. Jackson, 165 N.C. App. 763 (2004).

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subsequently transferred. Related offenses also include any greater or lesser included offenses of the felony that is alleged in the petition and subsequently transferred.

First Appearance

A first appearance must be held in accordance with the Juvenile Code in all cases that are subject to transfer. The Juvenile Code mandates a first appearance *within ten days* of the filing of a delinquency petition for all felony allegations.[14] The first appearance is required to be held sooner, at the initial secure or nonsecure custody hearing, if the youth is being held in secure or nonsecure custody.[15]

The court must accomplish four things at the first appearance:

1. It must inform the juvenile of the allegations in the petition.
2. It must determine whether the juvenile has retained counsel or been assigned counsel, appointing counsel if the juvenile is not yet represented.
3. It must inform the juvenile of the date of the probable cause hearing, if such a hearing is required.
4. It must inform the juvenile's parent, guardian, or custodian that the parent, guardian, or custodian must attend all hearings in the proceeding and can be held in contempt of court for failure to attend.[16]

Transfer Pathways: An Overview

The Juvenile Code provides three different procedures that can, and sometimes must, be used to transfer a case. The two critical factors that determine which procedure or procedures to use are (1) age at the time of the offense and (2) offense classification.

Age at the Time of Offense

Both G.S. 7B-2200 and G.S. 7B-2200.5, the statutes that provide transfer procedures, are grounded in the age that the juvenile was "at the time the juvenile allegedly committed an offense." Age at the time of the offense is foundational to establishing subject matter jurisdiction.[17] In addition, the court only has jurisdiction to transfer cases to superior court if they meet the various age requirements laid out in the Juvenile Code. It is therefore critical that age at the time of the offense is precisely known.

A juvenile's age is based on the "birthday rule."[18] Youth become the next chronological age on the first second of their date of birth, regardless of the time of day that the actual birth occurred. Age must be measured chronologically, not developmentally, for determining a juvenile's age at offense.[19]

14. G.S. 7B-1808(a).
15. *Id*; *see also* G.S. 7B-1906 (requiring an initial secure custody hearing within five calendar days of an initial remand to secure custody and within seven calendar days of an initial remand to nonsecure custody).
16. G.S. 7B-1808(b).
17. State v. Collins, 245 N.C. App. 478 (2016).
18. *In re* Robinson, 120 N.C. App. 874, 877 (1995).
19. *In re* Wright, 137 N.C. App. 104, 111 (2000).

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Table 1. Transfer Mechanisms by Age at Offense and Felony Classification

Age at Offense	Felony Classification	Transfer Mechanism	Mandatory?
13–15	A	Finding of probable cause or return of an indictment[a]	Yes[b]
	B1–I	Finding of probable cause, motion for transfer, and judicial determination at transfer hearing[c]	No[d]
16–17	F–G	Finding of probable cause or return of an indictment[e]	Only if prosecutor chooses to transfer[f]
	H–I	Finding of probable cause, motion for transfer, and judicial determination at transfer hearing[g]	No[h]

a. G.S. 7B-2200.
b. *Id.*
c. G.S. 7B-2200, -2203.
d. *Id.*
e. G.S. 7B-2200.5(a).
f. G.S. 7B-2200.5(a1).
g. G.S. 7B-2200.5(b), -2203.
h. *Id.*

Offense Classification

Determining the correct procedure to follow for transfer depends on both the age of the juvenile at the time of offense and on the offense classification. For example, every case in which a Class A felony is alleged to have been committed at age 13, 14, or 15 is subject to mandatory transfer.[20] Table 1 details how the age at offense and the offense classification determine the transfer procedure that applies.

There is no need to use multiple transfer mechanisms if a case includes felonies that have varying transfer procedures. This is because G.S. 7B-2203(c) provides that the superior court obtains jurisdiction over all related offenses when one felony in the case is transferred. Therefore, only one transfer mechanism per case should be used.[21]

Transfer Pathways in Detail

Class A Felony Alleged at Age 13, 14, or 15: Mandatory Transfer

Transfer of a case that includes a Class A felony alleged to have been committed at ages 13, 14, or 15 is required, following notice and a finding of probable cause for the Class A felony or upon notice of the return of a true bill of indictment.[22] This is called mandatory transfer.

Mandatory transfer of Class A felonies became law in 1979 when a new Juvenile Code was enacted in North Carolina.[23] That law required that all capital offenses committed at age 14 or

20. G.S. 7B-2200.

21. *See In re* Ford, 49 N.C. App. 680 (1980) (affirming transfer of breaking and entering charges on transfer of murder charge). For a fuller discussion of this topic, see Jacquelyn Greene, *All Related Charges Are Transferred When One Felony in a Delinquency Case Is Transferred*, On the Civil Side: A UNC Sch. of Gov't Blog (Feb. 25, 2020), https://civil.sog.unc.edu/all-related-charges-are-transferred-when-one-felony-in-a-delinquency-case-is-transferred/.

22. G.S. 7B-2200(b).

23. G.S. 7A-557 (1980) (recodified as G.S. 7A-608 (1992) (replacing capital offense with Class A felony) and 7B-2200).

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older be transferred to superior court, following a finding of probable cause.[24] The statute was amended to replace "capital offense" with "Class A felony" in 1991.[25] The legislature lowered the age at offense for this mandatory transfer to 13 in 1994.[26] While North Carolina's appellate courts have never explicitly ruled on the constitutionality of a mandatory transfer statute, several cases that were transferred to superior court pursuant to the mandatory transfer statute have been upheld by the North Carolina Court of Appeals.[27]

Transfer Triggered by a Finding of Probable Cause

The prosecutor may choose to pursue a finding of probable cause to trigger transfer of a case in which a Class A felony is alleged to have been committed by a juvenile at age 13, 14, or 15.[28] The juvenile must be provided notice,[29] and a probable cause hearing must be conducted within *ninety days* of the juvenile's first appearance.[30] The hearing may be continued for good cause.[31] The hearing must be conducted in accordance with the requirements of G.S. 7B-2202, unless the juvenile waives in writing the right to the hearing and stipulates to a finding of probable cause.[32] The form AOC-J-343, Juvenile Order—Probable Cause Hearing, should be used to order transfer in these cases, following a finding of probable cause. There is no transfer hearing.

Transfer Triggered by a True Bill of Indictment

Alternatively, the prosecutor may choose to trigger mandatory transfer of cases in which a Class A felony is alleged to have occurred at age 13, 14, or 15 through the return of a true bill of indictment.[33] The prosecutor must notify the juvenile court immediately when the true bill of indictment is returned and the court must calendar the case for an indictment return appearance within five business days of the date the true bill was returned.[34]

The only finding that needs to be made at the indictment return appearance is that the juvenile received notice of the indictment charging the commission of a Class A felony at age 13, 14, or 15.[35] The requirement for notice to the juvenile is the same requirement for notice to a defendant under the criminal law: it must be provided through mail or personal delivery to the juvenile unless the juvenile is represented by counsel of record.[36] On finding that notice was provided, the court must transfer the matter to superior court for trial as an adult.[37]

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24. *Id.*
25. S.L. 1991-842 (recodifying the statute at G.S. 7A-608).
26. S.L. 1994-22es, § 25.
27. *See, e.g., In re* Ford, 49 N.C. App. 680 (1980) (affirming transfer of murder and breaking and entering charges pursuant to mandatory transfer statute); *In re* K.R.B., 134 N.C. App. 328 (1999) (affirming transfer of first-degree murder charge pursuant to mandatory transfer statute); State v. Brooks, 148 N.C. App. 191 (2001) (affirming transfer of first-degree murder charge pursuant to mandatory transfer statute).
28. G.S. 7B-2200(b).
29. G.S. 7B-2202(a).
30. G.S. 7B-2202(b1).
31. *Id*.
32. G.S. 7B-2202(d).
33. G.S. 7B-2200(b).
34. G.S. 7B-2202.5.
35. G.S. 7B-2202.5(b).
36. G.S. 7B-2202.5(b), 15A-630.
37. G.S. 7B-2202.5(b).

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The form AOC-J-444, Juvenile Order—Transfer After Bill of Indictment, should be used to order transfer under these circumstances.[38] There is no transfer hearing.

There are no statutes directing when charges may be submitted to the grand jury in a case subject to transfer, how the returned indictment should be provided to the district court, or whether the returned indictment is confidential prior to the transfer. The absence of such provisions raises significant questions about how to implement this process. Thus, localities have been left to develop their own implementation processes.

No Order for Arrest on Return of True Bill of Indictment

An order for arrest *should not be issued* when a true bill of indictment is returned related to a matter that is under juvenile jurisdiction. This will be true for every case that is being transferred as a result of the indictment. Because the district court must make a finding and order the transfer, the case remains under juvenile jurisdiction at the same time that there is an indictment. While juveniles may be taken into temporary custody and ordered into secure custody, they may not be arrested.[39] Therefore, an order of arrest should not be generated when an indictment is returned in a case that has not yet been transferred by the district court.[40]

Class F or G Felony Alleged at Age 16 or 17: Mandatory Transfer at Prosecutor Discretion

Juvenile court has exclusive original subject matter jurisdiction over cases in which the most serious charged offense is a Class F–I felony (that is not a motor vehicle offense) and it is alleged that the juvenile was age 16 or 17 at the time of the offense.[41] The cases that include these Class F and G felonies are subject to the same mandatory transfer procedure described above for Class A felonies alleged to have been committed at ages 13, 14, or 15.[42] However, the prosecutor may decline to transfer these cases.[43] If the prosecutor exercises this discretion, the matter remains in juvenile court following a finding of probable cause.[44] The prosecutor may reconsider and choose to transfer the matter at any time before adjudication.[45]

If the prosecutor chooses to pursue transfer, transfer is mandatory under the same pathways described above for Class A felonies alleged to have been committed at age 13, 14, or 15 (following either a finding of probable cause or the return of an indictment).

38. Form AOC-J-444 is available at https://www.nccourts.gov/assets/documents/forms/j444.pdf (last visited July 2, 2024).

39. *See* G.S. 7B art. 19.

40. This is reflected in the note to the court on the first page of the form AOC-CR-215, Notice of Return of Bill of Indictment, https://www.nccourts.gov/assets/documents/forms/cr215.pdf ("An Order for Arrest shall *not* be issued for an indicted juvenile whose case began in juvenile court and for which the district court has not yet entered an order for transfer to superior court pursuant to G.S. 7B-2200 or G.S. 7B-2200.5(a)(1).").

41. G.S. 7B-1601(a), -1501(7)(b).

42. G.S. 7B-2200.5(a).

43. G.S. 7B-2200.5(a1).

44. *Id.*

45. *Id.*

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All Other Felonies at Age 13 or Older and Subject to Original Juvenile Jurisdiction: Discretionary Transfer

Cases are subject to discretionary transfer when they originate as juvenile matters and include felonies committed at age 13 or older that are not subject to mandatory transfer. This includes

- Class B1–I felonies committed at ages 13–15[46] and
- Class H and I felonies (other than motor vehicle offenses) committed at ages 16 and 17.[47]

Discretionary transfer follows a three-step process:

1. a finding of probable cause;
2. a motion by the prosecutor, juvenile's attorney, or court to transfer; and
3. a transfer hearing at which the court determines whether to transfer the case.

The probable cause hearing in these matters must be conducted within *fifteen days* of the juvenile's first appearance.[48] The hearing may be continued for good cause.[49] Probable cause can be found as a result of evidence presented at the hearing or as a result of the juvenile's written waiver of the hearing and stipulation to the finding.[50]

If probable cause is found, the prosecutor, the juvenile's attorney, or the court may move to transfer the case. Once the motion is made, the court may proceed to a transfer hearing or set a date for a transfer hearing.[51] If the juvenile does not receive notice of intent to seek transfer at least five days before the probable cause hearing, the court must continue the transfer hearing at the request of the juvenile.[52]

Transfer Hearings

Both the prosecutor and the juvenile have the right to present evidence at the transfer hearing. The juvenile's attorney is expressly permitted to examine any records that the court may consider in making the transfer determination, including court and probation records.[53] The district court is statutorily required to (1) determine whether the protection of the public and the needs of the juvenile will be served by transfer of the case and (2) consider eight specified factors.[54]

The eight factors that must be considered are

1. the juvenile's age;
2. the juvenile's maturity;
3. the juvenile's intellectual functioning;
4. the juvenile's prior record;
5. prior attempts to rehabilitate the juvenile;
6. facilities or programs available to the court while it will retain juvenile jurisdiction over the matter and the likelihood that the juvenile would benefit from treatment or rehabilitative efforts;

46. G.S. 7B-2200(a).
47. G.S. 7B-2200.5(b).
48. G.S. 7B-2202(a).
49. *Id*.
50. G.S. 7B-2202(c), (d).
51. G.S. 7B-2202(e).
52. *Id*.
53. G.S. 7B-2203(a).
54. G.S. 7B-2203.

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7. whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and
8. the seriousness of the offense and whether the protection of the public requires that the juvenile be prosecuted as an adult.[55]

While the court must consider all eight of these factors, the transfer order does not have to include findings of fact to support the court's conclusion that the needs of the juvenile or the protection of the public would be served by transfer.[56] At the same time, the transfer order must specify the reasons for transfer[57] and reflect that the court considered all eight factors. The North Carolina Court of Appeals found a transfer order that stated the following reasons for transfer to be insufficient.

1. The juvenile was 15 years old.
2. A codefendant in the matter was 17 years old.
3. It was desirable to handle both cases in one court.
4. The juvenile admitted guilt to an officer.
5. The damage done to public property was extensive ($23,564.97 to school buses and $785.30 to a school fence).[58]

The court held that the transfer order was deficient, failing to adequately state the reasons for transfer, because it did not reflect "that consideration was given to the needs of the juvenile, to his rehabilitative potential, and to the family support he receives."[59] The transfer hearing order form provided by the North Carolina Administrative Office of the Courts, AOC-J-442, includes a blank box in which the reasons for transfer should be included.[60]

If the court decides not to transfer the case to superior court, a separate adjudicatory hearing on the petition must occur in juvenile court.[61] The adjudicatory hearing may occur immediately following the transfer hearing, or it may be scheduled by the court at the conclusion of the transfer hearing.[62] The adjudicatory hearing may also be continued for good cause.[63]

55. G.S. 7B-2203(b).
56. State v. Green, 124 N.C. App. 269, 276 (1996).
57. *In re* E.S., 191 N.C. App. 568, 572–73 (2008).
58. *In re* J.L.W., 136 N.C. App. 596, 600–01 (2000).
59. *Id.* at 601.
60. Form AOC-J-442 is available at https://www.nccourts.gov/assets/documents/forms/j442-en.pdf (last visited July 2, 2024).
61. G.S. 7B-2203(d).
62. *Id.*
63. *Id.*

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Procedure when Transfer Is Ordered

Conditions of Pretrial Release

Once an order of transfer is entered, the juvenile has a right to pretrial release under Article 26 of the North Carolina Criminal Procedure Act.[64] Therefore, the district court must determine the conditions of pretrial release. The court must impose at least one of the following conditions:

1. release on written promise to appear,
2. release on unsecured appearance bond,
3. placement in the custody of a designated person or organization agreeing to supervise the youth,
4. release on a secured appearance bond, or
5. house arrest with electronic monitoring.[65]

The court must impose one of the first three conditions unless it finds that such release (1) will not ensure the appearance of the youth (now the defendant) as required, (2) will pose a danger of injury to any person, or (3) is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.[66] If the court makes any of these findings, then either release on a secured appearance bond or house arrest with electronic monitoring must be ordered.[67] Courts are required to take several factors into consideration when determining conditions for pretrial release, on the basis of available information, including

- the nature and circumstances of the offense charged;
- the weight of the evidence against the youth;
- the youth's family ties, employment, financial resources, character, and mental condition;
- whether the youth is intoxicated to such a degree that the youth would be endangered by being released without supervision;
- the length of the youth's residence in the community;
- the youth's record of convictions;
- the youth's history of flight to avoid prosecution or failure to appear at court proceedings; and
- any other evidence relevant to the issue of pretrial release.[68]

The Criminal Procedure Act contains several additional provisions regarding determining conditions of pretrial release that apply to specific charges, such as capital offenses[69] and domestic violence offenses,[70] and specific situations, such as previous failures to appear.[71] For more detailed information on the additional restrictions and requirements related to

64. G.S. 7B-2204, -2603(b) (providing that upon entry of an order of transfer, the juvenile has a right to pretrial release as provided in G.S. 15A-533 and 15A-534); 7B-2202.5(b).
65. G.S. 15A-534(a). If house arrest with electronic monitoring is ordered, a secured bond must also be imposed.
66. G.S. 15A-534(b).
67. *Id*.
68. G.S. 15A-534(c).
69. G.S. 15A-533(c).
70. G.S. 15A-534.1.
71. G.S. 15A-534(d1).

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determining conditions of pretrial release, see *Criminal Proceedings Before North Carolina Magistrates*[72] and the *North Carolina Superior Court Judges' Benchbook*.[73]

The court is required to issue an order that details the conditions for pretrial release. Form AOC-CR-922 should be used for this purpose after the court orders the case transferred.[74] The order must also inform the defendant of the penalties associated with violation of the conditions in the order and that arrest will be ordered immediately upon any violation.[75]

Fingerprinting and DNA Sample

The Juvenile Code requires fingerprinting of the youth and submission of those fingerprints to the State Bureau of Investigation when jurisdiction is transferred to superior court.[76] The Juvenile Code also requires the taking of a DNA sample from the youth once the case is transferred if the charged offense is one that falls within the mandate for DNA sample collection in the Criminal Procedure Act.[77]

Addressing Counsel for the Juvenile

Transfer of a case has implications for appointment of counsel to represent the juvenile. The case begins as a juvenile matter and, therefore, counsel must be appointed under G.S. 7B-2000 unless counsel is retained for the juvenile. Under the Juvenile Code, juveniles are "conclusively presumed to be indigent," and there is therefore no need for an affidavit of indigency.[78]

When a delinquency case is transferred to superior court, it is no longer governed by the provisions of the Juvenile Code. Therefore, the original counsel appointment that was made under G.S. 7B-2000 no longer applies. The case becomes a criminal matter once transfer is ordered, and the law governing the appointment of counsel in criminal cases now applies to the case.

Indigent criminal defendants accused of felony offenses are guaranteed the right to counsel.[79] Because a juvenile matter can only be transferred to superior court if it includes a felony offense, every transferred case will fall under this guarantee.

Unlike delinquency proceedings, indigency must be shown in order to qualify for appointed counsel in criminal matters. Under G.S. 7A-450(a), a person is indigent when that person "is financially unable to secure legal representation and to provide all other necessary expenses of representation in an action or proceeding enumerated in this Subchapter." While it is difficult to imagine a circumstance in which a juvenile would not meet the requirements of this definition, and it can be reasonably argued that the presumption of juvenile indigence may also apply in a criminal matter, indigency should be determined in order to appoint counsel once the case

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72. Jessica Smith, Criminal Proceedings Before North Carolina Magistrates 27–37 (UNC School of Government, 2014).

73. Jessica Smith & Christopher Tyner, *Pretrial Release* (rev. July 2023), *in* North Carolina Superior Court Judges' Benchbook (Shea Denning ed., UNC School of Government, Apr. 2015), https://benchbook.sog.unc.edu/criminal/pretrial-release-updated-july-2023.

74. Form AOC-CR-922 is available at https://www.nccourts.gov/assets/documents/forms/cr922_0.pdf (last visited July 18, 2024).

75. G.S. 15A-534(d).

76. G.S. 7B-2201(a).

77. G.S. 7B-2201(b); *see also id.* § 15A-266.3A (DNA sample requirements under the state Criminal Procedure Act).

78. G.S. 7B-2000(b).

79. G.S. 7A-451; *see also* Gideon v. Wainwright, 372 U.S. 335 (1963); State v. Mays, 14 N.C. App. 90 (1972).

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becomes a criminal matter. This is a determination that is specific to the juvenile and does not include consideration of the resources of the parent, guardian, or custodian.

The Juvenile Code does not expressly mandate that appointment of counsel be addressed immediately following transfer. However, the time immediately following transfer is critical because there is a time-limited window for appeal of some transfer orders (discussed below), and the juvenile is newly eligible for conditions of pretrial release. Given the critical nature of this time period, the changing legal foundation for the appointment of counsel, and the varying ways that indigent defense is structured across North Carolina, it is sound practice for the court to address appointment of counsel immediately after ordering the transfer of the case.[80]

Remand to District Court and Expungement

The Juvenile Code allows a transferred case to be remanded to district court to be handled as a juvenile matter under certain circumstances.[81] The superior court must remand the case when the prosecutor and the juvenile's attorney file a joint motion for remand.[82] There is no requirement beyond the filing of the joint motion. The superior court does not have discretion regarding the remand; once the joint motion is filed, the case must be remanded to district court. Form AOC-CR-291 should be used to order the remand.[83]

The Juvenile Code also requires the expungement of the superior court record when the case is remanded.[84] This includes expunction of any DNA record or profile included in the state DNA database and any DNA sample stored in the state DNA databank as a result of the remanded charges.[85] The clerk must send a certified copy of the expungement order to

1. the juvenile;
2. the juvenile's attorney;
3. the Administrative Office of the Courts;
4. the sheriff, chief of police, or other arresting agency;
5. the Division of Motor Vehicles, when applicable;
6. any state or local agency identified by the petition as bearing record of the expunged offense;
7. the Department of Public Safety, Combined Records Section; and
8. the State Bureau of Investigation.[86]

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80. Rule 1.7 of the IDS Rules for the Continued Delivery of Services in Non-capital Criminal and Non-criminal Cases at the Trial Level obligates appointed counsel to represent the client through judgment at the trial level, to discuss the right to appeal with the client, and to either file notice of an appeal or represent the client until the time for providing notice of appeal expires. While this rule is not directly applicable to delinquency proceedings, the attorney appointed in the delinquency proceeding may have an obligation to ensure that the juvenile is able to exercise the right to appeal the transfer order. Attorneys may want to consider providing verbal notice of appeal in court following transfer in order to meet any such obligation.

81. G.S. 7B-2200.5(d), -2200(c).

82. G.S. 7B-2200.5(d), -2200(c).

83. Form AOC-CR-291 is available at https://www.nccourts.gov/assets/documents/forms/cr291_0.pdf (last visited July 2, 2024).

84. G.S. 7B-2200.5(d), -2200(c), 15A-145.8.

85. G.S. 15A-145.8(b).

86. G.S. 15A-145.8(d), -150(b).

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Each agency that receives a certified copy must delete any public records made as a result of the remanded charges.[87] AOC-CR-291 includes an order for expungement to be used when ordering remand.[88]

Confinement Orders and the Remand Process

When a case is transferred, it shifts from being under juvenile jurisdiction, subject to the Juvenile Code, to being under superior court jurisdiction, subject to the criminal law. Before transfer, if the juvenile is confined, it is pursuant to a secure custody order issued under the Juvenile Code.[89] As discussed previously, when transfer is ordered, the case becomes subject to the laws governing criminal actions, so the juvenile has the same right to conditions of pretrial release as any other defendant in a criminal proceeding.[90] Therefore, the secure custody order issued under the Juvenile Code is no longer valid and any confinement must be ordered in accordance with G.S. 15A-533 and G.S. 15A-534.[91]

When a case is remanded, jurisdiction (and therefore the applicable law) shifts again. The case leaves the jurisdiction of superior court, the criminal law no longer applies, and the case is again subject to the Juvenile Code. As a result, the juvenile can no longer be confined pursuant to conditions of pretrial release set under the criminal law. Instead, any confinement can once again be ordered only via a secure custody order issued in accordance with the Juvenile Code.

On December 1, 2019, when the remand provision took effect, the jurisdictional shift that occurs at remand made the issuance of a secure custody order necessary for continued confinement following remand.[92] However, there was no statutory provision that authorized the superior court to issue a secure custody order. Session Law 2021-123 provided express authority to allow the superior court to issue a secure custody order under the Juvenile Code when remanding a case.[93] A hearing in district court to determine the need for continued secure custody must be held no more than ten calendar days after the superior court issues a secure custody order on remand.[94] That hearing cannot be continued or waived.[95] If the juvenile remains in secure custody after this initial hearing, ongoing secure custody hearings must be held every thirty days (unless the juvenile requests to hold the hearings every ten days, and the court finds good cause).[96] These ongoing hearings may be waived with the consent of the juvenile.[97]

87. G.S. 15A-145.8(d).
88. See note 83, above.
89. G.S. 7B-1904.
90. G.S. 7B-2204.
91. *Id*.
92. S.L. 2019-186, § 8.(a). This original remand provision applied only to cases that were transferred based on an allegation that a felony was committed at age 16 or 17. Session Law 2024-17 added G.S. 7B-2200(c), which includes the same possibility of remand in cases based on an allegation that a felony was committed at age 13, 14, or 15.
93. S.L. 2021-123, §§ 3.(a)–(d).
94. G.S. 7B-1906(b2).
95. *Id*.
96. G.S. 7B-1906(b1)–(b2).
97. G.S. 7B-1906(b1).

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Place of Confinement in Transfer Cases

Secure custody for any youth under juvenile jurisdiction must be in a juvenile detention facility.[98] Therefore, juveniles who are subject to transfer must be held in juvenile detention, and not jail, while their case is under juvenile jurisdiction. This is generally true even if the juvenile is 18 or older.[99]

Once a case is transferred to superior court, the place of confinement depends on the age of the youth who is now a defendant in a criminal proceeding. As previously described, youth can be confined following transfer until they satisfy conditions of pretrial release set by the court in the criminal case. If a youth under the age of 18 is confined, the youth must remain in a juvenile detention facility.[100] Once the juvenile reaches the age of 18, the juvenile must be transported by The Division of Juvenile Justice to the custody of the sheriff for the county where the charges arose for confinement in the county jail.[101]

Posting Bond While in a Juvenile Detention Facility

Youth who have cases under superior court jurisdiction following transfer must be afforded the opportunity to post bond if they are confined pursuant to a secured bond. This can become very complicated when the place of confinement is a juvenile detention facility. Juvenile detention facilities lack the personnel and systems necessary to process bonds, which are not part of the juvenile justice system.

Geography may also present a challenge. Not every county has a juvenile detention facility. A youth may therefore have a criminal case pending in one county and be confined in a juvenile detention facility in another county. This creates practical barriers related to the actual processing of the bond as well as the physical release of the youth. The bond must be posted in the county where the criminal matter is pending, rather than the county where the juvenile is confined. The posting of the bond must be communicated to the juvenile detention facility. Once released, the youth must be transported back to the youth's home, which may be far from the facility.

Release of these youth following posting of a bond is also complicated because they are often minors and therefore must be released to an adult. This is reflected in the Juvenile Code provisions that address pretrial release following transfer. G.S. 7B-2204(a) requires both that the court follow the provisions of G.S. 15A-533 and 15A-534 in determining conditions of pretrial release and that "[t]he release order shall specify the person or persons to whom the juvenile may be released." Release to a specified person may become challenging if the youth is being held in a facility that is far from home.

Finally, the process for these youth to post bond is complicated by federal law that requires sight and sound separation between minors and adult inmates. Many local procedures for satisfying conditions of pretrial release involve processing inside the jail where the youth is likely to come into contact with adult inmates. However, the Juvenile Justice and Delinquency

98. G.S. 7B-1905(b).

99. *But see* G.S. 7B-1905(d) (providing that if secure custody is ordered for any person age 18 or older over whom the court did not obtain juvenile jurisdiction before that person aged out of juvenile jurisdiction, the person may be temporarily detained in the county jail); 7B-1901(d) (providing that if secure custody is ordered for a person 21 or older over whom the court did not obtain juvenile jurisdiction before that person aged out of juvenile jurisdiction, the person must be temporarily detained in the county jail).

100. G.S. 7B-2204(a).

101. G.S. 7B-2204(c).

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Prevention Act requires sight and sound separation from adult inmates for any youth under 18 who is housed in a secure facility, regardless of whether the youth is being processed as a juvenile or as a defendant in the criminal system.[102] The Act allows for a minor to be held in an adult jail for up to six hours for processing of the minor's release. If the jail is used to process release, the youth still must have no sight or sound contact with any adult inmate.[103] Therefore, any process used to post bond for youth housed in juvenile detention must comply with this requirement.

Localities need to develop procedures that allow youth to post bond while they are housed in a juvenile detention facility. This may include use of magistrates or very short-term use of jails where sight and sound separation are maintained.[104]

Appeal of Transfer Orders

Under G.S. 7B-2603(a), juveniles have a right to appeal orders transferring jurisdiction of their juvenile matters to the superior court. Beginning with offenses committed on or after December 1, 2024, this right to an interlocutory appeal applies only to cases that are subject to discretionary transfer.[105] A juvenile has ten days from entry of the order of transfer in district court to give notice of appeal.[106] If notice is not given within ten days, the case proceeds as a superior court matter. If notice is given, the clerk must place the matter on the superior court docket, and the superior court must review the record of the transfer hearing within a reasonable time.[107]

Preserving Confidentiality Pending Resolution of the Appeal

Cases become criminal matters under the jurisdiction of the superior court as soon as the district court enters the order of transfer to superior court.[108] There is no statutorily provided lag time in superior court jurisdiction. This means that any forms used in the case after the transfer order is entered must be criminal forms. Those forms use a CRS number. For example, the form that is to be used to set conditions of pretrial release after transfer is ordered, form AOC-CR-922, Release Order for Juvenile Transferred to Superior Court for Trial, is a criminal form. As the matter is now a criminal matter under superior court jurisdiction, that form should use a CRS number and not the JB number assigned to the juvenile matter. The CRS number should be manually generated for use in the case once transfer is ordered. If an indictment is used to trigger transfer of the case, the CRS number may also be needed for the indictment process.

There are several practical implications that stem from criminal, superior court jurisdiction over cases during the appeal period. For example, if conditions of pretrial release need to be

102. 34 U.S.C. § 11133(a)(11)(B)(i)(I) (effective Dec. 21, 2021).

103. 34 U.S.C. § 11133(a)(13)(A).

104. For more information on posting bond while in juvenile detention, see Jacquelyn Greene, *Satisfying Conditions of Pretrial Release when in Juvenile Detention*, On the Civil Side: A UNC Sch. of Gov't Blog (Sept. 22, 2020), https://civil.sog.unc.edu/satisfying-conditions-of-pretrial-release-when-in-juvenile-detention/.

105. S.L. 2024-17, § 2.(g). The issue of transfer can be preserved for appeal to the court of appeals following conviction in criminal court in cases subject to the mandatory transfer procedure. G.S. 7B-2603(d).

106. G.S. 7B-2603(a).

107. *Id*.

108. G.S. 7B-2203(c).

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revisited during this time, that issue should be heard by the superior court. If the youth violates a condition of pretrial release and needs to be apprehended by law enforcement during this time, criminal procedure provides the appropriate process (although the place of confinement for any youth under age 18 remains juvenile detention, as discussed previously). If there is a change of attorney during this timeframe, the rules related to appointment of counsel in criminal matters apply. The superior court may want to consider closing the courtroom if there is a need to hear motions in a case during the ten-day appeal period or when an appeal of a transfer order is pending in order to preserve confidentiality until the appeal is resolved.

Standard of Review on Appeal

G.S. 7B-2603(a) provides that when an appeal of the transfer order is entered, the superior court must "review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer." The North Carolina Court of Appeals explained how the abuse of discretion standard is to be applied, stating that

> [a] superior court reviewing an appeal of a transfer order may not . . . re-weigh the evidence, decide which factors are more important, and reverse the district court on that basis, as the superior court did here. Put simply, a superior court may not substitute its judgment for that of the district court. In this case, the superior court did not explain in what way the district court's decision was manifestly unreasonable. The superior court simply concluded, based on its de novo view of the evidence, that transfer was inappropriate. That approach does not properly apply an abuse of discretion standard of review.[109]

In addition, the superior court may not review a finding of probable cause made by the district court before transfer.[110] The court of appeals has repeatedly held that a finding of probable cause in a juvenile proceeding is not immediately appealable.[111]

Preserving the Right to Appeal to the Court of Appeals

It is possible to preserve the right to appeal a discretionary transfer decision beyond the initial review by the superior court, but only under certain circumstances: the appeal must first be filed in the superior court, and conviction in superior court cannot be the result of a plea.

Initial Appeal to Superior Court Required

G.S. 7B-2603(d) states that "[t]he superior court order shall be an interlocutory order, and the issue of transfer may be appealed to the Court of Appeals only after the juvenile has been convicted in superior court." In 2002 the court of appeals held that this means that issues arising from a transfer order must first be appealed to the superior court.[112] The court noted that in 1999, the General Assembly removed statutory language stating that failure to appeal to the superior court constituted waiver of the right to raise the issue of transfer to the court of appeals before the matter's final disposition in superior court. According to the court, this deletion

109. *In re* E.S., 191 N.C. App. 568, 574 (2008).
110. G.S. 7B-2603(a).
111. *In re* Ford, 49 N.C. App. 680, 683 (1980); *In re* K.R.B., 134 N.C. App. 328, 331 (1999); *In re* J.L.W., 136 N.C. App. 596, 598 (2000).
112. State v. Wilson, 151 N.C. App. 219, 226 (2002).

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indicates legislative intent to remove any potential statutory authority for skipping an appeal to the superior court and appealing directly to the court of appeals. In addition, the court noted that the general principle of appellate review in criminal matters flows from district court to the superior court and not directly from district court to the court of appeals. The court held that the defendant must first appeal the transfer order and issues arising from it to the superior court in order to preserve any appeal to the court of appeals.

No Appeal After a Guilty Plea

The North Carolina Court of Appeals addressed whether a transfer decision may be appealed following a guilty plea in superior court in *State v. Evans*.[113] The court noted that other criminal statutes expressly provide for an appeal from a judgment of conviction based on a plea of guilty. The court held that there is no right to appeal a transfer decision after pleading guilty in superior court because there is no such express language in G.S. 7B-2603(d).[114]

113. State v. Evans, 184 N.C. App. 736 (2007).
114. *Id.* at 740.

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Part 2

Cases Subject to Removal

Beginning with offenses committed on December 1, 2024, original subject matter jurisdiction for all Class A–E felony offenses alleged to have been committed at ages 16 and 17 lies in criminal court, as do all offenses transactionally related to them.[115] These matters therefore proceed according to the applicable criminal law. However, a new procedure exists to allow the cases to move from criminal jurisdiction to juvenile jurisdiction. This process is called *removal* and is contained in G.S. 15A-960.[116] Removal can be used in any criminal matter in which a defendant is charged with committing a Class A–E felony, that is not a violation of the motor vehicle law, at age 16 or 17.[117]

Removal Procedure

The removal process can occur any time after the return of an indictment or issuance of a criminal information and before the jury is sworn and impaneled.[118] Removal is triggered by the filing of a joint motion by the prosecutor and the defendant's attorney. The prosecutor is required to provide the chief court counselor (or their designee) with a copy of the joint motion before submitting it to the court.[119] The superior court must order removal of the case to juvenile court on the filing of the motion.[120] The court does not have discretion to retain the case in criminal court. The removal order must

- be in writing and
- require the chief court counselor (or their designee) to file a juvenile petition in the case within ten calendar days after removal is ordered.[121]

The superior court is required to expunge the criminal charges and the superior court record at the time of removal.[122] The expunction process is governed by the same law described above for the expunction of the superior court record following remand of a case from superior court to juvenile court.[123]

The superior court is also authorized to issue a secure custody order at the time of removal if the juvenile meets the criteria for a secure custody order contained in G.S. 7B-1903.[124] If a secure

115. G.S. 7B-1501(7)(b)2. Class A–E felony offenses alleged to have been committed between December 1, 2019, and November 30, 2024, by a person who was 16 or 17 years old fell under the original subject matter jurisdiction of the juvenile court. S.L. 2017-57, § 16D.4(a). These offenses fell under the original subject matter jurisdiction of the criminal court before December 1, 2019. Session Law 2024-17 returned them to that status.

116. S.L. 2024-17, § 3.(b).

117. G.S. 15A-960(a).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. G.S. 15A-960(b).

123. G.S. 15A-145.8.

124. G.S. 15A-960(b), 7B-1902.

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custody order is issued, the prosecutor must provide a copy of that order to the chief court counselor (or their designee) as soon as possible and within twenty-four hours after the order is issued.[125] The juvenile court must hold a hearing on the need for continued secure custody within ten calendar days of the issuance of the secure custody order.[126] This hearing cannot be continued or waived. Subsequent ongoing hearings on the continued need for secure custody are required every thirty days.[127] These hearings can be waived by the juvenile.[128] The juvenile can also request ongoing hearings on the need for secure custody every ten days, and the court may order a ten-day schedule for good cause.[129]

The chief court counselor (or their designee) must file a juvenile petition in the matter within ten calendar days of the order removing the case to juvenile court. The case then proceeds to first appearance.[130] Unlike other cases in which a felony is alleged to have occurred at age 13 or older, these cases will not have a probable cause hearing in juvenile court. Instead, these cases proceed from first appearance to adjudication once they are under juvenile jurisdiction.

Place of Confinement in Removal Cases

Prior to Removal

The place of confinement when a criminal matter that alleges that the defendant committed a Class A–E felony at age 16 or 17 is pending depends on the age of the defendant. A defendant who is under 18 and is being confined pending trial must be held in a juvenile detention facility (not in a jail).[131] If the defendant is 18 or older, then that person will be held in the local jail.[132]

Following Removal

Once a case is removed to juvenile court, it falls under juvenile jurisdiction. As a delinquency matter, the place of confinement is in juvenile detention.[133] This is true even after the juvenile turns 18. As a delinquency case, the place of confinement pending adjudication will be juvenile detention.[134]

125. *Id.*
126. G.S. 7B-1906(b2).
127. G.S. 7B-1906(b1).
128. *Id.*
129. *Id.*
130. G.S. 7B-1808(a).
131. G.S. 15A-521(a).
132. *Id.*
133. G.S. 7B-1905(b).
134. See note 99, above, for a discussion of the unusual cases in which people over the age of 18 are subject to juvenile jurisdiction and held in local jails.

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2024 Delinquency Legislation

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H. 834 AN ACT TO MODIFY THE DEFINITION OF DELINQUENT JUVENILE, TO MODIFY THE TRANSFER PROCESS FOR INDICTED JUVENILE CASES, TO CREATE A NEW PROCESS TO REMOVE A CASE TO JUVENILE COURT, TO MAKE CHANGES TO SCHOOL USE OF INFORMATION, TO MAKE SECURE CUSTODY HEARING CHANGES, TO MAKE TECHNICAL CORRECTIONS, TO MAKE CHANGES TO CERTAIN DISPOSITIONAL ALTERNATIVES, AND TO INCREASE THE PUNISHMENT FOR AN ADULT TO SOLICIT A MINOR TO COMMIT A CRIME AND TO MODIFY THE NUMBER OF DAYS FOR REQUEST FOR REVIEW BY A PROSECUTOR

Modification of Definition of Delinquent Juvenile

- G.S. 7B-1501(7)(b) is amended to remove Class A – Class E felony offenses committed at the age of 16 and 17 from the definition of delinquent juvenile. The exclusion includes all offenses that are transactionally related to the Class A – Class E felony offense.

Modification of Transfer Process for Indicted Juvenile Cases

- G.S. 7B-1808(a) is amended to require a first appearance in juvenile court following the removal of a case from superior court to juvenile court (see below for a description of the new removal process).
- G.S. 7B-1906(b2) is amended to require a hearing to determine the need for continued secure custody within 10 calendar days of the issuance of a secure custody order in a matter that is removed from superior court to juvenile court (see below for a description of the new removal process).
- G.S. 7B-2200 is restructured to describe the current transfer process for felony offenses, other than Class A felonies, alleged to have been committed at age 13, 14 or 15 as discretionary transfer and to describe the current transfer process for Class A felony offenses alleged to have been committed at ages 13, 14, or 15 as mandatory transfer.
- G.S. 7B-2200 is amended to add a new subsection (c) to allow for remand of cases from superior court to juvenile court after transfer occurred in cases in which a felony is alleged to have been committed at ages 13, 14, or 15. The case must be remanded to district court upon joint motion of the prosecutor and the juvenile's attorney. The prosecutor must provide the chief court counselor or their designee with a copy of the joint motion before submitting the motion to the court. The superior court must expunge the superior court record at the time of remand. The superior court may also issue a secure custody order at the time of remand if the juvenile meets the criteria for secure custody in G.S. 7B-1903. The prosecutor must provide a copy of any such secure custody order to the chief court counselor as soon as possible and no more than 24 hours after the order is issued.
- G.S. 7B-2200.5 is amended to remove Class A – E felonies alleged to have been committed at ages 16 and 17 from the procedure to transfer cases from juvenile jurisdiction to superior court for trial as an adult. Language governing the timing of probable cause hearings in cases that remain subject to the mandatory transfer procedure for Class F and Class G felonies alleged to

have been committed at ages 16 and 17 is removed from this section (and placed in G.S. 7B-2202(b1), as described below).

- G.S. 7B-2202(a) is amended to exclude juvenile cases that were removed from superior court to juvenile court from a probable cause hearing in juvenile court (see description of removal process below).
- G.S. 7B-2202 is amended to add a new subsection (b1) providing that a probable cause hearing must be held in any matter subject to mandatory transfer within 90 days of the juvenile's first appearance. The probable cause hearing may be continued for good cause.
- A new G.S. 7B-2202.5 is added to require an indictment return appearance in juvenile court within five business days of the date a true bill of indictment is returned in a matter subject to mandatory transfer. The prosecutor must immediately notify the district court if a true bill of indictment is returned in a matter subject to mandatory transfer. The court must calendar the matter for an appearance within five business days of the date that the indictment was returned. At the appearance, the court must determine if notice of a true bill of indictment charging the commission of an offense subject to mandatory transfer was provided in accordance with G.S. 15A-630. If the court finds that notice was provided, the court must transfer the matter to superior court for trial as an adult and determine conditions of pretrial release as required by G.S. 7B-2204.
- G.S. 7B-2603 is amended to remove the right to an interlocutory appeal of a transfer order in cases subject to mandatory transfer. Issues related to mandatory transfers can be appealed to the Court of Appeals only following conviction in superior court.

New Process to Remove Cases to Juvenile Court

- G.S. 7B-1902 is amended to provide authority for a superior court judge to issue a secure custody order when the superior court orders removal of a case to juvenile court.
- A new G.S. 15A-960 is added to create a process for removal of cases in which a Class A – Class E felony is alleged to have been committed at age 16 and 17 from superior court to juvenile court.
    - Removal is required on the filing of a joint motion by the prosecutor and the defendant's attorney. The motion can be filed any time after an indictment is returned or a criminal information is issued and before the jury is sworn and impaneled. The prosecutor must provide a copy of the joint motion to the chief court counselor or their designee before submitting the motion to the court. The removal order must be in writing and require the chief court counselor or their designee to file a juvenile petition within 10 calendar days after removal is ordered.
    - The superior court record must be expunged according to G.S. 15A-145.8 at the time of removal.
    - The superior court may issue an order for secure custody at the time of removal upon the request of the prosecutor and if the defendant meets the criteria to issue a secure custody order in G.S. 7B-1903. The prosecutor must provide the chief court counselor or their designee with a copy of any secure custody order issued at removal as soon as possible and no more than 24 hours after the order is issued.

- G.S. 15A-145.8 is amended to apply the same expunction process in place for cases that are remanded from superior court to juvenile court to cases that are removed from superior court to juvenile court.

Changes to School Use of Information

- G.S. 7B-3101 is amended to restrict school notification of the filing of a petition in a delinquency matter to cases that allege a Class A – Class E felony if committed by an adult. Language that prohibits an automatic suspension policy related to this notification is added. The principal is required to make an individualized decision related to the status of the student during the pendency of the delinquency matter.
- G.S. 115C-404(b) is amended to prohibit an automatic suspension policy related to juvenile court information received either as a felony notification under G.S. 7B-3101 or information gained from the examination of juvenile records under G.S. 7B-3100. The principal is required to make an individualized decision related to the status of the student during the pendency of the delinquency matter.

Secure Custody Hearing Changes

- G.S. 7B-1906(b) is amended to require hearings on the ongoing need for secure custody every 30 days in all delinquency cases. Parties can request and the court can order an earlier hearing. Earlier hearings must be scheduled within 10 calendar days of the request for the earlier hearing.

Technical Corrections to Part V of S.L. 2023-114 (juvenile capacity)

- G.S. 7B-2401.2(d) is corrected to remove reference to a 30-day timeline for the completion of a forensic evaluation report.
- Effective dates are added to ensure that the entirety of the new law takes effect beginning with offenses committed on or after January 1, 2025.
- G.S. 7B-2401.4(f)(3) is amended to require good cause to grant an extension of remediation.
- G.S. 7B-1904 is amended to add a missing “than.”
- G.S. 7B-2401.5 is amended to prohibit placement of a juvenile in a situation where that juvenile will come into contact with adults for any purpose when the juvenile is subject to involuntary civil commitment.

Changes to Certain Dispositional Alternative

- G.S. 7B-2506(4) and G.S. 7B-2506(22) are amended to allow, but not require, joint and several responsibility for all participants in an offense that resulted in loss or damage to a person when restitution is ordered.

Increase Punishment for Certain Crimes

- G.S. 14-2.6 is amended
    - to define an adult as a person 18 years or older and to define a minor as a person who has not reached the age of 18 years;

- to include adults and minors as people who can be punished for soliciting another adult to commit a felony or misdemeanor offense;
- to establish solicitation of a minor to commit a felony or misdemeanor offense by another minor as an offense, as pictured in the table below;

Offense minor solicited to Commit	Punishment for minor who engaged in the solicitation
Class A or B1 felony	Class C felony
Class B2 felony	Class D felony
Class H felony	Class 1 misdemeanor
Class I felony	Class 2 misdemeanor
Any other felony	Felony 2 classes below solicited felony
Any misdemeanor	Class 3 misdemeanor

- to create a new offense when an adult solicits a minor to commit a felony or misdemeanor. An adult who solicits a minor to commit a felony or misdemeanor is guilty of the same class felony or misdemeanor the adult solicited the minor to commit.

Modify Number of Days for Request for Review by a Prosecutor

- G.S. 7B-1704 is amended to increase the number of days a complainant and a victim have to request prosecutor review of the decision of the juvenile court counselor not to file a petition in a delinquency matter. The number of days is increased from five days from receipt of the juvenile court counselor's decision not to approve the petition for filing to 10 days. The district attorney may waive this time limit.

Effective Date

- The act becomes effective December 1, 2024, and applies to offenses committed on or after that date, except for the technical amendments to the juvenile capacity law which take effect on January 1, 2025 and apply to offenses committed on or after that date.

EXTRADITION
Tips and Tricks?

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1

Definition

- The surrender of an alleged criminal usually under the provisions of a treaty or statute by one authority (such as a state) to another having jurisdiction to try the charge *Merriam-Webster Dictionary*

2

Brief History of Extradition in the USA

- First US extradition agreement as a cause within the 1794 Jay Treaty with Britain and applied only to murder and forgery
- Formal extradition did not become commonplace in Western countries until mid-19th century due to better travel options making it easier for criminals to escape
- 116 countries have extradition treaties of some sort with the USA
- High profile extraditions can take years to complete
- Disagreements on what actually constitutes an extraditionable offense

3

International Extradition

"International extradition is the formal process by which a person found in one country is surrendered to another country for trial of punishment. The process is regulated by treaty and conducted between the Federal Government of the United States and government of a foreign country. – *United States Attorneys' Manual section 9-15.000*

Lots of procedural hoops to jump through and everything depends on the list of extraditable offenses identified in the treaty but more recent ones simply make all felonies extraditable

Info obtained from J. Welty's blog post "Basics of International Extradition," July 5, 2011.

4

Primary Sources of Extradition Law

- Extradition Clause of the US Constitution (Article IV, section 2, clause 2)
- The Federal Extradition Act of 1793 (18 USC secs. 3181-3195)
- Uniform Criminal Extradition Act of 1936
  - UCEA
  - NC General Statute 15A-721 – 750
  - Louisiana, South Carolina, and North Dakota do not appear to have adopted the UCEA

5

FEDERAL ACT VS. UCEA

- Federal Act
  - Charged with treason, felony, or other crime
  - Fugitives only
  - No process established for Arrest and Rendition
- UCEA
  - Felony/Misdemeanor, absconded, escaped and juveniles
  - Fugitives and Nonfugitives
  - Procedure for Arrest and Rendition, e.g., Fugitive arrest, arraignment, identification hearing, and writ of habeas corpus

6

EXTRADITION CLAUSE

ARTICLE IV, SECTION 2, CLAUSE 2

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on the demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction.

7

"Shall Flee..."

Anyone who commits a crime in one State and is subsequently found in any other State is a fugitive from justice, See Appleyard v. Massachusetts, 203 US 222 (1906).

Reason for departure is irrelevant, See New Mexico, ex. Rel. Ortiz v. Reed, 524 US 151 (1998).

Person who leaves involuntarily is still a fugitive, See Clark v. Comm'r of Corr., 281 Conn. 380 (2007).

8

"Shall..."

- Asylum state has no discretionary power concerning the extradition of fugitive (discretionary with nonfugitive however)
- Extradition is part of the arrest process
- Determination of guilt not an issue
- Alleged violation of Constitutional rights if extradited is not an issue

9

Nonfugitive Extraditions

- Subject committed an act in one State that resulted in being charged with a crime in demanding state.
- Modern technology helps facilitate the commission of crimes across state lines
- Application should **NOT** have reference to fugitivity
- Governor has discretion to surrender subject
  - See NCGS 15A-726, "The Governor of this State *may* also surrender…"
  - Applies even if the accused was not in that state at th time of the commission of the crime, and has not fled therefrom.

10

Examples of Nonfugitive Extraditions

- Nonsupport
- Transfer of Funds or Drugs
- Identity Theft
- Internet Threats
- "Sexting" with Minors

11

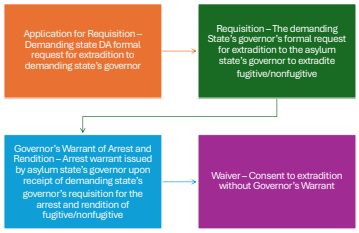
Basic Principles of Extradition

Extradition – Mandatory and summary procedure → **Intent** – Return fugitive to the Demanding state as swiftly as possible for prosecution → **Purpose** – To preclude any State from becoming a sanctuary for fugitives

Fugitive – A person who commits a crime while present in one State and is subsequently found in another State → **Nonfugitive** – A person who commits an intentiona act in one State that results in a crime in another State

12

Basic Terms of Extradition



13

THE EXTRADITION PROCESS

- THREE PARTS
  - ASYLUM STATE'S PRE-GOVERNOR'S WARRANT PROCESS
  - DEMANDING STATE'S FORMAL DEMAND FOR EXTRADITION PROCESS
  - ASYLUM STATE'S ISSUANCE OF GOVERNOR'S WARRANT PROCESS

14

THE BEGINNING

1. Person
   1. Commits a crime in the Demanding State
   2. Parolee/Probationer/Post-Release Absconder
   3. Prisoner Escapee
   4. Defendant fails to appear at sentencing

2. Arrest Warrant is issued in the Demanding State and entered in NCI

3. Subject Subsequently Found in Asylum State

15

INITIAL DECISION BY ASYLUM STATE

When a fugitive is found, Asylum State authorities may:

- Arrest fugitive without a warrant
- Arrest fugitive with a warrant
- Conduct surveillance and arrest fugitive upon issuance of a Governor's warrant
- Do nothing at all because Demanding State will not extradite

16

ARREST WITHOUT WARRANT

- Reasonable Information
  - Fugitive is charged with crime punishable by death or imprisonment for a term exceeding one year (felony)
- Demanding state's arrest warrant sufficient reasonable information (not warrant of arrest in Asylum state)
- Once arrested, fugitive must be taken before a judge/magistrate with all practicable speed (see NCGS 15A-734); 48 hours seems to be the "golden rule" but does that happen?
- Fugitive complaint must then be filed under oath setting for the ground(s) for arrest

17

ARREST WITH FUGITIVE WARRANT

- Upon filing a fugitive complaint, Asylum state court **shall** issue fugitive arrest warrant
- Asylum state should contact Demanding state before filing to determine if Demanding state will extradite
- Waiver of Extradition
  - Upon arrest, Court should ask fugitive if wiling to waive extradition
  - Send a certified copy to the Extradition Secretary – Governor's Copy

18

PRE-SIGNED WAIVER

NCGS 15A-1343(17) states that, as a regular condition of probation, a probationer will agree, to "Waive all rights relating to extradition proceedings if taken into custody outside of this State for failing to comply with the conditions imposed by the court upon a **FELONY** conviction." *See NC Department of Adult Corrections, Community Supervision Form DCC-2*

The NC DOJ and Office of the Governor take the stance that pre-signed waivers should be accepted

If there is a pre-signed waiver, a fugitive should be frought before a magistrate, told of the pre-signed waiver and held without a bond.

Notify demanding state for pickup.

19

FUGITIVE COMPLAINT

- Must state person is fugitive or nonfugitive
- Person has committed a crime, absconded, escaped, or failed to appear in demanding state.
- Must be sworn before a magistrate or supported by affidavit from demanding state.
- If available, certified copies of charging document and arrest warrant from demanding state should be attached.

20

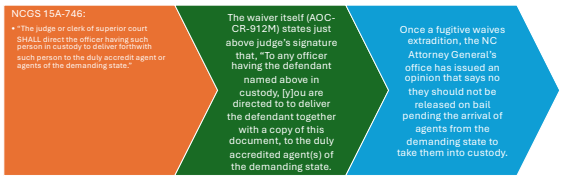
ARRAIGNMENT

Fugitive must be arraigned on fugitive complaint with "all practicable speed." *NCGS 15A-734*

- Reason for Arrest – criminal matter pending in demanding state
- Statutory Right to Counsel
- Right to have Governor's Warrant issued
- Right to Waive Issuance of Governor's Warrant
  - Fugitive **should** be asked if they are willing to waive extradition

21

WAIVERS



22

REFUSAL OF EXTRADITION

- Does not appear to be an AOC form for refusal. Each jurisdiction uses their own "Refusal of Extradition" which is signed by the person and then signed by the judge with a new court date for each 30 days until Order Dismissing the Extradition Charge
- Procedure is to notify the demanding state the **FIRST** time they appear in Court and refuse. This is to make sure the demanding state gets the maximum amount of time available to determine whether or not to get a Governor's Warrant.

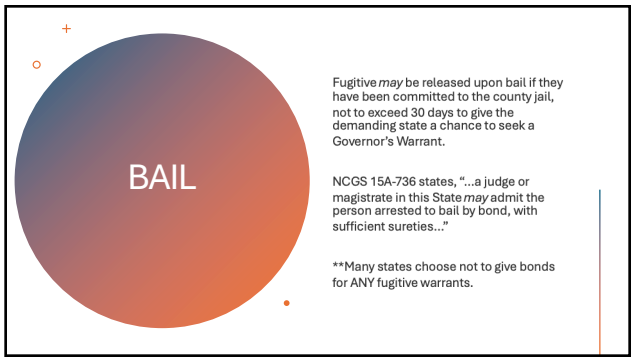
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Commitment Order NCGS 15A-735 and 737

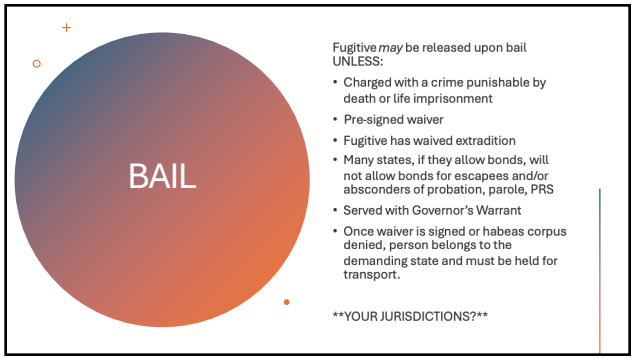
Asylum state court typically orders:

- Fugitive placed in custody for 30 days for issuance of Governor's Warrant
- Additional 60 days if needed
- End of 90 days, Asylum court may dismiss the matter unless Governor's Warrant has been issued

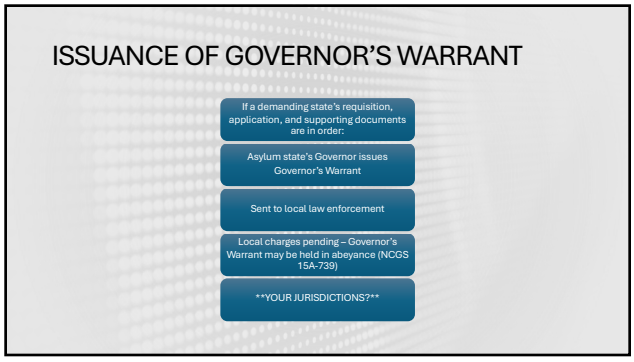
24


BAIL
Fugitive *may* be released upon bail if they have been committed to the county jail, not to exceed 30 days to give the demanding state a chance to seek a Governor's Warrant.
NCGS 15A-736 states, "...a judge or magistrate in this State *may* admit the person arrested to bail by bond, with sufficient sureties..."
**Many states choose not to give bonds for ANY fugitive warrants.

25


BAIL
Fugitive *may* be released upon bail UNLESS:
• Charged with a crime punishable by death or life imprisonment
• Pre-signed waiver
• Fugitive has waived extradition
• Many states, if they allow bonds, will not allow bonds for escapees and/or absconders of probation, parole, PRS
• Served with Governor's Warrant
• Once waiver is signed or habeas corpus denied, person belongs to the demanding state and must be held for transport.
YOUR JURISDICTIONS?

26


ISSUANCE OF GOVERNOR'S WARRANT
If a demanding state's requisition, application, and supporting documents are in order:
Asylum state's Governor issues Governor's Warrant
Sent to local law enforcement
Local charges pending – Governor's Warrant may be held in abeyance (NCGS 15A-739)
YOUR JURISDICTIONS?

27

Fugitive Sentenced for NC Charges

If they receive an active DPS sentence for local charges:

- A certified copy of any waiver goes with them to DPS (DPS will honor the waiver for 5 years)
- Local court notifies NC Extradition Secretary of DPS sentence
- Local court sends entire Governor's Warrant packet back to the Extradition Secretary
- In the event the subject did not waive extradition, the Governor's Warrant will be served up them upon completion of DPS sentence

28

GOVERNOR'S WARRANT

A fugitive warrant must be dismissed after 90 days

a. NCGS 15A-735 and 737

b. The dismissal of the first fugitive warrant is not a bar to a second fugitive warrant.

A Governor's Warrant is an arrest warrant. If a fugitive warrant has been dismissed, the Governor's Warrant can and should be used to arrest the fugitive again.

The dismissal of a fugitive warrant has no bearing upon a Governor's Warrant.

29

Arraignment on Governor's Warrant

Upon service and arrest:

Fugitive must be arraigned forthwith.

Fugitive must be advised

1. Demand has been made for extradition
2. Statutory right to counsel
3. Right to challenge warrant – Writ of Habeas Corpus

Failure to bring them before a judge is a Class 2 misdemeanor.

Competence to assist counsel in extradition proceedings may be raised.

30

WRIT OF HABEAS CORPUS NCGS 15A-730

Fugitive may only challenge legality of Governor's Warrant of four issues:

- Extradition documents not legally sufficient.
- Identity – Not the person wanted in demanding state.
- Not substantially charged with a crime in the demanding state.
- Not a "fugitive"

31

Habeas Corpus Process

Heard in Superior Court

A judge should give a reasonable period within which to file (10 days). **Your jurisdictions?**

Governor's Warrant *prima facie* evidence all requirements for extradition have been met.

Once *prima facie* showing has been made, fugitive has burden of **clear and convincing evidence**.

Strict rules of evidence inapplicable.

Affidavits, documentation, photographs, fingerprints.

If denied, fugitive may appeal BUT denial is considered a final order. Unless a stay is issued by the NC Criminal Appeals, they can be extradited even if appealed.

32

EXTRADITION ORDER

Upon arraignment and/or denial of writ of habeas corpus:

- Asylum state court orders fugitive extradited
- Sets date for pickup
  1. 18 USC 3182 "may be discharged after 30 days"
  2. Fugitive must file writ of habeas corpus requesting release
- Demanding state is notified fugitive is available for pickup
- Fugitive is returned to demanding state for prosecution

33

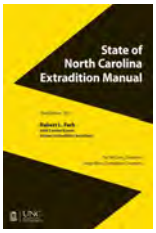
JUVENILES

Interstate Compact for Juveniles

- All 50 states, Washington, DC, and the Virgin Islands
- No specific statutes in the current compact set out the particular procedures for handling interstate issues involving delinquent juveniles
- Guidance is provided by the Interstate Commission for Juveniles which is a contract between the states that regulates the interstate movement of juveniles who are under court supervision or who have run away from home and left their state of residence. Compact provisions take precedence over conflicting state laws.

34

Additional Resources



35

QUESTIONS?

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36

Parallel Construction: A Defense Attorney's Guide to Discovering and Challenging Original Source Evidence in Criminal Investigations

Jessica Carmichael
CARMICHAEL ELLIS & BROCK | Alexandria, Virginia

I. What is parallel construction?

a. Government learns of information through warrantless surveillance
b. Provides that information to law enforcement
c. Law enforcement recreates the investigation as though the source of the investigation originated in another way.

II. Natasha Babazadeh, *Concealing Evidence: "Parallel Construction," Federal Investigations, and the Constitution*, 22 Va. J.L. & Tech. 1 (2018)

a. Parallel construction is the process of building a separate--and parallel--evidentiary basis for a criminal investigation. The process is undertaken to conceal the original source of evidence, which may have been obtained unlawfully. Clandestinely used for decades, this process raises serious constitutional questions.
b. Parallel construction allows law enforcement agencies to capitalize on sensitive or secret national security techniques in the domestic criminal context, without any form of oversight or accountability.
c. The result: parallel construction insulates surveillance techniques from judicial review, undermines checks and balances, and deprives individuals of the privacy benefits that court review would require. It also undermines fundamental principles of due process. Parallel construction enables law enforcement agencies to engage in questionable investigative practices, the concealment of which deprives criminal defendants of any challenges they might raise and prevents courts from reviewing the constitutionality of the practice in the first place.

III. John Shiffman & Kristina Cooke, *Exclusive: U.S. directs agents to cover up program used to investigate Americans*, REUTERS (Aug. 5, 2013)

a. "A secretive U.S. Drug Enforcement Administration unit is funneling information from intelligence intercepts, wiretaps, informants and a massive database of telephone records to authorities across the nation to help them launch criminal investigations of Americans."
b. Anonymous senior DEA official: "Parallel construction is a law enforcement technique we use every day."

IV. What are some of the surveillances used?

a. NSA/Intelligence agencies
b. Foreign partnerships

c. Stingrays/surveillance devices
d. Companies

V. Intelligence Collection – NSA, 702 FISA

a. PRISM
    i. Leaked by Edward Snowden in 2013
    ii. Bulk collection of NSA records from private electronic data belonging to users of major internet services like Gmail, Facebook, Outlook, and others from 2007-2015 under Section 702. Bulk collection allegedly ended by legislation 2015
    iii. Section 702 was set to expire Dec. 31, 2023. In March 2024, Senators Dick Durbin and Kevin Cramer, filed an amendment to the FISA Reauthorization Bill that would require the government to obtain a warrant from the Foreign Intelligence Surveillance Court (FISC) before reviewing the contents of Americans' private communications that get swept up in Section 702 surveillance. *See* U.S. Senate, Committee on the Judiciary, Durbin, *Lee Introduce Bipartisan SAFE Act to Reform FISA Section 702* (March 14, 2024). Senator Durbin explained that "[i]f the government wants to spy on my private communications or the private communications of any American, they should be required to get approval from a judge, just as our Founding Fathers intended in writing the Constitution." Ellen Nakashima et al, *Congress extends controversial warrantless surveillance law for two years*, Washington Post (April 20, 2024).
b. *Section 702: What It Is & How It Works*, Center for Democracy and Technology, https://cdt.org/wp-content/uploads/2017/02/Section-702.pdf
    i. Unlike "traditional" FISA surveillance, Section 702 does not require that the surveillance target be a suspected terrorist, spy, or other agent of a foreign power. Section 702 only requires that the targets be non-U.S. persons located abroad, and that a "significant purpose" of the surveillance be to obtain "foreign intelligence information" (the primary purpose of the surveillance can be something else entirely).
    ii. PRISM collection: the government collects all communications content to or from a targeted selector (such as an email address) directly from U.S.-based electronic communications service providers (such as Apple or Google). The NSA receives all raw (unminimized) PRISM-collected information and may also send such raw data to the CIA and FBI.
    iii. Upstream collection: the government collects all internet transactions that contain communications to, from, or "about" a targeted selector as the transactions flow through network gateways controlled by U.S.-based providers. Only the NSA may receive raw Upstream-collected information, but it may send such information to the CIA and FBI once it has gone through the NSA's minimization process.

c. Amber Phillips, *What's the database the FBI misused to seek info on Jan. 6 suspects, BLM arrestees?* The Washington Post, (May 19, 2023)
    i. The FBI is in hot water for misusing a powerful surveillance tool nearly 300,000 times in 2020 and early 2021, including to search for information about Americans linked to the Jan. 6, 2021, attack on the U.S. Capitol or arrested during Black Lives Matter protests.
    ii. The FBI is supposed to search the 702 database for information about U.S. residents or companies only when the FBI agent or analyst has a reason to believe such a query may generate foreign intelligence information or evidence of a crime. The FBI is supposed to follow strict procedures because using the database allows the bureau to skip the usual step of getting a warrant from a federal court to collect information on Americans.
    iii. In 2020 and early 2021, the FBI misused the database more than 278,000 times by conducting searches that didn't follow Justice Department rules, often to look for information on Americans who don't have connections to national security, The Washington Post's Devlin Barrett reports. The FBI has searched the database for "crime victims, Jan. 6 riot suspects, people arrested at protests after the police killing of George Floyd in 2020 and — in one case — 19,000 donors to a congressional candidate, according to a newly unsealed court document," he reports. (full court document here: https://www.intelligence.gov/assets/documents/702%20Documents/declassified/21/2021_FISC_Certification_Opinion.pdf)
d. Names of some other NSA surveillance programs: Stellar Wind, Prism,EvilOlive, ShellTrumpet

VI. Intelligence Collection- EO 12333

a. John Napier Tye, *Meet Executive Order 12333: The Reagan rule that lets the NSA spy on Americans,* The Washington Post (July 18, 2014).
    i. John Napier Tye served as section chief for Internet freedom in the State Department's Bureau of Democracy, Human Rights and Labor from January 2011 to April 2014. He is now a legal director of Avaaz, a global advocacy organization.
    ii. I believe that Americans should be even more concerned about the collection and storage of their communications under Executive Order 12333 than under Section 215.
    iii. Bulk data collection that occurs inside the United States contains built-in protections for U.S. persons, defined as U.S. citizens, permanent residents and companies. Such collection must be authorized by statute and is subject to oversight from Congress and the Foreign Intelligence Surveillance Court. The statutes set a high bar for collecting the content of communications by U.S. persons. For example, Section 215

permits the bulk collection only of U.S. telephone metadata — lists of incoming and outgoing phone numbers — but not audio of the calls.

iv. Executive Order 12333 contains no such protections for U.S. persons if the collection occurs outside U.S. borders. Issued by President Ronald Reagan in 1981 to authorize foreign intelligence investigations, 12333 is not a statute and has never been subject to meaningful oversight from Congress or any court. Sen. Dianne Feinstein (D-Calif.), chairman of the Senate Select Committee on Intelligence, has said that the committee has not been able to "sufficiently" oversee activities conducted under 12333.

v. Before I left the State Department, I filed a complaint with the department's inspector general, arguing that the current system of collection and storage of communications by U.S. persons under Executive Order 12333 violates the Fourth Amendment, which prohibits unreasonable searches and seizures. I have also brought my complaint to the House and Senate intelligence committees and to the inspector general of the NSA.

vi. Keith Alexander, a former NSA director, has said publicly that for years the NSA maintained a U.S. person e-mail metadata program similar to the Section 215 telephone metadata program. And he has maintained that the e-mail program was terminated in 2011 because "we thought we could better protect civil liberties and privacy by doing away with it." Note, however, that Alexander never said that the NSA stopped collecting such data — merely that the agency was no longer using the Patriot Act to do so. I suggest that Americans dig deeper.

b. Elizabeth Goitein, *How the CIA Is Acting Outside the Law to Spy on Americans* (Feb. 15, 2022).

i. most foreign intelligence surveillance actually takes place under EO 12333, not FISA. That means it is subject to no statutory constraints whatsoever, and there is no judicial review or oversight. EO 12333 does place some limits on surveillance, but not shockingly, its rules are much more permissive than those Congress established in FISA. Bulk collection is just one example — it's banned under FISA but permitted under EO 12333.

ii. What stops the CIA from poring through the data looking for Americans' information? Let's be honest: nothing. The CIA's internal rules from 2017 say the information sought must be "related to a duly authorized activity of the CIA," as determined by. . . the CIA. The FBI has similar rules limiting its searches of data obtained under FISA Section 702. Year after year, the Foreign Intelligence Surveillance Court finds that FBI agents have violated these rules—and that's when there's a court actually watching them.

iii. The CIA's rules also say that CIA officers should document their purpose in running searches for Americans' information. But according to staff members of the Privacy and Civil Liberties Oversight Board, these rules, despite having been finalized five years ago and released with great fanfare, have not yet been "implemented."

iv. And suppose for a moment that the CIA did restrict itself to searches designed to retrieve foreign intelligence (a limitation that would certainly satisfy the CIA's rules, despite the fact that EO 12333 defines "foreign intelligence" to include literally any information about the actions of any foreign person). Since when does the Fourth Amendment allow government agencies to help themselves to Americans' private data as long as they're conducting agency business? Should police be able to search your house without a warrant as long as they're investigating a crime?

VII. Intelligence Collection- Section 215 of Patriot Act

a. Bulk collection of more than 534 million phone records under Section 215 in 2017 and more than 434 million in 2018.
   i. https://www.dni.gov/files/CLPT/documents/2019_ASTR_for_CY2018.pdf
b. Expired in 2020, but still contains exceptions permitting the intelligence community to use the law for investigations that were ongoing at the time of expiration or to investigate "offenses or potential offenses" that occurred before the sunset.
   i. https://www.eff.org/deeplinks/2020/12/section-215-expired-year-review-2020

VIII. Intelligence Collection - DEA's Hemisphere

a. Scott Shane and Colin Moynihan, *Drug Agents Use Vast Phone Trove, Eclipsing N.S.A.'s*, The New York Times (Sept. 1, 2013).
   i. For at least six years, law enforcement officials working on a counternarcotics program have had routine access, using subpoenas, to an enormous AT&T database that contains the records of decades of Americans' phone calls.
   ii. Hemisphere covers every call that passes through an AT&T switch — not just those made by AT&T customers — and includes calls dating back 26 years, according to Hemisphere training slides bearing the logo of the White House Office of National Drug Control Policy. Some four billion call records are added to the database every day, the slides say; technical specialists say a single call may generate more than one record. Unlike the N.S.A. data, the Hemisphere data includes information on the locations of callers.
   iii. The slides were given to The New York Times by Drew Hendricks, a peace activist in Port Hadlock, Wash. He said he

had received the PowerPoint presentation, which is unclassified but marked "Law enforcement sensitive," in response to a series of public information requests to West Coast police agencies.

iv. "All requestors are instructed to never refer to Hemisphere in any official document," one slide says. A search of the Nexis database found no reference to the program in news reports or Congressional hearings.

v. [Government] said, the phone data is stored by AT&T, and not by the government as in the N.S.A. program. It is queried for phone numbers of interest mainly using what are called "administrative subpoenas," those issued not by a grand jury or a judge but by a federal agency, in this case the D.E.A.

vi. Brian Fallon, a Justice Department spokesman, said in a statement that "subpoenaing drug dealers' phone records is a bread-and-butter tactic in the course of criminal investigations." Mr. Fallon said that "the records are maintained at all times by the phone company, not the government," and that Hemisphere "simply streamlines the process of serving the subpoena to the phone company so law enforcement can quickly keep up with drug dealers when they switch phone numbers to try to avoid detection." He said that the program was paid for by the D.E.A. and the White House drug policy office but that the cost was not immediately available.

b. Dave Maass, *Before and After: What We Learned About the Hemisphere Program After Suing the DEA*, Electronic Frontier Foundation (Dec. 19, 2018).

i. Hemisphere has faded somewhat from the headlines since it was first revealed. That was long enough for officials to rebrand the program "Data Analytical Services," making it even less likely to draw scrutiny or stick in the memory.

ii. AT&T embeds employees with police agencies in at least three hubs: Los Angeles, Houston, and Atlanta. These employees run the software that searches and analyzes AT&T massive phone database. Cops (usually working drug cases) from around the country contact their regional hub to get the records, and federal officials can query Hemisphere without first getting permission from a judge. The system was reportedly especially useful for tracking people when they switched phones.

IX. Companies

a. Ex. Dep't of Justice: FOR IMMEDIATE RELEASE, Monday, June 2, 2014, *U.S. Leads Multi-National Action Against "Gameover Zeus" Botnet and "Cryptolocker" Ransomware, Charges Botnet Administrator*

i. Invaluable technical assistance was provided by Dell SecureWorks and CrowdStrike. Numerous other companies also provided assistance, including facilitating efforts by victims to remediate the damage to their computers inflicted by Gameover

Zeus. These companies include Microsoft Corporation, Abuse.ch, Afilias, F-Secure, Level 3 Communications, McAfee, Neustar, Shadowserver, Anubis Networks, Symantec, Heimdal Security, Sophos and Trend Micro. (Available at https://www.justice.gov/opa/pr/us-leads-multi-national-action-against-gameover-zeus-botnet-and-cryptolocker-ransomware)

b. Trend Micro: Our work with U.S. agencies
    i. As a leading voice and global citizen in the fight against cybercrime, we are proud to support law enforcement globally. Trend Micro shares strategic and tactical threat intelligence with U.S. Government Law Enforcement, including the FBI, U.S. Secret Service, and Homeland Security Investigations. We participate in threat and vulnerability research, joint reports with the U.S. Secret Service, and frequent collaborations with FBI's InfraGard and the U.S. Secret Service Electronic Crimes Task Force. Read The Evolution of Cybercrime and Cyber Defense, our joint research paper with the U.S. Secret Service (Available at https://www.trendmicro.com/en_us/business/capabilities/solutions-for/federal-government/agencies-stories.html)

X. Stingrays

a. Adam Bates, Stingray: *A New Frontier in Police Surveillance, Cato Institute*, at 5, Jan. 25, 2017
    i. Stingray surveillance devices are cellular site simulators — they are portable, military-grade surveillance devices that mimic the signal of a cell phone tower in order to force cell phones in the area to connect. Once a phone connects, the officer can download information from the phone or track its location.
    ii. Cell site simulators may be known by a variety of different brand names, including: "Triggerfish," Stingray," "Hailstorm," and "KingFish." They may also be referred to generically as "IMSI catchers," referring to a cell phone's "International Mobile Subscriber Identity"
    iii. Stingrays can be used to locate "cell phones to within six feet," including in a user's home or apartment

b. NDAs
    i. law enforcement agencies have a history of secrecy regarding the use of cell site simulators. Not only are law enforcement loath to confirm their use, they are also often contractually obligated to withhold information under their Nondisclosure Agreements – even in response to a court order. (Available at https://www.cehrp.org/tags/stingray/).
    ii. Emails from litigation in Florida on this matter show law enforcement directives to redraft investigation reports to conceal the use of a cell site simulator by simply calling it a "confidential

source." (Available at https://www.aclu.org/sites/default/files/assets/aclu_florida_stingray_police_emails.pdf)

c. LEO need a warrant to use a stingray
    i. "[W]hen the government uses cell-site simulators (often called 'stingrays') to *directly* intercept CSLI instead of obtaining CSLI records from phone companies, the Department of Justice requires a warrant." *United States v. Graham*, 824 F.3d 421, 426 n.4 (4th Cir. 2016)(emphasis in original)
    ii. "The Department recognizes that the collection of precise location information in real time implicates different privacy interests than less precise information generated by a provider for its business purposes." *United States v. Lambis*, 197 F. Supp 3d 606, 611 (S.D.N.Y 2016) (citing Deputy Assistant Attorney General Richard Downing Testifies Before House Oversight and Government Reform Committee at Hearing on Geolocation Technology and Privacy, 2016 WL 806338 (Mar. 2, 2016)).

XI. Ways to identify possible parallel construction

a. Not obvious how case started
b. Reports use passive tense
    i. "investigation revealed"
c. Report skips step
d. " defendant was located"
e. Vague language
    i. LEO ID'ed defendant through "legal processes"
f. Anonymous tips
g. Pretexual traffic stops
h. Consents
i. Defense investigation
j. Gut instincts
    i. "when law enforcement finds—for example—20 kilograms of drugs in a vehicle during a stop, 'The chances of it being a random traffic stop … [are] unlikely in my opinion.'" –HRW Report

XII. How to leverage

a. Prosecutors likely will not know.
b. "Although these cases rarely involve national security issues, documents reviewed by Reuters show that law enforcement agents have been directed to conceal how such investigations truly begin - not only from defense lawyers but also sometimes from prosecutors and judges." *Exclusive: U.S. directs agents to cover up program used to investigate Americans*, REUTERS
c. Motions to compel (Court, how will you assess the Fourth Amendment issues?)
d. *Roviaro* motion

e. Motions to suppress
    i. What was the probable cause for the search?
    ii. What was the "reason to believe" the defendant would be there?
    iii. Working arrangement/joint venture
f. Any other motions that shift burden to prosecution
g. Cross examination at trial

XIII. What could this do?

a. Lead to suppression of evidence
b. Shake the prosecutor's faith in the LEO on the case
c. Cause Court to question the prosecution
d. Dismissal
    i. Former ODNI general counsel Robert Litt told Human Rights Watch, and Arthur Rizer implied, that prosecutors may drop cases in order to avoid revealing sources or methods. "At the end of the day, if the Intelligence Community says, 'You can't risk this information, you need to dismiss the case,' that carries the day," Litt said. –HRW Report

XIV. Examples in caselaw

a. Human Rights Watch identified, the disclosure of a "wall stop" was inadvertent (evidence emerged in a New Mexico federal trial that an officer had mentioned a "whisper stop from DEA" to a dispatcher while unaware that he was being recorded).
b. *United States v. Sheridan*, case no. 1:10-cr-00333 (D. NM), Defendant's Motion to Suppress and Memorandum in Support Thereof (doc. 26), filed March 18, 2010, pp.2-3
c. A defendant who had been convicted in Arizona state court only found out the traffic stop in his case was a "whisper stop" requested by the DEA after his conviction, when pertinent records were later disclosed in a California federal court.
d. *Arizona v. Wakil*, case no. CR 2011-00530 (Arizona Superior Court, Coconino County), Petition for Post-Conviction Relief, August 21, 2014; *Arizona v. Wakil*, Minute Entry: Oral Argument on Petition for Post Conviction Relief, November 6, 2014.
e. "That afternoon, Agent Kenneybrew contacted GSP and asked them to prepare a 'whisper stop,' in which ICE tells a local law enforcement agency that a vehicle contains drugs or other contraband but asks the local agency to develop its own probable cause for the stop to avoid compromising the federal investigation. Around 8:00 p.m., the red Volkswagen returned to the truck stop, and Sanders returned to the tractor-trailer and followed the red Volkswagen out of the parking lot. Agent Kenneybrew notified GSP, which subsequently stopped the tractor-trailer for traffic and equipment violations." *United States v. Sanders*, 668 F.3d 1298, 1303 (11th Cir. 2012)

XV. Conclusion

a. "[A] defendant whose attorney is aware of parallel construction and asks hard questions may avoid imprisonment—while a defendant whose attorney is less savvy may not. " – HRW Report
b. Look for it
c. Use it
d. And if I can help, contact me, jessica@carmichaellegal.com

XVI. Resources

a. Secondary Sources

i. Sarah St.Vincent, *Dark Side: Secret Origins of Evidence in US Criminal Cases*, Human Rights Watch (Jan. 9, 2018) https://www.hrw.org/report/2018/01/09/dark-side/secret-origins-evidence-us-criminal-cases
ii. Natasha Babazadeh, *Concealing Evidence: "Parallel Construction," Federal Investigations, and the Constitution*, 22 Va. J.L. & Tech. 1 (2018)
iii. FOIA Response Documents: https://s3.documentcloud.org/documents/1011382/responsive-documents.pdf
iv. John Shiffman & Kristina Cooke, *Exclusive: U.S. directs agents to cover up program used to investigate Americans*, REUTERS (Aug. 5, 2013)
v. Adam Bates, Stingray: A New Frontier in Police Surveillance, CATO Institute (Jan. 25, 2017) https://www.cato.org/policy-analysis/stingray-new-frontier-police-surveillance#cite-43
vi. Yomna N, Gotta Catch 'Em All: Understanding How IMSI-Catchers Exploit Cell Networks, EFF (June 28, 2019) https://www.eff.org/wp/gotta-catch-em-all-understanding-how-imsi-catchers-exploit-cell-networks

b. Sample Motions

i. *O'Shaughnessy*, D. Or. 3:16cr51, ECF No. 545
ii. *Mohammad*, N.D. OH, 3:15cr358, ECF No. 131
iii. *Thomas*, E.D. Pas, 2:15cr171, ECF No. 72
iv. *Alimehmetl*, S.D.NY, 1:16cr398, ECF No. 61

c. Court Orders

i. *Lambis*, S.D.NY, 1:15cr734, ECF No. 30
ii. *Hasbajmmi*, E.D.NY, 1:11cr623, ECF No. 85

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Concealing Evidence: "Parallel Construction," Federal Investigations, and the Constitution

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ABSTRACT

Federal law enforcement agencies are increasingly relying on . parallel construction" to pursue criminal cases against U.S. persons. Parallel construction is the process of building a separate — and parallel — evidentiary basis for a criminal investigation. The process is undertaken to conceal the original source of evidence, which may have been obtained unlawfully. Clandestinely used for decades, this process raises serious constitutional questions.

Parallel construction allows law enforcement agencies to capitalize on sensitive or secret national security techniques in the domestic criminal context, without any form of oversight or accountability. The result: parallel construction insulates surveillance techniques from judicial review, undermines checks and balances, and deprives individuals of the privacy benefits that court review would require. It also undermines fundamental principles of due process. Parallel construction enables law enforcement agencies to engage in questionable investigative practices, the concealment of which deprives criminal defendants of any challenges they might raise and prevents courts from reviewing the constitutionality of the practice in the first place.

Addressing parallel construction is a pressing issue, especially in light of current events surrounding the 2013 global surveillance disclosures by Edward Snowden, the ongoing War on Drugs and War on Terror, and the efforts to reform the criminal justice system. As this Article explains, using this process is a deliberate attempt to bypass constitutional guarantees in ways that will unduly prejudice criminal proceedings. There is much to be gained by ensuring that law enforcement refrains from practicing parallel construction in the future.

TABLE OF CONTENTS

Abstract 2

Introduction 5

I. The Practice: Parallel Construction 9

A. The Drug Enforcement Administration's Use of Parallel Construction and Cell-Phone Records 11

1. Reuters Disclosure, FOIA Requests, and Training Modules .. 12

2. The Hemisphere Program 15

B. The Federal Bureau of Investigation's Use of Parallel Construction and StingRays 17

II. The Problem: Overview of Due Process and Separation of Powers Concerns 19

A. The Due Process Concern 20

1. The Inability to Challenge the Lawfulness of a Criminal Investigation 20

2. Brady Disclosures 22

3. Fabricating Evidence and Lying Under Oath 24

4. The Inability to Confront Witnesses 25

5. The Exclusionary Rule and the Fruit of the Poisonous Tree .. 25

B. The Underlying Separation of Powers Concerns 27

1. Violation of the Constitutional Separation of Powers 27

2. Exceeding the Scope of Executive National Security Powers 32

III. The Analysis: Critique of the Likely Justifications for Parallel Construction 36

A. National Security Justifications 36

B. Law Enforcement's Use of Supreme Court Case *Scher* 38

IV. The Solution: What Has Been Done and How Do We Move Forward? 44

A. Current Efforts for Transparency and Oversight 44

B. Moving Forward: Proposals and Obstacles 47

1. Broad Disclosure Requirements and a Framework for Notice in Criminal Cases 48

2. In the Alternative, Exclusion of the Evidence 52
a. The Act of Concealment as Tainted 54
b. The Use of Unlawful Investigative Methods as Tainted 55
Conclusion 58

INTRODUCTION

After the terrorist attacks of September 11, 2001, the federal government significantly expanded an information-sharing system between intelligence communities, federal agencies, and state, local, and tribal law enforcement agencies. The system was intended to improve law enforcement's ability to detect, prevent, and respond to acts of terrorism — thus enhancing national security and improving public safety.[2] However, the 2013 global surveillance disclosures by Edward Snowden[3] revealed that these agencies, particularly the National Security Agency (NSA), use surveillance tactics on U.S. citizens that are questionable and arguably unlawful.[4] There is no doubt

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[2] ABOUT THE INFORMATION SHARING ENVIRONMENT (ISE), OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, https://www.dni.gov/index.php/who-we-are/organizations/national-security-partnerships/ise/about-the-ise (last visited Sept. 2, 2018).

[3] In 2013, Edward Snowden, former technical assistant for the Central Intelligence Agency (CIA) and employee of the defense contractor Booz Allen Hamilton, disclosed numerous top-secret documents of the U.S. National Security Agency and its international partners to the public. Snowden claimed to have leaked the documents to launch a global debate on the limits of NSA surveillance. He argued that domestic and foreign citizens should be informed of the lack of transparency in government, unequal pardon, and overpowering executive powers that rule the world in which they live. Subsequently, in order to maximize impact, Snowden left the U.S. to avoid legal retribution and reached out to *The Guardian* and several other organizations to reveal his most significant and pertinent discoveries to the world. Glenn Greenwald, Ewen MacAskill, and Laura Poitras, *Edward Snowden: The Whistleblower Behind the NSA Surveillance Revelations*, THE GUARDIAN (June 9, 2013), http://www.theguardian.com/world/2013/jun/09/edward-snowden-nsa-whistleblower-surveillance.

[4] For instance, the disclosures revealed that the NSA had access to information contained within major U.S. technology companies such as Google, Facebook, Microsoft, Yahoo and Apple, and often without individualized warrants. *See, e.g., NSA Collecting Phone Records of Millions of Verizon Customers Daily*, THE GUARDIAN (June 13, 2013), https://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order. The documents also provided information on the NSA's mass-interception of data from fiber-optic cables - the backbone of global phone and Internet networks - as well as its work to undermine the security standards upon which the Internet, commerce, and banking rely. *GCHQ Taps Fibre-Optic Cables for Secret Access to World's Communications*, THE GUARDIAN (June 21, 2013), https://www.theguardian.com/uk/2013/jun/21/gchq-cables-secret-world-communications-nsa. As a component of the previously undisclosed program called "Prism," NSA officials were permitted to collect material including search history,

that the manner in which government agencies collect information on U.S. citizens is concerning.[5] But the subsequent utilization of information by law enforcement agencies raises even more significant and debilitating concerns. Government intelligence agencies such as the NSA will transfer information, obtained outside of domestic investigative procedures, to law enforcement agencies such as the Drug Enforcement Administration (DEA) to pursue criminal cases against U.S. citizens.[6] The NSA's ability to transfer intelligence was most recently noted to have expanded as the Obama administration left the White House in January 2017.[7] According to a declassified document

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the content of emails, file transfers and live chats from the servers of these U.S. companies. *NSA Prism Program Slides*, THE GUARDIAN (Nov. 1, 2013), http://www.theguardian.com/world/interactive/2013/nov/01/prism-slides-nsa-document. Many companies strongly denied their affiliation with or awareness of NSA espionage. Dominic Rushe and James Ball, *PRISM Scandal: Tech Giants Flatly Deny Allowing NSA Direct Access to Servers*, THE GUARDIAN (June 6, 2014). However, several documents provided evidence of NSA funding of millions of dollars to "Prism providers," as well as confirmation that certain companies, such as Microsoft, had assisted the NSA in circumventing its users' encryption. *Id.*

[5] Snowden's disclosure launched a global debate on privacy and government power. The revelations have raised a series of questions and concerns regarding: growing domestic surveillance, the scale of global monitoring, the securing of private information, trustworthiness in the technology sector, and the quality of the laws and oversight keeping the NSA and other law enforcement agencies in check. *See* OVERVIEW OF CONSTITUTIONAL CHALLENGES TO NSA COLLECTION ACTIVITIES, CONGRESSIONAL RESEARCH SERVICE (May 21, 2015), *available at* https://www.fas.org/sgp/crs/intel/R43459.pdf (providing an overview of the bulk collection of telephony metadata for domestic and international telephone calls and the interception of Internet-based communications, as well as the various constitutional challenges that have arisen in judicial forums with respect to each).

[6] *See* John Shiffman & Kristina Cooke, *Exclusive: U.S. directs agents to cover up program used to investigate Americans*, REUTERS (Aug. 5, 2013), http://www.reuters.com/article/2013/08/05/us-dea-sod-idUSBRE97409R20130805 (arguing that the DEA is "funneling information from intelligence intercepts, wiretaps, informants and a massive database of telephone records to authorities across the nation to help them launch criminal investigations on Americans." The authors also interviewed a prosecutor who discovered that a drug case he was handling did not originate from a tip from an informant, as the DEA initially told him. After pressing the agent further, a DEA supervisor revealed that the tip actually came from an NSA intercept.).

[7] Charlie Savage, *N.S.A. Gets More Latitude to Share Intercepted Communications*, N.Y. TIMES (Jan. 12, 2017), https://www.nytimes.com/2017/01/12/us/politics/nsa-gets-more-latitude-to-share-intercepted-communications.html?_r=0.

containing intelligence sharing procedures,[8] the NSA now enables other law enforcement agencies to "search directly through raw repositories of communications intercepted by the NSA…."[9] Furthermore, the document revealed that if an analyst comes across any evidence implicating a U.S. citizen, the analyst can send the evidence to the Justice Department.[10]

More than just information sharing, federal agencies such as the Federal Bureau of Investigation (FBI) will also provide local law enforcement with sensitive or secret techniques and special equipment, like cellphone surveillance devices, to carry out their criminal investigations.[11] These novel investigative techniques raise questions of legality. Most importantly, law enforcement conceals the use of such techniques by practicing parallel construction — the process of building a parallel and separate evidentiary basis for a criminal investigation.[12] With parallel construction, law enforcement agencies hide the original source of information used to identify a criminal defendant. Then, the agencies provide an alternative, purportedly lawful yet fabricated, evidentiary path that is admissible in court. This alternative path conceals the government's actual investigatory methods and surveillance practices from the public, Congress, or judicial scrutiny.

Remarkably, parallel construction has, to date, eluded serious legal analysis. Yet such analysis is sorely needed, especially in light of current events surrounding the 2013 global surveillance disclosures by Edward Snowden, the ongoing War on Drugs and War on Terror, and the efforts to reform the criminal justice system. As discussed below,

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[8] PROCEDURES FOR THE AVAILABILITY OR DISSEMINATION OF RAW SIGNALS INTELLIGENCE INFORMATION BY THE NATIONAL SECURITY AGENCY UNDER SECTION 2.3 OF EXECUTIVE ORDER 12333 (RAW SIGINT AVAILABILITY PROCEDURES), https://www.documentcloud.org/documents/3283349-Raw-12333-surveillance-sharing-guidelines.html.

[9] Savage, *supra* note 7 (stating that the "move is part of a broader trend of tearing down bureaucratic barriers to sharing intelligence between agencies that dates back to the aftermath of the terrorist attacks of Sept. 11, 2001").

[10] *See id*.

[11] *See generally* Jessica Glenza and Nicky Woolf, *Stingray Spying: FBI's Secret Deal with Police Hides Phone Dragnet from Courts*, THE GUARDIAN (Apr. 10, 2015), https://www.theguardian.com/us-news/2015/apr/10/stingray-spying-fbi-phone-dragnet-police.

[12] Shiffman & Cooke, *supra* note 6.

the process implicates the fairness of criminal trials by concealing the origins of an investigation and insulating the techniques used from judicial review. Even more concerning, parallel construction allegedly disproportionately impacts communities of color, particularly in the drug context.[13] The sooner this practice is evaluated, the sooner we can ensure that criminal investigations follow well-established procedures for fairness, accountability, and judicial supervision.

This Article proceeds as follows: Part I lays out the fundamental principles for understanding parallel construction and provides two recent instances where its use has been disclosed to the public. Part II analyzes various constitutional concerns of concealing information from a criminal trial and subsequently developing an independent evidentiary path to raise in court. These concerns include due process violations: the inability to challenge the legality of a criminal investigation; withholding material information from the defense; lying under oath; the inability to confront witnesses; and the inability to suppress evidence under the exclusionary rule. Part II also focuses on the authorization of parallel construction and discusses the concerns associated with its use from a separation of powers perspective. It then evaluates whether the executive branch has exceeded its constitutional powers to legitimize parallel construction even when considering national security imperatives. Part III addresses law enforcement justifications for using parallel construction and argues that such justifications are unwarranted and do not excuse the concerns raised in Part II. Lastly, Part IV mentions the current modes of advocacy being used to address parallel construction. It also proposes legislative reform, a framework for notice, exclusion, and greater law enforcement oversight to prevent using parallel construction and ensure well-established procedures for fairness in criminal trials.

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[13] Electronic Communication, REQUEST TO THE UNITED STATES COMM'N ON CIVIL RIGHTS TO INVESTIGATE DISPROPORTIONATE IMPACT OF "PARALLEL CONSTRUCTION" ON COMMUNITIES OF COLOR (Oct. 23, 2015), http://thexlab.org/sites/default/files/RequesttoUSCCRonParallelConstruction_0.pdf.

I. THE PRACTICE: PARALLEL CONSTRUCTION

Parallel construction is a law enforcement process of building a separate and *parallel* evidentiary basis for a criminal investigation to conceal how the investigation actually began.[14] The temptation for government officials to employ something like parallel construction should be obvious enough. In the course of trolling for national security threats, these officials stumble upon evidence of ordinary — but still reprehensible — criminal activity. What to do? On the one hand, the officials want to share that information with those positioned to thwart or punish such transgressions.[15] And on the other hand, introducing this information in open court could draw public attention to, and thereby impede, the national security program that yielded the information at issue.[16] Unlike military and intelligence agencies that use information to target suspected foreigners, domestic law enforcement agencies must use information at issue in court to prove to a jury that the suspected individual committed the charged crime.[17] Parallel construction thus allows domestic law enforcement agencies to capitalize on intelligence information, while obscuring sensitive sources and surveillance methods from the prosecution, defense, and the public at large.

There are several identifiable reasons for the government's interest in concealing its secret or sensitive investigative methods, particularly when dealing with new programs or technology. First, by concealing the original source of an investigation, the defense cannot raise any challenges against the methods used, enhancing the government's odds of prevailing at trial.[18] Second, disclosing even one

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[14] *Id.*

[15] Shawn Musgrave, *DEA Teaches Agents to Recreate Evidence Chains to Hide Methods*, MUCKROCK (Feb. 3, 2014), https://www.muckrock.com/news/archives/2014/feb/03/dea-parallel-construction-guides/.

[16] *Id.*

[17] *Id.*; *see also* Legal Information Institute, *Criminal Procedure*, https://www.law.cornell.edu/wex/criminal_procedure (explaining that to comply with due process requirements, the Constitution commands that "the prosecution turn over all evidence that will be presented against the defendant").

[18] Patrick Toomey & Brett Max Kaufman, *The Notice Paradox: Secret Surveillance, Criminal Defendants, & The Right to Notice*, 54 SANTA CLARA L. REV. 843, 894–95 (2015), a*vailable at* http://digitalcommons.law.scu.edu/lawreview/vol54/iss4/2/.

instance where a secret or sensitive method is used risks exposing the surveillance technique entirely, whether old or new, both to other targets of similar investigations and to the public generally.[19] When the government develops a new investigative capability — like the NSA's phone tracking program or the widespread adoption of StingRay devices by local law enforcement — the resulting public outcry might be substantial.[20] Public outcry, in turn, can lead to congressional action or judicial review, resulting in new restrictions on surveillance or other investigative techniques. So, public backlash and the potential for newfound restrictions and regulations incentivize government agencies to find alternative means to pursue their law enforcement objectives while also maintaining their intelligence advantage.

Third, by withholding notice of clandestine investigative techniques, the government can evade judicial review altogether, undermining constitutional protections.[21] The government can avoid the process of determining whether there was a Fourth Amendment search, and if so, if it was reasonable or required a warrant. Without judicial review, the government can rely on its own internal analysis of a technique's status under the Fourth Amendment, which can be more favorable to the government's own interests and rarely subject to public disclosure or criticism. Take, for example, the government's long withheld notice of its bulk collection of phone records. In its internal review, the government must have concluded that withholding notice of bulk phone record collection did not trigger Fourth Amendment scrutiny. The issue was not addressed until the tactic became publicly known in 2013.[22]

Lastly, parallel construction ensures that the international public does not learn of the government's surveillance practices used for national security. For the foregoing reasons, government agencies like the DEA and the FBI have a strong incentive to use parallel construction, despite the threats it poses to constitutional rights.

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[19] *Id.* at 895.
[20] *Id.*
[21] *Id.* at 896.
[22] *Id.* No court has found that there was a Fourth Amendment violation by using the tactic; however, one district court has found that the NSA's bulk collection of phone records is unconstitutional. *See* Klayman v. Obama, 957 F. Supp. 2d 1 (D.D.C. 2013).

Suppose, for example, the NSA intercepts John Doe's personal emails under Section 702 of the Foreign Intelligence Surveillance Act. The NSA discovers that Doe received a Fed-Ex package with drugs and that he planned to store the drugs in his kitchen cabinet. The NSA provides this information to the DEA, and the DEA then sets out to develop a "lawful" criminal case against Doe. The DEA sends officers to patrol generally the area where Doe resides. The officers witness individuals coming and going from Doe's house, carrying suspicious looking packages. The officers use this information to retrieve a search warrant for the house based on probable cause that drug transactions are occurring within. The DEA officers then search the home and "find" the drugs in the kitchen cabinet — right where the NSA said they would be.[23] In more general terms, the NSA here has collected information showing that Doe has committed a crime. This conclusive information is then passed to the DEA, who, working backwards from the conclusion, formulates an independent, "legal" body of evidence to use against Doe in his prosecution.

To illustrate the prevalence of parallel construction, however, we need not resort to mere hypotheticals. The real world supplies plenty of concrete examples. Two examples are analyzed below: the DEA's Hemisphere program; the FBI's StingRay practice.

A. THE DRUG ENFORCEMENT ADMINISTRATION'S USE OF PARALLEL CONSTRUCTION AND CELL-PHONE RECORDS

The Drug Enforcement Administration (DEA)[24] has been the primary focus of public attention regarding parallel construction. While

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[23] Peter Van Buren, *Parallel Construction: Unconstitutional NSA Searches Deny Due Process*, HUFFINGTON POST (July 21, 2014), http://www.huffingtonpost.com/peter-van-buren/parallel-construction-unc_b_5606381.html.

[24] The Drug Enforcement Administration (DEA) is a United States federal law enforcement agency under the U.S. Department of Justice that was established on July 1, 1973. The Administration is in charge of combating drug smuggling and use within the United States. It is the lead agency for domestic enforcement of the Controlled Substances Act, sharing concurrent jurisdiction with the FBI and Immigration and Customs Enforcement (ICE), and has sole responsibility for coordinating and pursuing U.S. drug investigations abroad. About, *Mission*, DRUG

reports suggest parallel construction has been used for decades and by a number of different law enforcement agencies, the DEA made headlines when news articles revealed the practice. A month later, the public learned of the DEA's Hemisphere program, which demonstrated a concrete application of parallel construction to an investigative program.

1. REUTERS DISCLOSURE, FOIA REQUESTS, AND TRAINING MODULES

On August 5, 2013, international news agency *Reuters* revealed that the DEA's Special Operations Division[25] (SOD) advises DEA agents to practice parallel construction when pursuing criminal cases against U.S. citizens.[26] DEA officials use this process to protect sources— such as undercover agents or informants— or methods of investigation.[27] More particularly, parallel construction has been used to protect the DEA's use of information from intelligence intercepts, wiretaps, and a massive database of telephone records.[28] In other words, the intelligence community (including the NSA) can drop "hints" to the law enforcement community (including the DEA), allowing the latter to conjure up pretenses for its investigations, while allowing the former to conceal its potentially illegal surveillance practices.

Several hours after the *Reuters* disclosure, MuckRock[29] user C.J. Ciaramella filed a Freedom of Information Act (FOIA) request with the

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ENFORCEMENT ADMINISTRATION, http://www.dea.gov/about/mission.shtml (last visited Sept. 2, 2018).

[25] The Special Operations Division is comprised of two-dozen partner agencies, including the FBI, CIA, NSA, Internal Revenue Service (IRS), and the Department of Homeland Security (DHS). It was created in 1994 to combat Latin American drug cartels and has grown significantly since that time. Today, much of the SOD's work is classified. The unit itself is not technically a secret, as it appears in DEA budget documents, but its operations seem covert, especially in its involvement in criminal court cases. Brad Michelson, *DEA's Special Operations Divisions, SOD: Top 10 Facts You Need to Know*, HEAVY (Aug. 9, 2013), http://heavy.com/news/2013/08/deas-special-operations-divisions-sod-justice-department-surveillance-americans/.

[26] Shiffman & Cooke, *supra* note 6.

[27] *Id.*

[28] *Id.*

[29] MuckRock is a U.S.-based organization that assists individuals in filing governmental requests for information through the Freedom of Information Act, then

DEA for its training materials and official policies on parallel construction.[30] On January 23, 2014, Ciaramella received nearly 300 pages of redacted training documents[31] from the DEA. The documents showed that DEA trainers routinely teach parallel construction to field agents and analysts across the country.[32] The documents also showed that the Justice Department's training center has taught parallel construction since at least 2007.[33] The DEA's training module makes it apparent that parallel construction is used to shape evidence chains so that neither the prosecution nor the defense becomes aware of secret or sensitive investigative techniques. Law enforcement use of *classified* information, in particular, would trigger the Classified Information Procedures Act (CIPA).[34] And if the court is alerted of classified evidence and CIPA comes into play, then a squad of prosecutors called

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publishes the returned information on its website and encourages journalism around it. *About MuckRock*, MUCKROCK, https://www.muckrock.com/about/ (last visited Aug. 31, 2018).

[30] C.J. Ciaramella, *DEA Policies on "Parallel Construction,"* MUCKROCK (Aug. 5, 2013), https://www.muckrock.com/foi/united-states-of-america-10/dea-policies-on-parallel-construction-6434/.

[31] Responsive Documents, Drug Enforcement Admin., MUCKROCK, http://www.documentcloud.org/documents/1011382-responsive-documents.html#document/p9 (last visited Aug. 31, 2018) [hereinafter *DEA Training Slides*].

[32] Musgrave, *supra* note 15.

[33] Kevin Gosztola, *How DEA Keeps Defendants in the Dark on Role Intelligence Agencies Play in their Prosecution*, SHADOW PROOF (Feb. 3, 2015), https://shadowproof.com/2015/02/03/how-dea-keeps-defendants-in-the-dark-on-role-intelligence-agencies-play-in-their-prosecution/.

[34] CIPA was enacted on October 15, 1980 and was codified in the U.S. Code, specifically in Title 18, which deals with crimes and criminal procedure. Classified Information Procedures Act, 18 U.S.C. App. 3. §§ 1-16 (2018). The primary purpose of CIPA was to limit the threat of criminal defendants from disclosing classified information during the course of trial. Classified Information Criminal Trial Procedures Act, Pub. L. No. 96-456, 94 Stat. 2025. (1980), *available at* https://www.congress.gov/bill/96th-congress/senate-bill/01482. According to a Senate report, Congress did not intend for CIPA to infringe on a defendant's right to a fair trial or to change the existing rules of evidence in criminal procedure. S. REP. No. 110-442, at 9 (2008), *available at* https://www.congress.gov/congressional-report/110th-congress/senate-report/442. *See also generally* U.S. DEP'T OF JUSTICE, UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF COLUMBIA CRIMINAL DIVISION DISCOVERY POLICY 28-29 (2010).

the Taint Review Team[35] must consult with the judge to decide which evidence must be turned over to the defense—a time-consuming and costly process. So, parallel construction can decrease prosecutorial labor by ensuring that the trial prosecutor encounters as little classified evidence as possible.

The DEA can conceal sources by discouraging agents from disclosing sensitive or classified information on affidavits or in courtroom testimony, so that the court would never know the origins of an investigation.[36] Agents would be told, "[b]e at a certain truck stop at a certain time and look for a certain vehicle."[37] The agents would then alert the state police to find a pretext to stop that vehicle, and then have a drug dog search it.[38] The government will often use evidence obtained from the traffic stop at trial, without disclosing the information that originally prompted the stop. The released training modules, although heavily redacted, extensively covered traffic stops and drug dog sniffs. They highlighted the huge advantage to law enforcement agencies in pairing "tip information" and "vertical information transfers"[39] with routine traffic stops as a pretext for making an arrest.[40]

According to the training slides, the DEA and other government agencies justify parallel construction by invoking a 1938 U.S. Supreme

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[35] The Taint Review is a procedure developed by the United States Department of Justice (DOJ) to protect unrelated and privileged information from being reviewed after electronic records are obtained. The DOJ normally appoints prosecutors who are not otherwise assigned to the case under investigation and directs them to review all electronic records and identify portions of the record that are classified and should not be disclosed in the case. This group is referred to as the "Taint Team" because their purpose is to protect "the government from a defense motion to suppress electronic record evidence based on an argument that the prosecution and investigating team was 'tainted' by viewing electronic records it had no right to see." Robert Keefe & Stephen Jonas, *Government "Taint Teams" May Open a Pandora's Box: Protecting Your Electronic Records in the Event of an Investigation*, WILMERHALE (May 11, 2004), https://www.wilmerhale.com/pages/publicationsandnewsdetail.aspx?NewsPubId=94347.

[36] Musgrave, *supra* note 15.

[37] *Id.*

[38] *Id.*

[39] Vertical information transfers refer to the process of law enforcement and government agencies to share information with each other.

[40] Musgrave, *supra* note 15.

Court decision,[41] *Scher v. United States*.[42] There, a prohibition agent had received a tip through surveillance.[43] The agent pursued the tip and found the defendant handling whiskey, violating the Liquor Taxing Act.[44] The Supreme Court reasoned that the defendant had no right to learn of the source of the tip used against him, and that the source of the information was not relevant to his defense.[45] Furthermore, the Court explained that "the legality of the officers' action does not depend upon the credibility of something told but upon what they saw and heard what took place in their presence. Justification is not sought because of honest belief based upon credible information…"[46] The DEA and other government agencies seem to interpret *Scher* to justify concealing the original source of information implicating an individual so long as there is independent and lawful evidence to submit to a court. As explained in Part III, however, this interpretation of *Scher* to authorize parallel construction is not persuasive and is arguably invalid.

2. THE HEMISPHERE PROGRAM

The DEA's "Hemisphere" program bore the fruits of parallel construction until its disclosure.[47] Hemisphere is a massive telephone surveillance program that enables DEA agents access to troves of AT&T's historical cell phone records, combined with a sophisticated analytics system.[48] Hemisphere captures every call that passes through an AT&T switch— whether or not it is made by an AT&T customer or

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[41] *DEA Training Slides*, *supra* note 31, at 70.
[42] Scher v. United States, 305 U.S. 251 (1938).
[43] *Id.* at 253.
[44] *Id.* at 252.
[45] *Id.*
[46] *Id.*
[47] The New York Times publicly disclosed the DEA's Hemisphere program on September 1, 2013. Scott Shane & Colin Moynihan, *Drug Agents Use Vase Phone Trove, Eclipsing N.S.A.'s*, N.Y. TIMES (Sept. 1, 2013), http://www.nytimes.com/2013/09/02/us/drug-agents-use-vast-phone-trove-eclipsing-nsas.html. The New York Times relied on PowerPoint slides provided by Drew Hendricks who retrieved the slides through a series of public information requests to West Coast police agencies in Washington. *Id. See also Los Angeles Hemisphere*, OFFICE OF NATIONAL DRUG CONTROL POLICY, https://s3.amazonaws.com/s3.documentcloud.org/documents/782287/database.pdf.
[48] Shane & Moynihan, *supra* note 47.

not — and retains calls dating back 26 years.[49] Approximately four billion call records are added to the database every day.[50] Through the program, AT&T employees aid local law enforcement and the DEA in obtaining and analyzing the database of call records.[51] The call records contain data on numbers dialed and received, the time, date, and length of a call, and even location information in some circumstances.[52] Most significantly, the program instructs agents to engage in parallel construction by using subpoenas to re-obtain call records originally found through Hemisphere. Although a warrant would require magistrate approval, the DEA can issue administrative subpoenas without any court involvement.[53] The DEA thus administers subpoenas to create a separate, lawful evidentiary trail that would be admissible in court, all the while concealing the Hemisphere program from public and judicial scrutiny.

Hemisphere is a government investigative program, and as such, requires Fourth Amendment scrutiny.[54] Accessing cell phone records raises profound privacy concerns. With parallel construction, however, individuals are unaware that they are being subject to the program. They also do not know when and to what extent the government is accessing their cell phone records. As a result, these individuals cannot materialize

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[49] *Id.* The program was paid for by the White House Office of National Drug Control Policy and the Drug Enforcement Administration. *Id.*

[50] *Id.*

[51] *See EPIC v. DEA Hemisphere*, ELEC. PRIVACY INFO. CTR., https://epic.org/foia/dea/hemisphere/ (last visited Aug. 31, 2018). EPIC also obtained key documents and prevailed in a lawsuit against the DEA to uncover more information about the DEA's secret Hemisphere program. *See also Hemisphere: Law Enforcement's Secret Call Records Deal with AT&T*, ELEC. FRONTIER FOUND., (Sept. 2013), https://www.eff.org/cases/hemisphere. The program was reportedly used in Los Angeles, Atlanta, Dallas and Houston, areas of high intensity drug trafficking. Evan Perez, *DEA Program Linked to Vast AT&T Database, Documents Show*, CNN (Sept. 2, 2013), http://security.blogs.cnn.com/2013/09/02/dea-program-linked-to-vast-att-database-documents-show/.

[52] ELEC. FRONTIER FOUND., *supra* note 51.

[53] *Id.*

[54] *See* Kyllo v. United States, 533 U.S. 27 (2001) (holding that government use of thermal imaging of a home constitutes a Fourth Amendment "search" and may be done only with a warrant); Katz v. United States, 389 U.S. 347 (1968) (holding that government use of an electronic eavesdropping device attached to the exterior of a phone booth constitutes a Fourth Amendment "search").

any privacy concerns, raise any objections, or claim Fourth Amendment protections.

B. THE FEDERAL BUREAU OF INVESTIGATION'S USE OF PARALLEL CONSTRUCTION AND STINGRAYS

More recently, a memo disclosed in early May 2016 from the Federal Bureau of Investigation (FBI) to Oklahoma law enforcement shows the FBI instructing the use of parallel construction to conceal the FBI's covert cell-phone tracking equipment, formally known as cell site simulators, and commonly known as StingRays.[55] The memo provides:

> "Information obtained through the use of the equipment is FOR LEAD PURPOSES and may ***not be used as primary evidence in any affidavits***, hearings or trials. This equipment provides general location information about a cellular device, and your agency understands ***it is required to use additional and independent investigative means and methods***, such as historical cellular analysis, ***that would be admissible at trial to corroborate information concerning the location of the target obtained through use of this equipment***."[56]

Thus, the FBI memo not only permits using StingRays, but also authorizes local law enforcement to manufacture a new chain of evidence that would be admissible in court to conceal the device. In 2015, the Justice Department mandated that federal law enforcement must first obtain a warrant before using StingRays, subject to

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[55] Jenna McLaughlin, *FBI Told Cops to Recreate Evidence from Secret Cell-Phone Trackers*, THE INTERCEPT (May 2016), https://theintercept.com/2016/05/05/fbi-told-cops-to-recreate-evidence-from-secret-cell-phone-trackers/; Jessica Glenza and Nicky Woolf, *StingRay Spying: FBI's Secret Deal with Police Hides Phone Dragnet From Courts*, THE GUARDIAN (Apr. 10, 2015), https://www.theguardian.com/us-news/2015/apr/10/stingray-spying-fbi-phone-dragnet-police.

[56] Letter from James E. Finch, Federal Bureau of Investigation Special Agent in Charge, to Chief William City, Chief of Oklahoma City Police Department (Aug. 7, 2014) (https://assets.documentcloud.org/documents/2825761/OKCPDFBI-MOU.pdf) (emphasis added).

exceptions.[57] This policy, however, did not extend to state or local law enforcement.[58] StingRays were originally designed for military and national security use and have now made their way to local law enforcement agencies, with the aid of the federal government.[59] These devices constitute surveillance technology that imitates a cellphone tower to confuse cellphones, computers with certain types of wireless Internet connections, and other devices into thinking it is a cellphone tower.[60] The StingRay can obtain significant information about a device, including a phone's unique identity number, metadata for calls dialed and received, call duration, text and voice messages and phone location.[61] Furthermore, the devices have the capacity to eavesdrop on incoming and outgoing phone calls.[62]

Civil rights advocates have found using StingRays controversial.[63] StingRays have the potential to collect information from scores of other surrounding cellphone owners, regardless of whether these owners are suspected of a crime.[64] According to Adam Bates of the CATO Institute:

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[57] *Justice Department Announces Enhanced Policy for Use of Cell-Site Stimulators*, DEP'T OF JUSTICE, https://www.justice.gov/opa/pr/justice-department-announces-enhanced-policy-use-cell-site-simulators.

[58] Some states, however, have adopted laws to regulate using StingRays. *See Cell-site Simulators: Frequently Asked Questions*, ELEC. FRONTIER FOUND., https://www.eff.org/node/89287.

[59] Adam Bates, *Stingray: A New Frontier in Police Surveillance*, CATO INSTITUTE (Jan. 25, 2017), https://www.cato.org/publications/policy-analysis/stingray-new-frontier-police-surveillance.

[60] Clifton Adcock, *Oklahoma Authorities Have or Use Controversial Cellphone Tracker*, OKLAHOMA WATCH (Apr. 10, 2016), http://oklahomawatch.org/2016/04/10/okla-authorities-have-or-use-controversial-cell-phone-tracker/.

[61] *Id.*

[62] Kim Zetter*, Turns Out Police StingRay Spy Tools Can Indeed Record Calls*, WIRED (Oct. 28, 2015), https://www.wired.com/2015/10/stingray-government-spy-tools-can-record-calls-new-documents-confirm/.

[63] The U.S. Supreme Court is currently considering *Carpenter v. United States*, concerning warrantless access to cell phone location history. While this case does not directly address using StingRays, it may have a profound impact on whether warrantless use of StingRays is constitutional. *See Carpenter v. United States*, ELEC. PRIVACY INFO. CTR., https://epic.org/amicus/location/carpenter/ (last visited Sept. 2, 2018).

[64] Bates, *supra* note 59, at 2.

> [S]tingrays have moved from military and national security uses to routine police use. Surveillance technology, designed for use on battlefields or in antagonistic states where constitutional concerns are minimal, has increasingly found its way into the hands of local law enforcement, often without any discernible effort to adapt the equipment or the policies governing its tactical use to the home front, where targets are citizens with constitutional rights rather than battlefield combatants.[65]

Also, these owners do not have the faintest idea that the data is being gathered.[66] StingRays are being used with little or no judicial oversight and no public disclosure. As of date, at least 71 agencies in 24 states and the District of Columbia own StingRays.[67] Because many agencies keep the purchase and use of StingRays a secret, however, this information significantly underrepresents the extent to which law enforcement agencies use StingRays nationwide.[68] Additionally, because agencies like the FBI are instructing local law enforcement agencies to conceal the use of StingRays, like the Hemisphere program, its use is skirting public and judicial scrutiny.

II. THE PROBLEM: OVERVIEW OF DUE PROCESS AND SEPARATION OF POWERS CONCERNS

This Article focuses on two critical aspects of parallel construction and discusses the relevant problems associated with each. The two parts consist of: 1) the act of concealing the original source of an investigation, and 2) the creation of a separate and "lawful" evidentiary path from the initial disclosure. Part II examines both the act of concealment and subsequent fabrication of evidence and

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[65] *Id.*
[66] Adcock, *supra* note 60.
[67] *See generally* Bates, *supra* note 59; Multimedia, *Stingray Tracking Devices: Who's Got Them?*, ACLU (Feb. 2017), https://www.aclu.org/map/stingray-tracking-devices-whos-got-them.
[68] *Id.*

discusses how each raises unique and significant constitutional concerns.

A. THE DUE PROCESS CONCERN

Due process is recognized in a number of the Constitution's provisions,[69] but it is explicitly mentioned in the Fifth Amendment. The Fifth Amendment states that no person shall be "deprived of life, liberty, or property, without due process of the law."[70] The Due Process Clause serves two principle objectives: 1) to establish more accurate results through fair procedures, and 2) to ensure that people have been treated fairly by the government.[71] This section provides a brief overview of problematic aspects of parallel construction as it relates to affording criminal defendants due process of the law. It also references due process implications provided for by the Fourth and Sixth Amendments. These concerns relate to both the act of concealment and the subsequent development of a separate evidentiary path. As explained below, both aspects of parallel construction undermine due process objectives.

1. THE INABILITY TO CHALLENGE THE LAWFULNESS OF A CRIMINAL INVESTIGATION

Concealing the source of information being used to convict an individual of a crime violates a defendant's procedural due process right to challenge a criminal investigation's lawfulness. Due process requires that criminal defendants receive a fair trial.[72] Defendants have a right to call their own witnesses, mount their own evidence, and present their

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[69] *See* Richard Re, *The Due Process Exclusionary Rule*, 127 HARV. L. REV. 1885, 1907-12 (2014) (recognizing that at a minimum due process "requires courts to observe separately codified constitutional procedures for deprivations of life, liberty or property").

[70] U.S. CONST. amend. V.

[71] PROCEDURAL DUE PROCESS, EXPLORING CONSTITUTIONAL CONFLICTS, http://law2.umkc.edu/faculty/PROJECTS/FTRIALS/conlaw/proceduraldueprocess.html; *see also* Bisonnete v. Haig, 776 F.2d 1384, 1389 (8th Cir. 1985) (stating that "the essence of due process is that no governmental power, civilian or military, may be used to restrain the liberty of the citizen or seize his property otherwise than in accordance with the forms of law, including, in most instances, judicial proceedings").

[72] JUSTIA, http://law.justia.com/constitution/us/amendment-14/57-fair-trial.html (last visited Dec. 15, 2015).

own theory of the facts.[73] To properly mount a defense, however, the prosecution must disclose both the evidence that will be presented against the defendant *and the sources of that evidence*, and must provide the defendant with the opportunity to confront adverse witnesses.[74]

Rule 16(a)(1)(E) of the Federal Rule of Criminal Procedure (FRCP) provides that "the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if…the item is material to preparing the defense."[75] This rule is broader than *Brady v Maryland*, discussed below, which held that disclosures of evidence that is "material" to the preparation of the defense is required.[76] The FRCP Advisory Committee ultimately did not codify the *Brady* rule because "limiting the rule to situations in which the defendant can show that the evidence is material seems unwise. It may be difficult for a defendant to make this showing if he does not know what the evidence is."[77] So, Rule 16 compels discovery even when evidence is not completely "material" to the defense.

As explained in the following section, the origin of an investigation is no doubt "material" to preparing a defense. But even in the case where the evidence withheld, in and of itself is not "material," the defense still has a right to access it in certain circumstances. For instance, Rule 16(a)(1)(E)(ii) and (iii) compel disclosure if the government intends to use the evidence at trial or the evidence "was obtained from or belongs to the defendant."[78] If parallel construction conceals evidence originally belonging to the defendant, then the defendant will not know to compel disclosure of that evidence and prepare her defense accordingly.

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[73] *Criminal Procedure*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/criminal_procedure (last visited Aug. 31, 2018).
[74] *Id.*
[75] FED. R. CRIM. P. 16(a)(1)(E)(i).
[76] Brady v. Maryland, 373 U.S. 83, 87 (1963).
[77] FED. R. CRIM. P. 16, Notes of the Advisory Committee on Rules – 1974 Amendment, *available at* https://www.law.cornell.edu/rules/frcrmp/rule_16.
[78] FED. R. CRIM. P. 16(a)(1)(E)(iii).

Disclosure is crucial because if a defendant can show that the evidence was obtained unlawfully, the defendant may redress the illegal conduct and the harm it created. For example, under the Fourth Amendment, if evidence was obtained through an unlawful search or seizure, the exclusionary rule will often suppress that evidence against the defendant.[79] Law enforcement's use of parallel construction, however, disables a defendant from learning the source of the information that lead to the discovery of the incriminating evidence. Accordingly, the practice denies a defendant the ability to challenge government conduct, as it had actually and originally occurred—thus undermining the defendant's right to due process.

2. BRADY DISCLOSURES

Concealing the original source of an investigation undermines the underlying due process principles of the *Brady* requirement. In *Brady v. Maryland*, the Supreme Court held that when a prosecutor suppresses evidence that is favorable to a defendant who has requested it, the prosecutor has violated the defendant's right to due process.[80] As a result, the Court mandated that the prosecution turn over all exculpatory evidence—that is, anything that might exonerate a person—to the defendant in a criminal case.[81] Enforcing this rule would preclude "an unfair trial to the accused."[82]

Parallel construction can deprive a defendant of her right to know all evidence used against her, even exculpatory evidence. The investigative method used and concealed by parallel construction, in and of itself, can constitute "exculpatory" evidence. If the original evidence was obtained unlawfully, for example, the Fourth Amendment would

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[79] The exclusionary rule is a legal principle in the U.S., under constitutional law, which establishes that evidence collected or analyzed in violation of a defendant's constitutional rights is sometimes inadmissible for criminal prosecution in a court of law. The rule is designed to provide a remedy and disincentive, which essentially works to deter prosecutors and police who illegally gather evidence in violation of the Constitution, most often the Fourth, Fifth, and Sixth Amendments. Richard M. Re, *The Due Process Exclusionary Rule*, 127 HARV. L. REV. 1885, 1888-90, 1893-94 (2014).

[80] Brady v. Maryland, 373 U.S. at 87 (noting that the evidence must be material either to guilt or to punishment).

[81] *Id.*

[82] *Id.*

require exclusion of that evidence.[83] So, potentially unlawful investigative techniques are exculpatory because suppression of evidence derived from the investigation may have led to a different outcome in a criminal case. Without that initial investigation, a defendant may have never been indicted for a crime in the first place.

To be sure, an objector could argue that the prosecution is unlikely aware whether law enforcement has handed over the original source of its investigation or a fabricated evidentiary path. So, the argument goes, the prosecutors are complying with *Brady*, as they are turning over all exculpatory evidence that is *personally known* to them. The Supreme Court in *Kyles v. Whitley*, however, has held that the prosecution must also disclose exculpatory evidence that is known *only to the police*.[84] The prosecution has a duty to maintain a relationship with law enforcement to be constantly informed of any evidence that is "material" to the defendant's defense.[85]

Parallel construction undermines the *Brady* requirement because it encourages law enforcement to withhold information both from the prosecution and the defense. In the instance where the prosecution is aware that law enforcement used the practice to conceal "material" information, their knowledge is a direct violation of *Brady*. Also, because the prevalence of parallel construction was exposed in 2013, prosecutors are now aware of its existence. They now have a duty under *Kyles v. White* to ascertain whether law enforcement is actually concealing the original source of an investigation, as well as what the original source actually is. This, in turn, will ensure that the prosecution is aware of all available evidence regarding a criminal case, to then determine which evidence must be turned over to the defense. Turning a blind eye holds the prosecution in direct violation of the *Brady* and *Kyles* requirement, depriving criminal defendants of due process of the law.

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[83] *See* Mapp v. Ohio, 367 U.S. 643 (1961) (holding that the Fourth Amendment excludes unconstitutionally obtained evidence from use in criminal prosecutions).
[84] Kyles v. Whitley, 514 U.S. 419, 437-38 (1994).
[85] *Id.* at 438.

3. FABRICATING EVIDENCE AND LYING UNDER OATH

The process of fabricating an evidentiary trail, not to mention lying under oath, also undermines due process rights. Perjury is the criminal offense of lying under oath and can be brought when someone makes a false statement after being sworn in or promising to tell the truth in a legal situation.[86] In criminal cases, law enforcement agents are usually brought in to assist the prosecution and testify against the defendant. The agents also discuss the manner in which they conducted the investigation and discovered the evidence being used against the defendant. Before testifying, a witness must give an oath to testify truthfully.[87] This oath normally includes a witness agreeing to "tell the truth, the whole truth, and nothing but the truth."[88] By employing parallel construction, law enforcement agents are not disclosing the "whole" truth about how they conducted their investigation and discovered evidence against the defendant. As early as 1935, the Supreme Court addressed the combination of perjured testimony and non-disclosure of evidence, stating:

> "It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation."[89]

Because government agents are concealing information from the defense, their testimony of the fabricated evidentiary path brought

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[86] Debora C. England, *Perjury: Laws and Penalties*, CRIMINAL DEFENSE LAWYERS, http://www.criminaldefenselawyer.com/crime-penalties/federal/perjury.htm.
[87] Criminal Procedure Act 51 of 1977, *available at* http://www.justice.gov.za/legislation/acts/1977-051.pdf.
[88] Brendan Koerner, *Where Did We Get Our Oath? The Origin of the Truth, the Whole Truth, and Nothing but the Truth*, SLATE (Apr. 30, 2004), http://www.slate.com/articles/news_and_politics/explainer/2004/04/where_did_we_get_our_oath.html.
[89] Mooney v. Holohan, 294 U.S. 103, 112 (1935).

before the court is a "deliberate deception of the court and jury" and is "perjured" by its presentation of a partial truth. Presenting perjured information contributes toward the defense's inability to challenge the lawfulness of an investigation, thus undermining fundamental fairness as required by due process.

4. THE INABILITY TO CONFRONT WITNESSES

The Sixth Amendment also recognizes due process, providing that a person accused of a crime has the right to confront the witnesses used against her.[90] In *Melendez-Diaz v. Massachusetts*, the Supreme Court held that to fulfill procedural due process requirements inherent in the Confrontation Clause, the accused must have the opportunity to cross-examine testimony that has been made against her.[91] Using parallel construction to conceal informants or witnesses, in particular, deprives a defendant of her right to confront those witnesses. By concealing these sources, however, law enforcement need not produce the witnesses in court.

The purpose for the Confrontation Clause is to ensure that witnesses testify under oath; to allow the accused to cross-examine witnesses who testify against her; and to allow jurors to assess the credibility of a witness by observing the witness's behavior.[92] It also promotes fairness in the criminal justice system.[93] Parallel construction directly undermines these objectives. By withholding witnesses, the government deprives the accused of her right to cross-examine the witness and the jury the ability to assess the reliability of the witness. By concealing informants and witnesses, parallel construction undermines procedural due process obligations required by the Confrontation Clause.

5. THE EXCLUSIONARY RULE AND THE FRUIT OF THE POISONOUS TREE

A defendant has the right to know of the evidence being used against her, and be informed of the source of such evidence, to make sure that the collection was lawful.[94] Because parallel construction

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[90] U.S. CONST. amend. VI.
[91] Melendez-Diaz v. Massachusetts, 557 U.S. 305, 309 (2009).
[92] Mattox v. United States, 156 U.S. 237, 259 (1895).
[93] Lee v. Illinois, 476 U.S. 530, 540 (1986).
[94] LEGAL INFO. INST., *supra* note 73.

conceals the original source of the information used against a defendant in court, a defendant will be unable to determine whether that information was obtained legally. Nor will the defendant be able to unearth what original piece of evidence spawned the current criminal charge. As discussed, concealing evidence undermines fairness and transparency in the criminal process, depriving a defendant of due process. It may also prevent judicial scrutiny of what would otherwise be an unlawful investigative method under the Fourth Amendment — thus denying a defendant the constitutional right to be free from unreasonable searches. So, the act of concealment and the concealment of what could possibly be an unlawful investigative method is, in and of itself, tainted. Finally, because the practice is tainted, subsequent evidence gathered as a result of the original investigation is tainted, too, and should be excluded from trial under the fruit of the poisonous tree doctrine.

The fruit of the poisonous tree doctrine prevents the prosecution from admitting certain evidence in a criminal case after it has been tainted by a primary illegality.[95] The doctrine is meant to remove illegally-acquired evidence from negatively impacting a criminal defendant.[96] It is an extension of the exclusionary rule, which requires excluding evidence illegally obtained from a criminal trial. The doctrine also takes the assessment one step further by excluding evidence that stemmed from the primary illegality—i.e., the poisonous tree. In determining whether evidence is the fruit of a poisonous tree, the trial judge must examine all the facts surrounding the initial illegality and subsequent gathering of evidence as a result of that illegality.[97] This determination is usually made by the judge in a suppression hearing held before trial.[98] As will be discussed in detail in Part IV, concealing evidence and using unlawful investigative methods are tainted. So, any evidence seized because of this process and subsequently used in a criminal proceeding should be suppressed as fruit of the poisonous tree.

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[95] *What Does "Fruit of the Poisonous Tree" Mean in Criminal Proceedings?*, HG.org, http://www.hg.org/article.asp?id=35403 (last visited on Dec. 6, 2015).
[96] *Id.*
[97] *See* Wong Sun v. United States, 371 U.S. 471 (1963); *Fruit of the Poisonous Tree*, THE FREE DICTIONARY, http://legal-dictionary.thefreedictionary.com/Fruit+of+the+Poisonous+Tree (last visited on Dec. 7, 2015).
[98] *Id.*

B. THE UNDERLYING SEPARATION OF POWERS CONCERNS

The extent to which the Executive has the power to conceal information is one that is recognized but limited under the Constitution. And normally, such power is restricted to national security objectives. As Part II.b. will demonstrate, even with a grant of such authority to conceal information, the Executive has exceeded its power by using parallel construction in the domestic criminal context. This section primarily focuses on the act of concealment and the separation of powers concerns related to it.

1. VIOLATION OF THE CONSTITUTIONAL SEPARATION OF POWERS

The primary concern with concealing investigations, let alone using parallel construction in its entirety, is whether the executive branch can authorize the practice without violating the separation of powers. Under the Constitution, the three federal branches — Congress, the President, and the courts — have the power and responsibility to check one another, all in service to preserve liberty and ensure thoughtful, well-reasoned federal action.[99] Congress has the sole power to legislate for the United States.[100] The executive power is vested in the President.[101] Lastly, the judicial power is vested in the Supreme Court, which has the power to interpret the Constitution and apply its interpretation to cases and controversies brought before it.[102]

Section 3 of Article II of the Constitution states that the President "shall take Care that the Laws be faithfully executed."[103] In other words, the President has a duty to enforce the laws of the nation, even if he may disagree with them. In *Youngstown Sheet & Tube Co. v. Sawyer*, Supreme Court Justice Robert Jackson provided a framework for evaluating executive power and determining its validity.[104] Justice

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[99] JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW 150 (Hornbook Series 8th ed. 2010).
[100] U.S. CONST. art. I.
[101] U.S. CONST. art. II.
[102] U.S. CONST. art. III.
[103] U.S. CONST. art. II, § 3.
[104] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 634–38 (1952). In *Youngstown*, the Supreme Court ultimately limited the President's ability to seize private property since the power was neither specifically enumerated under Article II of the Constitution nor conferred upon him by an act of Congress. *Id.* at 585. While

Jackson rejected a strict divide between Congressional and Presidential power, and instead divided Presidential power into three categories of legitimacy. First, Jackson provided that "[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate."[105] Second, "[w]hen the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain."[106] Third, "[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers…"[107]

There is no specific statute on point that explicitly authorizes the use of parallel construction. But, law enforcement agencies may argue that parallel construction constitutes an administrative act—that is, an action necessary to carry out the intent of some federal statute.[108] Furthermore, such an administrative act is authorized under the Classified Information Protection Act ("CIPA");[109] thus, providing the President with maximum authority under category one of the *Youngstown* framework.[110] The primary purpose of CIPA is to protect the unnecessary disclosure of classified information during the course of a criminal prosecution.[111] As discussed above, parallel construction often aims to protect information and sources, especially in the criminal context. The government may also argue that executive agencies are

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Justice Black wrote the majority opinion, Justice Jackson's concurrence has been utilized repeatedly and significantly throughout history in both case law and legal scholarship to assess the extent of executive power. Patricia L. Bellia, *Executive Power in Youngstown's Shadows*, 19 NOTRE DAME L.S. CONST. COMMENTARY 87, 87–90 (2002).

[105] Youngstown Sheet & Tube Co., 343 U.S. at 635 (1952) (Jackson, J., concurring).

[106] *Id.* at 637.

[107] *Id.*

[108] The Administrative Procedure Act (APA), 5 U.S.C. §§ 500–96 (1946). The APA is a federal statute that governs the way in which federal administrative agencies may propose and establish regulations. *Id.* The Act also provides jurisdiction to courts to review all agency actions. *Id.* at § 706.

[109] 18 U.S.C. App. 3. §§ 1-16 (2018).

[110] Youngstown Sheet & Tube Co., 343 U.S. at 635 (1952) (Jackson, J., concurring).

[111] Classified Information Criminal Trial Procedures Act, *supra* note 34.

granted significant deference in their interpretation of federal statutes and how they choose to administer them.[112] So, federal agencies like the DEA and FBI arguably can use parallel construction in keeping with the purpose of CIPA and should therefore be granted wide deference in their ability to use the procedure.

Nonetheless, while CIPA may seem as though it authorizes parallel construction, parallel construction actually requires different rules and processes that extend beyond the scope of that statute. On the one hand, under CIPA, a defendant is required to notify the prosecution and the court of any classified information that the defendant would like to discover or disclose during the trial.[113] Once notified, the government may object to the disclosures and the courts are required to accept the objection and impose nondisclosure orders.[114] Courts may also issue protective orders limiting disclosure to members of the defense team with adequate security clearances during the discovery phase.[115] The disclosure will often allow the defense to use unclassified redactions or summaries of classified information, which they are normally entitled to receive.[116] But, when the court is required to grant a nondisclosure order, the court can also dismiss the indictment against the defendant or impose other appropriate sanctions.[117]

On the other hand, parallel construction conceals sources of information so that defendants and the courts would never receive notice of the source or the use of parallel construction in the first place, undermining the purpose of CIPA and the court's role to uphold the statute. Parallel construction enables the government to no longer forgo

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[112] *See* Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). In *Chevron*, the Supreme Court established a legal test for determining whether to grant deference to a government agency's interpretation of a statute. *Id.* at 842-43. The courts must defer to the administrative agency's interpretation of authority granted to them by congress where 1) the intent of Congress was ambiguous, and 2) where the interpretation was reasonable or permissible. *Id.*

[113] Edward C. Liu & Todd Garvey, *Protecting Classified Information and the Rights of Criminal Defendants: The Classified Information Procedures Act*, CONGRESSIONAL RESEARCH SERVICE 1-12 (Apr. 2, 2012), https://fas.org/sgp/crs/secrecy/R41742.pdf.

[114] *Id.* at 2.

[115] *Id.*

[116] *Id.*

[117] *Id.*

any criminal prosecutions or risk dismissal of charges by the courts for failing to disclose classified information. So long as a separate, lawful and unclassified evidentiary path is brought before the court, the defendants and the courts will never know whether some other initial investigation ever occurred. If anything, CIPA serves as another example of why law enforcement agencies cannot practice parallel construction. Even sensitive or classified information cannot be withheld from the courts, which ultimately decide if the information should be handed over to the defense. As a result, the courts are stripped of their obligation to evaluate the original information and determine whether maintaining suit is fair to both parties, undermining the court's role under CIPA to balance national security interests against others.[118] In other words, parallel construction enables law enforcement to circumvent safeguards placed within CIPA, especially those respecting the rights of the accused and having a neutral court determine how to proceed in fairness.[119]

Nor may the executive branch characterize parallel construction as the product of a permissible interpretation of CIPA warranting Chevron deference.[120] According to a Senate report, Congress did not intend for CIPA to infringe on a defendant's right to a fair trial or to change the existing rules of evidence in criminal procedure.[121] And yet, as mentioned earlier, parallel construction deprives a criminal defendant of his right to due process. By concealing the original source of information that lead to the criminal charge, a defendant is denied the opportunity to challenge the source and stripped of his right to a fair trial. So, to the extent that the executive branch purports to derive from CIPA the power to deprive criminal defendants of due process, that interpretation falls outside the bounds of reasonableness and is impermissible.

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[118] *See* Edward C. Liu, *The State Secrets Privilege and Other Limits on Litigation Involving Classified Information*, Congressional Research Service, at 3 (May 28, 2009), https://fas.org/sgp/crs/secrecy/R40603.pdf.
[119] *Id.*
[120] *See id.*
[121] S. Rep. No. 110-442, *supra* note 34. *See also generally* U.S. DEP'T OF JUSTICE, *supra* note 34.

Since CIPA does not authorize parallel construction, its use falls out of the first category under the *Youngstown* framework.[122] The Executive may argue, however, that there is no federal statute authorizing an executive agency like the DEA or FBI to use cars, computers, and the like either. A lack of federal authorization should not prevent the executive from developing its own internal measures to carry out its duties. Also, there is no federal statute prohibiting against the use of parallel construction, pulling its use into the second category of the *Youngstown* framework: the twilight zone.[123]

Law enforcement's employment of cars, computers, and other devices is distinct from parallel construction. Parallel construction is not a device designed to assist law enforcement in detecting crime or ensuring public safety. Rather, it is a process specifically developed and used to ensure criminal convictions by shielding government conduct leading to the conviction from judicial scrutiny. As discussed in Part II, *Brady* and Rule 16 of the Federal Rule of Criminal Procedure provides a framework for when evidence must be disclosed to the defense. But even in the national security context, CIPA requires notice of classified information used against the defense. Again, the legislative history for CIPA demonstrates that Congress did consider the importance of safeguarding constitutional rights of criminal defendants.[124] Individuals should have notice when classified information was used in bringing about their criminal charges.[125] And if they are denied the ability to challenge that information, the court is empowered to dismiss the charge or provide sanctions.[126] This process ensures fundamental fairness between the government and the individual accused of a crime. Therefore, any process that bypasses these minimal guarantees in the use of classified information is incompatible with the implied will of Congress, falling out of *Youngstown*'s category two.[127]

Because Congress seems to have spoken on the issue of parallel construction and advised against it, the only other way in which the

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[122] Youngstown Sheet & Tube Co., 343 U.S. at 635 (1952) (Jackson, J., concurring).
[123] *Id.*
[124] *See* Liu and Garvey, *supra* note 113 and accompanying text.
[125] *Id.*
[126] *Id.*
[127] Youngstown Sheet & Tube Co., 343 U.S. at 635 (1952) (Jackson, J., concurring).

process is legitimate is through the use of the Executive's own constitutional powers, which will be discussed in the following section.

2. EXCEEDING THE SCOPE OF EXECUTIVE NATIONAL SECURITY POWERS

As demonstrated above, CIPA does not authorize parallel construction. Arguably, CIPA serves as an instrument demonstrating that Congress considered the process of keeping classified information from the defense in criminal cases and decided against authorizing anything like parallel construction. Furthermore, as discussed above, parallel construction, unlike the use of vehicles, mobile devices and computers by law enforcement agencies, requires authorization of some sort because of the extent to which it negatively impacts individuals in the criminal context.[128]

Still, the Executive could argue that parallel construction is authorized under its general, plenary constitutional powers. The President, after all, retains the power to withhold information from the courts and Congress in certain circumstances. For instance, the President has broad powers to manage national affairs and the workings of the government.[129] The President may issue rules, regulations, and executive orders, which have the binding force of law upon federal agencies but do not require congressional approval.[130] Nonetheless, aside from these powers, the President's ability to prevent the judiciary from addressing the constitutionality of a given case or controversy is quite narrow. The executive privilege normally affords the President the ability to withhold information from the public, Congress, and the courts normally only in matters of national security.[131] Parallel construction ensures that novel and clandestine investigative methods would not be revealed to the public, especially since these methods can be used for national security purposes. It also guarantees that the executive branch retains its power to withhold information from the

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[128] *See* discussion of due process violations *infra* Part II.
[129] *Our Government: The Executive Branch*, THE WHITE HOUSE, https://www.whitehouse.gov/1600/executive-branch (last visited on Dec. 6, 2015).
[130] *Id.*
[131] *Id.*

courts, Congress, and the public by justifying the process with national security incentives.

Executive privilege, otherwise known as State Secret Privilege ("Privilege"), is a judicially created evidentiary privilege that was first formally recognized in *United States v. Reynolds*.[132] In *Reynolds*, the Supreme Court held that the executive branch could withhold evidence from the court if it deemed that its release would impair national security.[133] Since 1953, when the case was decided, the Court has continued to recognize executive privilege, even today. Most recently, in 2011, the Supreme Court in *General Dynamics Corp. v. United States* unanimously held that "when litigation would end up disclosing state secrets, courts may not try the claims and may not award relief to either party."[134] Not only would invoking the Privilege prevent the Executive from disclosing information and its sources, but it would also limit the ability to bring and maintain suit. *General Dynamics Corp.* is also noteworthy because the Privilege was invoked in a setting where the government was bringing the case against private contractors. According to the contractors, withholding the information as Privilege prevented them from mounting an effective defense.[135] So, the Executive faced a dilemma when it brought suit and sought to raise the Privilege at the same time. In other words, the Privilege ends up being a double-edged sword, especially when looking at the civil context.

In criminal cases, the Supreme Court has not answered whether the Executive may invoke Privilege in criminal prosecutions. The Second Circuit in *United States v. Aref*, however, has held that state secrets privilege may be asserted in criminal prosecutions, *subject to* the procedures in CIPA, to bar disclosure of classified evidence that is *not*

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[132] Reynolds v. United States, 345 U.S. 1 (1953) (holding that, where military secrets were involved, there was a valid claim of privilege under Rule 34 of the Federal Rules of Civil Procedure).
[133] *Id.*
[134] Gen. Dynamics Corp. v. United States, 563 U.S. 478 (2011) (ruling on facts where the Navy terminated a contract with General Dynamics and McDonnell Douglas and requested return payments, but the contractors refused, arguing that the government kept too much information secret under the State Secret Privilege for there to be adequate progress in the case).
[135] *Id.*

relevant and helpful to the defense.[136] Referring back to the preceding section, CIPA does not authorize parallel construction, let alone any procedure that would deny a criminal defendant of her constitutional rights. Furthermore, CIPA requires courts to access and review the classified information to determine whether privilege may be asserted in the first place.[137] By completely circumventing CIPA review, using parallel construction undermines even the Second Circuit's holding in *Aref*. Therefore, *Aref* demonstrates that even plenary power granted to the Executive in the form of privilege is not sufficient to authorize parallel construction, and is instead cabined by statutes like CIPA. Assuming that *Aref* is not controlling and CIPA does not apply – to differentiate the analysis from Part II.A. – the Executive's inherent ability to pursue prosecution and raise Privilege at the same time is still extremely problematic from a policy perspective.

Using parallel construction, the executive branch need not face the dilemma between Privilege and being able to raise suit. First, concealing the source of information by using parallel construction serves the same purpose as raising Privilege. It prevents the defense from accessing sources or methods that is otherwise sensitive and/or used for national security purposes. Second, by concealing the source and using an independent evidentiary path, the Privilege no longer has to be invoked and does not require court review under statutes like CIPA or the Foreign Intelligence Surveillance Act.[138] As a result, a case will not be dismissed for failure to evaluate evidence in its entirety as is required by *General Dynamics Corp.* because the courts and those who are being subjected to suit will never know that such information existed in the first place. For the executive branch, this is a win-win situation.

In addition to the series of constitutional violations discussed in Part II, it is for these reasons that parallel construction is so inherently problematic from a policy perspective. Even though Executive privilege

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[136] United States v. Aref, 533 F.3d 72, 78-79 (2d Cir. 2008).
[137] 18 U.S.C. §§ 1-16; *see also* Liu, *supra* note 118, at 3.
[138] The Foreign Intelligence Surveillance Act (FISA) of 1978 is a United States federal law that prescribes procedures for the physical and electronic surveillance and collection of foreign intelligence between foreign powers and agents of foreign powers. The Act may also include American citizens and permanent residents suspected of espionage or terrorism. Foreign Intelligence Surveillance Act, 50 U.S. § 1881a (2008).

is recognized and there are a number of circumstances in which the Executive can withhold information from Congress and the courts, invoking the Privilege at least acknowledges that national security or some other justification is at play. In which case, the courts and Congress can respond accordingly upon discovering that certain information is being withheld. For instance, as was the case in *General Dynamics Corp.*, the inability to turn over privileged information resulted in the Court deciding that defendants could not adequately raise their defense, which in turn resulted in the case's dismissal.[139] By raising Privilege, the Court can still evaluate the validity of a claim without the requested information and assess the fairness of continuing suit in light of the Privilege. Parallel construction completely undermines the role of the courts by preventing them from practicing this safeguard, infringing fundamental liberties and fairness to both parties and the court system. Furthermore, parallel construction enables law enforcement to conceal sources that are not even sensitive or used for national security purposes, exacerbating the inherently problematic policy concerns.

Parallel construction also significantly implicates defendants in domestic criminal cases, which are attenuated from issues related to national security that normally justify using Privilege. The President, even if invoking Privilege, has exceeded any power granted to him or her by the Constitution. For instance, the President does not have the power to keep secret his or her implementation of national security surveillance measures on U.S. citizens in purely domestic realms if it intends to use those measures to subsequently prosecute them.[140] Such authorization in this case would further violate the separation of powers doctrine and undermine the Constitution's system of checks and balances, especially since the courts have the ability to review any case or controversy that implicates the Constitution, particularly the rights of U.S. citizens. So, the courts, at a minimum, should be able to determine whether the President has the power to authorize parallel construction against U.S. citizens under the Constitution, and if not, to determine whether the practice is constitutional in and of itself. However, because

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[139] Gen. Dynamics Corp., 563 U.S. at 492.

[140] *See generally* U.S. Const. Art. II; *see also United States v. United States District Court*, 407 U.S. 297 (1972) (the *Keith* case) (holding that in the case of intelligence gathering involving domestic security surveillance, prior judicial approval was required to satisfy the Constitution).

the act of concealment inhibits the courts from ever scrutinizing these investigative methods in the domestic criminal context, it is a violation of the separation of powers, specific to inherent Executive national security powers, too.

III. THE ANALYSIS: CRITIQUE OF THE LIKELY JUSTIFICATIONS FOR PARALLEL CONSTRUCTION

Law enforcement agencies have raised several justifications for parallel construction, despite separation of powers and due process concerns. For instance, in instructing local law enforcement agencies to conceal using StingRays, the FBI has justified secrecy by insisting that public revelation will compromise the efficacy of the device.[141] Once criminals become aware of the device, they will adjust their behavior accordingly to avoid being swept up by its surveillance capabilities. These devices were also deemed necessary to prevent terrorist attacks and capture drug kingpins, the latter of which are likewise deemed (rightly or wrongly) threats to national security.[142] As Part. III.a. will discuss, using StingRays has expanded beyond the scope of terrorism and drug trafficking into the domestic criminal context. It further argues why a national security justification is unwarranted when dealing with parallel construction.

Other law enforcement agencies, like the DEA, have also attempted to provide a legal basis for parallel construction. In the DEA's training modules, agents cite to Supreme Court case *Scher v. United States* as enabling law enforcement to practice parallel construction.[143] As Part IV.B. will demonstrate, *Scher* is outdated and was likely never intended to justify parallel construction. Taking a closer look at each justification in turn, Part III argues that there is no legal justification for parallel construction.

A. NATIONAL SECURITY JUSTIFICATIONS

[141] Bates, *supra* note 59, at 3.
[142] *Id.*
[143] *DEA Training Slides*, *supra* note 31, at 55.

Law enforcement agencies justify parallel construction by asserting that revealing sensitive sources and investigative methods would impose great risks on national security. Even if evidence is directly related to a criminal conviction, law enforcement agents are trained to think "the interests of national security outweigh the relevance of the information to the defendant."[144] Take, for example, StingRays. Local law enforcement agencies acquired StingRays to aid in addressing national security threats domestically, namely drug trafficking and terrorism prevention.[145] Revealing the use of these devices, however, would compromise its efficacy. Targeted individuals will adjust their behavior to avoid the StingRay's surveillance capabilities.[146] To ensure national security and the efficacy of national security methods at the local law enforcement level, concealing sources and information is warranted, enabling the lawful use of parallel construction.

This argument fails for two reasons. First, courts are equipped to balance national security interests against other interests, and do so all the time.[147] Parallel construction directly circumvents this process. In the domestic criminal context, the U.S. Constitution prohibits the government from performing unreasonable searches or seizures.[148] The warrant requirement ensures that investigative power is balanced against individual liberties. This balance may frustrate government efficiency and investigative efficacy, but is necessary to limit privacy intrusions and guard against abuse. So, using and subsequently concealing StingRays must be evaluated and weighed against established legal principles, such as the right to privacy, the separation of powers, and a criminal defendant's due process rights. Parallel construction deprives the courts of its duty to engage in this balancing analysis—thus violating the checks and balances of our current legal structure.

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[144] *Id.*
[145] Bates, *supra* note 59, at 3.
[146] *Id. See* N.Y. Civil Liberties Union v. Erie Cnty. Sheriff's Office, 15 N.Y.S. 3d 713 (Sup. Ct. 2015) (holding that the non-disclosure agreement itself states the concern, providing that disclosure would enable targets to "employ countermeasures to avoid detection").
[147] *See* discussion on CIPA *infra* Part III.
[148] U.S. CONST. amend. IV.

Second, court review of StingRays, as it is currently being used, would likely find that other interests trump any national security interests. The facts surrounding the current use of StingRays do not support the government's argument. Through state freedom of information litigation, several data releases revealed little on the use of StingRays to combat terrorism or drug trafficking.[149] Instead, the devices have been reportedly used for countless routine law enforcement actions without using a warrant.[150] As discussed in Part II, there are certain instances where law enforcement can withhold evidence from the defense, particularly in the national security context under the State Secrets Privilege doctrine. It's possible that a court might consider using StingRays to combat drug trafficking and terrorism a sufficient national security basis to withhold revealing the device. But that is not what is happening here. The StingRay is repeatedly and routinely being used in the domestic criminal context, far removed from any national security imperatives.[151] So, national security is not a legitimate basis for using parallel construction.

B. LAW ENFORCEMENT'S USE OF SUPREME COURT CASE *SCHER*

In its training module, the DEA relied on Supreme Court precedent, *Scher v. United States*, to justify parallel construction.[152] In *Scher*, the Court found that a defendant had no right to learn of the source of a tip based on surveillance that was used against him.[153]

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[149] Bates, *supra* note 59, at 8. One release, in particular, of the Tallahassee Police Department showed that the StingRay was used in hundreds of routine law enforcement practices, without a single showing of any terrorism investigation. *See* Master list of Stingray Deployments by the Tallahassee Police Department, FUSION (Mar. 27, 2014), https://fusiondotnet.files.wordpress.com/2015/02/03.27.2014_-_master_ce_log.pdf.

[150] For instance, in Baltimore, one detective estimated that StingRays have been used more than 4,300 times in the course of routine law enforcement activities. *See* Justin Fenton, *Baltimore Police Used Secret Technology to Track Cellphones in Thousands of Cases*, BALTIMORE SUN (April 9, 2015), http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-stingray-case-20150408-story.html.

[151] Bates, *supra* note 59, at 8.

[152] *DEA Training Slides*, supra note 31; Scher v. United States, 305 U.S. 251 (1938)..

[153] *Id.*

Furthermore, the source of the information was not relevant to a defendant's defense. The Court emphasized that "the legality of the officers' actions does not depend upon the credibility of something told but upon what they saw and heard what took place in their presence. Justification is not sought because of honest belief based upon credible information."[154] In other words, the manner in which the agent discovered the evidence did not matter, so long as the agent subsequently saw the illegal acts with his own eyes. And so, the Supreme Court "enabled" the idea of parallel construction. *Scher* has been used to ultimately inform law enforcement agents to expect information derived from intelligence sources, but agents should try their best to never find out why and how they obtained that information.[155]

Using *Scher* to justify law enforcement's use of parallel construction is no longer warranted — and likely never was — given the current surveillance state and development in technology.[156] First, the source of information relied upon in *Scher* was by an informant: an individual who provides information to officers that is otherwise unknown.[157] Even today, the Supreme Court in *McCray v. Illinois* has held that when an informant's testimony is to probable cause, and not to guilt or innocence, there is no need to disclose the informant's identity, as long as the officers relied in good faith upon credible information supplied by a reliable informant.[158] The government may argue that, oftentimes, defendants want access to information about informants to examine their background, motive, and credibility — ultimately to impeach any substantive testimony and to challenge the basis for the original search. Despite these interests, the Supreme Court still allowed using anonymous informants in criminal prosecutions, as established by *Scher* and *McCray*.[159] Parallel construction is no different. While defendants may want access to the original source of information used

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[154] *Id.*
[155] *DEA Training Slides*, supra note 31.
[156] *Scher*, 305 U.S. at 251.
[157] *See id.*
[158] McCray v. Illinois, 386 U.S. 300 (1967) (holding that the government need not identify an undercover informant whose testimony goes only to probable cause).
[159] *Id.* at 300; *Scher*, 305 U.S. at 251.

against them, their ability to challenge the independent trail of evidence implicating their case should be sufficient.

Revealing the identity of an informant, however, is significantly distinguishable from revealing the surveillance methods used in an investigation. An informant is oftentimes a private third party to the investigation and so her conduct, in terms of conducting surveillance or investigations, does not run afoul of the Fourth Amendment or federal laws, such as the Foreign Intelligence Surveillance Act (FISA).[160] Even more so, informants are usually anonymous, so law enforcement is *incapable* — as opposed to *unwilling* — to provide such information if required to do so.[161] The Fourth Amendment protects U.S. persons from unreasonable searches and seizures *by state actors*. Since parallel construction is concealing investigative methods practiced by the government itself, and not private third parties, *Scher* and *McCray* are perhaps less relevant. Also, technology and surveillance capabilities cannot be considered third party informants to an investigation; otherwise, the Fourth Amendment would be futile.

Almost all contemporary government investigations are assisted by technology, whether through tracking devices, binoculars, or

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[160] For purposes of this analysis, it is important to clarify here that the Fourth Amendment does not cover a private third party's actions in conducting surveillance. The Fourth Amendment has a state action requirement. However, the informant relevant to the government action is scrutinized under the Fourth Amendment, which is not the point being discussed here. For instance, where an anonymous tip is corroborated with actual police findings, a totality of the circumstances approach is appropriate to determine probable cause for purposes of facilitating searches, seizures, and/or obtaining warrants under the Fourth Amendment. Illinois v. Gates, 462 U.S. 213 (1983). Here, I am referring to the individual conduct of the informant in retrieving the information that is then being used in a police investigation. The Fourth Amendment applies to governmental searches and seizures, but not those done by private citizens who are not acting on behalf of the government. *See* Robert J. Glennon, Jr. & John E. Nowak, *A Functional Analysis of the Fourteenth Amendment "State Action" Requirement*, 1976 SUP. CT. REV. 221, 261.

[161] Furthermore, requiring law enforcement to provide the identity of an informant would render anonymous tips useless. Additionally, less individuals would report findings to law enforcement that would assist in their investigation if they had to disclose their identity, especially if that information was then presented to the court and the Defendant the information is implicating. These concerns are not relevant to parallel construction and the concealment of sources of information that involve no third-party actors.

computers. If such capabilities were justified by cases like *Scher*, what is to differentiate the government from using a computer to access publicly available information online and using a computer to intercept emails and the contents of private communications? Does it really matter whether the information discovered is extremely reliable? *Scher* was decided long before the Supreme Court decided *Wong Sun* and other "Fruit of the Poisonous Tree" cases.[162] In the latter case, the crucial question was not whether the underlying information was *reliable*, but rather whether it was obtained through a search that was itself *unreasonable*.[163] A line must be drawn between *reliability* and *legality*, and it has: the Fourth Amendment has played a pivotal role in securing privacy by regulating government conduct. So, while cases like *Scher* and *McCray* may still be good law, they are not applicable in justifying parallel construction, particularly in its use to conceal government use of technology from judicial scrutiny. There is no justification to conceal sources of information that would clearly fall under Fourth Amendment scrutiny in the domestic criminal context, demonstrating further the immediate necessity to address the legality of parallel construction.

Second, in *Scher*, the fact that there was an informant involved at the inception was information made readily available to the defendant and the court, despite not revealing the informant's identity.[164] At least, the defendant could raise the argument that she is entitled to know the identity of the informant and the court can deliberate the issue. There are instances like *Scher* where the court deliberates whether such information should be required and ultimately decide in the negative.[165] In the alternative, the court may also find that the lack thereof of

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[162] *See* Scher, 305 U.S. at 251 (decided in 1938); Wong Sun, 371 U.S. at 471 (decided in 1963); Nix v. Williams, 467 U.S. 431 (1984).

[163] Wong Sun, 371 U.S. at 477.

[164] *Scher*, 305 U.S. at 251.

[165] *See, e.g.*, Roviaro v. United States, 353 U.S. 53, 62 (1956) (employing a balancing text, weighing the public interest in protecting the flow of information to the Government against the individual's right to prepare her defense); Miller v. United States, 273 F.2d 279, 279 (5th Cir. 1959) (holding that "where informer was not an active participant in crime, or person with whom accused had been dealing, it was not error to refuse to require Government to divulge his identity"); Cannon v. United States, 158 F.2d 952, 954 (5th Cir. 1946)(emphasizing that it is settled in the Fifth Circuit that "public policy forbids disclosure of an informer's identity unless essential to the defense").

revealing information would unduly prejudice the defendant and adjudicate the case accordingly, like dismissing the case or sanctioning the prosecution.[166] Parallel construction completely circumvents these safeguards. It enables law enforcement to bring the independent evidentiary path against a defendant without notifying the defense or the court that such evidence was originally derived from an alternative source. So, the original source is never subject to defense and/or court scrutiny. Parallel construction ensures that there will never be a situation where the court would hold otherwise than it did in *Scher*.

Third, it seems unlikely that the Supreme Court in 1938 could have fathomed that its opinion would authorize the concealment of government agency's bulk data acquisition and intercept of U.S. citizens' email content, phone records, search history, live chats and so forth in criminal cases. Most, if not all, of these capabilities did not exist in 1938. The opinion itself is terse, only a page in length. And its lack of depth suggests that the Court did not expect the opinion to establish anything other than the outcome of the specific facts of that case. In *Scher*, the government sought to withhold the identity of an informant;[167] here, it is seeking to withhold information about surveillance intruding upon the privacy of the defendant and the lawfulness of the government's investigation. *Scher* is attenuated from addressing the legality of parallel construction.

The development of caselaw post-*Scher* provides more appealing alternatives to determine this legal question. Since *Scher*, the Supreme Court has held that a U.S. person has a reasonable expectation of privacy in the contents of sealed packages during transmission[168] and in a telephone booth from a listening device.[169] Also, the Sixth Circuit has held a person has a reasonable expectation of privacy in the content of emails stored with or sent and received by an Internet Service Provider (ISP).[170] Most relevant, the federal district court in Washington, D.C., has held that the NSA's Bulk Telephony Metadata

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[166] For examples, refer to cases dealing with CIPA and State Secrets Privilege under Part II, such as General Dynamics Corp. v. United States, 563 U.S. 478 (2011) and United States v. Aref, 533 F.3d 72 (2nd Cir. 2008).
[167] *Scher*, 305 U.S. at 251.
[168] Ex Parte Jackson, 96 U.S. 727 (1877).
[169] Katz v. United States, 389 U.S. 347 (1967).
[170] United States v. Warshak, 631 F. 3d 266 (6th Cir. 2010).

Program[171] violates a reasonable expectation of privacy.[172] Lastly, the Foreign Intelligence Surveillance Act Court (FISC) held that the NSA's procedures for filtering out and handling purely domestic communications were not reasonable and violated the Fourth Amendment since, despite the NSA's targeting of foreign communications, the agency was still collecting approximately 56,000 Americans' emails a year.[173]

Although the Supreme Court has yet to decide whether the NSA's surveillance practices after the 2013 global surveillance disclosures constitute an unlawful infringement upon privacy, these cases suggest that the Court will find that intercepting an individual's emails, phone records, and text messages without a warrant is either an unreasonable search or in violation of federal statutory law.[174] Furthermore, as established by the Fruit of the Poisonous Tree Doctrine,

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[171] In 2006, the Foreign Intelligence Surveillance Court (FISC) adopted a broader and unprecedented interpretation of section 215 of the PATRIOT Act. This decision led to the creation of the NSA's Bulk Telephony Metadata Program. The FISC judges issued orders under section 215 directing specified telephone service companies to turn over to the NSA, regularly and on an ongoing basis, huge quantities of telephone meta-data involving the phone records of millions of Americans, none of whom are themselves suspected of anything. The meta-data at issue includes information about phone numbers (both called and received), but it does not include information about content of the calls or identities of the participants. The NSA has been authorized to keep this information for five years. Geoffrey R. Stone, *The NSA's Telephone Meta-data Program: Part I*, The Huffington Post (Dec. 24, 2013), http://www.huffingtonpost.com/geoffrey-r-stone/nsa-meta-data_b_4499934.html.

[172] Klaymon v. Obama, No. 13-0851 (RJL), 2013 WL 6571596 (D.D.C. Dec. 16, 2013).

[173] FISA Ct. (mem.) at 59-63, 67-80 (Oct. 3, 2011); *See also Section 702 of the Foreign Intelligence Surveillance Act (FISA): Its Illegal and Unconstitutional Use*, ELEC. FRONTIER FOUND., *available at* https://www.eff.org/files/filenode/702_one_pager_final_adv.pdf; *See also* OVERVIEW OF CONSTITUTIONAL CHALLENGES TO NSA COLLECTION ACTIVITIES, CONG. RESEARCH SERV. (May 21, 2015), *available at* https://www.fas.org/sgp/crs/intel/R43459.pdf (providing an overview of the bulk collection of telephony metadata for domestic and international telephone calls and the interception of Internet-based communications, as well as the various constitutional challenges that have arisen in judicial forums with respect to each).

[174] The U.S. Court of Appeals for the Second Circuit has already found that the NSA's bulk phone record collection exceeded authorization of Section 215 of the U.S.A. Patriot Act. ACLU v. Clapper, 785 F.3d 787 (2d Cir. 2015).

evidence gathered with the assistance of illegally obtained information must be excluded at trial.[175] So the subsequent investigation in the process of parallel construction to create a separate evidentiary path is likely the fruit of a tainted source (unlawful surveillance practices). Such use of tainted evidence violates the defendant's due process rights. Therefore, given the current state of surveillance technologies and the extent to which individual liberties are violated while using parallel construction, the government's reliance on *Scher* to justify parallel construction is misplaced.

IV. THE SOLUTION: WHAT HAS BEEN DONE AND HOW DO WE MOVE FORWARD?

A. CURRENT EFFORTS FOR TRANSPARENCY AND OVERSIGHT

Since the *Reuter*s disclosure in 2013, journalists and advocacy groups have played a significant role in disseminating information about law enforcement using parallel construction. An illustrative list of websites covering this issue include: Washington's Blog, Blacklisted News, The Daily Dot, Tech Dirt, and the Electronic Frontier Foundation (EFF). Most of these websites have informed their readers what the process of parallel construction consists of and, briefly, why it can be a problem. Since the *Reuter*s disclosure, individuals like Ciaramella have filed FOIA requests regarding the DEA's training materials and official policies on parallel construction.[176] Over 300 pages of redacted documents had been received in the form of PowerPoint presentations and embedded speaker notes.[177] These documents have enhanced transparency of the DEA's use of parallel construction. Still, there is

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[175] Robert M. Pitler, *The Fruit of the Poisonous Tree Revisited and Shepardized*, 580 CAL. L. REV. 579, 588 (1968).
[176] Ciaramella, *supra* note 30.
[177] Mike Masnick, *Parallel Construction Revealed: How the DEA is Trained to Launder Classified Surveillance Info*, TECHDIRT (Feb. 3, 2014), https://www.techdirt.com/articles/20140203/11143926078/parallel-construction-revealed-how-dea-is-trained-to-launder-classified-surveillance-info.shtml.

much to learn about parallel construction and its prevalence in routine criminal proceedings.

The Electronic Privacy Information Center, American Civil Liberties Union, EFF, Brennan Center for Justice, and many other organizations have also signed a coalition letter to James R. Clapper, Jr., the Director of National Intelligence, seeking transparency on Section 702 of the Foreign Intelligence Surveillance Act (FISA).[178] The Act requires the government to notify U.S. citizens if it intends to use information derived from Section 702 against them in legal proceedings.[179] The Administration did begin notifying criminal defendants of the use of Section 702-derived information in October 2013; but it did so in only eight cases, and there has not been a single notification in the last eighteen months.[180] Agencies like the DEA, which engage in parallel construction, reconstruct Section 702-derived information using less controversial methods in order to avoid disclosing the use of Section 702. The ACLU asserted in its coalition letter that "individuals should know whether they are being given a fair opportunity to challenge Section 702 surveillance when the fruit of such surveillance is used against them."[181] The ACLU seeks information about how the Department of Justice and other agencies interpret the statutory notification requirement, including the legal interpretations that control when those agencies consider evidence to be derived from Section 702 surveillance. However, the coalition letter has yet to receive a response.

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[178] Coalition Letter Seeking Transparency on Section 702 to Hon. James R. Clapper (Oct. 29, 2015) [hereinafter "Coalition Letter"], *available at* https://www.aclu.org/letter/coalition-letter-seeking-transparency-section-702.

[179] Section 702 specifically prohibits intentionally targeting an American through government surveillance. However, while targeting others, the NSA routinely acquires innocent Americans' communications without a probable cause warrant. When the FISA Court approves a Section 702 order, which it does more often than not, the NSA is allowed to work with telecoms to copy, scan, and filter Internet and phone traffic coming through their physical infrastructure. Most importantly, however, the ACT requires that the government notify U.S. citizens if it intends to use information derived from Section 702, which it has oftentimes not done so. Foreign Intelligence Surveillance Act § 702, 50 U.S.C. § 1881a (2008).

[180] Coalition Letter, *supra* note 178, at 3-4.

[181] Coalition Letter, *supra* note 178, at 4.

Sean Vitka, co-founder of the Civil Liberties Coalition,[182] also wrote a request to the United States Commission on Civil Rights (USCCR) to investigate disproportionate impacts of parallel construction on communities of color.[183] Vitka, similar to other public interest organizations addressing this issue, argues that parallel construction should be scrutinized insofar as it conceals tips from sensitive sources and authorizes acts that might prove unlawful under the Fourth Amendment. Still, his primary focus for the request is to ensure that alleged criminals are protected against exploitative law enforcement investigations, particularly in the context of communities already subject to disproportionate law enforcement targeting.[184] Parallel construction is principally used in the context of drugs, gangs, and terrorism investigations, all of which disproportionately target communities of color.[185] For these reasons, Vitka has requested the USCCR to investigate and publish more information on parallel construction.

The ACLU and Federal Public Defender attorneys also filed a joint motion for notice of the surveillance techniques employed by the government in its investigation of defendants Jamishid Muhtorov and Bakhtiyor Jumaev.[186] The motion argues that notice of the government's reliance on surveillance techniques in securing evidence against the defendants is essential to the due process rights of the defendants.[187] Furthermore, by engaging in parallel construction to conceal the nature of the government's underlying investigation, the government is refusing to give notice of the derived evidence as due process requires. No developments regarding this case have been made since the motion was submitted in October of 2014.

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[182] The Civil Liberties Coalition is one of the largest coalitions in the United States calling for an end to mass government surveillance. LIBERTY COAL., http://www.libertycoalition.net [website is not functioning – please provide appropriate link].
[183] Electronic Communication, *supra* note 13.
[184] *Id.*
[185] *Id.*
[186] Mot. for Notice of the Surveillance Techniques Utilized, 1, *United States v. Muhtorov and Jumaev*, No. 12-cr-00033-JLK (Dist. Ct. D. Colo. 2014).
[187] *Id.*

Aside from the dissemination of information, FOIA requests, media commentary, and further attempts by the ACLU for greater transparency, minimal steps have been taken to address the constitutionality of parallel construction and advocate for reform. The DOJ Inspector General Michael Horowitz reportedly had been investigating the DEA's use of parallel construction, particularly with regard to the "Hemisphere" program.[188] There have been no developments or results, however, from this initial investigation. Furthermore, the government has never publicly or formally defended parallel construction, nor has it publicly outlined the legal theories on which it relies to justify the practice.

B. MOVING FORWARD: PROPOSALS AND OBSTACLES

Eliminating parallel construction will be no easy feat. One possible solution is to address parallel construction through a broad based constitutional challenge in court. These challenges are commonly known as "law reform" litigation, a type of public interest lawsuit designed to advance social change.[189] But, in order to litigate a case, especially in a criminal prosecution, the court must establish that the defendant has standing to challenge the legal issue at hand. Finding an individual who has standing will be the greatest obstacle in using litigation as a mechanism for change here.

To tee up a challenge to parallel construction, a defendant would first have to show that the evidence used against him was not derived merely by accident. The defendant would have to somehow show that the DEA or other local law enforcement agencies concealed the original source of the information used in subsequently creating the criminal case against her. How can one really tell whether evidence being used against the accused is from a separate evidentiary path to conceal a source or from an original source itself? The difficulty of answering

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[188] *See generally DOJ Inspector General Investigating DEA's Use of Parallel Construction Under Hemisphere*, EMPTYWHEEL (Apr. 18, 2014), https://www.emptywheel.net/2014/04/18/doj-inspector-general-investigating-deas-use-of-parallel-construction/.

[189] Lori Turner, *Using Impact Litigations as a Tool for Social Change: Jimmy Doe: A Case Study*, HARV. C.R. L. REV. 1 (Aug. 2010), *available at* http://harvardcrcl.org/using-impact-litigation-as-a-tool-for-social-change-jimmy-doe-a-case-study-by-lori-turner/.

this question yields yet another issue: How can we regulate law enforcement's use of parallel construction if we do not even know when they are using it? Only in the off-chance that a defendant has discovered some sort of information that has revealed law enforcement's use of parallel construction in creating a criminal case against her, could the defendant be able to challenge the practice's constitutionality. Because the process of parallel construction has become somewhat publicly known, the chances of this occurring has increased.

But even if a defendant with standing could pursue the issue, and even if parallel construction was deemed unconstitutional, how would we subsequently regulate the DEA and other law enforcement agencies to ensure that they are no longer practicing it? Government agencies have kept this practice a secret for quite some time now. Although the practice has been leaked to the public, it remains unclear when and to what extent the process has been used in criminal prosecutions. One win in one case may not effectively eliminate using parallel construction in its many different forms and contexts. Say the Supreme Court declared that using subpoenas to conceal the DEA's Hemisphere program is unlawful. It is unlikely that that ruling will also eliminate using parallel construction to conceal law enforcement using StingRays. A completely different program or technology is being challenged, so the government may think it's entitled to specific adjudications for each investigative method used. The result: a never-ending cycle of challenges every time a new investigative method is discovered.

This Article proposes two primary solutions to eliminate using parallel construction and redress its harms. The first requires Congress to address the practice through legislation by mandating disclosure of the origins of an investigation and developing a framework for notice in exceptional cases. In the alternative, should law enforcement not heed such disclosure and notice requirements, courts must require exclusion of evidence obtained through parallel construction. This not only guarantees fundamental fairness in criminal proceedings, but also ensures Congress and the courts uphold its role in maintaining checks and balances on overreaching executive power.

1. Broad Disclosure Requirements and a Framework for Notice in Criminal Cases

Given how difficult it would be to raise the claim that law enforcement has engaged in parallel construction, the legislature may

be the best equipped to address this issue. Congress can effectively terminate, or at a minimum regulate, law enforcement's use of parallel construction through legislation. While *Brady* and Rule 16 of the Federal Rules of Criminal Procedure provide for broad disclosure requirements,[190] Congress should develop a comprehensive law that ensures disclosure of the origins of an investigation, too. For classified information or information retrieved through sensitive techniques or special equipment used for national security, Congress should also incorporate a framework for notice.[191]

In criminal cases, Congress must require disclosure of complete information regarding the origins of the investigation. This will ensure that defendants can challenge the lawfulness of the investigation and any evidence derived from that investigation. There will be certain times when the origins of an investigation or evidence cannot be disclosed for national security purposes or concerns. In these instances, Congress should craft a broad-based solution, requiring notice of new investigative technologies that may produce new incentives for law enforcement agencies to withhold disclosure from defendants.[192] This framework for notice should provide a criminal defendant the opportunity to challenge both longstanding and new and sensitive investigative methods used by the DEA, FBI, and other law enforcement agencies. Additionally, the framework should address the defendant's due process interest and require notice of both evidence acquired directly from the investigative method and evidence subject to a claim that it was derived from such method.[193] The latter will ensure that "courts resolve close or disputed questions of law or fact, rather than permitting the government to do so unilaterally."[194] Even the Supreme Court has determined that where "derived" evidence is at issue, the courts do not have to accept the government's unilateral determination

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[190] *See* Section I.A.
[191] A similar framework for notice was suggested by Patrick Toomey, staff attorney in the National Security Project at the ACLU, and Brett Max Kaufman, a teaching fellow and staff attorney in the Technology Law & Policy Clinic at the New York University School of Law. Toomey & Kaufman, *supra* note 18, at 897.
[192] *See* 50 U.S.C.A § 1825 (West); 18 U.S.C.A. §2703 (West); Fed. R. Crim P. 31. Many of the existing notice requirements have been imposed by statute or rule.
[193] *See* Toomey & Kaufman, *supra* note 18, at 897 n. 230.
[194] *Id.*

concerning which evidence is "derived" from an illegal search.[195] In its place, a defendant has the right to an adversarial hearing to address that question.[196] Overall, this framework for notice will enable criminal defendants to have the opportunity to raise colorable claims that the investigation violated her legally protected interest she had standing to litigate.[197]

Additionally, one other key principle is relevant to government disclosure requirements and notice determinations: the rule of lenity. Generally, in criminal law, the rule of lenity states that when interpreting an ambiguous criminal law, the court should resolve the ambiguity in favor of the defendant.[198] In the context of disclosure and notice in

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[195] *See* Alderman v. United States, 394 U.S. 165, 168 (1969) (recounting, in wiretapping challenge, Supreme Court refusal to accept the ex parte determination of relevance by the Department of Justice in lieu of adversary proceedings in the District Court); Kolod v. United States, 390 U.S. 136, 136-37 (1968).

[196] Toomey & Kaufman, *supra* note 18, at 897.

[197] That legally protected interest will likely present itself as a defendant's Fourth Amendment privacy interest – but that is not necessarily the sole ground for finding an investigative method unlawful. *See* Nix v. Williams, 467 U.S. 431, 442 (1984) (observing that "the 'fruit of the poisonous tree' doctrine has not been limited to cases in which there has been a Fourth Amendment violation."). Other grounds for finding an investigative method unlawful can include procedural interests created by statute, such as the rules for obtaining a particular type of data pertaining to the defendant. Toomey & Kaufman, *supra* note 18, at 897. Additionally, in certain other cases, it might be a First Amendment interest that has been intruded upon. *Id.* Regardless, a defendant has the right to litigate the lawfulness of government surveillance when there is a likelihood that investigators have not complied with any one of these protections. *Id.* at 898.

[198] *See* Note, *The New Rule of Lenity*, 119 HARV. L. REV. 2420, 2441 (2006). When interpreting criminal laws, courts oftentimes recite the maxim that "penal statues should be strictly construed against the government." 3 Norman J. Singer, Statutes and Statutory Construction §59:3, at 125 (6th ed. 2001). This canon of construction has been applied in the United States since at least 1820, when Chief Justice Marshall described it as "perhaps not much less old than construction itself." United States v. Wiltberger, 18 U.S. (5 Wheat) 76, 95 (1820). Modern courts recognize the rule as "venerable" and "well-recognized." United States v. R.L.C., 503 U.S. 291, 305 (1992); United States v. Rodgers, 466 U.S. 475, 484 (1984). After the 2013 surveillance disclosures by Edward Snowden, Orin Kerr proposed that Congress could dictate a similar principle to that of the rule of lenity for courts called on to interpret the FISA. *See* Orin Kerr, *The Rule of Lenity as a Tool to Regulate National Security Surveillance,* LAWFARE (Nov. 5, 2013, 3:20 PM), https://www.lawfareblog.com/rule-lenity-tool-regulate-national-security-surveillance. In the court's interpretation of FISA, if the scope of the statute is

parallel construction cases (or surveillance cases in general), the government should be required to disclose the origins of an investigation, and in the alternative, provide notice to defendants in close or novel cases. These close or novel cases consist of situations where law enforcement may have engaged in sensitive surveillance techniques or used special equipment that is not readily known to the public. Also, close cases can include instances where law enforcement attempts to conceal such investigative methods used against a defendant in a criminal proceeding. In these circumstances, it is the court's role to determine a favorable outcome and ensure fairness in the criminal proceeding. As discussed in the following section, exclusion of the evidence may be one such remedy. Most importantly, a defendant must have the opportunity to litigate difficult legal issues. The government should not be allowed to resolve these issues unilaterally in secret.

With the Fourth Amendment, in particular, the rule of lenity is applicable in two scenarios: 1) where evidence *may* be the fruit of a poisonous tree,[199] but it is a close question; and 2) where courts have not considered whether a particular investigative method constitutes a "search."[200] The latter is particularly significant for both defendants and the public; it enables the law to keep pace with developing technology — like the wiretapping in *Katz*, the thermal imaging in *Kyllo*, the GPS tracking in *Jones*, or the NSA's bulk collection of phone records

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ambiguous, the directive would state, courts should interpret the law narrowly in favor of the persons monitored, as opposed to the state. As technology changes, potentially allowing new programs that were not contemplated by Congress and do not fit within the confines of the statute, the Executive branch would have to go to Congress and seek approval of the new program. *Id.*; *see also* Orin S. Kerr, *A Rule of Lenity for National Security Surveillance Law*, 100 VA. L. REV. 1513 (2014).

[199] Return to Part IV for a discussion of parallel construction as a tainted fruit for purposes of the exclusionary rule and circumstances in which the Fruit of the Poisonous Tree doctrine applies. To substantiate this claim, the Supreme Court has held that defendants are entitled to adversarial hearings to resolve whether evidence is "derived from" unlawful wiretap. *Alderman*, 394 U.S. at 168. The Court in *Alderman* rejected the government's effort to resolve that issue without defense participation. *See also* Kastigar v. United States, 406 U.S. 441 (1972) (holding an equivalent hearing where a defendant has provided testimony under a "use" immunity agreement but is subsequently prosecuted to determine if evidence is derived from the immunized testimony or is free of any taint).

[200] Toomey & Kaufman, *supra* note 18, at 898.

today.[201] The government cannot withhold notice of new investigative techniques just because courts have not determined whether such techniques constitute "searches" under the Fourth Amendment. This action is clearly a self-serving policy for withholding notice and evading judicial review.[202]

Legislation that requires broad disclosure requirements with an additional framework for notice for exceptional cases should guide courts, defense attorneys, and government actors in cases moving forward. Reform, however, will not come easy. There will need to be transparency and oversight. It is crucial to remember that parallel construction was hidden from the public in the first place. For a new disclosure and notice framework to work, there needs to be effective regulation to ensure compliance with the new law. In an area clouded with secrecy about new investigative technologies and even methods to conceal using such technologies, especially in the national security context, the incentives for the government to keep such technologies hidden remains powerful. Most importantly, defense attorneys should aggressively raise complete disclosure issues, prosecutors should be diligent in uncovering law enforcement's complete investigative path, and judges should vigorously police complete disclosures and notice rights in applicable cases. Courts play crucial roles; they are in the best position to extract details about hidden investigative techniques when defendants are kept in the dark. So, judges should press the government for those details *sua sponte* to ensure that due process rights are protected in criminal prosecutions and notice is given when necessary.

2. IN THE ALTERNATIVE, EXCLUSION OF THE EVIDENCE

In the absence of disclosure or providing notice when required, any evidence derived from using parallel construction should be excluded. As discussed in Part II, because concealing evidence undermines fairness and transparency in the criminal process and prevents judicial scrutiny of the origins of an investigation, parallel construction is tainted. And because the practice is tainted, subsequent evidence gathered as a result of the original investigation is tainted, too, and should be excluded from trial under the fruit of the poisonous tree

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[201] *Id.* at 899. *See also Katz*, 389 U.S. at 361; Kyllo v. United States, 553 U.S. 27 (2001); United States v. Jones, 565 U.S. 400 (2012).
[202] Toomey & Kaufman, *supra* note 18, at 899.

doctrine. The exclusionary rule remedies and deters law enforcement misconduct by excluding evidence gathered in violation of the Constitution. The rule has predominately been recognized to redress Fourth Amendment violations.[203] But it has also been used in Fifth and Sixth Amendment cases, too.[204] The fruit of the poisonous tree doctrine prevents admitting evidence after it has been tainted by a primary illegality. [205]

As discussed in Part II, there are a number of due process violations that arise from using parallel construction. Some of these violations, such as the inability to challenge the lawfulness of an investigation, recognize additional constitutional violations therein. Due process requires the ability to challenge an investigation because the investigation itself may be unlawful. The Fourth Amendment states that a person has a right to be free from unreasonable searches and seizures.[206] The interrelationship between due process requirements and other constitutional guarantees, such as the Fourth Amendment, provide the foundation for determining when exclusion should apply.[207] Law enforcement action that deprives an individual of "life, liberty, or property, without due process of law," requires court scrutiny. In any instance where government investigative methods are concealed, depriving the court of practicing such scrutiny and undermining due process rights, evidence derived from those methods should be excluded. Again, this is much easier said than done. Defense lawyers, prosecutors, and judges will have to be vigilant to discern when such methods are being concealed in the first place. But in due course, there will be greater transparency and oversight over the practice.

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[203] *See* Mapp v. Ohio, 367 U.S. 643 (1961) (holding that evidence obtained in violation of the Fourth Amendment, which protects against "unreasonable searches and seizures," may not be used in criminal prosecutions).
[204] *See* Miranda v. Arizona, 384 U.S. 436 (1966) (establishing that the exclusionary rule applies to improperly elicited self-incriminatory statements gathered in violation of the Fifth Amendment, and to evidence gained in situations where the government violated the defendant's Sixth Amendment right to counsel).
[205] HG.ORG, *supra* note 95.
[206] U.S. CONST. amend. IV.
[207] *See* Re, *supra* note 79, at 1887 (arguing that the exclusionary rule is not grounded solely in the Fourth Amendment, but rather "from the historically evolving interrelationship between the Fourth Amendment and the Due Process Clause").

a. THE ACT OF CONCEALMENT AS TAINTED

Parallel construction conceals the origins of a law enforcement investigation. Concealing the investigation serves as the poisonous tree—undermining due process rights, and as explained in Part III, violating the Separation of Powers. Neither Congress nor the judicial branch has authorized parallel construction; thus, the only possible justification for the practice's authorization is under the executive's constitutional powers. As explained in Part III, the executive branch wields the ability to withhold information from the other two branches of federal government under the privilege doctrine. This power, however, is traditionally cabined by national security imperatives. In the purely domestic criminal context, national security does not warrant parallel construction. The criminally accused are afforded a number of constitutional rights that would otherwise be infringed by concealing sources. So, any evidence seized because of this process and subsequently used in a criminal proceeding should be suppressed as fruit of the poisonous tree. In other words, the subsequent investigation carried out by law enforcement officials to create the separate evidentiary path is tainted, so any evidence derived from it and used in court against a criminal defendant should be inadmissible under the exclusionary rule.

Law enforcement agents engaging in parallel construction may argue that *Whren v. United States*[208] allows them to bring cases against individuals solely on a pre-textual basis. So long as there is legitimate evidence implicating an individual, the original source for an investigation cannot taint subsequent evidence for suppression to apply. In *Whren*, the court held that "the temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective." [209] In the drug-based context, it would not matter if the traffic stop was set up specifically for a drug bust, so long as there was independent justification for the stop. So, even if parallel construction concealed the fact that law enforcement learned of someone dealing drugs through some other source, subsequent and independent evidence is sufficient to

[208] Whren v. United States, 517 U.S. 806 (1996).
[209] *Id.* at 806.

justify criminal charges and is not tainted for purposes of the exclusionary rule.

Whren is distinguishable from using parallel construction and does not justify its use in criminal investigations. In *Whren*, police officers had a lawful basis to perform a traffic stop: the violations of traffic regulations.[210] Proponents against the holding in *Whren* argued that individuals commit traffic violations on a regular basis, so allowing pre-textual stops would encourage profiling and justify targeting practices.[211] The fear in *Whren* was not using potentially unlawful surveillance methods or programs, such as the DEA's Hemisphere program or the use of special equipment, like StingRays.[212] The fear was discriminatory motives. Concealing one's intent is a far cry from concealing a surveillance program or investigative device from the defense or judicial scrutiny. Discriminatory intent is not a violation of the Fourth Amendment and cannot require suppression of evidence. Also, in *Whren*, the court was made aware of the entire investigative path,[213] whereas parallel construction would conceal a significant part of how an investigation actually began. The court was able to evaluate both the original reason for the stop and the pre-textual basis for the investigation before finding that a pre-textual basis for a spot is justified under the Fourth Amendment's reasonable search and seizure standard. Parallel construction withholds information and sources form the courts completely, so that courts forfeit scrutinizing the investigative process. It is this act of concealment, not some original motive to engage in a traffic stop, that is so inherently problematic. Because of the series of violations parallel construction raises in relation to the separation of powers and due process, any pre-textual evidence derived from it is tainted and should be suppressed under the exclusionary rule.

b. THE USE OF UNLAWFUL INVESTIGATIVE METHODS AS TAINTED

There is also a subsequent claim to be made here regarding the initial investigation concealed through the use of parallel construction. Since the reason for concealing the initial investigation may often result from its unlawful execution, the exclusionary rule and the fruit of the

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[210] *Id.* at 808.
[211] *Id.* at 810.
[212] Whren, 517 U.S. at 806-19.
[213] *Id.* at 808.

poisonous tree are applicable under these circumstances as well. Professor of Law Albert W. Alschuler asserts that the appropriate question for applying the exclusionary rule is one of "contributory" causation.[214] Courts should not focus on whether a constitutional violation enabled law enforcement to obtain evidence they would not have obtained otherwise,[215] but rather on whether a constitutional violation facilitated the discovery of evidence either by improving the likelihood of its discovery or by reducing the work required to obtain it.[216] Regardless of the approach taken, the application of the exclusionary rule on parallel construction is straightforward. In the first instance, parallel construction can most definitely enable law enforcement to obtain evidence they would not have obtained otherwise. As discussed earlier, the concealed initial investigation could have been conducted through unlawful surveillance methods. These methods may capture information regarding individuals whom law enforcement agents did not have the slightest clue to suspect or begin investigating in the first place. So, under the more traditional approach to the exclusionary rule, evidence obtained through the initial investigation concealed by parallel construction should be inadmissible.

In the alternative view, that of "contributory" causation, the use of unlawful investigative practices clearly and significantly improves the likelihood of discovering incriminating evidence, and reduces the work of law enforcement agencies to obtain it. While one could argue

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[214] Albert W. Alschuler, *The Exclusionary Rule and Causation: Hudson v. Michigan and Its Ancestors*, 93 IOWA L. REV 1741 (2007), *available at* http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1989&context=journal_articles.

[215] The proposition that the exclusionary rule should focus on whether a constitutional violation enabled law enforcement to obtain evidence they would not have obtained without it is commonly known as the "but-for" requirement. This approach to the exclusionary rule was used in Hudson v. Michigan, which held that evidence need not be excluded even in the face of a constitutional violation if the evidence could have been obtainable without the violation. In *Hudson*, the police had violated the Fourth Amendment by failing to knock and announce their presence before conducting a search. Hudson v. Michigan, 126 S. Ct. 2159 (1975). However, because the court determined that the police would still have obtained the evidence even if they had knocked, the exclusionary rule did not apply. Professor Albert W. Alschuler disagrees with this approach and feels that there is an alternative approach, that of "contributory" causation, that is more appropriate for Fourth Amendment analysis. Alschuler, *supra* note 214.

[216] *Id.*

that parallel construction actually provides agencies with more work to initiate a subsequent investigation to create a separate evidentiary path and conceal the original source of information, this argument misses the mark. The focus of the analysis is on the initial point of investigation and not the manner in which law enforcement attempts to conceal the investigation. Also, the work of law enforcement agencies is significantly reduced because the constitutionality of the initial investigation, the one being concealed, will not be addressed in a court of law. Accordingly, law enforcement agencies will not have to defend the initial investigation's validity in court. The clandestine use of advanced investigative techniques deprives courts of any Fourth Amendment analysis to determine whether evidence was obtained lawfully and is admissible. Furthermore, such methods reduce using traditional and lawful investigative practices that would need to be conducted otherwise to obtain such information in the first place. That is why using parallel construction should not only be excluded from law enforcement practice through traditional notions of the exclusionary rule, but also for its "contributory" causation of facilitating unconstitutional short cuts in the investigatory role of law enforcement.

Even under the more commonly recognized deterrence-based approach, exclusion is justified. In *United States v. Leon*, the Supreme Court held that to exclude evidence, the police misconduct must have been "substantial and deliberate" that exclusion would deter future similar conduct. And, the deterrence would also have to justify any costs to the justice system.[217] Using parallel construction is no doubt a deliberate attempt to bypass constitutional guarantees that undermine procedures for fairness and accountability. Even in the national security context, when investigative methods are sensitive or deal with classified information, there are already procedures in place that provide notice to both defendants and the courts to find a solution moving forward. Parallel construction undermines these efforts by completely circumventing these safeguards used to ensure fairness in criminal proceedings. Parallel construction enables law enforcement agencies to engage in questionable investigative practices, to evade any challenges the criminal defendant might raise against the practice, and to prevent judicial review of the practice by concealing its source in the first place. Parallel construction thus undermines the legal system and process of

[217] United States v. Leon, 468 U.S. 897, 909 (1984).

checks and balances. So, using parallel construction is no doubt "sufficiently deliberate" to warrant exclusion.

It is also important to mention that there needs to be greater mobilization on this issue. But given the focus of securing a criminal defendant's due process rights in the criminal justice system, how can we mobilize or organize the general public when is seems that the majority is not being subjected to parallel construction? Even in the case where we were to argue that the root of the problem is widespread — oftentimes, illegal searches/surveillance practices — how do we encourage public participation when the focus of reform is specifically to safeguard the rights of convicted individuals, especially in the cases for drug offenses? The issue should not be framed specifically to the criminal justice system and a defendant's due process of the law, but rather on the right to privacy in general; a right that transcends the criminally accused and carries implications for the public at large. If we allow our government to engage in unlawful and clandestine surveillance practices against criminal defendants, we have to remember that these practices were conducted before any incriminating evidence was discovered in the first place. By addressing the situations where unlawful government practices are more readily apparent, like in criminal procedures, we can ensure that the practice is not subjecting U.S. persons in general.

CONCLUSION

As this Article demonstrates, law enforcement's use of parallel construction poses a series of concerns to the community and our Constitution. First, it challenges the utility of our Fourth, Fifth, and Sixth Amendment jurisprudence. If law enforcement conceals the origins of an investigation, the defense cannot challenge the investigation and the courts cannot scrutinize its legality to warrant suppression of the evidence if necessary. Second, parallel construction undermines the bedrock doctrine of separation of powers. As discussed, parallel construction is not limited for use in the national security context. Rather, it prevents judicial scrutiny of any investigative method, including national security measures, used in the domestic criminal context that would otherwise impede the efficacy of law enforcement practices. Third, parallel construction exposes a lack of

accountability and transparency among our law enforcement agencies. And fourth, it raises serious questions about the security of our individual rights as the government's technological capabilities rapidly advance. Without a doubt, there is much to be gained from ensuring that law enforcement refrains from practicing parallel construction in the future.

Perhaps for many, it is not much of a concern when the police conduct an investigation that leads to the discovery of reliable, tangible evidence of a defendant's guilt. Nonetheless, the principles that immunize government investigations of a criminal's behavior from judicial scrutiny also immunizes such investigations when it is directed at the citizen who has never committed a crime in her life. The criminal defendant can challenge the evidence being used against her if the police transgressed constitutional restraints during their investigation. As a result, judicial scrutiny of an investigation will set the level of privacy and freedom for the nation. Suppression of illegally obtained evidence protects us all, not just those suspected of criminal activity. The diminution of constitutional guarantees in the criminal context, such as Fourth Amendment protections or Due Process, also lessens the quality of life for all U.S. persons, not just for the criminally inclined.[218]

[218] Lewis R. Katz, *In Search of a Fourth Amendment for the Twenty-First Century*, 65 IND. L. J. 549 (1990), *available at* http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1295&context=ilj.



Dark Side

Secret Origins of Evidence in US Criminal Cases

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Dark Side

Secret Origins of Evidence in US Criminal Cases

Summary 1

Methodology 7

I. Background 10

II. Parallel Construction in Action 17

A. Federal Agencies that Request or Carry Out Parallel Construction 17

1. Agencies Other Than the DEA 17

2. The DEA and its Special Operations Division 20

B. How Parallel Construction Is Carried Out 28

1. Call records 28

2. Interviews and searches based on consent 29

3. Intelligence surveillance 29

4. Proceedings under the Classified Information Procedures Act 30

5. Pretextual traffic stops 31

C. Frequency of Parallel Construction 38

D. Who Is Affected by Parallel Construction 39

E. The Government's Legal Justifications for Parallel Construction 40

III. Defendants' Difficulties in Discovering and Challenging Parallel Construction 42

A. Prosecution Resistance to Defense Motions 42

1. Arguing that the defendant is merely speculating 42

2. Suggesting that the evidence would not be relevant or discoverable 47

3. Maintaining that the evidence is not in the possession of the prosecution team 50

4. Claiming that the government does not intend to "use" evidence as part of the prosecution 53

B. Inadvertent or Politically Motivated Revelations 55

IV. Impact on Human Rights 57

V. Recommendations 64

Conclusion **66**

Acknowledgments **67**

Annex: Background on US Surveillance Authorities **68**

A. The Fourth, Fifth, and Fourteenth Amendments to the US Constitution 68

B. Law Enforcement Surveillance and Other Search Powers 68

1. Access to telephone and internet communications: content 68

2. Access to telephone and internet communications: metadata 70

3. The surveillance of non-US Persons outside the United States 70

C. Intelligence and National Security Surveillance Powers 70

1. The Foreign Intelligence Surveillance Act 72

2. Intelligence-sharing arrangements with foreign governments 74

3. The sharing of intelligence with law enforcement 75

4. Notification of surveillance 77

Summary

> Judge: [I]f, you know, there was an illegal search … followed by a legal search, but that was only obtained because now that you had the illegal search, you knew something about [the case], that would be a concern to the Court.… And that is the fruit of the poisonous tree, potentially.
>
> Prosecutor: I respectfully dispute that point.… [I]n fact, I don't have any concern about that.
>
> —Hearing transcript, United States v. Lara (Northern District of California), December 2013

> We have in our country a Fourth Amendment and Fourth Amendment rights.… That's a bedrock principle of our system. Essentially, this practice is an attempt to circumvent that.
>
> —Jessica Carmichael, Virginia-based defense attorney who has represented a client in a case of suspected parallel construction, discussing the practice with Human Rights Watch in July 2017

In the United States today, a growing body of evidence suggests that the federal government is deliberately concealing methods used by intelligence or law enforcement agencies to identify or investigate suspects—including methods that may be illegal. It does so by creating a different story about how agents discovered the information, and as a result, people may be imprisoned without ever knowing enough to challenge the potentially rights-violating origins of the cases against them.

Through a practice known as "parallel construction," an official who wishes to keep an investigative activity hidden from courts and defendants—and ultimately from the public—can simply go through the motions of re-discovering evidence in some other way. For example, if the government learned of a suspected immigration-related offense by a person in Dallas, Texas, through a surveillance program it wished to keep secret, it could ask a Dallas police officer to follow the person's car until she committed a traffic violation, then pull her over and start questioning her—and later pretend this traffic stop was how the investigation in her case started.

Due to parallel construction, defendants in criminal cases across the country may be experiencing serious infringements of their rights without their knowledge. The United States Constitution draws on lessons learned from the abuses of the British colonial era in placing firm restrictions on how the government can behave when it wants to prove someone has done something wrong. It establishes criteria for rights-respecting searches and seizures, requires the prosecution to turn over to the defense any evidence favorable to the accused, and demands that all trials and proceedings take place in accordance with "due process"—that is, fundamental fairness. However, parallel construction—when sustained through the end of proceedings—means defendants cannot learn about, and therefore cannot challenge, government actions that violate these or other rights.

In creating fictions to keep potentially questionable investigative activities out of sight, the government also avoids an important deterrent to official misconduct. When law enforcement or intelligence agencies break the law, judges typically prohibit prosecutors from introducing evidence that was obtained as a result of those illegal operations. This is one of the main incentives agents have to respect rights. Parallel construction removes this incentive by deliberately rendering those agents' actions invisible to courts and defendants, and the resulting lack of accountability risks turning constitutional rights into little more than words on paper.

This impact is not limited to criminal defendants. If government agents can potentially create privacy-violating, discriminatory, or otherwise unlawful programs or patterns of behavior in secret and without facing any negative consequences, the rights of every member of the public are in jeopardy. Taken to its worst logical conclusion, parallel construction risks creating a country in which people and communities are perpetually vulnerable to investigations based on prejudice, vast illegal operations, or official misconduct, but have no means of learning about these problems and holding agents to account.

Of particular concern is the potential use of parallel construction to hide intelligence surveillance programs. Modern US intelligence surveillance is as sweeping as it is secretive, and a lack of disclosure of the use of such surveillance in criminal investigations means wide-ranging or acute civil liberties violations may go unnoticed.

Parallel construction also means judges may never evaluate whether government uses of constantly evolving surveillance techniques adhere to the US Constitution and laws

adopted by Congress, as is their role in the US system. For example, if the government were to identify a suspect in a robbery by scrutinizing a store's security video using a new but flawed facial recognition technology it does not want to reveal, it could send an informant to talk to the suspect and report what he said—then suggest in court records that this conversation was how the investigation began. Such possible uses of parallel construction are especially troubling in human rights terms because new technologies may be inaccurate (including, in the case of facial recognition software, for people of certain racial or ethnic groups) or raise new legal concerns. Unless judges are aware that such new technology has been used, they will not be able to assess whether the technology violates rights.

Virginia-based defense attorney Jessica Carmichael, who has represented a client in a case that gave rise to concerns about potential parallel construction, told Human Rights Watch the practice "flies in the face of everything that our justice system stands for." Referring to the Fourth Amendment to the US Constitution, which is intended to protect the population against abusive searches and seizures by the authorities, she continued, "Essentially, this practice is an attempt to circumvent that. It's a way that defendants can't challenge the evidence and the way that it was obtained." Other defense attorneys told Human Rights Watch that parallel construction "encourages law enforcement to be duplicitous" and risks destroying the essence of Fourth Amendment protections.

Human Rights Watch investigated parallel construction from April 2016 to October 2017 using interviews, court records, documents disclosed by the government, and media reports. In this report we detail how the practice:

- Is a technique that, the evidence suggests, is employed frequently and possibly even daily;
- Has roots in strained and untested government interpretations of US Supreme Court and other cases—cases that in fact have never explicitly provided license for officials to deliberately avoid telling defendants the truth about investigative methods in order to conceal practices that might raise legal concerns;
- May be employed by a range of federal agencies responsible for investigating suspected violations of criminal and immigration law;
- In particular, is employed by a part of the Drug Enforcement Administration ("DEA") known as the Special Operations Division ("SOD"), at least part of which has been nicknamed "the Dark Side" and which the evidence suggests is responsible for

passing tips to various law enforcement bodies with the expectation that those tips will not be revealed in court;

- Regularly relies on pretextual stops and searches of vehicles—an exercise of police powers that is sometimes known as a "wall stop" or "whisper stop" and that risks becoming unlawfully coercive;
- May also rely on other tactics, such as attempts to find incriminating evidence by obtaining a suspect's consent to a search of his or her person or belongings, requests for call records (which do not require a warrant under US law), closed proceedings under the Classified Information Procedures Act, or the use of less-controversial intelligence surveillance methods to conceal more controversial forms;
- Is at least sometimes used in investigations involving relatively minor offenses;
- Prevents courts from providing oversight over surveillance and other investigative methods, and therefore from deterring law enforcement misconduct; and
- Is facilitated by prosecution tactics for resisting defense attorneys' efforts to find out how the cases against their clients truly originated, including prosecution claims that agencies such as the NSA are not part of the prosecution "team" and that prosecutors therefore are not required to find out if such agencies were involved in the investigation.

The government appears to have developed legal justifications for parallel construction based on theories with which at least some US courts might agree in individual cases. These theories appear to hinge on exceptions to the "exclusionary rule"—a court-developed doctrine under which judges generally will not allow prosecutors to introduce evidence obtained thanks to illegal behaviors. (Such evidence is known as "fruit of the poisonous tree.") They may also hinge on prior cases in which courts have allowed the government to conceal the identities of human informants.

However, in making any secret determinations about whether it can legally withhold information about its activities, the government essentially claims for itself the judge's role. Moreover, except in instances in which the government ultimately decides on its own initiative to reveal that it has engaged in parallel construction, court documents reviewed by Human Rights Watch suggest that defendants and their lawyers face a low likelihood of being able to find out whether parallel construction has occurred (and challenge the

lawfulness of the government's actions in this area). Where the possible use of intelligence surveillance is concerned, the discovery of such information as part of criminal proceedings is essentially the only way a defendant can find out whether she or he may have been unlawfully monitored, since US doctrines related to "standing" (that is, the ability to establish a right to sue by showing that one has been or will be harmed by a government action) make it difficult for individuals who lack strong evidence that they were surveilled to bring suit.

The report concludes that parallel construction violates the right to fair trial proceedings. It also facilitates other potential human rights violations by hiding them from defendants, judges, and the public. Depending on the circumstances, these violations may include infringements on privacy rights (as in the case of any unlawful surveillance), defendants' right of access to any evidence the government holds that is favorable to them, and the entitlement to a remedy for government abuses. By shielding official decisions and actions from view, parallel construction may also conceal law enforcement or intelligence activities that violate rights in a discriminatory manner.

"Society wins not only when the guilty are convicted, but when criminal trials are fair," the US Supreme Court wrote more than 50 years ago in *Brady v. Maryland*. Parallel construction means society loses: people facing the loss of their liberty may receive unfair trials, and government activities that may violate the human rights of significant numbers of people—or even, as in the case of large-scale surveillance programs, much of the population—are shielded from view.

This report recommends that the US executive branch prohibit all government departments and agencies from engaging in or contributing to parallel construction efforts, and disclose all policies related to the concealment of sources or evidence. The Office of the Director of National Intelligence ("ODNI") should also publicly and fully disclose all policies and legal interpretations of the intelligence agencies that may affect criminal defendants or others involved in proceedings before US courts or tribunals. Additionally, the US Congress should require the disclosure to criminal defendants of complete information about the origins of the investigations in their cases, with special procedures as necessary to address classified information or information whose disclosure may jeopardize the safety of identifiable human informants.

Human Rights Watch further urges federal and state courts, whenever the circumstances suggest that parallel construction may have occurred, to direct the prosecution to inquire into and disclose any previously unrevealed investigative sources or techniques that were employed as part of the investigation. Defense attorneys, too, should be alert to the possibility that their clients' cases may have stemmed from undisclosed activities.

As a concealment method, parallel construction poses unique research challenges; the point of the practice is to ensure that no one outside of government knows it has taken place. Human Rights Watch's investigation nevertheless indicates that this use of secret evidence may be occurring regularly in cases throughout the country—cases in which the person accused of an offense remains innocent until proven guilty and faces a potentially life-altering prison term. The report concludes that action is needed immediately to end an aspect of the US justice system that is, in the words of multiple defense attorneys who spoke with Human Rights Watch, a lie.

Methodology

From April 2016 to October 2017, Human Rights Watch investigated the issue of parallel construction through a combination of interviews, analyses of court opinions and records, and assessments of government documents.

For the purposes of this research, Human Rights Watch has defined "parallel construction" to include deliberate efforts by US government bodies, as part of a criminal investigation or prosecution, to conceal the true origins of evidence by creating an alternative explanation for how the authorities discovered it.

For example, if the government learned of a piece of information by intercepting and reading an e-mail, then sent a confidential human informant to the e-mail sender's door to try to get him or her to repeat the same information so the government would not have to reveal the interception of the message, this would constitute parallel construction in accordance with our understanding. Another hypothetical example—drawn from allegations made by the defense in a federal case in New Mexico[1]—would be a government agent's secret search of a piece of luggage, followed by a deliberate effort to persuade the luggage's owner to consent to a search of the bag just as if the first search (the one the government does not wish to admit having done) had never happened.

This report includes a focus on the potential use of parallel construction to conceal warrantless surveillance activities due to particular human rights concerns about those activities. However, as discussed herein, officials may also use parallel construction to conceal sources of information that are not necessarily related to warrantless surveillance, such as a tip from a human informant or a wiretap that takes place pursuant to a court order.

As part of this investigation, Human Rights Watch assessed judicial decisions, transcripts, briefs, and/or other court records from 95 relevant US federal and state criminal cases. Some of these cases were identified through outreach to defense attorneys, while others

[1] *United States v. Grobstein*, case no. 1:13-cr-00663 (D. NM), Defendant's Motion to Suppress (doc. 44), May 6, 2013, https://www.hrw.org/sites/default/files/supporting_resources/201711us_motion_to_suppress.pdf.

were located through database searches or media coverage, or shared with Human Rights Watch by the American Civil Liberties Union.

To better understand the practice of parallel construction and its consequences, Human Rights Watch also conducted 24 interviews with defense attorneys, current and former US officials, and experts from civil society groups.

To uncover evidence concerning the government's legal and policy justifications for parallel construction as well as the history and nature of the practice, we examined several hundred pages of documents that executive branch agencies have released following Freedom of Information Act ("FOIA") requests or by their own initiative. Some of the most significant of these included policies and other materials declassified and released by ODNI; historical documents posted in the online FOIA reading room of the Central Intelligence Agency ("CIA"); and trainings and other documents obtained under FOIA by the American Civil Liberties Union, the Electronic Frontier Foundation, and the journalist CJ Ciaramella.[2] We submitted our own FOIA requests concerning intelligence surveillance and parallel construction to 22 federal agencies in January 2017 and were still awaiting final responses from many at the time this report was finalized.[3]

Additionally, we have incorporated information obtained by journalists from media outlets such as Reuters, which published a groundbreaking article on parallel construction in August 2013.[4] In some sections of the report, we have utilized (primarily as corroborating evidence) a blog post by a former New York state prosecutor that had strong indicia of authenticity, although efforts to arrange an interview with the author prior to the finalization of this report were unsuccessful.

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[2] See "DEA policies on 'parallel construction,'" post to Muckrock (blog), undated, https://cdn.muckrock.com/foia_files/1-23-14_MR6434_RES_ID13-00541-F_1.pdf (accessed October 31, 2017) (hereinafter "Muckrock documents").

[3] See "Human Rights Watch Asks US about Use of Secret Surveillance for Drug, Immigration Purposes," Human Rights Watch, January 23, 2017, https://www.hrw.org/news/2017/01/23/human-rights-watch-asks-us-about-use-secret-surveillance-drug-immigration-purposes.

[4] John Shiffman and Kristina Cooke, "Exclusive: US directs agents to cover up program used to investigate Americans," *Reuters*, August 5, 2013, http://www.reuters.com/article/us-dea-sod/exclusive-u-s-directs-agents-to-cover-up-program-used-to-investigate-americans-idUSBRE97409R20130805 (accessed October 31, 2017) (hereinafter "Shiffman and Cooke").

Several discussions in this report draw on materials concerning US intelligence surveillance that were disclosed by former NSA contractor Edward Snowden beginning in 2013, or on US diplomatic cables that Army soldier Chelsea Manning (then known as Bradley) disclosed to the media organization WikiLeaks in 2010.

The CIA, Federal Bureau of Investigation ("FBI"), NSA, and ODNI responded to requests for comment by referring Human Rights Watch to the Justice Department.[5] The Justice Department declined our request for an interview, stating in an e-mail that "as a general matter, [the Department] does not comment on issues surrounding investigative sources and methods, or related litigation."[6] The DEA also declined to provide comments.[7] However, this report extensively quotes and describes materials produced by US government lawyers.

The issues addressed in this report include only those pertaining to information the government does or does not disclose to defendants, who may challenge the legality of the government's techniques for gathering the information, and the role of judges, who are responsible for making determinations in this area. The report does not address prosecutors' decisions about which evidence to present to juries at trial.

[5] Email from Ben Huebner, Privacy and Civil Liberties Officer, Central Intelligence Agency, to Human Rights Watch, August 9, 2017; Email from Andrew C. Ames, National Press Office, Federal Bureau of Investigation, to Human Rights Watch, August 17, 2017; Email from Vanee M. Vines, Public and Media Affairs Office, National Security Agency/Central Security Service, to Human Rights Watch, August 25, 2017; Email correspondence between Human Rights Watch and Alexander W. Joel, Chief, Office of Civil Liberties, Privacy, and Transparency, Office of the Director of National Intelligence, August 16, 2017.

[6] Email from Wyn Hornbuckle, Deputy Director, Office of Public Affairs, Department of Justice, to Human Rights Watch, September 22, 2017.

[7] Email from Katherine M. Pfaff, National Media Affairs, Office of Congressional and Public Affairs, Drug Enforcement Administration, to Human Rights Watch, August 8, 2017.

I. Background

In August 2013, the wire service Reuters published an article revealing the deliberate use of parallel construction to conceal the original sources of evidence.[8] Focusing on the DEA, journalists John Shiffman and Kristina Cooke found that a "secretive" unit known as the Special Operations Division was "funneling information from intelligence intercepts, wiretaps, informants and a massive database of telephone records to authorities across the nation to help them launch criminal investigations of Americans." Documents they had obtained, the reporters wrote, showed that "federal agents are trained to 'recreate' the investigative trail to effectively cover up where the information originated."[9]

In Reuters' account, an anonymous senior DEA official depicted parallel construction as "a bedrock concept" that is "decades old" and that the government employs daily.[10] A former federal prosecutor who spoke with Human Rights Watch on the condition of anonymity said of the use of pretextual stops and searches of vehicles for parallel construction purposes, "Does it bother me a little? Yeah. But if it's gonna stop 100 keys [kilograms of drugs] from getting on the street, it's okay by me. I didn't make the rules. I just play by them."[11]

US civil liberties groups, however, have decried parallel construction, with the American Civil Liberties Union characterizing it as a "dangerous constitutional runaround" and the Electronic Frontier Foundation calling it "intelligence laundering."[12]

The government's justifications and methods for carrying out parallel construction, and some rights-based objections to the practice, are grounded in certain key features of US law:

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[8] Shiffman and Cooke.

[9] Ibid.

[10] Ibid.

[11] Human Rights Watch interview with a former US federal prosecutor who requested anonymity, United States, 2016.

[12] Matthew Harwood and Jay Stanley, "Power Loves the Dark," post to American Civil Liberties Union (blog), May 19, 2016, https://www.aclu.org/blog/privacy-technology/surveillance-technologies/power-loves-dark (accessed October 31, 2017); Hanni Fakhoury, "DEA and NSA Team Up to Share Intelligence, Leading to Secret Use of Surveillance in Ordinary Investigations," post to Electronic Frontier Foundation (blog), August 6, 2013, https://www.eff.org/deeplinks/2013/08/dea-and-nsa-team-intelligence-laundering (accessed October 31, 2017).

- The Fourth Amendment to the US Constitution establishes protections against unreasonable searches and seizures by the authorities, as well as a requirement that warrants be based upon probable cause to believe that wrongdoing has occurred or will soon occur.[13]
- The Constitution also establishes in the Fifth and Fourteenth Amendments that the government cannot deprive individuals of their "liberty … without due process of law."[14]
- Judges in US courts will normally prohibit prosecutors from introducing evidence the government obtained thanks to illegal activities.[15] Such evidence is known as "fruit of the poisonous tree," and the rule is known as the "exclusionary rule."[16] The US Supreme Court has characterized the purpose of the exclusionary rule as the deterrence of future law enforcement misconduct.[17]
- There are exceptions to the "fruit of the poisonous tree" doctrine, and some of these appear to form part of the government's legal underpinning for parallel construction. Under these exceptions, evidence the authorities originally located through an illegal action may still be admissible.
- One exception to the "fruit of the poisonous tree" doctrine, known as the "independent source" exception, arises where "a later, lawful seizure is *genuinely independent* of an earlier, tainted [i.e., unlawful] one."[18] Other exceptions to the "fruit of the poisonous tree" doctrine arise if the government "inevitably" would have discovered the evidence in some other manner "without reference to" the unlawful action, or if its discovery of the evidence through lawful methods was sufficiently "attenuated" from the unlawful behavior.[19]
- One of the best-documented parallel construction methods is pretextual stops and searches of vehicles in the hopes that officers will find incriminating items such as drugs. A key legal basis for these stops is *Whren v. United States*, in which the US Supreme Court held that a law enforcement officer may stop a car whenever the officer has probable cause to believe a traffic violation has occurred, and that it

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[13] United States Constitution, Fourth Amendment.

[14] United States Constitution, Fifth, and Fourteenth Amendments.

[15] *Weeks v. United States*, 232 U.S. 383 (1914); *Mapp v. Ohio*, 367 U.S. 643 (1961).

[16] *Nardone v. United States*, 308 U.S. 338 (1939); *Wong Sun v. United States*, 371 U.S. 471 (1963); *Mapp v. Ohio*.

[17] See, e.g., *Mapp v. Ohio*, p. 656; *Illinois v. Krull*, 480 U.S. 340, 347 (1987).

[18] *Murray v. United States*, 487 U.S. 533, 542 (1988) (emphasis added).

[19] *Nix v. Williams*, 467 U.S. 431, 448 (1984); *Nardone v. United States*; *Wong Sun v. United States*.

does not matter whether the officer has some other, unrelated motive for carrying out the stop.[20] However, *Whren* concerned only the legality of the traffic stop itself and did not address any application of the "fruit of the poisonous tree" doctrine to investigative activities that led to the stop.

- During a traffic stop, an officer may use various means of searching the vehicle for contraband or other evidence that gives rise to probable cause to believe that a criminal offense has been or is being committed (thus justifying an arrest). For example, the officer may ask for consent to search the car.[21] (As scholars have pointed out, individuals regularly provide what is legally regarded as valid consent, even when it is not in their interest to do so.)[22] Even in the absence of consent, the officer may use a drug-detecting dog to carry out a "canine sniff" of the vehicle.[23] Consent may also serve as a legal basis for other warrantless searches; for example, an officer may approach a bus passenger and ask for consent to search his or her luggage, even though in most circumstances the officer would not otherwise be permitted to carry out the search without a warrant.[24]
- A crucial protection for defendants was established by the US Supreme Court in *Brady v. Maryland*, in which the court found that the Constitution's due process provisions require the prosecution to disclose any exculpatory evidence to the defense (that is, any evidence that is "favorable" to him or her).[25] The court has also found that the prosecution "has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police."[26]

The government may be using parallel construction to conceal surveillance activities, although it may also use the practice to prevent other types of sources from being disclosed. Where surveillance is concerned, important concepts and historical background include:

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[20] *Whren v. United States*, 517 U.S. 806 (1996).

[21] See, e.g., *Ohio v. Robinette*, 519 U.S. 33 (1996).

[22] See, e.g., Alafair S. Burke, Consent Searches and Fourth Amendment Reasonableness, *Florida Law Review* vol. 67 (2016), pp. 521-531, available at http://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1247&context=flr (accessed November 6, 2017).

[23] *Illinois v. Caballes*, 543 U.S. 405 (2005)

[24] On warrantless luggage searches, see *Bond v. United States*, 529 U.S. 334 (2000).

[25] *Brady v. Maryland*, 373 U.S. 83 (1963).

[26] *Kyles v. Whitley*, 514 U.S. 419 (1995).

- The US government collectively describes its intelligence agencies as the "Intelligence Community."[27] In addition to the NSA and CIA, these include—among others—the FBI, the DEA's Office of National Security Intelligence, and the Department of Homeland Security's Office of Intelligence and Analysis.[28] The emergence of these various intelligence bodies has created decades-long controversies about the role they should play in monitoring people and events in the United States and their proper relationship to domestic law enforcement.[29] Some of these controversies are rooted in a history of various forms of unnecessary and/or discriminatory monitoring of African-Americans, Native Americans, women's rights advocates, political dissidents, and others.[30] State and local law enforcement bodies, too, have faced repeated outcries over allegedly unlawful monitoring of minorities.[31]
- Normally, US law enforcement agents may only intercept or demand the content of telephone or internet communications if they first obtain a warrant or order from a court. This requirement stems from the Fourth Amendment and is found in a 1968 law commonly known as the Wiretap Act, which has since been amended to cover electronic communications.[32]
- However, the US Supreme Court ruled in 1979 that the Fourth Amendment does not require officers to obtain a warrant before seeking records of telephone calls (other than the content of the conversation).[33] The logic of this ruling continues to underpin various forms of warrantless collection of metadata (that is, non-content

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[27] See "Members of the IC," Office of the Director of National Intelligence, https://www.dni.gov/index.php/what-we-do/members-of-the-ic (accessed November 6, 2017).

[28] Ibid.

[29] See, e.g., David S. Kris and J. Douglas Wilson, *National Security Investigations & Prosecutions 2d* (Thomson West, 2012), vol. 1, pp. 42-44, 63-87; vol. 2, pp. 5-13.

[30] Ibid., vol. I, pp. 38-44; *United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Intelligence Activities and the Rights of Americans* (1976), Report no. 94-755, Book II, pp. 6-12 (hereinafter "Church Committee Report"), available at http://www.aarclibrary.org/publib/contents/church/contents_church_reports_book2.htm (accessed October 17, 2017).

[31] See, e.g., Matt Apuzzo and Adam Goldman, "After Spying on Muslims, New York Police Agree to Greater Oversight," *New York Times*, March 6, 2017, https://www.nytimes.com/2017/03/06/nyregion/nypd-spying-muslims-surveillance-lawsuit.html (accessed November 6, 2017); Denis C. Theriault, "'Shameful and dangerous': Civil rights group rips Black Lives Matter surveillance," *OregonLive/Oregonian*, April 12, 2016, http://www.oregonlive.com/politics/index.ssf/2016/04/shameful_and_dangerous_civil_r.html (accessed November 6, 2017).

[32] "Title III of The Omnibus Crime Control and Safe Streets Act of 1968 (Wiretap Act)," Department of Justice, Sept. 13, 2013, https://it.ojp.gov/PrivacyLiberty/authorities/statutes/1284 (accessed November 6, 2017); 18 U.S.C. § 2511.

[33] *Smith v. Maryland*, 442 U.S. 375 (1979).

information about internet or telephone communications) in the US. Since the government does not need a warrant to obtain call records, demands for such records may be used as a form of parallel construction to hide some other activity.[34]

- The government's creation of large, warrantless databases of telephone records, as well as its warrantless collection of cell-phone location data, are also some of the activities parallel construction may have been used to conceal.[35]
- The US Supreme Court has also ruled that, at least in some circumstances, the Fourth Amendment does not apply to "activities of the United States directed against aliens in foreign territory or in international waters."[36] Thanks in part to this holding, the executive branch has concluded that it is entitled to carry out extremely large warrantless intelligence surveillance programs, as long as those programs do not specifically target a "US person" (a category that includes US citizens; lawful permanent residents, also known as green-card holders, and some corporations and associations).[37] When conducting such surveillance, the government believes it has the power to gather Americans' communications "incidentally" and to search them without a warrant.[38] Whistleblowers and independent experts have indicated that the scale of the "incidental" surveillance of US persons' communications could be large.[39]
- In some circumstances, US federal law explicitly requires that defendants or other individuals involved in proceedings be notified of surveillance employed in their cases.[40] However, officials have indicated that they do not believe they are required to notify defendants of any investigative use of surveillance data obtained under one of the country's most important intelligence surveillance authorities

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34 See Part II below.

35 Ibid.; Tim Cushing, "Stingray Memo From FBI To Oklahoma Law Enforcement Tells PD To Engage In Parallel Construction," *TechDirt*, May 9, 2016, https://www.techdirt.com/articles/20160507/10052134369/stingray-memo-fbi-to-oklahoma-law-enforcement-tells-pd-to-engage-parallel-construction.shtml (accessed November 7, 2017).

36 *United States v. Verdugo-Urquidez*, 494 U.S. 259, 266 (1990).

37 50 U.S.C. § 1801(i).

38 See, e.g., *United States v. Mohamud*, case no. 14-30217 (9th Cir.), Answering Brief of Plaintiff-Appellee (doc. 53-2), pp. 102 et seq.

39 Privacy and Civil Liberties Oversight Board, *Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act* (Washington, DC, 2014), available at https://www.pclob.gov/library/702-Report.pdf, p. 9 (accessed November 6, 2017) (hereinafter "PCLOB Report"); Brief of *Amicus Curiae*, United States Foreign Intelligence Surveillance Court, Oct. 16, 2015, p. 11, available at https://www.aclu.org/foia-document/brief-fisc-amicus-curiae-amy-jeffress?redirect=foia-document/brief-amicus-curiae (accessed November 6, 2017).

40 E.g., 18 U.S.C. § 2518(8)(d).

(Executive Order 12333), and controversies continue as to whether the government is complying fully with its obligation to notify defendants of surveillance under a controversial provision of the Foreign Intelligence Surveillance Act ("FISA"), Section 702.[41] Executive Order 12333, Section 702 of FISA, and other US intelligence surveillance authorities are explained in greater detail in the Annex to this report.

While the legal justifications for parallel construction largely appear to lie in some of the court-acknowledged exceptions to the "fruit of the poisonous tree" doctrine, the historical origins of the practice are more difficult to discern. However, declassified documents suggest that debates within the executive branch about the possibility of deliberately using alternative investigative methods to prevent the disclosure of the original sources of information extend back to at least the mid-1970s. At the time, following revelations about discriminatory or otherwise abusive domestic monitoring (see above), the intelligence agencies perceived "a sense of prohibition against cooperation" between themselves and law enforcement bodies.[42] "This is especially true," a committee of intelligence officials wrote in a 1976 report, "in the narcotics area."[43] The agencies also worried that if defendants made motions in court for the disclosure of information about the evidence against them in court cases, "sensitive SIGINT" (signals intelligence, meaning surveillance) methods could be publicly revealed.[44]

To begin addressing the latter issue, the 1976 report recommended a review of "the feasibility of … enabling negative responses to information requests or motions for discovery of 'electronic surveillance' data on the grounds that such SIGINT is properly classified and essential national security information not used for evidentiary or prosecutive [*sic*] purposes."[45] In other words, the report suggests that at least some officials were attempting to determine how they could refuse defense motions asking the

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[41] Charlie Savage, "Reagan-Era Order on Surveillance Violates Rights, Says Departing Aide," *New York Times*, August 13, 2014, https://mobile.nytimes.com/2014/08/14/us/politics/reagan-era-order-on-surveillance-violates-rights-says-departing-aide.html (accessed November 6, 2017); Patrick C. Toomey, "Why Aren't Criminal Defendants Getting Notice of Section 702 Surveillance—Again?," post to Just Security (blog), Dec. 11, 2015, https://www.justsecurity.org/28256/arent-criminal-defendants-notice-section-702-surveillance-again (accessed October 31, 2017).

[42] "Impact of Executive Order 11905 and Implementing Guidelines on Signals Intelligence Agencies of the United States," 1976, CIA Freedom of Information Act Electronic Reading Room document no. CIA-RDP79M00467A001100190008-2, p. 3.

[43] Ibid.

[44] Ibid.

[45] Ibid., p. 4.

government to turn over surveillance data. A revised version of the report circulated the following year suggested:

> The need to protect sensitive intelligence sources and methods which provide foreign narcotics information from public disclosure can conflict with the legal requirement that the sources of evidence used in the prosecution of a narcotics trafficker in a U.S. court be disclosed to the defense. In order to preserve future access to sensitive sources and methods which contribute significant information to the overall narcotics [intelligence] collection effort, agencies involved should work together more closely to ensure that such information is not used in the prosecution of a trafficker. If it appears that a U.S. prosecution or potential prosecution might invite disclosure of a sensitive source, the agency or agencies involved should notify the Department of Justice as quickly as possible so that all prosecutorial alternatives can be fully explored.[46]

A 1983 document proposed that a panel should:

> [r]ecommend intelligence support processes for drug enforcement that will enable drug agencies to develop evidence independently and reduce the likelihood that intelligence sources and methods will be regarded [as] essential to a criminal defendant's case; in effect, build a firebreak in the evidentiary [trail] leading to sources and methods.[47]

This approach matches the tactic now commonly known as "parallel construction."

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[46] Critical Collection Problems Committee, "CCPC Study on Intelligence Activities against Illicit Narcotics Trafficking," September 1976, CIA Freedom of Information Act Electronic Reading Room document no. CIA-RDP86M00638R000100050001-0, p. 5.

[47] "Terms of Reference: CIPC Narcotics Working Group's Panel on the Use of Classified Intelligence Information by Drug Enforcement Agencies," Sept. 19, 1983, CIA Freedom of Information Act Electronic Reading Room doc. no. CIA-RDP90B00612R000100060019-7, available at https://www.hrw.org/sites/default/files/supporting_resources/cipc_narcotics_working_group.pdf. The word "trail" in the quotation above from this document reads "trial" in the original text; this appears to be a copyist's error, but either reading provides the same sense of the suggested practice.

II. Parallel Construction in Action

Interviews and documentary research conducted by Human Rights Watch regarding the current practice of parallel construction indicate that the technique may be common. Evidence further suggests that a range of federal agencies may be employing it to conceal a variety of intelligence and law enforcement sources, in some instances including warrantless surveillance.

A. Federal Agencies that Request or Carry Out Parallel Construction

1. Agencies Other Than the DEA

While the DEA and its SOD have been the focus of much of the public attention regarding parallel construction, and while parallel construction in the context of drug investigations may be frequent, Human Rights Watch's research suggests that other federal agencies also employ the technique.

In particular, a search of a major legal database using terms associated with pretextual traffic stops (a parallel construction technique, although not the only one) revealed references in published US federal and state court opinions to requests for such stops by—or to conceal the investigations of—entities other than the DEA.[48] These include the FBI,[49] Immigration and Customs Enforcement ("ICE")[50] and its Homeland Security Investigations unit,[51] and the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF").[52] Meanwhile, Reuters has reported that an Internal Revenue Service ("IRS") manual available to the agency's personnel between 2005 and 2007 contained an entry describing parallel

[48] Search terms Human Rights Watch used for this purpose included "wall stop," permutations of "wall-off stop" and "walled-off stop," and "whisper stop." The opinions we located in this manner occasionally included references to other salient opinions that did not employ these terms.

[49] *United States v. Benard*, 2010 U.S. Dist. LEXIS 100189 (D. Utah 2010); *United States v. Munoz*, 2015 U.S. Dist. LEXIS 159443 (D. Utah 2015).

[50] *United States v. Sanders*, 668 F.3d 1298 (11th Cir. 2012); *United States v. Son*, case no. 1:12-cr-00042 (N.D. GA), Suppression Hearing (Transcript) (doc. 35), filed June 2, 2012, p. 9 (testimony by state trooper Matt Moorman that "ICE wanted me to perform a traffic stop on the vehicle. It is what we call a whisper stop").

[51] *United States v. Bruce*, 2013 U.S. Dist. LEXIS 170948 (D. Ariz. 2013); *United States v. Browne*, 219 F. Supp. 3d 1030 (D. Mont. 2016).

[52] *United States v. Mitchell*, 2008 U.S. Dist. LEXIS 95512 (D. Mass. 2008).

construction and instructing personnel to use various methods to "recreate"—and thereby avoid disclosing—information provided by the DEA's SOD.[53]

The FBI has also used non-disclosure agreements to direct local police departments to employ "additional and independent investigative means and methods" to avoid revealing the collection of telephone-related metadata using cell-site simulators (commonly known as "Stingrays" after the brand name of one type of equipment used for this purpose).[54] Cell-site simulators behave like mock cellular phone towers, deceiving mobile telephones in the vicinity into connecting and sharing information with them as if they were real towers.[55] The technology is reportedly "capable of intercepting data from hundreds of people's cellphones at a time," and the constitutionality of using it without a warrant remained open to debate at the time of publication.[56]

Additionally, case records and government documents suggest that the executive branch may have engaged in parallel construction in at least some cases involving NSA surveillance. For example, a 2009 report by several government offices of inspectors general (made publicly available in 2015) found that, beginning in 2003, a special FBI team

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53 John Shiffman and David Ingram, "Exclusive: IRS manual details DEA's use of hidden intel evidence," Reuters, August 7, 2013, http://www.reuters.com/article/us-dea-irs/exclusive-irs-manual-detailed-deas-use-of-hidden-intel-evidence-idUSBRE9761AZ20130807 (hereinafter "Shiffman and Ingram").

54 Jenna McLaughlin, "FBI Told Cops to Recreate Evidence from Secret Cell-Phone Trackers," *Intercept*, May 5, 2016, https://theintercept.com/2016/05/05/fbi-told-cops-to-recreate-evidence-from-secret-cell-phone-trackers/ (accessed December 9, 2017); Jessica Glenza and Nicky Woolf, "Stingray spying: FBI's secret deal with police hides phone dragnet from courts," *Guardian*, April 10, 2015, https://www.theguardian.com/us-news/2015/apr/10/stingray-spying-fbi-phone-dragnet-police (accessed December 9, 2017).

55 "Cell-site Simulators: Frequently Asked Questions," Electronic Frontier Foundation, undated, https://www.eff.org/sls/tech/cell-site-simulators/faq (accessed November 6, 2017).

56 Brad Heath, "Police secretly track cell phones to solve routine crimes," *USA Today*, August 23, 2015, https://www.usatoday.com/story/news/2015/08/23/baltimore-police-stingray-cell-surveillance/31994181/ (accessed November 6, 2017). The Justice Department issued a policy in 2015 requiring federal law enforcement to obtain warrants before using cell-site simulators, subject to exceptions; however, the policy does not apply to state or local authorities, although some states have adopted laws restricting the use of these devices. Department of Justice, "Department of Justice Policy Guidance: Use of Cell-Site Simulator Technology," undated, https://www.justice.gov/opa/file/767321/download (accessed November 6, 2017); Department of Justice, "Justice Department Announces Enhanced Policy for Use of Cell-Site Simulators," September 3, 2015, https://www.justice.gov/opa/pr/justice-department-announces-enhanced-policy-use-cell-site-simulators (accessed November 6, 2017); Electronic Frontier Foundation, "Cell-site Simulators: Frequently Asked Questions." At the time this report was finalized, the US Supreme Court was considering a case, *Carpenter v. United States*, that does not directly address but may have profound implications for understandings of whether the warrantless use of Stingrays is constitutional. See "ACLU at Supreme Court Wednesday to Argue in Cellphone Tracking Case," American Civil Liberties Union, November 27, 2017, https://www.aclu.org/news/aclu-supreme-court-wednesday-argue-cellphone-tracking-case (accessed December 19, 2017).

was assigned to share information from a classified NSA surveillance program codenamed Stellar Wind with their colleagues at the Bureau "without disclosing that the NSA was the source of the information or how the NSA acquired the information."[57] When sharing the information, the team instructed recipients that it could not be "incorporated into any … court proceeding."[58]

The Justice Department has also failed to notify defendants at the outset of their cases that surveillance data obtained by the NSA and/or the FBI under a controversial warrantless intelligence surveillance law, Section 702 of FISA (a successor to the Stellar Wind program), had been involved in the investigations leading to their prosecutions. In at least one such case, the government has contended that prior to a Justice Department policy change, it simply "had not considered the particular question" of whether surveillance under a somewhat less controversial provision of FISA—one entailing an individualized court order—"could also be considered to be derived from prior collection" under Section 702.[59] The defense replied that "[t]he government's claim that it was unaware" that constitutional doctrines concerning evidence that may be tainted by illegality applied to information derived from Section 702 "strains credulity."[60]

In another case, defendant Agron Hasbajrami had already pleaded guilty when the government notified him that Section 702 surveillance had been employed in his case. Judge John Gleeson permitted Hasbajrami to withdraw his guilty plea, describing the government's previous provision of notice of surveillance under a FISA order—but not Section 702—as "misleading."[61]

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[57] Offices of the Inspectors General of the Department of Defense et al., *Report on the President's Surveillance Program*, vol. 1, July 10, 2009, p. 272, available here: https://www.nytimes.com/interactive/2015/04/25/us/25stellarwind-ig-report.html?_r=0.

[58] Ibid., p. 273.

[59] *United States v. Mohamud*, case no. 3:10-CR-00475 (D. Or.), Government's Response to Defendant's Motion for Full Discovery Regarding Surveillance (doc. 491), February 13, 2014, p. 7.

[60] *United States v. Mohamud* (D. Or.), Reply to Government's Response to Motion for Full Discovery Regarding the Facts and Circumstances Underlying Surveillance (doc. 496), February 27, 2014.

[61] *Hasbajrami v. United States*, case no. 1:11-cr-00623 (E.D. NY), Order (doc. 85), filed October 3, 2014, p. 6.

As this report was being finalized, the *Intercept* reported that it had identified a case in which the government notified a defendant of monitoring under a FISA order without ever disclosing that the investigation had also relied on Section 702 surveillance data.[62]

2. The DEA and its Special Operations Division

As noted above, Reuters has identified a DEA unit known as the Special Operations Division as disseminating intelligence and other information in a manner that is not revealed during prosecutions. Human Rights Watch's research suggests that the SOD may include a "Dark Side" responsible for carrying out some of the division's potentially controversial operations.

In general, the DEA's rationale for its practice of parallel construction appears to be much the same as that expressed in government documents from the 1970s and 1980s (see above). DEA training documents obtained by the journalist CJ Ciaramella under the Freedom of Information Act in 2013 and reviewed by Human Rights Watch explain "parallel reconstruction" by pointing to the idea that while "[u]nclassified material can be used in court," classified materials—including sources, methods, and technologies—"must be protected."[63] One training notes:

> Our friends in the military and intelligence community never have to prove anything to the general public. They can act upon classified information without ever divulging their sources or methods to anyway [*sic*] outside their community. If they find Bin Laden's satellite phone and then pin point his location, they don't have to go to a court to get permission to put a missile up his nose.
>
> We are bound, however, by different rules.
>
> Our investigations must be transparent. We must be able to take our information to court and prove to a jury that our bad guy did the bad things

[62] Trevor Aaronson, "NSA Secretly Helped Convict Defendants in U.S. Courts, Classified Documents Reveal," *Intercept*, November 30, 2017, https://theintercept.com/2017/11/30/nsa-surveillance-fisa-section-702/ (accessed December 8, 2017).
[63] Muckrock documents, p. 9 of the complete PDF.

> we say he did. No hiding here. However, we are also bound to protect certain pieces of information so as to protect the sources and methods.
>
> To use it…., we must properly protect it.[64]

In other words, the training indicated that if the DEA wished to continue to benefit from information the government was gathering through certain methods, it needed to prevent the public disclosure of those methods.

A 2007 DEA presentation Ciaramella obtained sought to introduce participants to "legally acceptable methodologies for handling this problem"—that is, the problem of how to use intelligence information in law enforcement investigations "without disclosing or unduly risking disclosure of sensitive or classified [Intelligence Community] information."[65] "Our government has worked out procedures to accommodate the sharing of IC [Intelligence Community] information with [law enforcement agents] for criminal investigations," the training notes state[66]—and one of these procedures is parallel construction, which "can shield information that might otherwise be discoverable in circumstances where the IC and [law enforcement agents] have focused on the same individual or groups of individuals."[67]

a. The nature of the SOD

The DEA contains a Special Operations Division established in 1994; according to congressional testimony by Derek S. Maltz, who then served as the SOD's special-agent-in-charge, the purpose of the SOD's creation was to facilitate the sharing of intelligence among law enforcement and intelligence bodies.[68] In an interview with Human Rights Watch, Maltz described the SOD as "an operational law enforcement center" intended to "coordinate different transnational crime threats to the country and utilize different agency representatives to put together the pieces of the puzzle."[69]

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[64] Ibid.; see also p. 11 of the complete PDF.

[65] Ibid., p. 14 of the complete PDF.

[66] Ibid. at p. 16 of the complete PDF.

[67] Ibid. at p. 39 of the complete PDF.

[68] Derek S. Maltz, "Narcoterrorism and the Long Reach of U.S. Law Enforcement, Part II," Statement before the House Subcommittee on Terrorism, Nonproliferation, and Trade, November 17, 2011, p. 4, https://www.dea.gov/pr/speeches-testimony/2012-2009/111117_testimony.pdf (accessed November 6, 2017).

[69] Human Rights Watch telephone interview with Derek S. Maltz, August 3, 2017.

"What we used to see back in the old days," Maltz explained, "was [that] when these cartels based in Colombia were sending drugs in to the US," they used operatives located in a wide variety of geographical locations. The DEA therefore needed a centralized team to coordinate its field operations and cases.[70]

The idea behind the SOD, he said, "is to piece together the different elements of a criminal network" that is allegedly responsible for crime in the United States "and use all tools of national power to attack the network."[71]

Similarly, Arthur Rizer, a former federal prosecutor who worked at the SOD from 2010 to 2013, described the SOD to Human Rights Watch as "like a clearinghouse for information for very large prosecutions."[72]

Maltz told Human Rights Watch that the division incorporates representatives from perhaps 30 different agencies, including partners from the United Kingdom, Canada, and Australia. (Along with the United States, these three countries and New Zealand are members of an international intelligence-sharing arrangement known as the Five Eyes.[73]) Two former DEA Special Agents who had worked in the SOD offered descriptions consistent with Maltz's during a DEA panel discussion in 2015, depicting the entity as "basically a task force"—one that incorporates agencies ranging from the FBI and US Customs and Border Protection to the New York City Police Department and foreign partners from the same countries Maltz later named.[74] Similarly, Reuters reported that the SOD includes "[t]wo dozen partner agencies" such as the "CIA, NSA, Internal Revenue Service and Department of Homeland Security."[75]

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[70] Ibid.

[71] Ibid.

[72] Human Rights Watch interview with Arthur Rizer, Washington, DC, June 8, 2017.

[73] Privacy International, "The Five Eyes," undated, https://www.privacyinternational.org/node/51 (accessed November 6, 2017).

[74] "DEA Museum Lecture Series: The History of the Special Operations Division" (Transcript), April 22, 2015, pp. 5, 20-21, https://www.deamuseum.org/wp-content/uploads/2015/08/042215-DEAMuseum-LectureSeries-MLS-SOD-transcript.pdf (accessed November 7, 2017) (hereinafter "DEA Museum Lecture").

[75] Shiffman and Cooke.

The first special-agent-in-charge of the SOD, Michael Horn, later described the Division as having adopted a groundbreaking approach at the time of its creation: "I think it was the first time that … a federal law enforcement agency really effectively used the work of the Intelligence side. It was … intelligence-led policing."[76] Nathaniel Burney, a former state narcotics prosecutor in Manhattan, has claimed in a public blog post to have interacted with the SOD in the late 1990s and early 2000s and has explained:

> A lot of international drug trafficking takes place outside our borders, so the idea was to take advantage of intelligence data to make the drug war more effective. You just can't use the intelligence data in court. So SOD was formed as a way to make the information known, without compromising criminal investigations…. [W]hat the SOD does is get evidence from sources that can never see the light of day in court—usually from intelligence services here and abroad…. If something comes up about some big drug trafficking — not at all uncommon to hear about in the intelligence world— then the SOD hears about it. Then they clue in law enforcement. It's up to law enforcement to figure out how to gather the evidence legally.[77]

Historically, one of the SOD's key functions has been to "exploit[] communications-related data for law enforcement purposes."[78] A 2007 report by the Justice Department's Office of the Inspector General explained that according to the DEA:

> [T]he most effective means of ascertaining the breadth of a drug trafficking operation is to track the communication between the parties involved. The SOD is a repository for phone numbers used or called by persons who are part of a DEA investigation. The SOD uses a database to collect these phone numbers and can connect cases with hits on the same phone

[76] Privacy International, "The Five Eyes."

[77] Nathaniel Burney, "On the DEA's Special Operations Division," post to *The Criminal Lawyer* (blog), August 5, 2013, http://burneylawfirm.com/blog/2013/08/05/on-the-deas-special-operations-division-2/ (accessed Oct. 31, 2017) (hereinafter "Burney blog").

[78] U.S. Department of Justice, Office of the Inspector General, "Review of the Organized Crime Drug Enforcement Task Forces Fusion Center," March 2014, p. 2, https://oig.justice.gov/reports/2014/e1402.pdf (accessed November 6, 2017).

numbers. This allows the DEA to link cases investigated by different offices across the country and throughout the world.[79]

In April 2015, *USA Today* revealed that for many years, the Justice Department and the DEA had "amassed logs of virtually all telephone calls from the USA to as many as 116 countries linked to drug trafficking," including Mexico and Canada. According to the newspaper's account, the DEA's SOD had passed tips based on this program to agents in the field while avoiding disclosing the existence of the program itself—potentially a way of encouraging parallel construction. (The Justice Department reportedly ended this program in September 2013.)[80]

US diplomatic cables from 2009 and 2010 that were later disclosed to WikiLeaks show DEA agents asking the SOD to provide information concerning telephone numbers furnished by foreign government entities in relation to drug investigations.[81]

Today, the data the SOD gathers, stores, and searches could extend well beyond telephone call records. A 2004 NSA document that Snowden revealed describes the NSA and DEA as having "a vibrant two-way information sharing relationship" and mentions "the critical supporting role that NSA continues to play in key DEA operations to disrupt the flow of narcotics to our country and thwart other, related crimes."[82] While this document is no longer recent, former Justice Department attorney Melanie Reid wrote in a 2015 article that "[a]s it currently stands, there is nothing prohibiting the DEA from utilizing NSA intercepts

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[79] U.S. Department of Justice, Office of the Inspector General, "The Drug Enforcement Administration's International Operations (Redacted)," February 2007, https://oig.justice.gov/reports/DEA/a0719/chapter4.htm#51 (accessed November 6, 2017) (citation omitted).

[80] Brad Heath, "U.S. secretly tracked billions of calls for decades," *USA Today*, April 7, 2015, https://www.usatoday.com/story/news/2015/04/07/dea-bulk-telephone-surveillance-operation/70808616/ (accessed November 6, 2017).

[81] "Action Request for Subscriber, Tolls and Indices Checks for DEA SOD, DEA Country Offices; Kabul, India, Egypt, Dubai and Canberra," June 23, 2009, https://wikileaks.org/plusd/cables/09ISLAMABAD1375_a.html (accessed November 6, 2017); "UI-09-0003/WEH1F/Sarov, Nosir/Telephone Toll Information Related to the Sarov Drug Trafficking Organization," April 24, 2009, https://wikileaks.org/plusd/cables/09DUSHANBE488_a.html (accessed November 6, 2017); "UI-09-0003/YEH1K/Saraf, Haji Nasir, Tajik Ministry of Interior Toll and Subscriber Information Related to the Haji Nasir Saraf DTO," June 2, 2009, https://wikileaks.org/plusd/cables/09DUSHANBE669_a.html (accessed November 6, 2017).

[82] "DEA – The 'Other' Warfighter," Apr. 20, 2004, https://search.edwardsnowden.com/docs/DEA%E2%80%93the%E2%80%9COther%E2%80%9DWarfighter2014-05-19nsadocs (accessed November 6, 2017).

under FISA or 702 or E.O. 12,333 as tips to initiate criminal investigations."[83] As explained in the Annex to this report, these intelligence authorities empower the government to gather content as well as records (metadata) of communications. Additionally, Burney's blog post refers to "[w]iretaps conducted without regard to Title III"—that is, the Wiretap Act, which requires law enforcement to get a warrant for the monitoring of telephone or Internet conversations—"because they're not intended for criminal prosecution," although Human Rights Watch has been unable to confirm the occurrence or nature of such "wiretaps."[84]

It appears that the SOD's early days were not without controversy: according to Horn, the FBI—one of the SOD's earliest partners—"initially didn't think … some of our techniques and tools were being … legally implemented."[85] However, he added, "When they started seeing some success, they … kind of changed their mind. And … they came on board."[86]

It may have been these doubts about the legality of the SOD's operations that earned the division (or some element of it) the moniker "the Dark Side." Human Rights Watch's research suggests that the nickname remains in use, although sources disagree about its significance.

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[83] "Melanie Reid," Duncan School of Law, Lincoln Memorial University, https://www.lmunet.edu/academics/schools/duncan-school-of-law/faculty-staff/faculty/melanie-reid (accessed November 6, 2017); Melanie M. Reid, "NSA and DEA Intelligence Sharing: Why it is Legal and Why Reuters and the Good Wife Got it Wrong," *SMU Law Review*, vol. 68 (2015), p. 465, available at http://scholar.smu.edu/cgi/viewcontent.cgi?article=1029&context=smulr (accessed November 6, 2017).

[84] Burney blog. Human Rights Watch has located a footnote in a 2003 report by the Justice Department's Office of the Inspector General stating, "Title III of the Omnibus Crime Control and Safe Streets Act of 1968 [the Wiretap Act] provided for the use of court-ordered electronic surveillance in the investigation of certain specified violations. The law provided that wiretaps could be used in emergency situations, but if a warrant was not obtained within 48 hours then any information obtained could not be used in court or even revealed." It is unclear why this footnote employs the past tense when describing Title III, and the apparent implication that the government might be able to engage in "emergency" wiretaps under the law without ultimately seeking a warrant if the authorities chose not to "use[]" the information in court is unexplained and remains of interest to Human Rights Watch. The footnote appears following a glossary entry for "Centralized Data Intercept," which is described as "serv[ing] as a central collection and distribution point for the call data information related to Title III." Office of the Inspector General, Department of Justice, "Department Critical Infrastructure Protection Implementing Plans to Protect Cyber-Based Infrastructure," November 2003, https://oig.justice.gov/reports/plus/a0405/app6.htm (accessed November 6, 2017). While the text of Title III provides for emergency wiretaps, the same provision establishes that if the government fails to obtain a valid judicial order within 48 hours, "the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of this chapter"—that is, illegally. 18 U.S.C. § 2518(7). Burney's statement and the footnote to the 2003 report suggest that further inquiries in this area are desirable, although Burney's mention of "[w]iretaps" is ambiguous and may refer to an activity under a legal authority other than Title III.

[85] DEA Museum Lecture, p. 14.

[86] Ibid.

"The Dark Side does stuff that doesn't come to the public's attention," the former federal prosecutor who requested anonymity told Human Rights Watch in an interview.[87] This former prosecutor, who claimed to have been part of the Dark Side for a few months, also suggested that the Dark Side included personnel from the CIA, NSA, and Defense Department in addition to the DEA; he characterized the term as referring to a type of activity and not necessarily as a specific, designated unit.[88]

Burney stated in his blog post that when he was interacting with the SOD, he and his coworkers referred to the division as the Dark Side "only half-jokingly."[89]

By contrast, Rizer portrayed the "Dark Side" nickname in his interview with Human Rights Watch as "a tongue-in-cheek kind of thing. When we all left, we got little keychains of Darth Vader."[90] He added that while "there's nothing official called the Dark Side," the entity or activity "is the intersection of the criminal justice system and the intelligence community."[91] (According to Rizer, the SOD also contains a component that is unofficially known as the "Light Side.")[92] Although he declined to provide details about the Dark Side, he emphasized that "[i]t's not as sinister as people think it is," and that "[t]he atmosphere that I saw was painful in ensuring that no laws were violated."[93]

During the same interview, however, Rizer emphasized that the public should think about just how extensive US surveillance powers are. "The powerful aspect of the SOD," he said, "is that they do everything legally—but the laws are so fucking powerful."[94] In other words, the problem is what the laws permit. "The public outcry should really be about the expansive powers of the federal government," Rizer concluded.[95]

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[87] Human Rights Watch interview with a former US federal prosecutor who requested anonymity, United States, 2016.

[88] Ibid.

[89] Burney blog.

[90] Human Rights Watch interview with Arthur Rizer, Washington, DC, June 8, 2017. Darth Vader is a fictional character from the US science-fiction film series *Star Wars*, and is associated with a sinister type of power famously described in the films as the "dark side."

[91] Human Rights Watch interview with Arthur Rizer, Washington, DC, June 8, 2017.

[92] Ibid.

[93] Ibid.

[94] Ibid.

[95] Ibid.

b. The SOD's role in parallel construction

Sources consistently describe the SOD as distributing tips to other agencies, subject to a mutual understanding that the tips will not be revealed in court proceedings. Typically, the division does not disclose the original source of its knowledge, even to other law enforcement officers or prosecutors. Rizer explained the government's perspective after obtaining and deciding to share information that may be useful in a US criminal investigation: "A lot of times, you don't want the bad guys to know how you got [the] information…. You want to give [law enforcement] just enough" to start an investigation, but "not enough to know where everything came from."[96]

In his blog post, Burney concurred, writing that during his time as a prosecutor:

> It was well understood that you couldn't build a case off of [the SOD's] information. We'd never know where their information came from, for one thing. Without a source to put on the stand, the information couldn't even be a brick in the wall of any case we wanted to construct.
>
> And to be fair, the SOD folks themselves were very clear in their instructions: Their information was not to be used as evidence. It was only to help us figure out what we were looking at in an investigation, and let us know about other things we might want to be looking for. It was all along the lines of "how you gather your evidence is up to you, but you ought to know that this Carlos guy you're looking at is part of a much larger organization, and his role is… and their shipment chain appears to have nodes here, here, and here… and your subject Gilberto over here is looking for a new local dealer."[97]

The former federal prosecutor who requested anonymity indicated to Human Rights Watch that the government has a fundamental dilemma when it is conducting an intelligence operation and, as part of that operation, obtains evidence of a criminal activity (such as a "go-fast" boat that will soon arrive at certain coordinates and may be carrying banned

[96] Ibid.

[97] Burney blog.

substances). "It's a balancing act," he said: the government wants to catch the suspected crime, but does not want to reveal its wiretap or other source.[98]

Maltz was emphatic in his description of the SOD as a law-abiding agency, saying, "SOD is a recognized international law enforcement center for excellence. They try to do the right thing 100 percent of the time."[99] However, as noted elsewhere in this report, the use of parallel construction means executive branch agencies such as the DEA (and its parent agency, the Justice Department) are determining whether many of their own activities are legal—without the checks that judicial review in the course of criminal trials would provide.

B. How Parallel Construction Is Carried Out

The available evidence indicates that the government has a variety of ways of carrying out parallel construction.

1. Call records

As noted above, law enforcement agents in the US may obtain records of telephone calls (although not the content of the conversations) without a warrant. An entry in an IRS manual that was reportedly available to personnel from 2005 to 2007 indicates that parallel construction methods may include—among others—subpoenas of domestic telephone call records or requests for foreign call records or subscriber information.[100]

In 2013, reports emerged that the DEA had been gaining access to enormous volumes of call records from the US telecommunications company AT&T through a program known as Hemisphere.[101] A government presentation indicated that agents could issue subpoenas to re-obtain any call records they originally found through Hemisphere, thus preventing the program from being disclosed—an apparent form of parallel construction.[102] The American

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[98] Human Rights Watch interview with a former US federal prosecutor who requested anonymity, United States, 2016.

[99] Human Rights Watch telephone interview with Derek S. Maltz, August 3, 2017.

[100] Shiffman and Ingram.

[101] Scott Shane and Colin Moynihan, "Drug Agents Use Vast Phone Trove, Eclipsing N.S.A.'s," *New York Times*, September 1, 2013, http://www.nytimes.com/2013/09/02/us/drug-agents-use-vast-phone-trove-eclipsing-nsas.html (accessed November 6, 2017).

[102] "Los Angeles Hemisphere," *New York Times*, undated, p. 10, http://www.nytimes.com/interactive/2013/09/02/us/hemisphere-project.html (accessed October 20, 2017).

Civil Liberties Union and the Electronic Frontier foundation have argued in court that Hemisphere is unconstitutional.[103]

An investigation by the Justice Department's Office of the Inspector General regarding "the DEA's use of administrative subpoenas to obtain broad collections of data or information," including "the use of 'parallel construction' or other techniques to protect the confidentiality of these programs," remained ongoing the time of writing.[104]

2. Interviews and searches based on consent

In some circumstances, the government may engage in parallel construction by eliciting information directly from suspects or asking them for consent to perform a search. The IRS manual entry mentioned above refers to "[f]ield interviews/defendant debriefs" as a parallel construction technique.[105] Meanwhile, a federal case in New Mexico, *United States v. Grobstein*, highlights the potential use of consent searches: based on security videos recorded at the Albuquerque bus station, defense attorneys alleged that a DEA agent secretly (and unlawfully) searched luggage left on a long-distance bus during a layover, then—after the passengers had re-boarded—approached the defendant seeking consent to search his bag.[106]

Pretextual traffic stops, discussed below, may also lead to attempts by officers to obtain consent to perform a search.

3. Intelligence surveillance

It is also possible that the government is using some forms of intelligence surveillance to hide other forms of such surveillance. For example, as explained above, the government has previously given defendants notification of individualized orders under longstanding and relatively uncontroversial provisions of FISA while avoiding disclosing its use of more

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[103] *United States v. Diaz-Rivera*, case no. 12-cr-00030 (N.D. Cal.), Brief of *Amici Curiae* of ACLU, ACLU of Northern California and Electronic Frontier Foundation in Support of Defendants' Motion to Compel Discovery, filed October 15, 2013, https://www.aclu.org/files/assets/usvdiazrivera-amici_curiae_brief_of_aclu_aclunc_eff.pdf (accessed December 21, 2017).

[104] Office of the Inspector General, Department of Justice, "Drug Enforcement Administration: Ongoing Work," undated, https://oig.justice.gov/ongoing/dea.htm (accessed November 7, 2017).

[105] Shiffman and Ingram.

[106] *United States v. Grobstein*.

controversial Section 702 programs. Additionally, DEA training documents obtained by Ciaramella highlight "FISA" (presumably meaning such relatively uncontroversial orders) as a means of enhancing the sharing of information between the Intelligence Community and law enforcement.[107]

Even the government's secretive surveillance under Section 702, when disclosed, might serve to conceal other intelligence surveillance sources. A defendant who received notice of Section 702 surveillance in 2015 went on to ask for the disclosure of any monitoring pursuant to two other intelligence authorities, Executive Order 12333 and national security letters; the prosecution responded that he was not entitled to any such notification.[108] This raises the prospect that the government may be using intelligence surveillance methods to conceal other, even more secretive intelligence surveillance methods.

4. Proceedings under the Classified Information Procedures Act

Adopted in 1980, the Classified Information Procedures Act ("CIPA") creates procedures for the treatment of classified information that a party to a case in the US—including the prosecution or a criminal defendant—may wish to introduce into evidence. To resolve such matters, the law enables the court to take actions such as holding pretrial hearings, issuing protective orders, and directing the government to provide the defendant with a redacted copy or declassified summary of classified evidence.[109]

Arthur Rizer, the former federal prosecutor who worked at the SOD from 2010 to 2013, suggested in his interview with Human Rights Watch that CIPA "is a very misunderstood, incredibly powerful statute" and pointed out that it allows prosecutors to "sanitize discovery" of classified information.[110] The implications of Rizer's statement for parallel construction currently remain unclear; however, CIPA features prominently in several places in the DEA training documents obtained by journalist Ciaramella. For example, one of these documents states that CIPA (and FISA) "provide a means lawfully to limit exposure

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[107] Muckrock documents, p. 71 of the complete PDF.

[108] *United States v. Mohammad*, case no. 3:15-cr-00358 (N.D. OH), Government's Response in Opposition to Defendant's Motion for Notice and Additional Discovery Regarding Surveillance Techniques (doc. 137), filed September 13, 2016, pp. 12-13.

[109] See Classified Information Procedures Act, 18 U.S.C. App. §§ 1 et seq.

[110] Human Rights Watch interview with Arthur Rizer, Washington, DC, June 8, 2017.

of sensitive information during public trials" and that "the concept known as 'parallel construction' can be used to shield classified information that might otherwise be discoverable in a trial from the discovery process at trial by using the [CIPA] and a 'Taint Review Team.'"[111]

5. Pretextual traffic stops

At least in the area of narcotics enforcement, one of the best documented parallel construction techniques is pretextual traffic stops. The documents Ciaramella obtained indicate that the use of "[a] wall off or pretext stop" is an accepted tactic.[112] Human Rights Watch has also identified numerous federal and state judicial decisions in which the government has admitted, after the fact, to having carried out what are known as "whisper," "wall," "walled off," or "wall off" stops.[113] It is unclear how the government decides whether to disclose the fact a traffic stop was pretextual on its own initiative during proceedings: in at least one case Human Rights Watch identified, the disclosure of a "wall stop" was inadvertent (evidence emerged in a New Mexico federal trial that an officer had mentioned a "whisper stop from DEA" to a dispatcher while unaware that he was being recorded).[114] In another case a defendant who had been convicted in Arizona state court only found out the traffic stop in his case was a "whisper stop" requested by the DEA after his conviction, when pertinent records were later disclosed in a California federal court.[115]

In a 2014 Sixth Circuit judgment vacating a defendant's guilty plea due to an unlawful frisk (that is, pat-down of an individual) following a "wall off" stop, the court summarized the nature of these stops: "During an undercover investigation, if it is necessary to stop a suspect's vehicle, law enforcement will sometimes request that a marked patrol car

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[111] Muckrock documents, pp. 96, 117; see also p. 71.

[112] Muckrock documents, p. 203 of the complete PDF.

[113] E.g., *United States v. Son*; *United States v. Munoz*; *United States v. Norton*, 2016 U.S. Dist. LEXIS 69177 (N.D. IN), April 28, 2016; *United States v. Bateman*, 2009 U.S. Dist. LEXIS 56259 (E.D. TX), June 25, 2009.

[114] *United States v. Sheridan*, case no. 1:10-cr-00333 (D. NM), Defendant's Motion to Suppress and Memorandum in Support Thereof (doc. 26), filed March 18, 2010, pp.2-3; Human Rights Watch interview with a former federal prosecutor who requested anonymity, 2016 (suggesting that the defense cannot count on prosecutors coming forward with this information in "wall stop" cases and calling on defense attorneys skeptical about the reasons for traffic stops to directly challenge the government with questions such as "'Why were you [law enforcement] in that position? Who told you to go there?'").

[115] *Arizona v. Wakil*, case no. CR 2011-00530 (Arizona Superior Court, Coconino County), Petition for Post-Conviction Relief, August 21, 2014; *Arizona v. Wakil*, Minute Entry: Oral Argument on Petition for Post Conviction Relief, November 6, 2014.

initiate a traffic stop based on a traffic infraction in order to avoid disclosing the larger investigation's existence."[116] Similarly, a 2012 Eleventh Circuit decision concerning a case involving an ICE request for a traffic stop in order to protect a "confidential source" described "whisper stops" as ones in which the government "tells a local law enforcement agency that a vehicle contains drugs or other contraband but asks the local agency to develop its own probable cause for the stop to avoid compromising the federal investigation."[117]

A detective testifying in a 2005 federal case in Utah explained even more bluntly that during a "walled-off" stop, "We will use patrol vehicles to initiate stops for offenses other than what we are doing our investigation on. And then, of course, we are expecting or hoping that there would be something more coming out of that traffic stop, such as the seizure of narcotics or weapons, etcetera. Basically what we're doing is we're trying to build a wall between what's happening with our investigation and the suspect at the time."[118]

The earliest published court opinions located by Human Rights Watch describing what may have been pretextual stops for parallel construction purposes describe stops requested in Indiana and Illinois in 1985.[119] Over time, such cases appear to have become far less unusual: using search terms such as "wall stop" and "whisper stop," Human Rights Watch has located dozens of published opinions indicating that such stops had been performed. For several reasons, these cases may represent a fraction of the actual total: not all opinions are published or otherwise included in databases, many defendants in the US accept plea bargains at early stages of their cases (such that courts never write opinions resolving legal issues), and there is no indication that the government believes it is legally obligated to inform defendants that a traffic stop was pretextual.

In an interview with Human Rights Watch, Rizer stated that a tip to law enforcement for parallel-construction purposes might be "as simple as, 'Look for a white car at this intersection at this time.'"[120] In his blog post, Burney wrote:

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[116] *United States v. Noble*, 762 F.3d 509, fn. 1 (6th Cir. 2014).

[117] United States v. Sanders, p. 1303.

[118] *United States v. Cervantes*, 2005 U.S. Dist. LEXIS 34870 (D. Utah 2005), p. 3.

[119] *United States v. Rodriguez*, 831 F.2d 162 (7th Cir. 1987); *United States v. Celio*, 945 F.2d 180 (7th Cir. 1991).

[120] Human Rights Watch interview with Arthur Rizer, Washington, DC, June 8, 2017.

> [L]et's say you know that a blue van with Florida plates XXX-XXXX will be going up I-95 this weekend, loaded with heroin in a variety of clever traps. But you can't just pull it over because you can't introduce that information in court for whatever reason. Instead, you follow it in a series of unmarked cars, until it makes a moving violation. Which is very likely to happen, no matter how careful the driver is (it's practically impossible to travel very far without committing some moving violation or other). You now have a lawful basis to pull the van over. And a dog sniff doesn't even count as a Fourth Amendment search, so out comes the convenient K-9. And tada! Instant lawful search and seizure, and the original reason why you were following him is not only unnecessary but irrelevant.[121]

Similarly, the first Reuters article on parallel construction quotes a "former federal agent in the northeastern United States" as saying, "You'd be told only, 'Be at a certain truck stop at a certain time and look for a certain vehicle.' And so we'd alert the state police to find an excuse to stop the vehicle, and then have a drug dog search it."[122]

Court decisions located by Human Rights Watch confirm these accounts of how traffic stops conducted to facilitate parallel construction often unfold. First, an official involved in a related investigation contacts a state or local law enforcement officer with a request that a vehicle matching a certain description be stopped.[123] In some instances, although not all,[124] the official requesting the stop does not provide any further information about the underlying investigation or any drugs or contraband he or she believes the vehicle may be carrying.[125] The officer conducting the stop is expected to find an independent reason for doing so—typically, a violation of traffic laws.[126] (Examples of such violations in past cases have included speeding, failing to signal a lane change, weaving over a line demarcating a

[121] Burney blog.

[122] Shiffman and Cooke.

[123] E.g., *United States v. Munoz*.

[124] E.g., *United States v. Alonzo*, 2016 U.S. Dist. LEXIS 51043 (D. Minn.), April 15, 2016; *United States v. Son*, Order, October 2, 2012, https://www.leagle.com/decision/infdco20121004a91 (accessed December 14, 2017).

[125] E.g., *United States v. Munoz*; *United States v. Covarrubias*, 2007 U.S. Dist. LEXIS 199 (D. Or.), January 4, 2007; *United States v. Cervantes*; *United States v. Marquez-Martinez*, 2009 U.S. Dist. LEXIS 6961 (D. Kan.), January 30, 2009.

[126] E.g., *United States v. Gonzales*, 121 F. Supp. 3d 1094 (D. NM 2015); *United States v. Munoz*; *United States v. Son*.

lane, and having improperly tinted windows.[127]) In one Ninth Circuit case in which the court upheld the validity of the stop, no traffic violation actually occurred, although officers falsely told the driver they had observed one.[128] In another case, a federal court upheld the validity of the pretextual stop and search of a vehicle for drugs even though the officer knew the government had already removed the narcotics for which he was ostensibly searching and had replaced them with a "sham" substance—in other words, he knew that there would be no drugs.[129]

After stopping the vehicle, the officer may ask for consent to search it.[130] If the driver does not provide such consent, the officer may arrange for a drug-detecting dog to sniff the vehicle.[131] Depending on the circumstances, the officer may "frisk" (that is, pat down) the driver and/or passengers.[132] In some cases, an officer who has not found any evidence of contraband may tell the driver that he or she is free to go, then begin a "consensual conversation" with him or her or request to ask some additional questions—the answers to which may give the officer legally sufficient reason to search the vehicle without consent.[133] In one extreme case, the government staged a traffic accident followed by the purported theft of the defendant's car and a high-speed chase; in 2007, the Ninth Circuit ruled that this "ruse," which was intended to conceal DEA surveillance, was legal.[134]

Rizer and the other former federal prosecutor interviewed by Human Rights Watch confirmed that the issuance to local law enforcement of "Be On the Lookout Orders," or BOLOs, are one means by which agencies might prompt such traffic stops in order to avoid

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[127] *Fertig v. Wyoming*, 146 P. 3d 492 (Wyo. S. Ct.), November 17, 2006; *United States v. Bateman*; *United States v. Son*, Order; *Commonwealth v. Young*, 2015 Pa. Dist. & Cnty. Dec. LEXIS 38, March 12, 2015.

[128] *United States v. Magallon-Lopez*, 817 F.3d 671 (9th Cir. 2016); see also *United States v. Chavez*, 534 F.3d 1338 (10th Cir. 2008) (upholding the validity of a wall stop although the supposed traffic violation identified by the officer did not in fact constitute a violation of the law).

[129] *United States v. Son*, Order.

[130] E.g., ibid.

[131] E.g., ibid.; *United States v. Reidy*, 2013 U.S. Dist. LEXIS 151493 (D. Mont.), October 8, 2013.

[132] E.g., *United States v. Noble*.

[133] E.g., *United States v. Pickel*, 2014 U.S. Dist. LEXIS 53530 (D. Kan.), April 2, 2014; *United States v. Sanchez-Tamayo*, 2011 U.S. Dist. LEXIS 154851 (N.D. Ga.), November 28, 2011; *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015); *United States v. Chavez*.

[134] *United States v. Alverez-Tejeda*, 491 F.3d 1013 (9th Cir. 2007).

disclosing the fact that information was obtained from certain sources.[135] Examples of BOLOs appear in emails disclosed to WikiLeaks that belonged to Stratfor, a private Texas-based intelligence firm. After describing vehicles that the sender of the BOLO believes may be involved in narcotics trafficking or other unlawful activities, several of these documents explicitly instruct law enforcement to "[d]evelop your own probable cause for conducting a traffic stop."[136] (It is unknown whether any of the specific BOLOs located by Human Rights Watch were issued based on intelligence activities, although the instruction to "develop your own probable cause" indicates that the government did not initially plan to disclose the original source of its information to the defendant.)

Overall, Rizer suggested that when law enforcement finds—for example—20 kilograms of drugs in a vehicle during a stop, "The chances of it being a random traffic stop … [are] unlikely in my opinion."[137]

Courts across the nation have accepted this practice of pretextual traffic stops, if at times reluctantly. As noted above, the US Supreme Court's decision in *Whren* established for the purposes of US constitutional law that an officer may stop a driver whenever the officer objectively has sufficient reason to believe the driver has committed a traffic violation—regardless of whether the officer has some other motive for carrying out the stop.

The transcript of the cross-examination of a state trooper by a defense attorney in a Georgia case illustrates how this rule facilitates parallel construction:

> Q. So you called this a whisper stop, correct?

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[135] Human Rights Watch interview with Arthur Rizer, Washington, DC, June 8, 2017; Human Rights Watch interview with a former US federal prosecutor who requested anonymity, United States, 2016.

[136] These BOLOs from the leaked Stratfor emails may be viewed at the following links:
https://wikileaks.org/gifiles/docs/28/2870237_corrected-bolo-suspected-meth-smuggler-mexico-to-atlanta-ga-.html;
https://wikileaks.org/gifiles/docs/28/2890348_fw-bolo-possible-narcotics-smuggling-.html;
https://wikileaks.org/gifiles/docs/29/2942193_fw-possible-narcotics-currency-trafficker-contact-sa-steven.html;
https://wikileaks.org/gifiles/docs/28/2833293_fw-bolo-narcotics-smuggling-white-denali-.html;
https://wikileaks.org/gifiles/attach/136/136917_BOLO-Possible%20Narcotics%20Smuggling.pdf;
https://wikileaks.org/gifiles/docs/28/2833019_bolo-possible-drug-smuggler-.html;
https://wikileaks.org/gifiles/attach/136/136844_2012-0086%20BOLO.pdf;
https://wikileaks.org/gifiles/docs/28/2886801_possible-alien-smuggling-in-ept-aor-.html; and
https://wikileaks.org/gifiles/docs/29/2943328_-alpha-insight-cbsa-2-aric-ag-3-cfix-ciac-2-and-dhs.html (last file listed at end of message); (all accessed November 6, 2017).

[137] Human Rights Watch interview with Arthur Rizer, Washington, DC, June 8, 2017.

A. That's correct.

Q. I guess that is a term you guys use in your job?

A. That's correct.

Q. It is really a ruse, isn't it? I mean, you are trying to protect an informant's identity, that is your testimony, right?

A. That's right.

Q. You are trying to make the driver… think you are stopping him for some other reason, but that is really a ruse, isn't it?

A. The reason I stopped him was a valid reason. The reason I did what I did was to protect the identity of the confidential informant so the target would believe that I was stopping him for a traffic violation and not that he was burnt.

Q. So you were sort of pretending and you knew exactly what you were looking for when you pulled the car over, right?

A. Right.

Q. You are pretending, but you don't want the driver to know what is going on?

A. To protect the identity of the confidential informant.

THE COURT: The answer is yes, you don't want the driver to know.

THE WITNESS: Yes, correct, yes, ma'am.

> THE COURT: Yes, Mr. Finlayson, you know under Supreme Court law it makes no difference, so move on.[138]

After the stop has occurred, other US Supreme Court decisions allow officers to conduct canine sniffs without a warrant, although they cannot unreasonably prolong the stop to do so in the absence of probable cause to believe an offense has occurred.[139] However, an increasingly prevalent doctrine of "collective knowledge" that has emerged among the lower courts means many judges continue to take an expansive view of when an officer has reasonable suspicion to prolong the traffic stop beyond the time that would have been required to address the traffic violation.[140] Also known as the "fellow officer" rule, the doctrine treats knowledge possessed by one law enforcement officer (such as a DEA agent) as also being possessed by others involved in the investigation (such as the state or local officer conducting the traffic stop), even if those other officers do not know the relevant facts. As a result, some courts have held that an action taken by law enforcement during a traffic stop was based on a reasonable suspicion or probable cause (as applicable), even though the action in question would otherwise have been unconstitutional due to a lack of sufficient fact-based suspicion on the part of the officer who actually carried out the stop.[141]

Some courts have begun to express discomfort with the consequences of the permissive doctrines that have developed in relation to wall stops and other traffic stops—but believe they have no choice but to apply them. Most strikingly, Judge Marsha Berzon of the Ninth Circuit expressed frustration in a concurrence with a ruling that a traffic stop was valid even though the officer conducting the stop lied to the driver when claiming that a traffic violation had occurred. "Is it fine for police officers flatly to tell the drivers they stop that they observed—or thought they observed—a traffic violation when they really did not? We hold today that it is," she wrote, suggesting that precedents such as *Whren* left the court with no choice. These precedents, she suggested, "are especially troubling in that they enable artifice and abuse by law enforcement, with disproportionate effect on racial

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[138] *United States v. Son*, pp. 39-40.

[139] *Illinois v. Caballes*; *Rodriguez v. United States*, 575 U.S. __ (2015).

[140] See, e.g., *United States v. Jensen*, 425 F.3d 698 (9th Cir. 2005); *United States v. Chavez*.

[141] E.g., *United States v. Alonzo*; *United States v. Marquez-Martinez*.

minorities."[142] Judge Frances Tydingco-Gatewood, chief judge of the federal district court of Guam, similarly expressed concern about the requirements imposed by precedent when applying the collective knowledge doctrine to a wall stop. While upholding the validity of such a stop based on collective knowledge, her opinion acknowledged that the decision "stretche[d] the confines of the Fourth Amendment" and indicated that "the lack of candor and inconsistent position of many of the United States' witnesses" had been "deeply disturbing."[143]

C. Frequency of Parallel Construction

Human Rights Watch has received conflicting information about the frequency of parallel construction.

For example, Robert Litt, a former general counsel of ODNI, told Human Rights Watch in response to a question about how often parallel construction occurs, "It is not the routine practice in criminal cases. I'm quite confident that it is a small minority of the overall realm of criminal cases in which it's used."[144] Regarding intelligence information specifically, the DEA documents obtained by Ciaramella state that "highly classified [Intelligence Community] information is being used to assist [law enforcement agents] in their investigative activities," but that this is "not the normal course of business."[145]

By contrast, Reuters has quoted an anonymous senior DEA official as saying, "Parallel construction is a law enforcement technique we use every day."[146] Rizer told Human Rights Watch that when he was part of the SOD, there were "thousands of sealed indictments around the country involving the kind of work the SOD was doing" and that the use of SOD tips for US prosecutions "was a daily affair."[147] He added that this "tip and lead" practice

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[142] *United States v. Magallon-Lopez*, pp. 676-77 (Berzon, J., concurring). Judge Berzon may have been alluding to concerns that racial minorities in the United States are disproportionately subjected to traffic stops and citations. For a discussion of this topic, see Sharon LaFraniere and Andrew W. Lehren, "The Disproportionate Risks of Driving While Black," *New York Times*, October 24, 2015, https://www.nytimes.com/2015/10/25/us/racial-disparity-traffic-stops-driving-black.html (accessed November 7, 2017).

[143] *United States v. Martinez*, 2016 U.S. Dist. LEXIS 147543 (D. Guam 2016).

[144] Human Rights Watch telephone interview with Robert Litt, former General Counsel of the Office of the Director of National Intelligence, August 29, 2017.

[145] Muckrock documents, p. 33 of the complete PDF.

[146] Shiffman and Cooke.

[147] Human Rights Watch interview with Arthur Rizer, Washington, DC, June 8, 2017.

was done "across DOJ," and not only at the SOD.[148] Joseph O'Keefe, a former special-agent-in-charge of the SOD, said during the 2015 DEA panel, "I think every day there's cases that are affected by products that come out to the field through SOD from the Fusion Center that multi-jurisdiction operations go on" (although he did not specify the nature of these products or the role of the fusion center).[149]

Thus, while the frequency with which the government uses parallel construction to conceal intelligence surveillance or other intelligence activities remains unclear, it may be common. In particular, sources suggest that information from the DEA's SOD regularly leads to or forms part of investigations and prosecutions nationwide, although the division's role does not appear to be disclosed routinely (if ever) in criminal cases. More broadly, the evidence suggests that the use of parallel construction to conceal some type of investigative source (intelligence-related or otherwise) from defendants, at least during the initial stages of an arrest and prosecution, is widespread.

D. Who Is Affected by Parallel Construction

Many of the government-acknowledged "wall stop" cases located by Human Rights Watch through searches of published opinions resulted in prosecutions of defendants for trafficking significant amounts of drugs. However, a few suggested that law enforcement may be deploying the technique in more minor cases. For example, in a Louisiana state case, a DEA tip led to the wall stop of a suspect who was found to be carrying approximately five pounds of marijuana and was ultimately charged with a single count of possession with intent to distribute.[150] A Wyoming state case involving the use of an avowedly "pretextual" traffic stop for speeding resulted in the prosecution of a man who was found to be carrying contraband suggestive of personal drug use, including a "kitchen spoon" that had apparently been "used to heat powdered methamphetamine into a liquid for intravenous injection," along with ten grams of methamphetamine.[151]

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[148] Ibid.

[149] DEA Museum Lecture, p. 34. "Fusion centers" are federally funded entities that promote information-sharing between federal, state, and local authorities. Carrie Johnson, "Report Slams Counterterrorism 'Fusion Centers'," National Public Radio, October 3, 2012, https://www.npr.org/2012/10/03/162246652/report-slams-counterterrorism-fusion-centers (accessed December 13, 2017). The transcript suggests that O'Keefe was referring to a specific fusion center.

[150] *State v. Meyers*, 100 So. 3d 938 (La. App. 2012).

[151] *Fertig v. State*, 146 P.3d 492 (S. Ct. Wyo. 2006). In a 2016 report, Human Rights Watch and the American Civil Liberties Union called for addressing drug possession for personal use through a public health approach and for the decriminalization

The government may also be deploying parallel construction techniques other than traffic stops against relatively low-level offenders. In 2015, *USA Today* reported that police in Baltimore had used cell-site simulators to investigate crimes such as harassment, cell phone and automobile theft. According to the report, the use of the devices in these cases had previously been undisclosed.[152]

E. The Government's Legal Justifications for Parallel Construction

While the government has not explicitly revealed its theory as to why it believes parallel construction to be legal under US law, evidence suggests the theory is based on government lawyers' interpretations of cases relating to the "fruit of the poisonous tree" doctrine described above. In other words, the government may be concealing certain investigative activities based on its own determination that its later efforts to relocate the same or related information qualify as independent or sufficiently attenuated from the original activity to avoid the risk of taint from any unlawful conduct (or that officials inevitably would have discovered the same information even without the potentially unlawful behavior).

This understanding of the government's approach is supported by information submitted by Director of National Intelligence Dan Coats to a committee of the House of Representatives in July 2017. Coats indicated that where the use of data from a Section 702 surveillance program is concerned, the government's standard for determining whether evidence in a case is "derived from" Section 702 (thus legally entitling the defendant to specific notice of this surveillance) "incorporates a 'fruit of the poisonous tree' analysis analogous to that conducted under the Fourth Amendment exclusionary rule context."[153] Coats went on to refer to the independent-source, inevitable-discovery, and attenuation exceptions to the "fruit of the poisonous tree" doctrine.[154]

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of the possession of drugs for personal use due to the excessive sentences and related human rights problems that ensue during prosecution and conviction. Human Rights Watch, *Every 25 Seconds* (New York: Human Rights Watch, 2016), https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states.

[152] Heath, "Police secretly track cell phones to solve routine crimes."

[153] Letter from Daniel R. Coats to Bob Goodlatte and John Conyers, Jr., July 17, 2017, p. 18, https://www.documentcloud.org/documents/4320685-SSCI-ODNI-FISA-702-QFRs-2017-06-07.html#document/p11/a390936 (accessed December 10, 2017).

[154] Ibid.

"Under US law, a defendant has the right to challenge the evidence used against him or her in court—whether it derived directly or indirectly from unlawful activity," Robert Litt, the former general counsel of ODNI, explained in correspondence with Human Rights Watch about parallel construction.[155] "However, there is a whole host of case law delineating when evidence is and is not derived from unlawful activity (fruit of the poisonous tree), and," he wrote, "a defendant doesn't have the right to challenge government activity that didn't lead to evidence under those cases, save for an argument like entrapment."[156] Current officials may be embracing a logical extension of views like Litt's as an internal justification for refraining from disclosing evidence to the defense if it believes the defendant would not have a right to challenge the underlying government activities.

When discussing parallel construction with Human Rights Watch, Litt also mentioned a decades-old Supreme Court decision in *Roviaro v. United States*, a case in which the court accepted that it may be constitutional for the government to conceal the identity of a human informant from a defendant in some circumstances.[157] The DEA documents obtained by journalist Ciaramella highlight *Scher v. United States*, in which the Supreme Court issued a similar holding.[158]

Whatever the government's internal justifications for deliberately concealing a source of information (such as a surveillance program) may be, the use of parallel construction means judges are deprived of their role in applying this prior case law—the Supreme Court's holdings and any subsequent federal court decisions, as well as relevant state law—to the facts of the case before them. Defendants are also deprived of the opportunity to make counterarguments. Thus, the government secretly places itself in the judge's role, jeopardizing both the fairness of the case at hand and the rights of other individuals affected by official activities that may violate US law or human rights.

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[155] Email correspondence between Robert Litt, former general counsel of the Office of the Director of National Intelligence, and Human Rights Watch, November 10, 2017.

[156] Ibid.

[157] Human Rights Watch telephone interview with Robert Litt, former general counsel of the Office of the Director of National Intelligence, August 29, 2017.; *Roviaro v. United States*, 353 U.S. 53 (1957).

[158] Muckrock documents, pp. 30, 63, 70, 85, 112, 126, and 156 of the complete PDF; *Scher v. United States*, 305 U.S. 251 (1938).

III. Defendants' Difficulties in Discovering and Challenging Parallel Construction

In some cases, the government has acknowledged in court proceedings that officers conducted a pretextual traffic stop to prevent suspects from realizing at initial stages that information had been obtained from a particular source. In other cases, however, defense attorneys who have suspected that the government has employed some form of parallel construction to conceal an investigative technique have struggled to compel the prosecution to disclose whether this had in fact occurred; this is especially true where the attorneys argue that an intelligence source may have been involved.

Human Rights Watch's research suggests that except in cases where the government—acting on its own initiative—chooses to reveal that it has engaged in parallel construction, defendants currently face a low likelihood of being able to find out whether officials have sought to create a "firebreak in the evidentiary trail."[159]

A. Prosecution Resistance to Defense Motions

Our review of relevant court documents indicates that when defendants make motions to find out whether the government has concealed the true origins of information in their cases, the prosecution rarely answers in a straightforward manner. Instead, prosecutors deploy arguments that prevent defendants from learning definitively whether intelligence or other undisclosed information or sources were used in the investigation.

1. Arguing that the defendant is merely speculating

In several cases Human Rights Watch examined, the prosecution described the defendant's efforts to question whether undisclosed sources or information may have been used in his or her case as "speculation" or a "fishing expedition"—without ever providing a definitive "yes" or "no." This places the burden of justifying the question on the defense attorneys, who are unlikely to be able to validate even reasonable suspicions that secret activities lie behind the investigation of their client. While this response may be

[159] See n. 47 above and accompanying quoted text.

a common one to defense motions in criminal cases, it takes on a particular significance in light of reports that government agencies may intentionally avoid telling prosecutors that they engaged in sensitive investigative techniques[160], as well as the clear difficulties defendants face in obtaining and offering any evidence about classified programs or other activities the government has deliberately sought to conceal.

In *United States v. Syed Ali*, for example, the attorney for a Texas defendant who was accused of selling synthetic marijuana at his smoke shop pointed out in a motion that "[t]he government has provided voluminous discovery [i.e., evidence] in this case, but none that illuminates how the investigation began."[161] The attorney suspected that the government had relied on undisclosed FISA surveillance, since the FBI had originally included the defendant in an investigation related to a suspected terrorism offense (something with which he was never charged) and since one of his co-defendants had communicated with people abroad.[162] Without directly affirming or denying that such surveillance had taken place, the prosecution described the attorney's request as "an impermissible speculative fishing expedition."[163]

Very similar language—and the same lack of an explicit affirmation or denial—has appeared in prosecution responses in several other federal cases around the country.[164] While to some extent this wording is based on prior US judicial decisions[165], it also appears to reflect a consistent tactical choice by prosecutors to avoid having to find out or disclose

[160] Shiffman and Cooke; Brad Heath, "FBI warned agents not to share tech secrets with prosecutors," *USA Today,* April 20, 2016, https://www.usatoday.com/story/news/2016/04/20/fbi-memos-surveillance-secrecy/83280968/ (accessed December 13, 2017).

[161] *United States v. Syed Ali*, case no. 5:13-cr-00580 (S.D. TX), Complaint (doc. 1), filed June 26, 2013, para. 27; Motion for Discovery (doc. 374), filed February 3, 2014, p. 1.

[162] Ibid. at pp. 13-14.

[163] *United States v. Syed Ali*, Government's Response to Defendant's Motion for Discovery (doc. 394), filed February 18, 2014, p. 2.

[164] E.g., *United States v. Alexander*, case no. 1:11-cr-00148 (E.D. IL), Government's Consolidated Response to Defendant's Motion for Discovery of Electronic Surveillance and Special Operations Division Materials (doc. 136), October 4, 2013, p. 2; *United States v. Simmons*, case no. 6:13-cr-06025 (W.D. NY), Government's Memorandum in Opposition to Pre-trial Motions by Tyshawn Simmons (doc. 288), February 25, 2014, p. 24; *United States v. Collins*, case no. 1:13-cr-00383 (E.D. VA), Government's Opposition to Defendant's Motion to Enforce Order Compelling Discovery (doc. 378), September 2, 2014, pp. 1, 5; *United States v. Vawter*, case no. 6:13-cr-03123 (W.D. Mo., United States Response to Vawter's Motion to Compel Discovery (doc. 104), filed April 16, 2015, pp. 7-9.

[165] E.g., *United States v. Mayes*, 917 F.2d 457 (10th Cir. 1990).

whether intelligence surveillance or other previously undisclosed methods were employed in an investigation.

Prosecutors sometimes argue that the *defense* should be required to produce factual materials to support efforts to uncover any parallel construction to lift its inquiry beyond the realm of "speculation." For example, in *Ali,* the prosecution argued that "[t]he defendant does not offer a scintilla of evidence that these FISA intercepts exist."[166]

Another illustration is *United States v. Collins*, a case stemming from distributed denial of service ("DDoS") attacks staged by the activist network Anonymous. Prosecutors noted that a defendant "sought to compel the Government to produce information from the intelligence community allegedly related to this case that he claimed could possibly exist. However, neither in his written motion nor in the oral argument … did the Defendant establish that this information did in fact exist."[167]

Defendants have sometimes sought to reply to these arguments by highlighting circumstances or evidence suggesting that their concerns are more than merely speculative. For example, Jessica Carmichael, one of the defense attorneys in *Collins*, referred to NSA documents leaked by Snowden referring to operations against Anonymous.[168] In *Ali*, the defense attorney noted that his client had initially been the subject of a terrorism investigation.[169]

A more fundamental problem is that even where the defense has reason to suspect intelligence surveillance lies behind a case, the classified nature of these activities leaves no choice but to guess. Then-federal public defender Todd Watson explained in a hearing in *Collins* that while the defense possessed leaked information suggesting that one of the NSA's known intelligence-sharing partners had taken a direct interest in Anonymous, any further information "presumably … is all top secret. Right?" He concluded, "The only way

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166 *United States v. Syed Ali*, doc. 394, p. 8.

167 *United States v. Collins*, Indictment (doc. 1), October 3, 2013; doc. 378, p. 1.

168 *United States v. Collins*, Motions Hearing (Transcript) (doc. 246), May 12, 2014, pp. 14, 16; regarding the Snowden documents, see "Exclusive: Snowden Docs Show UK Spies Attacked Anonymous, Hackers," *NBC News*, February 5, 2014, https://www.nbcnews.com/feature/edward-snowden-interview/exclusive-snowden-docs-show-uk-spies-attacked-anonymous-hackers-n21361.

169 *United States v. Syed Ali*, Motion for Discovery (Transcript) (doc. 408), March 6, 2014, p. 11.

we get this information is if the Court orders a review and requires [the US intelligence] agencies to provide it to us."[170]

In *Ali*, the prosecution suggested that if courts allow defendants to compel prosecutors to check and see whether undisclosed surveillance was involved in an investigation, "every court" could be faced with the burden of uncovering such surveillance, even if it was only distantly involved in an investigation.[171] In an interview with Human Rights Watch, Ali's defense attorney Simon Azar-Farr described this as "one of those 'scare' arguments."[172] He suggested that judges could take the facts of the case into account in deciding whether to order the prosecution to carry out such a check.[173] Carmichael, a defense attorney in *Collins*, similarly suggested that a judge could take into account any unusual circumstances surrounding the origin of a case even if the defense lacks "concrete evidence" that an undisclosed source was involved.[174] She noted that a judge would not necessarily need to order the prosecution to approach every relevant federal agency at once, but could ask it to take the inquiry one step at a time—"Let's ask these five questions first, and then we'll go farther if we need to."[175] During a hearing in *Collins*, defense attorney John Kiyonaga stated: "Every single agency pertinent to this request has offices that are dedicated to nothing but liaison with other government agencies. There are procedures in place for receiving and answering questions, it's simply a matter of directing an inquiry to the pertinent agencies and seeing it responded to."[176]

In an interview with Human Rights Watch, Robert Litt, the former ODNI general counsel, suggested that defendants should at least need to make an "affirmative showing" that intelligence surveillance may have been used in their cases in order to compel the prosecution to check with the intelligence agencies about this (a logic that would presumably extend to other undisclosed sources or methods).[177] Litt expressed a sense

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[170] *United States v. Collins*, Transcript, pp. 20-21.

[171] *United States v. Syed Ali*, Transcript, p. 31.

[172] Human Rights Watch telephone interview with attorney Simon Azar-Farr, San Antonio, Texas, June 1, 2017.

173 Ibid.

[174] Human Rights Watch telephone interview with defense attorney Jessica Carmichael, Alexandria, Virginia, July 24, 2017.

[175] Ibid.

[176] *United States v. Collins*, Transcript, p. 21.

[177] Human Rights Watch telephone interview with Robert Litt, former general counsel of the Office of the Director of National Intelligence, August 29, 2017.

that "people are frustrated at an inability to use ordinary legal processes to challenge surveillance, and are looking to use the criminal cases as a way of opening the door to overall challenges of surveillance that they're not otherwise able to bring," adding, "I don't think that is an appropriate function of a criminal case. The purpose of a criminal case is to determine the guilt or innocence of a criminal defendant."[178]

By contrast, Carmichael told Human Rights Watch that while "I don't think the defendant needs to know necessarily every detail of the investigatory process," he or she does have a right to know how the case against him or her began.[179] "It's a constitutional principle," she said. "We have the right to challenge evidence that's presented in court," which includes need to be able to challenge any unlawfully gathered evidence.[180]

Azar-Farr told Human Rights Watch:

> It's very straightforward. Every judge in this country knows it, every prosecutor knows it, and either they are too gutless to admit this or to hold the government's feet to the fire…. Every judge should know that when people are gathered and a citizen is accused in his courtroom, the case is not about the judge or the prosecutor or the courtroom deputy or the building itself. It's only about the citizen accused. We're all here, every one of us, in order to ensure that the Constitution is upheld…. You would think that a judge would want to say, "Hey, there is sufficient information in a given case that I now believe that there's a question about this evidence, and before I go forward, I want to make sure that none of this information has come from an intelligence-gathering operation."[181]

In an unusual success for the defense, Judge Liam O'Grady pressed the prosecution in *Collins* to justify its refusal to approach the intelligence agencies, saying:

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[178] *Ibid.*

[179] Human Rights Watch telephone interview with defense attorney Jessica Carmichael, Alexandria, Virginia, July 24, 2017.

[180] *Ibid.*

[181] Human Rights Watch telephone interview with attorney Simon Azar-Farr, San Antonio, Texas, June 1, 2017.

> [W]hy is it so difficult for the Government to put a lead out to NSA which should, as I understand it, have information from the other intelligence agencies, just to say, was anybody involved in an undercover capacity in these [online] chats during this period of time with this group of defendants concerning these pending [DDoS] attacks?
>
> Why can't you do that? You're acting like this is climbing Mount Everest.[182]

The prosecution agreed to make an initial inquiry with the intelligence agencies about a specific matter, although the case was largely resolved shortly afterward through plea bargains (and the dropping of charges against one defendant).[183]

2. Suggesting that the evidence would not be relevant or discoverable

In some cases, the government has resisted motions for the disclosure of unrevealed investigative techniques by suggesting that any information would not be "relevant" or "discoverable." When making these arguments, it has sometimes relied on its own interpretation of Rule 16 of the Federal Rules of Criminal Procedure. That rule requires it to disclose to the defense "any relevant written or recorded statement by the defendant" that is in its possession (including e-mails or recorded telephone calls, for example), and to allow the inspection of other items within its possession that are "material to preparing the defense."[184]

For example, in *United States v. Daoud*, the prosecution argued in 2013 (quoting prior case law) that it was not required to "divulge every possible shred of evidence that could conceivably benefit the defendant" and that under Rule 16, Daoud needed to be able to

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[182] *United States v. Collins*, Transcript, pp. 25-26.

[183] The prosecution told the judge: "If Your Honor wants us to ask the intelligence agencies if anybody from the intelligence agencies were in the chat channels that were dedicated by Anonymous in an undercover capacity during the time frame of the conspiracy or involved with any of the victims, the targeted victims, we can do that…" Ibid., p. 26. The hearing was held on May 12, 2014; records available in an online database (Public Access to Court Electronic Records) indicate that much of the substance of the case was resolved through plea bargains between July and October 2014. The indictment of one defendant was fully dismissed on stated grounds related to his disabilities: see *United States v. Collins*, Motion to Dismiss Indictment as to Defendant Phy (doc. 456), filed October 3, 2014.

[184] Federal Rule of Criminal Procedure, no. 16. The DEA training materials obtained by Ciaramella can be read to suggest that relevance is something a trial judge should determine, although it is unclear whether this is the DEA's position in all circumstances. Muckrock documents, pp. 39 and 152 of the complete PDF.

show that the evidence he sought would "significantly alter the quantum of proof in his favor."[185]

In *United States v. Lara*, a federal drug prosecution in California, the defense moved in 2013 for the disclosure of DEA administrative subpoenas that it was concerned might have been used to obtain more types of cell-phone metadata than the government had revealed, or to conceal other surveillance activities.[186] Prosecutor S. Waqar Hasib refused, telling Judge Elizabeth Laporte: "My response is quite simple. We have to draw the line somewhere. We do not have open-file discovery," and "I don't see anything in [the subpoenas] that could conceivably be construed as *Brady* [exculpatory] material. And therefore, I'm not going to turn them over."[187]

Judge Laporte ultimately permitted the prosecution to withhold the subpoenas, saying, "I don't think, so far, there's any showing in this instance" that the government had "hidden the means by which they derived something." However, she added, "I have to say that I wonder."[188] The judge's discomfort with the prospect of parallel construction was clear, even though she characterized the issue as not arising directly in the case before her: "I have to say … I mean, I'm very disturbed by reports that say, you know, get the information one way, and then replicate it, and don't tell the Court how you originally got it. I think that's wrong."[189]

In a striking exchange, the prosecutor then explicitly defended the practice of parallel construction, even where the government has used it to conceal an investigative technique that it knows may be illegal:

> Hasib: I think there are two situations that Your Honor has described. One is where you have an affidavit that's presented to a Magistrate or a District Court Judge, in which a source of information is, in fact, something other than what we purport it to be. That's one situation.

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[185] *United States v. Daoud*, case no. 12-cr-723 (N.D. IL), Government's Consolidated Response to Defendant's Pretrial Motions (doc. 63), filed August 26, 2013, p. 5.

[186] *United States v. Lara*, Case no. 3:12-cr-00030 (N.D. Cal.), Transcript of Proceedings (doc. 297), Dec. 16, 2013, pp. 31-33.

[187] Ibid. at p. 12.

[188] Ibid. at p. 18.

[189] Ibid. at p. 19.

The Court: Right.

Hasib: That's one situation. And in that situation, I share the Court's concern. That would be a problem.

The other situation, where the Government uses some sort of investigative technique, and then decides to use another investigative technique to re-create what they found the first time—that, I think, is an entirely different scenario.

The Court: It is a different scenario, but it shares some of the same concerns, depending—especially if it were some of the same concerns, depending—especially if it were for the purpose of keeping from the Court something of questionable legality. In other words, it might well be that, you know, you want to protect some informant as much as possible; and you don't want to cite Informant 1; and you'd rather cite Informant 2.

They're both valid sources. There wasn't a contradiction between them, or something like that. That probably wouldn't get you *Brady*.

But if, you know, there was an illegal search, for example, followed by a legal search, but that was only obtained because now that you had the illegal search, you knew something about that, that would be a concern to the Court.

Mr. Hasib: Your Honor, I respectfully –

The Court: And that is the fruit of the poisonous tree, potentially.

Mr. Hasib: I respectfully dispute that point…. I think the second scenario that Your Honor described would be the independent-source doctrine, which I think has been well established in the Supreme Court precedent

> and Ninth Circuit precedent. And that, I think, I have much less concern – in fact, I don't have any concern about that.[190]

In *United States v. Thomas*, a federal terrorism-related case in Pennsylvania, defense attorney Andrew Dalack pointed out to the judge: "The problem, Your Honor, in a nutshell, is this. The Government wants to have it both ways. It wants to be able to on the front end, at the very beginning of an investigation, be able to utilize all of the tools at its disposal"—tools including warrantless intelligence surveillance powers.[191] Referring to government desires to remove limits on information-sharing between law enforcement and intelligence bodies (including a bureaucratic "wall" imposed on the sharing of FISA material prior to the September 11 attacks), he continued:

> The Government wants to be able to essentially not have this wall between foreign intelligence gathering and then gathering of evidence in the course of a criminal prosecution.
>
> But then on the back end, to the detriment of the defendant, Ms. Thomas, the Government wants to resurrect this arbitrary wall between evidence gleaned for strictly foreign intelligence purposes versus evidence gleaned for the purposes of a criminal prosecution.
>
> The Government is not entitled to make arbitrary one-sided, self-serving determinations about whether its evidence is admissible.[192]

3. Maintaining that the evidence is not in the possession of the prosecution team

As noted above, the US Supreme Court established in *Brady v. Maryland* that due process requires the prosecution to disclose evidence that is "favorable" to the defendant.[193] The court later clarified that this obligation includes a "duty to learn" of any such evidence

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[190] Ibid. at pp. 20-21.

[191] *United States v. Thomas*, case no. 2:15-cr-00171 (E.D. PA), Transcript of Hearing (doc. 75), August 4, 2016, pp. 10-11.

[192] Ibid.

[193] *Brady v. Maryland*.

"known to the others acting on the government's behalf in the case, including the police."[194]

Despite this "duty to learn," in several cases examined by Human Rights Watch, prosecutors resisted defense motions seeking to compel the disclosure of any use of intelligence-derived information in their cases by maintaining that the intelligence agencies were not part of the "prosecution team"; they argued that the prosecution therefore should not be required to make inquiries about those agencies' actions.

For example, in *United States v. Alexander*, a federal drug case in Illinois, the prosecution told the court in 2013 that it had "no reason to believe" any evidence in the case had been obtained from NSA surveillance or SOD leads and insisted that the Supreme Court "has never imposed a responsibility for information not in the government's [meaning the prosecution's] possession, but in the possession of agencies which were not acting on the government's behalf in the case."[195]

Three years later, in a domestic terrorism prosecution arising from the armed occupation of an Oregon wildlife refuge by right-wing activists (*United States v. Bundy*), prosecutors similarly avoided affirming or denying that intelligence-derived evidence had been employed in the investigation, writing that there was "nothing to indicate" that intelligence sources had been used. They added, "Nor have [the] defendants made the showing necessary to require the government to do anything further" under the relevant statute.[196]

In a 2014 motion in *United States v. Simmons*, a federal homicide and drug case in New York, prosecutors stated flatly that "the National Security Agency … is not part of the prosecution team in this case and any information in the NSA's custody or control is, therefore, not subject to disclosure to Simmons under either Brady or Rule 16" of the Federal Rules of Criminal Procedure.[197] The *Simmons* prosecutors used language similar to

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[194] *Kyles v. Whitley*.

[195] *United States v. Alexander*, case no. 1:11-cr-00148 (E.D. IL), Government's Consolidated Response to Defendant's Motion for Discovery of Electronic Surveillance and Special Operations Division Materials (doc. 136), October 4, 2013, p. 5.

[196] *United States v. Bundy*, case no. 3:16-cr-00051 (D. Or.), Government's Response to Defendants' Motion to Compel Notice of Surveillance and for Production of Related Discovery (doc. 607), filed May 25, 2016, p. 2.

[197] *United States v. Simmons*, case no. 6:13-cr-06025 (W.D. NY), Government's Memorandum in Opposition to Pre-trial Motions of Tyshawn Simmons" (doc. 288), February 25, 2014, pp. 23-24.

what had appeared in *Alexander*, writing that they had "no reason to believe" that evidence had originally come from the NSA.[198]

In *United States v. Khan*, a federal prosecution in Oregon in which the defendant belatedly received notice that Section 702 surveillance had been involved in the case, prosecutors opposed a defense effort to force the government to ensure that any relevant intelligence information not be destroyed. The pertinent discovery rules, they wrote, apply "only to statements, documents, and materials to which federal prosecutors have knowledge and access, that is, generally the files of the Department of Justice and of the investigative agency … Here, the FBI is the appropriate agency."[199] They resisted the possibility that they had an obligation to check with other agencies: "[N]o prosecution, including this one, requires that a defendant be allowed access to all government files, or that other government agencies, not part of the prosecution and investigative team, should be ordered to retain unspecified information not demonstrably material to the defense."[200]

Defense attorneys have responded to such contentions by pointing out their logical weaknesses and the obvious difficulties they create for defendants (who are legally presumed to be innocent).

Defense attorney Jessica Carmichael, who represented a defendant in a prosecution of alleged Anonymous activists (*Collins*), told Human Rights Watch, "The NSA for practical purposes in a general sense may not be part of the prosecution, but if they are providing evidence in a specific case through whatever channels, then they *become* part of the prosecution team."[201] She argued, "You can't not be part of the prosecution team if you're providing evidence to the prosecution," even if the NSA's involvement was far back in the evidentiary chain.[202]

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[198] Ibid., p. 25.

[199] *United States v. Khan*, case no. 3:12-cr-00659 (D. Or.), Government's Response to Defendant's Motion for Order Directing Government to Preserve FISA/FAA-Obtained Evidence" (doc. 76), May 12, 2014, p. 3.

[200] Ibid., p. 8.

[201] Human Rights Watch telephone interview with Jessica Carmichael, Alexandria, Virginia, July 24, 2017.

[202] Ibid.

In a joint interview with Human Rights Watch, two other attorneys who represented defendants in *Collins* explained the difficulties they had faced. "I wanted to resolve the issue of who [in the government] knew what, when," said John Kiyonaga. "It was simply a matter of telling them to do their jobs."[203]

Fellow attorney Marina Medvin characterized the government's response as "'Our own organization is too big for us to know what's happening.'"[204] She went on to assert, "We don't jail people in America" so that the government can "hide exculpatory evidence for the purposes of national security."[205]

4. Claiming that the government does not intend to "use" evidence as part of the prosecution

One of the most significant controversies concerning intelligence surveillance that has erupted in US courts to date has involved government claims in a challenge to the constitutionality of Section 702 of FISA, *Clapper v. Amnesty International USA*.[206] The case centered on standing: the legal right to bring a case arguing that surveillance is unconstitutional, based on current or future harm. Although the court ruled in the government's favor, the Justice Department issued a policy memorandum stating that "any communications to or from, or information about, a U.S. person acquired under Section 702 of FISA shall not be introduced as evidence against that U.S. person in any criminal proceeding except" in certain types of cases. However, the memorandum did not disclose how the Justice Department decides whether it must notify defendants of Section 702-derived information that it does not formally "introduce[] as evidence"—that is, information it uses in the case in some other way.[207]

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[203] Human Rights Watch interview with defense attorneys John Kiyonaga and Marina Medvin, Alexandria, Virginia, May 12, 2016.

[204] Ibid.

[205] Ibid.

[206] *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013).

[207] Department of Justice, National Security Division, "Restriction Regarding the Use of FISA Section 702 Information in Criminal Proceedings Against United States Persons," https://www.dni.gov/files/documents/icotr/51117/Doc%2013%20%E2%80%93%20DOJ%20Memorandum%20re%20Restrictions%20on%20the%20Use%20of%20Section%20702%20Information.pdf.

Compounding questions raised by this limited and unclear Section 702-related policy, Human Rights Watch is concerned that in this and other relevant contexts, prosecutors may be adopting restrictive interpretations of when they have "used" surveillance evidence as part of an investigation. For example, in *Thomas*, prosecutors told the court: "The government's decision to use a particular surveillance technique is only discoverable if evidence gathered pursuant to that technique is being used by the government and therefore may be the subject of a defense suppression motion."[208] It is unclear whether prosecutors may have intended to suggest that the defendant was not entitled to learn of any surveillance employed in his case if the government chose not to introduce the resulting data as evidence in court. Similarly, in *Bundy*, prosecutors stated: "If the government had engaged in electronic surveillance or physical searches of the defendants pursuant to FISA *and planned to use evidence obtained or derived from such electronic surveillance* or physical searches *in court* against an aggrieved person as defined under FISA, the government would be under an obligation to notify such aggrieved person."[209]

Of further relevance to this concern is an exchange in *United States v. Sedaghaty*, in which the government charged the defendant with fraud- and customs-related violations and sought to compel a bank to disclose relevant records held in another country. Both the bank and the defendant suggested during a hearing that a US government agency (even if not the prosecution) might already have those records, and the defense indicated that the court should make inquiries accordingly.[210] When responding, the prosecution said, "If we had records that we could use in court at the trial, we wouldn't have gone through" the process of trying to compel the bank to disclose them.[211] Defense attorney Steven Wax, who was then the most senior federal public defender for Oregon, immediately told the judge: "I would point out to you that I found [the prosecutor's] phrasing very, very interesting. If we had records that we could use in court, you know, that doesn't say he doesn't have the records."[212] Subsequent proceedings in the case addressed classified information, although the nature of the information remained undisclosed at the time of writing.[213]

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[208] *United States v. Thomas*, Case no. 2:15-cr-00171 (EDPA), Government's Response in Opposition to Defendant's Motion for Notice and Discovery of Surveillance Used in the Government's Investigation of the Defendant (doc. 74), July 29, 2016, p. 4.
[209] United States v. Bundy, doc. 607, p. 4.
[210] *United States v. Sedaghaty*, case no. 6:05-cr-60008 (D. Or.), Transcript of Oral Argument (doc. 270), February 16, 2010, pp. 24, 34-35.
[211] Ibid., p. 35.
[212] Ibid., pp. 35-36.
[213] See *United States v. Sedaghaty*, 728 F.3d 885 (9th Cir. 2013).

B. Inadvertent or Politically Motivated Revelations

As noted above, federal government agencies that have sought to employ parallel construction in the form of "wall stops" are sometimes willing to disclose this fact during proceedings, although the government's criteria—if any—for deciding whether to make such disclosures are unclear. In other cases, however, defendants have only learned about previously unrevealed investigative techniques due to carelessness by officials or comments by politicians to whom the government has given classified briefings.

For example, in December 2012 Senator Dianne Feinstein gave a floor speech in support of the renewal of the FISA Amendments Act (which includes Section 702). The speech implied that the government had used intelligence surveillance under the act in its investigations of several defendants who had not previously received any notification from the government to this effect.[214] Among others, these defendants included Mohamed Osman Mohamud, who did not receive a notification of Section 702 surveillance until he had been convicted and was awaiting sentencing.[215]

In January 2015, then-Speaker of the House John Boehner said the government had used "the FISA program" to investigate Ohio defendant Christopher Cornell. The context of the remark suggests that Boehner was referring to Section 702, particularly since he used the case to support the idea that the "program" should be re-authorized.[216] At the time of writing, publicly available court records suggested that the government had not yet disclosed any FISA surveillance to Cornell.

As described above, at least one disclosure of the government's use of a pretextual traffic stop has been inadvertent. The Snowden leaks also gave rise to a challenge by the defendants in *Collins*, and an apparent slip by the government in *Sedaghaty* alerted the defense attorney and judge to the possibility of undisclosed evidence.

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[214] "FISA Amendments Act Reauthorization Act of 2012," Congressional Record Vol. 158, No. 168 (December 27, 2012), available at https://www.gpo.gov/fdsys/pkg/CREC-2012-12-27/html/CREC-2012-12-27-pt1-PgS8384-2.htm (accessed December 20, 2017).

[215] See *United States v. Mohamud*, 843 F.3d 420, 431 (9th Cir. 2016).

[216] Jake Sherman, "Boehner: Surveillance helped foil alleged plot on Capitol," *Politico*, January 15, 2015, http://www.politico.com/story/2015/01/john-boehner-surveillance-capitol-114294 (accessed October 19, 2017).

These cases prompt concerns that defendants' ability to discover and challenge investigative techniques previously hidden by parallel construction may hinge on the publicity desires of officials or elected representatives, or on serendipity. This, in turn, raises the specter of inconsistent or arbitrary justice.

IV. Impact on Human Rights

Parallel construction may have a serious impact on the human rights of defendants in United States criminal cases—people who are, in line with what human rights require,[217] presumed to be innocent until proven guilty. Additionally, when it is used to conceal surveillance methods, parallel construction deprives the US public—and legislators responsible for enacting laws to govern what law enforcement and intelligence bodies may do—of an understanding of the true extent and impact of secret monitoring. As noted above, by avoiding the potential application of the exclusionary rule, parallel construction also effectively removes one of the most important incentives for law enforcement and other authorities to obey the law.

Under binding international human rights law, proceedings in criminal cases must be "fair" and take place before a "competent" tribunal.[218] Defendants also have a right to "adequate … facilities" for the preparation of their defense, a provision the Human Rights Committee, the UN independent expert committee charged with monitoring compliance with the relevant treaty, has said includes a right of access to "documents and other evidence."[219] According to the committee, "this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory," adding that "[e]xculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence."[220]

Furthermore, international human rights law addresses surveillance: all government interferences with privacy (including the privacy of communications) must be necessary to achieve a legitimate aim and must be done in accordance with both international and domestic law—including, in the United States, the Constitution.[221] Any law allowing secret

[217] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 14(2) (hereinafter "ICCPR").

[218] Ibid., art. 14(1).

[219] Ibid., art. 14(3)(b); Human Rights Committee, General Comment No. 32: "Article 14: Right to equality before courts and tribunals and to a fair trial," U.N. Doc. CCPR/C/GC/32, August 23, 2007.

[220] Ibid.

[221] See ICCPR, art. 17(1).

surveillance must be "sufficiently clear in its terms to give citizens an adequate indication as to the circumstances" in which the monitoring may take place.[222] Human rights law also provides that governments in most circumstances must notify people whose private information has been surveilled.[223]

If an individual's fair-trial, privacy, or other rights are violated, human rights further require that he or she must receive an effective remedy.[224]

Parallel construction violates, or facilitates violations of, each of these rights. A defendant who is unable to discover and challenge the use of an investigative source or method that was employed in his or her case and that may be unconstitutional or otherwise illegal is deprived of a "fair" proceeding as well as "adequate … facilities" for the preparation of his or her defense. In particular, she or he is deprived of the opportunity to argue that evidence obtained through or derived from unlawful investigative methods should be excluded from the trial as "fruit of the poisonous tree"—a crucial remedy in the United States system for violations of constitutionally protected rights, including privacy rights. Additionally, parallel construction may be preventing defendants from being notified that they have been surveilled (or that some other measure interfering with privacy has been involved in their cases).

In *Arizona v. Wakil*, for example, a "whisper stop" in Arizona was used to conceal the government's warrantless use of a location-tracking device it had installed on the defendant's rental car—a practice that the defense argued was unlawful and that the US Supreme Court later held to be unconstitutional nationwide. The judge in the state-court case in Arizona eventually overturned Wakil's conviction due to this illegal monitoring, rejecting the prosecution's argument that there had been an "independent basis" for the

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[222] See *Malone v. United Kingdom*, application no. 8691/79, judgment (European Court of Human Rights, plenary), August 2, 1984, ¶ 67; see also Office of the United Nations High Commissioner for Human Rights, "The right to privacy in the digital age," U.N. Doc. A/HRC/27/37, (2014), ¶ 23 ("[A]ny limitation to privacy rights reflected in article 17 must be provided for by law, and the law must be sufficiently accessible, clear and precise so that an individual may look to the law and ascertain who is authorized to conduct data surveillance and under what circumstances"), available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf (accessed December 20, 2017) (hereinafter "OHCHR Report").

[223] See, e.g., *Szabó and Vissy v. Hungary*, application no. 37138/14, judgment (European Court of Human Rights), January 12, 2016, ¶ 86; see also OHCHR Report, ¶ 40.

[224] ICCPR, art. 2(3).

subsequent traffic stop (an improper windshield attachment).[225] This development would not have occurred if it had not emerged during proceedings in federal court the stop had been pretextual.[226]

In another case, *United States v. Mohamud*, the defendant was only able to challenge the constitutionality of the surveillance of his communications under Section 702 of FISA (and argue that the resulting evidence should have been excluded) because the government eventually provided notice that the surveillance had occurred.[227] At the time of writing, Mohamud had asked the US Supreme Court to rule on the constitutionality of the monitoring but the court had not yet indicated whether it would hear the case.[228]

"We … lack notice of all the surveillance techniques that were used [in the government's investigation], and also how they were used," the defense attorneys in *United States v. Al-Jayab* told an Illinois federal court in March 2017. "Without notice, Defendant cannot test whether the government's evidence was, in fact, lawfully obtained—or whether government surveillance conducted with limited or no court review violated his rights."[229]

Parallel construction may also deprive a defendant of exculpatory information, as well as the opportunity to contend that the investigative source or method the government has employed produces evidence that is inaccurate, incomplete, biased, or otherwise flawed. To the extent that the technique also prevents judges from understanding and evaluating the government's methods, it may also deprive defendants of a hearing by a "competent" tribunal.

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[225] *Arizona v. Wakil*, Case no. CR-2011-00530 (Coconino County), Minute Entry, Nov. 6, 2014. The US Supreme Court ruled in *United States v. Jones*, 132 S.Ct. 945 (2012), that the Fourth Amendment warrant requirement applies to the monitoring of a vehicle's movements through the attachment and use of a GPS device.

[226] See *United States v. Wakil*, case no. 2:12-cr-00527 (C.D. Cal.), Report of Investigation (DEA Form 6) (doc. 321), filed July 7, 2013.

[227] See *United States v. Mohamud*, case no. 3:10-cr-00475 (D. Or.), Memorandum in Support of Motion for Full Discovery Regarding the Facts and Circumstances Underlying Surveillance (doc. 489), January 13, 2014; *United States v. Mohamud*, case no. 14-30217 (9th Cir.), Opening Brief of Appellant, September. 4, 2015, p. 137.

[228] Maxine Bernstein, "Mohamed Mohamud's lawyers petition U.S. Supreme Court to review conviction," *Oregonian/OregonLive*, July 14, 2017, http://www.oregonlive.com/portland/index.ssf/2017/07/mohamed_mohamuds_lawyers_petit.html (accessed October 19, 2017).

[229] *United States v. Al-Jayab*, case no. 1:16-cr-00181, Defendant's Motion for Notice of Surveillance Techniques Used During the Course of the Investigation (doc. 52), March 14, 2017, pp. 7-8.

Where the specific parallel construction technique of pretextual traffic stops is concerned, the demand for law enforcement officers to find an independent reason to stop and search a particular person or vehicle raises a risk that those officers will engage in unlawful behaviors in order to carry out this secretive task. Those behaviors may include the illegal prolongation of a stop,[230] unjustified "frisks"[231] and canine sniffs,[232] questioning that circumvents defendants' rights against self-incrimination,[233] and—as Judge Berzon wrote in her 2016 concurring opinion—"flat out lies about what police officers saw,"[234] which may constitute perjury if repeated in court.

At a broader level, parallel construction also creates a risk that the outcome of a case, and thus the consistency of the justice system for both defendants and any victims, will depend on how willing a defense attorney is to press for the revelation of undisclosed methods—particularly those that would be classified. Former ODNI general counsel Robert Litt told Human Rights Watch, and Arthur Rizer implied, that prosecutors may drop cases in order to avoid revealing sources or methods. "At the end of the day, if the Intelligence Community says, 'You can't risk this information, you need to dismiss the case,' that carries the day," Litt said.[235] One of the DEA trainings Ciaramella obtained also refers to the dismissal of a case as "the last resort" to protect the information a traffic stop was intended to "wall[] off." (The training adds: "Bottom line: DEA will rarely if ever disclose privileged or sensitive information from the other side of the 'wall.'"[236]) Therefore, a defendant whose attorney is aware of parallel construction and asks hard questions may avoid imprisonment—while a defendant whose attorney is less savvy may not. This situation jeopardizes the fairness and equality of trial processes.

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[230] See, e.g., *United States v. Evans*.

[231] See, e.g., *United States v. Noble*.

[232] See, e.g., *United States v. Evans*.

[233] See, e.g., *United States v. Hernandez-Rodriguez*, 2012 U.S. Dist. LEXIS 31918 (M.D. NC), March 7, 2012, although no violation was found in this case.

[234] *United States v. Magallon-Lopez*.

[235] Human Rights Watch telephone interview with Robert Litt, former General Counsel of the Office of the Director of National Intelligence, August 29, 2017; Human Rights Watch interview with Arthur Rizer, Washington, DC, June 8, 2017.

[236] Muckrock documents, p. 203 of the complete PDF. Another training, which is undated, suggests that the government has only dismissed a case for this reason on one occasion, although the training appears to be referring to scenarios in which a judge has reviewed classified evidence by holding CIPA proceedings and determined that the evidence should be disclosed. Ibid. at pp. 60-61.

The shield of secrecy parallel construction creates also means that the public and even Congress may not realize that the executive branch is interpreting surveillance laws as allowing certain activities—violating the human rights requirement that such laws be clear and have foreseeable consequences. Furthermore, the public is unlikely to pressure Congress to change the laws or impose greater transparency requirements—crucial means of reining in executive power in democratic societies—if it is unaware of the surveillance taking place.

Defense attorneys interviewed by Human Rights Watch were scathing in their assessments of parallel construction.

"It is lying," said Azar-Farr, the Texas-based defense attorney who represented Syed Ali. "You [government agents] are lying to your higher-ups, you are lying to your prosecutors, you are lying to the judge in the case, you are lying to the defense lawyer, you are lying to the accused."[237] The government, he said, "know[s] [parallel construction] is illegal and you're not supposed to do this. And they still do it. Maybe because they find it necessary, maybe they're guided by a desire to ensure that bad people get arrested and are put in prison."[238] He could understand these motivations, he said. "But you're not doing the United States any good when you behave like this."[239]

Similarly, Missouri defense attorney Dan Viets described parallel construction as "lying. Just lying." "All they [the government] are doing is just lying. And they're lying to the courts. I guess I'm naïve about this, but I would think that judges would be offended that this is [the government's] standard operating procedure." He went on, "In some cases, the prosecutors are victims; in some cases, they are collaborators with these lies that are being told to the courts. It's just appalling." He continued, "Surely, due process requires that the police don't lie to the courts, that prosecutors don't lie to the court."[240]

[237] Human Rights Watch telephone interview with attorney Simon Azar-Farr, San Antonio, Texas, June 1, 2017.
[238] Ibid.
[239] Ibid.
[240] Human Rights Watch telephone interview with defense attorney Dan Viets, Columbia, Missouri, April 3, 2017.

Michigan attorney John Minock commented that parallel construction troubles him "because it's a fiction. It's a lie. It's a means of disguising illegal intercepts and warrantless searches."[241]

Carmichael, one of the defense attorneys in *Collins*, told Human Rights Watch that parallel construction "flies in the face of everything that our justice system stands for" and is "legally and as a matter of principle a huge problem. We have in our country a Fourth Amendment and Fourth Amendment rights … That's a bedrock principle of our system. Essentially, this practice is an attempt to circumvent that. It's a way that defendants can't challenge the evidence and the way that it was obtained."[242]

Brian Pori, a federal public defender in New Mexico, said of parallel construction: "One practical effect is that it encourages law enforcement to be duplicitous. Law enforcement should not have to pretend—they shouldn't have to keep one hand behind their back with the information that they have." He added, "Any honorable law enforcement officer or prosecutor can figure out an honorable way to do the things that they're doing. Why do we have to have this charade or this game?"[243]

Several of these defense attorneys took pains to stress that they understood the value of intelligence-gathering.[244] However, Kiyonaga—one of the other defense attorneys in *Collins*—noted when interviewed, "National security shouldn't be allowed to eviscerate the Fourth Amendment and the other procedural safeguards that attend a prosecution."[245] Similarly, Azar-Farr accepted the idea of congressionally-approved intelligence collection to "prevent threats to the sovereignty of the nation."[246] "But don't collect all of this information," he said, "and then tell me that you have used it to arrest the guy who happened to sell half a kilo of marijuana in the suburbs of Philadelphia."[247]

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[241] Human Rights Watch telephone interview with defense attorney John Minock, Ann Arbor, Michigan, May 12, 2016.

[242] Human Rights Watch telephone interview with defense attorney Jessica Carmichael, Alexandria, Virginia, July 24, 2017.

[243] Human Rights Watch telephone interview with Brian Pori, Assistant Federal Public Defender, Albuquerque, New Mexico, March 15, 2017.

[244] Ibid.; Human Rights Watch telephone interview with attorney Simon Azar-Farr, San Antonio, Texas, June 1, 2017; Human Rights Watch telephone interview with defense attorney Jessica Carmichael, Alexandria, Virginia, July 24, 2017.

[245] Human Rights Watch interview with defense attorneys John Kiyonaga and Marina Medvin, Alexandria, Virginia, May 12, 2016.

[246] Human Rights Watch telephone interview with attorney Simon Azar-Farr, San Antonio, Texas, June 1, 2017.

[247] Ibid.

"Think of it a little differently," Azar-Farr said. "[I]f the doors were open that you could use any information [from] counterintelligence information as part of [prosecutions] in criminal courts, then you might as well say that we don't have a Fourth Amendment. Taken to its logical extension, there would be no Fourth Amendment."[248]

Alvaro Bedoya, an attorney and the executive director of the Center on Privacy & Technology at Georgetown Law, described parallel construction to Human Rights Watch as "antithetical to the core of due process" and pointed out that it may prevent judges from evaluating the legality of new types of surveillance technologies such as facial recognition software.[249] The defense attorneys in *Al-Jayab* made the same point, writing that "notice and discovery are especially crucial in an era of rapidly changing technology. By withholding notice, the government is preventing defendants from challenging sweeping new forms of surveillance that have never been reviewed in any adversarial court proceeding."[250] The research described in this report supports the gravity of these concerns.

[248] Ibid.

[249] Human Rights Watch telephone interview with Alvaro Bedoya, Executive Director, Center on Privacy & Technology, Georgetown Law, Washington, DC, June 30, 2017.

[250] *United States v. Al-Jayab*, doc. 52, p. 18.

V. Recommendations

To eliminate the human rights violations that parallel construction entails, Human Rights Watch recommends that Congress address the issue directly through legislation. Specifically, we recommend that the body adopt laws to require the disclosure to criminal defendants of complete information about the origins of the investigations in their cases, with special procedures as necessary to address classified information or information whose disclosure may jeopardize the lives or safety of identifiable human informants. Such procedures should be conducted by judges and should ensure that defense counsel have sufficient access to the information to challenge potentially unlawful activity. They should prohibit the sanitization of information in a manner that precludes constitutional or other challenges to the legality of a government activity that led to the identification of information or evidence.

Congress should also adopt legislation requiring that all executive branch agencies be treated as part of the prosecution for the purposes of obligations to disclose exculpatory information. Additionally, it should evaluate the judicially developed doctrines (such as applications of the "independent source" doctrine, interpretations of *Whren*, and the doctrine of collective knowledge) that may facilitate law enforcement's use of searches and seizures for parallel construction purposes and consider imposing restrictions accordingly.

To address the possibility that parallel construction is used to conceal potentially unconstitutional surveillance, we recommend that Congress adopt legislation strictly requiring the executive branch to notify defendants in all criminal cases of any employment of investigative techniques involving the surveillance of communications or metadata, or the compilation or monitoring of other personal data such as biometric data. Congress should also adopt similar requirements for other proceedings in which individuals' rights are adjudicated (such as immigration proceedings). Such legislation should impose requirements on prosecutors to determine whether such techniques were employed. In general, Congress should exercise stronger oversight over surveillance and other forms of data-gathering that take place under intelligence authorities.

The US executive branch should also act to eliminate parallel construction. Human Rights Watch recommends that the Justice Department adopt policies prohibiting the practice and

publicly disclose all relevant policies and legal interpretations. The Justice Department should also provide clear and publicly available legal guidance to the FBI, the DEA, and other relevant entities regarding these matters. Human Rights Watch also regards measures by ODNI as necessary: the Director of National Intelligence should publicly and fully disclose all policies and legal interpretations that may affect criminal defendants or others involved in proceedings before US courts or tribunals, including where these policies or interpretations conclude that an activity or approach will not result in any violations of rights.

The US federal and state courts will also be critical in ending the rights violations that parallel construction entails or may promote. When the circumstances of a case suggest that the government may have engaged in parallel construction to conceal activities that could have implications for the defendant's rights, Human Rights Watch recommends that judges strongly consider directing the prosecution to disclose any previously unrevealed investigative sources or techniques that were employed in the case or otherwise led to evidence, including by directing it to make inquiries with relevant law enforcement and intelligence bodies. They should consider issuing such orders even in the absence of specific evidence of parallel construction or the activities it may have been used to conceal, since the practice is designed to prevent defendants from possessing such evidence.

Human Rights Watch further recommends that when courts consider cases that may involve parallel construction, they should apply any relevant common-law doctrines, including those pertaining to pretextual traffic stops, the collective-knowledge doctrine, and the independent-source doctrine, in a manner that fully comports with human rights and the US Constitution. The US Supreme Court should consider revisiting or clarifying previous decisions that are currently facilitating parallel construction (or the problematic practices the executive branch may be employing it to conceal).

Conclusion

Fair-trial rights and the rights of people under investigation are so deeply woven into the US Constitution and human rights laws as to be inextricable from them. Both the Constitution and human rights treaties demand fair play and respect for the value of an individual's liberty. In the US, the Constitution's Fourth, Fifth, and Fourteenth Amendments are vital in creating and ensuring a legal system that is truly just.

Parallel construction fails that test. At best, it displaces judges from their role of deciding which government behaviors respect rights and which do not. At worst, it is a legalistic form of deceit, one that renders proceedings unfair and may ensure that violations of rights—not only of defendants, but of the US population at large—stay in the shadows, undetected and unchallenged. Its existence poses a threat to the bedrock concepts of a presumption of innocence and the gravity of the loss of liberty through imprisonment. This report shows that parallel construction is real, may be occurring regularly, and in a democratic society, should be disallowed.

Acknowledgments

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Above all, we wish to thank the defense attorneys who generously took the time to speak with us—sometimes repeatedly—and provide us with case records, as well as the current and former US government officials who shared their views with thoughtfulness and candor.

Annex: Background on US Surveillance Authorities

A. The Fourth, Fifth, and Fourteenth Amendments to the US Constitution

In the mid-18th century, fierce controversies arose in what is now the United States over the British colonial authorities' sweeping and intrusive methods for finding evidence of customs violations or materials criticizing the government.[251] Largely in response to these excesses, the US Constitution contains the Fourth Amendment, which reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[252]

Questions about how to apply these Fourth Amendment protections to evolving technologies have given rise to a complex body of US Supreme Court case law that has shaped US surveillance practices as well as some of parallel construction's many forms.

B. Law Enforcement Surveillance and Other Search Powers

1. *Access to telephone and internet communications: content*

Nearly 90 years ago, the US Supreme Court began grappling with how to apply the Fourth Amendment—which, as noted above, broadly requires the government to obtain a warrant before conducting searches or seizures—to a new type of communications device: the telephone.[253] Eventually, the court held that the Fourth Amendment's protections apply to the recording of conversations—including phone calls.[254]

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[251] *See Boyd v. United States*, 116 U.S. 616, 623-630 (1886); *United States v. Verdugo-Urquidez*; Clark D. Cunningham, "Apple and the American Revolution: Remembering Why We Have the Fourth Amendment," Forum post, *Yale Law Journal*, October 26, 2016, https://www.yalelawjournal.org/forum/apple-and-the-american-revolution-remembering-why-we-have-the-fourth-amendment-1 (accessed November 6, 2017).

[252] US Constitution, Fourth Amendment.

[253] *Olmstead v. United States*, 277 U.S. 438 (1928).

[254] *Katz v. United States*, 389 U.S. 347 (1967).

Congress went on to enshrine this ruling in statutory law when it adopted the Omnibus Crime Control and Safe Streets Act of 1968. Title III of the law, which is sometimes known as the Wiretap Act and which Congress has since amended several times, generally prohibits individuals from intercepting "any wire, oral, or electronic communication."[255] The law makes an exception for authorities who have obtained a warrant from a judge based on probable cause to believe that someone has committed or will soon commit a certain type of crime. The authorities must also show, among other things, that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous."[256] In 1986, Congress extended the scope of the original Wiretap Act to include electronic communications by adopting the Electronic Communications Privacy Act.[257]

While the Wiretap Act (as amended) is foundational to US communications privacy, in 2016 journalists uncovered a "vast and legally questionable eavesdropping program" created by the DEA and federal prosecutors and involving the interception of "millions of calls and text messages based on the approval of a single state-court judge" in California.[258] This development raises concerns as to whether the government's approach to surveillance even under Title III (a relatively uncontroversial law) has been fully disclosed or itself raises constitutional concerns.

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[255] 18 U.S.C. § 2511.

[256] 18 U.S.C. §§ 2516, 2518.

[257] See Justice Information Sharing, "Electronic Communications Privacy Act of 1986 (ECPA), 18 U.S.C. §§ 2510-22," Department of Justice, July 30, 2013, https://it.ojp.gov/PrivacyLiberty/authorities/statutes/1285; Electronic Privacy Information Center, "Electronic Communications Privacy Act (ECPA)," https://epic.org/privacy/ecpa/. While ECPA's provisions are complex, they generally establish that law enforcement must obtain a warrant to intercept the content of e-mails, chats, direct messages on social media sites, and other electronic communications while those communications are being transmitted. Law enforcement's powers to gain access to the content of stored electronic communications depend on where those communications are stored (for example, on an internet company's server or a personal device), how old they are, and whether the recipient has opened them. Civil-society groups have long sought reforms to ECPA to improve the consistency of its rights protections.

[258] Brad Heath, "DEA changes wiretap procedure after questionable eavesdropping case," *USA Today*, July 7, 2016, https://www.usatoday.com/story/news/2016/07/07/dea-changes-wiretap-procedure-after-questionable-eavesdropping-cases/86802508/ (accessed November 6, 2017). In at least one case, prosecutors later determined that these wiretaps had been illegal: see Brad Heath and Brett Kelman, "After illegal wiretap, suspects go free and want a refund," *USA Today*, December 9, 2015, https://www.desertsun.com/story/news/2015/12/09/illegal-dea-wiretap-riverside-money-laundering/77050442/ (accessed November 1, 2017).

2. Access to telephone and internet communications: metadata

US law draws distinctions between the content of communications and information that describes those communications without directly revealing what they contain—for example, the date and duration of a telephone call, as well as the numbers of the caller and recipient. Surveillance experts often refer to this type of descriptive information as "metadata" (although the term itself does not have a legal meaning or an agreed technical one).

In 1979, the US Supreme Court held in *Smith v. Maryland* that individuals do not have a reasonable expectation of privacy in the telephone numbers they dial—meaning that the Fourth Amendment does not require law enforcement officers to obtain a warrant before seeking such information.[259] This ruling continues to underpin US legal theories premised on the idea that metadata does not require the same protections as the content of communications.[260]

3. The surveillance of non-US Persons outside the United States

In a 1990 case about the DEA's warrantless search of a Mexican citizen's physical property in Mexico, the US Supreme Court stated that the Constitution's drafters did not intend for the Fourth Amendment "to apply to activities of the United States directed against aliens in foreign territory or in international waters."[261] This reasoning now forms a significant part of the legal underpinning for the country's warrantless intelligence surveillance programs, which, when targeted in nature, purport only to target "non-United States persons." ("United States persons" is a legal category that includes US citizens, lawful permanent residents—commonly known as green-card holders—and some corporations and associations.[262])

C. Intelligence and National Security Surveillance Powers

The use of surveillance in the United States for intelligence purposes has historically been far more controversial than monitoring in the law enforcement context, and the interplay between the intelligence bodies and the criminal justice system has long been fraught with

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[259] *Smith v. Maryland*.

[260] See *United States v. Jones* (Sotomayor, J., concurring).

[261] *United States v. Verdugo-Urquidez*.

[262] 50 U.S.C. § 1801(i).

concerns about potential abuses.[263] In criticizing the excessive and discriminatory intelligence surveillance activities of the mid-20th century, an influential Senate panel commonly known as the Church Committee distinguished intelligence activity from criminal investigations. Its members wrote in 1976:

> It is, of course, proper in many circumstances—such as developing a criminal prosecution—for the Government to gather information about a citizen and use it to achieve legitimate ends, some of which might be detrimental to the citizen. But in criminal prosecutions, the courts have struck a balance between protecting the rights of the accused citizen and protecting the society which suffers the consequences of crime. Essential to the balancing process are the rules of criminal law which circumscribe the techniques for gathering evidence, the kinds of evidence that may be collected, and the uses to which that evidence may be put. In addition, the criminal defendant is given an opportunity to discover and then challenge the legality of how the Government collected information about him and the use which the Government intends to make of that information.[264]

As demonstrated in this report, today parallel construction risks seriously undermining the "opportunity to discover and then challenge the legality of how the Government collected" and uses information. This, in turn, raises the risk that the government—operating without sufficient accountability or oversight—will engage in abuses.

In the wake of revelations about the mid-20th-century excesses addressed in the Church Committee's report, Congress and the executive branch began to impose stronger restrictions on the intelligence agencies, including where surveillance is concerned.[265] However, over time, and particularly following the attacks of September 11, 2001, these protections have eroded.

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[263] See, e.g., David S. Kris and J. Douglas Wilson, *National Security Investigations & Prosecutions 2d* (Thomson West, 2012), vol. II, pp. 5-13.

[264] Ibid., vol. I, pp. 38-44; Church Committee Report, Book II, pp. 2-3 (internal citation omitted).

[265] See, e.g., Kris and Wilson, vol. I, pp. 49-62; Foreign Intelligence Surveillance Act of 1978.

1. The Foreign Intelligence Surveillance Act

a. FISA orders

In 1978, Congress made it clear that even when the executive branch had a foreign intelligence purpose for conducting surveillance from within the US, it needed to get a judicial warrant in each case. The Foreign Intelligence Surveillance Act ("FISA") required—and, for surveillance that is carried out in the United States and targets a US person, still requires—that government agents obtain an individualized order based on a sworn statement showing probable cause to believe that the target is a "foreign power" (or "agent of a foreign power") and certifying that the information sought "cannot reasonably be obtained by normal investigative techniques."[266]

b. Section 702 of FISA

In 2005, the *New York Times* revealed that the executive branch had been monitoring the international telephone and internet communications of people in the United States, based on an executive order and without obtaining warrants.[267] After much controversy, Congress responded by ultimately adopting the FISA Amendments Act ("FAA") in 2008. The FAA added a set of provisions to FISA, including Section 702.[268]

Section 702 empowers the intelligence agencies to "target" non-US persons overseas for warrantless telephone or internet monitoring.[269] The purposes for which the government may conduct such monitoring are expansive: the executive branch need only certify that "a significant purpose" of the surveillance is to obtain "foreign intelligence information."[270] FISA defines this term broadly to include, for example, "information with respect to a foreign power or foreign territory that relates to … the conduct of the foreign affairs of the United States."[271] Hypothetically, information about a foreign march for civil rights or

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[266] See 50 U.S.C. § 1804(a). This requirement also applies to electronic surveillance carried out in the United States that targets *non*-US persons, although the FISA Amendments Act (explained below) also allows the government to carry out warrantless surveillance targeting such persons if they are outside the United States.

[267] James Risen and Eric Lichtblau, "Bush Lets U.S. Spy on Callers Without Courts," *New York Times*, December 16, 2005, http://www.nytimes.com/2005/12/16/politics/bush-lets-us-spy-on-callers-without-courts.html (accessed November 6, 2017).

[268] FISA Amendments Act of 2008, available at https://www.gpo.gov/fdsys/pkg/BILLS-110hr6304enr/pdf/BILLS-110hr6304enr.pdf (accessed November 6, 2017).

[269] 50 U.S.C. §1881a(a)-(b).

[270] 50 U.S.C. § 1881a(g)(2)(A)(v).

[271] 50 U.S.C. § 1801(e).

relating to a foreign agency's decision to restrict the sale of a particular substance such as tobacco, for example, would appear to qualify. The government reported having an estimated 106,469 targets under Section 702 in 2016 (the most recent year for which data is available).[272]

Although US persons cannot be the official targets of Section 702 surveillance and the statute prohibits reverse targeting—that is, the deliberate targeting of a non-US person with the actual goal of surveilling a US person—the government believes it has the power to surveil US persons' communications "incidentally." For example, if a US person Skypes with an uncle in China, calls a business in Mexico, e-mails a professor in Germany, or sends a Facebook message to a friend in India, the US government believes it is entitled to sweep up those communications without a warrant if any of those people or entities are the non-US person targets of Section 702 surveillance. At the time of writing, the scale of the government's "incidental" capture of US persons' information under Section 702 was unknown, although a 2014 report by the independent Privacy and Civil Liberties Oversight Board ("PCLOB") characterized it as "potentially large" and another independent expert described it in 2015 as "broad."[273]

The PCLOB's 2014 report confirmed that the government has operated at least two massive warrantless surveillance programs pursuant to this provision.[274] One, "upstream" scanning, has allegedly involved the automated bulk searching of communications that flow over the internet infrastructure that links the US to the rest of the globe.[275] The other, PRISM, has enabled the NSA—with the FBI's assistance—to demand private communications such as e-mails and instant messages from US internet companies without warrants.[276] Documents disclosed by former NSA contractor Edward Snowden

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[272] Office of the Director of National Intelligence, "Statistical Transparency Report Regarding the Use of National Security Authorities for Calendar Year 2016," April 2017, p. 7, https://www.dni.gov/files/icotr/ic_transparecy_report_cy2016_5_2_17.pdf (accessed November 6, 2017).

[273] PCLOB Report, p. 9; Brief of *Amicus Curiae*, United States Foreign Intelligence Surveillance Court, Oct. 16, 2015, p. 11, available at https://www.aclu.org/foia-document/brief-fisc-amicus-curiae-amy-jeffress?redirect=foia-document/brief-amicus-curiae (accessed November 6, 2017).

[274] PCLOB Report.

[275] See Ashley Gorski and Patrick Toomey, "Unprecedented and Unlawful: The NSA's 'Upstream' Surveillance," post to American Civil Liberties Union (blog), September 23, 2016, https://www.aclu.org/blog/speak-freely/unprecedented-and-unlawful-nsas-upstream-surveillance (accessed November 6, 2017).

[276] PCLOB Report, pp. 33-34.

beginning in 2013 indicate that these companies have included Google, Apple, Microsoft, and Facebook, among others.[277]

Section 702 requires the government to submit annual "targeting" and "minimization" procedures to the Foreign Intelligence Surveillance Court—procedures that are supposed to provide some privacy protections to US persons.[278] ("Minimization" refers to the practice of preventing the gathering or sharing of information that concerns or identifies US persons.[279]) However, the court does not issue individualized warrants or review the government's individual targeting decisions.

As explained below, the NSA may share specific information gathered under Section 702 with the FBI in a broad set of circumstances. The FBI may also search (or "query") raw Section 702 data—that is, the data as it was originally obtained—without a warrant, including by using search terms related to US persons, to find "foreign intelligence information" or "evidence of a crime."[280]

At the time of writing, Section 702 was scheduled to expire on December 31, 2017, unless Congress renewed it.[281]

2. Intelligence-sharing arrangements with foreign governments

EO 12333 allows the Director of National Intelligence to "enter into intelligence and counterintelligence arrangements and agreements with foreign governments and international organizations."[282] These agreements do not require the approval of Congress.

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[277] See "NSA slides explain the PRISM data-collection program," *Washington Post*, July 10, 2013, http://www.washingtonpost.com/wp-srv/special/politics/prism-collection-documents/ (accessed November 6, 2017).

[278] 50 U.S.C. § 1881a(d)-(e).

[279] See 50 U.S.C. § 1801(h).

[280] "Minimization Procedures Used by the Federal Bureau of Investigation in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, As Amended," September 21, 2016, p. 11, https://www.dni.gov/files/documents/icotr/51117/2016_FBI_Section_702_Minimization_Procedures_Sep_26_2016_part_1_and_part_2_merged.pdf (accessed November 6, 2017) (hereinafter "FBI minimization procedures").

[281] FISA Amendments Act Renewal Act of 2012, available at https://www.intelligence.senate.gov/sites/default/files/legislation/hr5949.pdf (accessed November 6, 2017).

[282] Executive Order 12333, "United States Intelligence Activities" (as amended 2008), § 1.4(b)(4)(A).

The executive branch has released certain historical documents concerning an intelligence-sharing agreement between the US and the United Kingdom,[283] and Snowden disclosed a memorandum of understanding suggesting that the US shares raw surveillance data with Israel.[284] However, Human Rights Watch is unaware of any intelligence-sharing arrangements whose current scope or details the government has made available to the public.

In a 2014 interview with Human Rights Watch, a senior US intelligence official stated that the government is permitted to *receive* intelligence concerning US persons from foreign states even in circumstances in which it would be illegal for the US to conduct the surveillance itself, although the authorities cannot *request* such intelligence.[285]

More recently, as part of the Senate Select Committee on Intelligence's confirmation hearing for CIA Director Mike Pompeo in 2017, Senator Ron Wyden stated:

> Absent a specific request from the CIA, a foreign partner, company, organization or individual may nonetheless provide the CIA with the results of extensive cyber operations or other surveillance, including targeted collection against, or bulk collection that includes the communications of U.S. persons. That information could include the communications of U.S. political figures and political activists, leaders of nonprofit organizations, journalists, religious leaders, businesspeople whose interests conflict with those of President Trump, and countless innocent Americans.[286]

3. The sharing of intelligence with law enforcement

After the attacks of September 11, 2001, questions about the extent to which the intelligence agencies may and should share information with law enforcement bodies

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[283] National Security Agency/Central Security Service, "UKUSA Agreement Release: 1940-1956," May 3, 2016, https://www.nsa.gov/news-features/declassified-documents/ukusa/ (accessed November 6, 2017).

[284] "Memorandum of Understanding (MOU) Between the National Security Agency/Central Security Service (NSA/CSS) and the Israeli SIGINT National Unit (ISNU) Pertaining to the Protection of U.S. Persons," undated, available at http://www.statewatch.org/news/2013/sep/nsa-israel-spy-share.pdf (accessed November 6, 2017).

[285] Human Rights Watch, *With Liberty to Monitor All* (New York: Human Rights Watch, 2014), https://www.hrw.org/report/2014/07/28/liberty-monitor-all/how-large-scale-us-surveillance-harming-journalism-law-and.

[286] "Questions for the Record: Mike Pompeo" (completed), Senate Select Committee on Intelligence, January 18, 2017, p. 5, https://www.intelligence.senate.gov/sites/default/files/documents/qfr-011217.pdf (accessed November 6, 2017).

gained new urgency. In US public discourse, the attacks were widely portrayed as having resulted from a failure on the part of intelligence and law enforcement agencies to "connect the dots"—that is, to obtain and share relevant information with one another.[287] Public commentary that emerged after the attacks also decried a phenomenon known as "The Wall": bureaucratic restrictions that gradually came to impede the sharing of intelligence information with prosecutors assigned to non-terrorism criminal cases, and that the 9/11 Commission ultimately described as "misunderstood and misapplied."[288]

Today, the government has adopted procedures that allow Section 702 and EO 12333 surveillance data to be shared with law enforcement under a wide range of circumstances. For example, if the NSA "incidentally" captures communications to or from US persons as part of its warrantless surveillance under Section 702, it can share those communications with federal law enforcement if the messages contain "evidence of a crime that has been, is being, or is about to be committed."[289] Similarly, the FBI may disseminate information obtained under Section 702 concerning a US person that "reasonably appears to be evidence of a crime" to federal, state, local, and tribal law enforcement.[290] The sharing of this warrantlessly gathered data is itself warrantless and does not require any specific level of suspicion that the person concerned is engaged in criminal wrongdoing, giving rise to a risk that such sharing will effectively constitute an end-run around Fourth Amendment protections.

Less information is available about the sharing of information gathered under EO 12333. However, the NSA has publicly released procedures indicating that it may disseminate information about US persons that it has obtained under EO 12333 in a range of circumstances, including when "[t]he information is evidence of a possible commission of

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[287] See National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (2004), p. 400, available at https://www.9-11commission.gov/report/911Report.pdf (accessed December 21, 2017).

[288] Ibid., p. 79; on public claims regarding "The Wall" and its role in the government's failure to prevent the attacks, see, e.g., Josh Meyer, "Fingers Point at an Intelligence 'Wall'," *L.A. Times*, April 14, 2004, http://articles.latimes.com/2004/apr/14/nation/na-wall14_ (accessed November 6, 2017).

[289] "Minimization Procedures Used by the National Security Agency in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, as Amended," March 24, 2017, pp. 10, 13 https://www.dni.gov/files/documents/icotr/51117/2016-NSA-702-Minimization-Procedures_Mar_30_17.pdf (accessed November 6, 2017).

[290] FBI minimization procedures, pp. 31-32.

a crime" or "indicates that the U.S. person may be engaged in international narcotics trafficking activities."[291]

4. Notification of surveillance

US law contains both statutory and (in some circumstances) constitutional requirements for the disclosure of surveillance to defendants. For example, the Wiretap Act requires that individuals named in a wiretap order must be notified of the surveillance after it has concluded.[292] The government must also notify a defendant (or other party, as applicable) if it plans to use wiretapped communications "or evidence derived therefrom" in proceedings.[293]

FISA, too, obligates the government to notify defendants or other parties in advance if it "intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding … against an aggrieved person, any information obtained or derived from an electronic surveillance [*sic*] of that aggrieved person."[294] However, civil society experts and defense attorneys have expressed concerns about the government's failure to disclose how it interprets this obligation—particularly the phrase "derived from"—in the Section 702 context.[295]

The government reportedly believes it is not required to notify any individual—including a criminal defendant—of the surveillance of his or her communications under EO 12333.[296]

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[291] "Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency under Section 2.3 of Executive Order 12333 (Raw SIGINT Availability Procedures)", p. 12, January 3, 2017, https://fas.org/sgp/othergov/intel/sigint-raw.pdf (accessed November 6, 2017).

[292] 18 U.S.C. § 2518(8)(d).

[293] 18 U.S.C. § 2518(9).

[294] 50 U.S.C. § 1806(c). According to the law, an "aggrieved person" is someone who "is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance." 50 U.S.C. § 1801(k).

[295] See, e.g., Toomey, "Why Aren't Criminal Defendants Getting Notice of Section 702 Surveillance – Again?"

[296] Savage, "Reagan-Era Order on Surveillance Violates Rights, Says Departing Aide."



1

Roadmap

01 Before *Smith v. Arizona*

02 *Smith v. Arizona*

03 Going forward

2

Before *Smith v. Arizona*

3

The Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."

4



Crawford v. Washington

- A "sea change" in confrontation cases
- Overruled the Reliability Test
- Held: Testimonial hearsay is inadmissible unless the declarant is unavailable and there was a prior opportunity for cross-examination

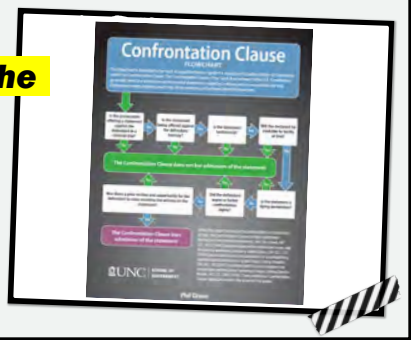
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Confrontation is required when

1. Testimonial hearsay
2. Declarant is unavailable
3. No prior opportunity for cross-examination

6

Go with the Flow



7

Testimonial Hearsay

Statements are testimonial when the circumstances objectively indicate that "the **primary purpose** of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution."
Davis v. Washington, 547 U.S. 813 (2006)

8



Melendez-Diaz

- Lab reports are testimonial
- Absent a stipulation, the State may not introduce a lab report without an opportunity for the defendant to cross-examine the author

9

Melendez-Diaz

The "power to subpoena the analysts is no substitute for the right of confrontation"

10

Bullcoming v. New Mexico

The State may not rely on surrogate testimony of an expert who did not conduct any analysis to introduce a lab report into evidence.

11

Williams v. Illinois

- Facts: Substitute analyst testified about how an analyst at a private lab determined that a DNA profile came from swabs from the victim
- 4-4-1 plurality opinion

12

Williams v. Illinois

- Five justices believed the substitute analyst's testimony relied on the truth of the other analyst's out-of-court statements
- One of the five justices did not believe the private lab report was testimonial
- Four justices believed the substitute analyst's testimony did not rely on the truth of the other analyst's statements

13

Williams v. Illinois

- According the NC Criminal Law Blog, *Williams* provided "no clear guidance"
- SCOTUS would later characterize *Williams* as "muddle" and "confusion"

14

State v. Ortiz-Zape

- Officers found suspected cocaine in the defendant's car
- Expert 1 tested the substance and determined it was cocaine
- Expert 2 identified the substance at trial based on Expert 1's analysis

15

State v. Ortiz-Zape

- The testimony of Expert 2 was proper because Expert 2 developed an independent opinion
- Expert 2 could reasonably rely on facts and data created by Expert 1
- The defendant was able to cross-examine Expert 2

16

Ortiz-Zape was issued in 2013 and has been the law in North Carolina since that time

17



18

Smith v. Arizona

19

The Facts

- Officers found suspected methamphetamine and marijuana in a shed owned by the defendant's father
- Expert 1 tested the substances and determined they were methamphetamine and marijuana
- Expert 2 identified the substances at trial based on Expert 1's analysis

20

Arizona Court of Appeals

- The testimony of Expert 2 was proper because Expert 2 developed an independent opinion
- Expert 2 could reasonably rely on facts and data created by Expert 1
- The defendant was able to cross-examine Expert 2

21

Sound familiar?

22

Smith v. Arizona

"This Court has held that the Confrontation Clause's requirements apply only when the prosecution uses out-of-court statements for 'the truth of the matter asserted' . . . . Some state courts, including the court below, have held that this condition is not met when an expert recites another analyst's statements as the basis for his opinion. **Today, we reject that view.**"

23

Smith v. Arizona

- "If an expert for the prosecution conveys an out-of-court statement in support of his opinion, and the statement supports that opinion only if true, then the statement has been offered for the truth of what it asserts."
- In this scenario, "the defendant has no opportunity to challenge the veracity of the out-of-court assertions that are doing much of the work."

24

Smith v. Arizona

"[Expert 1]'s statements thus came in for their truth, and no less because they were admitted to show the basis of [Expert 2]'s expert opinions. All those opinions were predicated on the truth of [Expert 1]'s factual statements. [Expert 2] could opine that the tested substances were marijuana, methamphetamine, and cannabis only because he accepted the truth of what [Expert 1] had reported about her work in the lab—that she had performed certain tests according to certain protocols and gotten certain results."

25

Smith v. Arizona

- "So the State's basis evidence—more precisely, the truth of the statements on which its expert relied—propped up its whole case. But the maker of those statements was not in the courtroom, and Smith could not ask her any questions."
- "Approving that practice would make our decisions in Melendez-Diaz and Bullcoming a dead letter, and allow for easy evasion of the Confrontation Clause."

26

Smith is quotable

27

The Sixth Amendment right to confrontation "applies in full to forensic evidence"

28

If the court admits out-of-court statements to establish the truth of the matter asserted, "the Clause's alarms begin to ring"

29

Courts should not "accept [a State's] nonhearsay label at face value."

30

Reaction to Smith v. Arizona

"The extent of impact of the *Smith* case on existing North Carolina precedent and future forensic expert practices are uncertain at the time of this publication, but it is clear that application of *Smith* would have altered the result in some decided cases and will call for quite different and sometimes a detailed analysis of the underlying facts relied on by the testifying expert."

North Carolina Evidentiary Foundations § 11-17

31

State v. Clark, 909 S.E.2d 566 (2024)

- Observed that SCOTUS "flatly rejected" an evidentiary rule that allows an expert to render an independent opinion based on "inadmissible data"
- Hearsay statements from a non-testifying analyst that are contained in a report and relied on by a substitute analyst "are testimonial"

32

Going Forward

33

Implications of Smith v. Arizona

- The reasoning of *State v. Ortiz-Zape* is no longer controlling
- The admissibility of substitute analyst testimony is harder to defend
- Other theories are emerging (e.g., machine-generated data)

34

Don't waive a confrontation issue

- Be vigilant for the use of substitute analysts
- Object when the State seeks to present the testimony of a substitute analyst

35

Notice-and-Demand Statutes

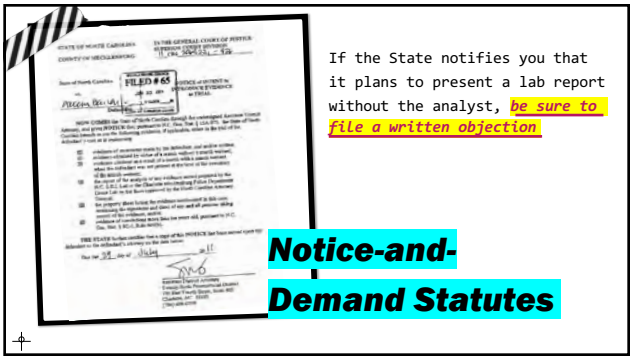
When the State submits matter (suspected drugs / blood) to the Crime Lab for chemical analysis, the report of that analysis is admissible **without the testimony of the analyst** if:

(1) The State notifies the defendant at least 15 business days before trial that it intends to introduce the report, and

(2) The defendant fails to file a written objection at least five business days before the trial.

N.C. Gen. Stat. § 90-95(g)
N.C. Gen. Stat. § 20-139.1(c1)

36



If the State notifies you that it plans to present a lab report without the analyst, *be sure to file a written objection*

Notice-and-Demand Statutes

37

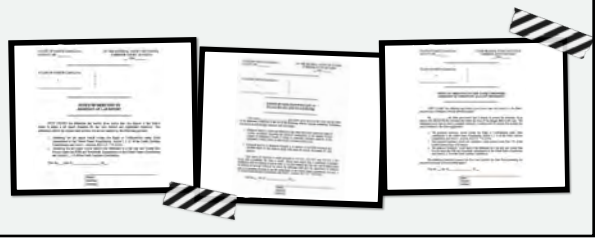
Notice of Substitute Analyst

- If you know the State plans to present a substitute analyst, **file a written objection**
- In addition: Object on confrontation grounds **at trial** to the substitute analyst's testimony



38

Sample written objections



39

Object on confrontation grounds

- If you object and are overruled, the defendant will be in a much better position on appeal
- The State will have to demonstrate that the error is harmless beyond a reasonable doubt
- An error that violates the defendant's constitutional rights "is presumed to be prejudicial." *State v. Brown*, 306 N.C. 151 (1982)

40

Don't forget about Rule 702

- Expert testimony must be the "product of reliable principles and methods"
- Rule 702 requires "rigorous gatekeeping." *State v. Daughtridge*, 248 N.C. App. 707 (2016)
- How can the opinion of a substitute analyst be reliable if she is unable to describe how the non-testifying analyst set up the tests or calibrated the equipment?

41

A word about objections

To preserve an evidentiary argument, you have to object when the evidence is admitted and in front of the jury. State v. Ray, 364 N.C. 272 (2010)



42



Machine-Generated Data

43

State v. Lester (N.C. 2025)

- The State charged the defendant with sex crimes
- The State presented phone records to substantiate the victim's account of the offenses

44

The good (or potentially good)

- Computer-generated data is "unique because it is created entirely by a machine, without any help from humans"
- "It is this independence—this freedom from human influence or interpretation—that makes computer-generated data distinct"
- "The key point is that no human judgment contributes to producing this information – the machine simply records and reports what it measures"

45

The bad

- "The chromatograph's raw data – showing the chemical composition of the blood sample – are simply 'the product of a machine'"
- "A printout of those results is, in turn, just a physical representation of the machine's pre-programmed internal processes"

46

How to respond to Lester?

- The section on gas chromatograph testing is (arguably) dicta
- The section is also inconsistent with *Smith v. Arizona*

47

Smith v. Arizona

The substitute analyst "testified to the precautions (she said) she took, the standards (she said) she followed, the tests (she said) she performed, and the results (she said) she obtained. *The State offered up that evidence so the jury would believe it—in other words, for its truth."*

48

Smith v. Arizona

"So if the out-of-court statements were also testimonial, their admission violated the Confrontation Clause. *Smith would then have had a right to confront the person who actually did the lab work, not a surrogate merely reading from her records."*

49

Smith v. Arizona

"[Expert 2] could opine that the tested substances were marijuana, methamphetamine, and cannabis *only because he accepted the truth of what [Expert 1] had reported about her work in the lab – that she had performed certain tests according to certain protocols and gotten certain results"*

50

Smith v. Arizona

If the State could present surrogate testimony about tests performed by a non-testifying analyst, "no defendant would have a right to cross-examine the testing analyst about *what she did and how she did it* and whether her results should be trusted."

51



52

Franklin v. New York

- Justice Alito: A statement is testimonial only if it is made by a person who is expected to "appear in court and testify"
- Justice Gorsuch: Historical analysis might require SCOTUS to **"broaden"** the protections of the Confrontation Clause

53



54



Thank you!

David.W.Andrews@nccourts.org

55

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
___ CRS _____

****

STATE OF NORTH CAROLINA)
)
v.)
)
_____)

****

NOTICE OF OBJECTION PURSUANT TO N.C.G.S. §20-139.1 AND N.C.G.S.§90-95(g)

****

Now comes _____, and hereby gives notice to the Court and the State of the defendant's objection to the use of the following without a proper evidentiary foundation introduced at trial through witnesses with knowledge:

1. Chemical analyst's report and affidavit or any other laboratory report and chain of custody documents regarding the chemical examination of the alleged alcohol content of defendant's breath or blood or controlled substance analysis of the defendant's breath, blood, or other bodily substance in this case,

2. Chemical analysis to determine if matter is or contains a controlled substance and certified report of said analysis along with chain of custody documents for said analysis.

This notice of objection is made pursuant to N.C.G.S. §20-139.1 and N.C.G.S. § 90-95(g), and accordingly the State is hereby placed upon notice that a traditional evidentiary foundation will be required at trial in order to use this material and that any such evidence must be introduced through witnesses for whom the defendant shall have the opportunity to confront and cross-examine pursuant to the 6th Amendment to the United States Constitution; Article I, § 23 of the North Carolina Constitution; and *Smith v. Arizona*, 602 U.S. 779 (2024).

This the ___ day of _____, 20___.

_____
[Name]
[Address]
[Address]

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing notice of objection was served on _____, Assistant District Attorney, [Address], by deposit in the United States mail, first-class and postage prepaid.

This the ___ day of _____, 20___.

_____
Ann Attorney
Attorney at Law

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
___ CRS _____

****

STATE OF NORTH CAROLINA)
)
v.)
)
_____)

****

NOTICE OF OBJECTION TO ADMISSION OF LAB REPORT

****

NOW COMES the defendant and hereby gives notice that s/he objects to the State's intent to admit a lab report prepared for this case without any supporting testimony. The defendant objects for reasons that include, but are not limited to, the following grounds:

1. Admitting the lab report would violate the Right to Confrontation under Sixth Amendment to the United States Constitution; Article I, § 23 of the North Carolina Constitution; and *Smith v. Arizona*, 602 U.S. 779 (2024).
2. Admitting the lab report would deprive the defendant of a fair trial and violate Due Process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 19 of the North Carolina Constitution.

This the ___ day of _____, 20___.

_____
[Name]
[Address]
[Address]

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing notice of objection was served on _____, Assistant District Attorney, [Address], by deposit in the United States mail, first-class and postage prepaid.

This the ___ day of _____, 20___.

_____
Ann Attorney
Attorney at Law

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
___ CRS _____

****

STATE OF NORTH CAROLINA)
)
v.)
)
_____)

****

NOTICE OF OBJECTION TO THE STATE'S PROPOSED ADMISSION OF SUBSTITUTE ANALYST TESTIMONY

****

NOW COMES the defendant and hereby gives notice that s/he objects to the State's proposed use of testimony from a substitute analyst.

On _____, the State gave notice that it intends to present the testimony of an analyst who did not test the substance that forms the basis of the charges filed in this case. The defendant asserts that the State's proposed testimony is inadmissible for reasons that include, but are not limited to, the following grounds:

1. The proposed testimony would violate the Right to Confrontation under Sixth Amendment to the United States Constitution; Article I, § 23 of the North Carolina Constitution; and *Smith v. Arizona*, 602 U.S. 779 (2024).
2. The proposed testimony would not constitute a valid opinion under Rule 702 of the North Carolina Rules of Evidence.
3. The proposed testimony would deprive the defendant of a fair trial and violate Due Process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 19 of the North Carolina Constitution.

The defendant therefore requests that this Court prohibit the State from presenting the proposed testimony of the substitute analyst.

This the ___ day of _____, 20___.

_____
[Name]
[Address]
[Address]

CERTIFICATE OF SERVICE

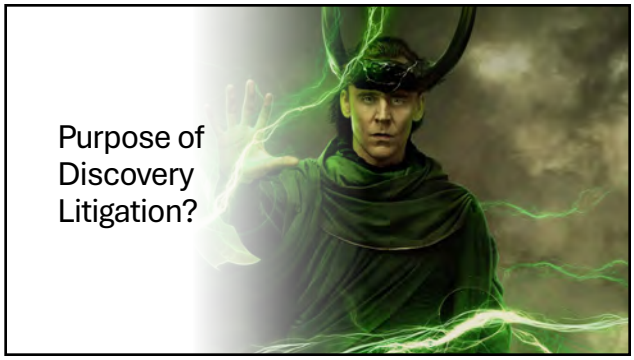
I hereby certify that a copy of the foregoing notice of objection was served on _____, Assistant District Attorney, [Address], by deposit in the United States mail, first-class and postage prepaid.

This the ___ day of _____, 20___.

_____
[Name]



1



2

What are our goals in litigating discovery?

- To get discovery
- To determine if all evidence has been preserved
- To get LEOs on the record
- To show the Judge/DA flaws in the case
- To show your client strength of the case
- To obtain remedies for discovery violations
- Sometimes we don't know – which is fine, but be strategic

3



Be careful what you wish for…

4



Early Actions in the Case

- Request for Discovery
- Motion to Preserve Evidence
  - GET AN ORDER!
- Review the Discovery as soon as possible and figure out what is missing

5

Request for Discovery

- Include specific items often excluded – underlying tests, raw cellbrite data, text messages, emails, communications with investigators, department policies etc.
- Timing: File as soon as you are assigned this case (and within 10 days of indictment or appointment)
  - File in District Court too
- Request a deadline for the State to provide discovery

6

What to do with your discovery

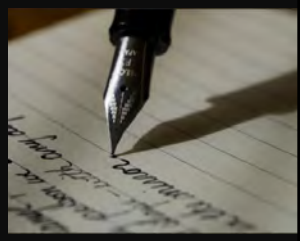
- Review it as soon as possible
- Review it again
- Create a running list of what is missing or what may be missing
- Begin communicating with the State



7

Document EVERYTHING in WRITING

- Memorialize in person meetings and phone calls with investigators or DAs with an email
- Document to the DA what you have received
- Keep emails professional and specific because you might be attaching them to motions later
- File all specific requests
- Ask for transcripts of early hearings in the case



8

Motion to Compel

- Needs to be timely (preceded by a request)
- Request and alternative motion
- Include attachments of communications with DA's office
- Be as specific as possible
- Constitutionalize your motion

9



10

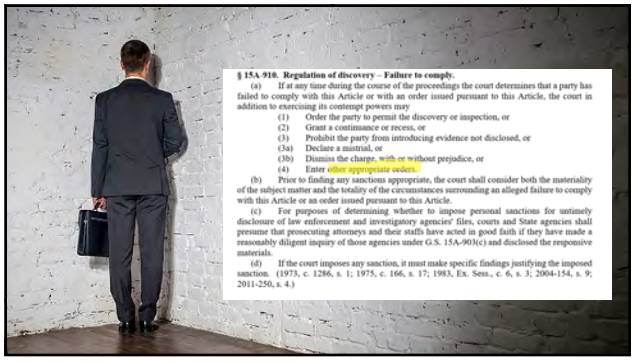


Remedies

- Dismissal
- Suppression
- Limiting State's charging/sentencing somehow
- Jury Instructions
- Last Argument
- Continuance (State v. Johnson, 379 N.C. 629 (2021))
- Deposition of witnesses
- Be super creative – You can ask for ANYTHING

- *Again, careful what you wish for – And if you ask for a lesser remedy, try to explain how it doesn't address the prejudice of the violation*

11



§ 15A-910. Regulation of discovery – Failure to comply.

(a) If at any time during the course of the proceedings the court determines that a party has failed to comply with this Article or with an order issued pursuant to this Article, the court in addition to exercising its contempt powers may

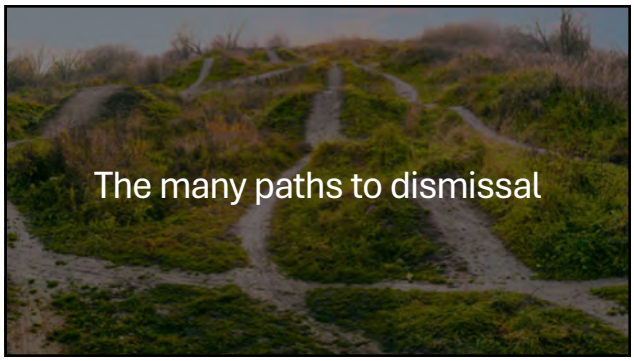
(1) Order the party to permit the discovery or inspection, or
(2) Grant a continuance or recess, or
(3) Prohibit the party from introducing evidence not disclosed, or
(3a) Declare a mistrial, or
(3b) Dismiss the charge, with or without prejudice, or
(4) Enter other appropriate orders.

(b) Prior to finding any sanctions appropriate, the court shall consider both the materiality of the subject matter and the totality of the circumstances surrounding an alleged failure to comply with this Article or an order issued pursuant to this Article.

(c) For purposes of determining whether to impose personal sanctions for untimely disclosure of law enforcement and investigatory agencies' files, courts and State agencies shall presume that prosecuting attorneys and their staffs have acted in good faith if they have made a reasonably diligent inquiry of those agencies under G.S. 15A-903(c) and disclosed the responsive materials.

(d) If the court imposes any sanction, it must make specific findings justifying the imposed sanction. (1973, c. 1286, s. 1; 1975, c. 166, s. 17; 1983, Ex. Sess., c. 6, s. 3; 2004-154, s. 9; 2011-250, s. 4.)

12



13

- Discovery violation + Irreparable Prejudice (Adams)
- Destruction of exculpatory evidence (Williams, Absher)
- Destruction of potentially useful evidence + Bad faith (Youngblood)
- Interference with the opportunity to present a defense (Knoll, Hill)

14

McLain v. Taco Bell Corp., 137 N.C. App. 179 (2000)
NCPJI Civil 101.39

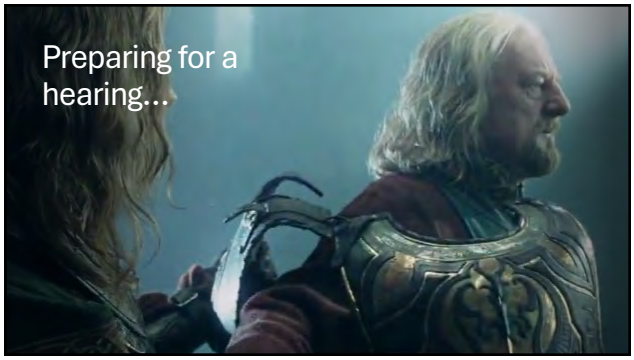


15

What is the Court most likely to give you?



16



17

Hearing Prep

- Collect your documentation
- Game out your goals
- Prepare Exhibits
- Consider alternative remedies
- Subpoena witnesses

18



19



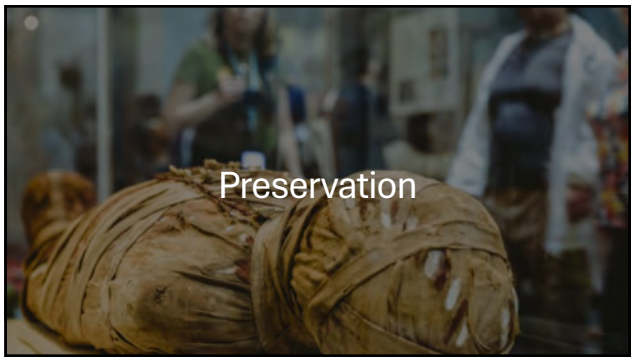
20



Post-Hearing Follow-up

- Draft Orders and make sure they get signed
- Continue to pester, er, communicate with the DA
- More motions, more hearings
- Subpoena/Court orders for third party records (Love v. Johnson)

21



22

Preservation Issues

- Be sure to be specific in your requests
- If the remedy requested is a continuance – include the discovery in the record (see Johnson)
- GET RULINGS ON YOUR MOTIONS – And get them in writing
- Get transcripts of hearings
- Renew throughout the trial as appropriate (when in doubt, object in front of the jury)



23

North Carolina Criminal Law Blog

Discovery of Officers' Text Messages

January 8, 2018 **Jeff Welty**
<https://nccriminallaw.sog.unc.edu/author/welty/>

More than a trillion <https://www.statista.com/chart/12109/sms-volume-in-the-united-states/> text messages are sent each year in the United States alone. Some of these messages are work-related communications from law enforcement officers to fellow officers, witnesses, prosecutors, and others. Which, if any, of these messages are discoverable? How should officers preserve discoverable messages? Must prosecutors ask for officers' text messages before providing discovery to the defense? This post begins to address these questions.

Statutory discovery. G.S. 15A-903 generally requires "[t]he State to make available to the defendant the complete files of all law enforcement agencies . . . involved in the investigation of the crimes committed." The term "file" includes witness statements, officers' notes, and "any other matter or evidence obtained during the investigation."

Some work-related text messages sent by officers are likely part of the "file." For example, a text message may memorialize a witness statement, such as a message from one officer to another stating, "I talked to the alibi witness and she said she wasn't with the defendant on the night of the crime." *Cf. United States v. Suarez*, 2010 WL 4226524 (D.N.J. Oct. 10, 2010) (unpublished) (ruling that text messages between officers and cooperating witnesses were witness statements subject to discovery and were "fertile ground for cross examination"; the government's failure to preserve and produce the messages justified an adverse inference instruction). Other text messages may function as notes, as when an officer texts a colleague, "I went to the convenience store next door to the crime scene but it doesn't have a surveillance camera." Furthermore, although the statutory definition of "file" doesn't expressly refer to correspondence, the list of items included in the file isn't exhaustive and it seems to me that substantive correspondence about the investigation, whether by letter, email, or text message, may be part of the file. For example, one officer texts another, "We are severely understaffed on the Jones case, we will not be able to do a timely and complete neighborhood canvas with only four officers and we may lose out on important leads," I suspect that many judges would rule that the message is part of the case file. *Cf. State v. Dorman*, 225 N.C. App. 599 (2013) (noting that a superior court judge had ruled that certain emails between an officer, a medical examiner, and a victim's advocate were discoverable, and assuming but not deciding that the judge's determination was correct).

On the other hand, some work-related text messages are administrative in nature and don't seem to be part of the "file." For example, if an officer texts a prosecutor to say, "I'm running 5 minutes late for our meeting," I don't think the letter or the spirit of the discovery statutes require that message to be preserved and turned over. Unfortunately, the line between substantive and administrative messages is fuzzy. Suppose an officer investigating an assault texts her supervisor, "I'm going to look into the suspect's gang connection." That's arguably administrative: it simply lets the supervisor know what the officer plans to do next, without describing any facts or evidence. But what if (1) there turns out to be no gang connection, (2) the defendant is actually an honor student and sings in his church choir, and (3) the defense is that the police focused on the defendant because of his race, and rushed to judgment based on biased assumptions and prejudices? Then the fact that the officer was eager to pursue a non-existent "gang connection" might be significant. The standard advice for officers and prosecutors confronting gray areas is to err on the side of caution. Until we have case law that offers guidance about what's discoverable and what's not, that advice is probably wise.

Brady/Giglio. Some text messages will implicate *Brady* or *Giglio*, such as a text message from an officer to a prosecutor saying, "Our star witness has serious mental health problems," or a message from a crime scene technician to an officer saying, "I found a dozen prints at the scene but none of them match your suspect." In such a case, the information contained in the text message would need to be produced regardless of statutory discovery obligations.

Information memorialized in formal reports. Presumably, the contents of most substantive text messages will eventually be memorialized in formal reports. Is it sufficient if the defense gets a report from the crime scene technician saying that the prints at the scene don't match the suspect but doesn't get the original message from the technician to the officer? I think that would satisfy *Brady*, since *Brady* is concerned the disclosure of the information itself. But I am not sure that it would satisfy the statutory discovery provisions. If the original text message was part of the file, it seems to me that it would remain so even if a report is filed later that covers the same territory. Of course, if the original message and the report are consistent, the defendant would not be prejudiced by receiving only the report. *Cf. State v. Rush*, 178 N.C. App. 235 (2006) (unpublished) (an officer made field notes, then used the field notes to prepare a formal report; in discovery, the State produced the report, but not the notes; under these circumstances, even "[p]resuming" that a discovery violation took place, the trial judge did not abuse his discretion when he declined to sanction the State). But if the report omits or minimizes information contained in the text message, the defendant would be prejudiced if denied the opportunity to explore the inconsistency.

Duties of officers and prosecutors. Our discovery statutes put the onus on officers to provide their complete files to prosecutors in a timely way. G.S. 15A-903(c). Based on the discussion above, officers may be obligated to give prosecutors at least some of their work-related text messages.

What about prosecutors? Must a prosecutor affirmatively request discoverable text messages from an officers, or may the prosecutor assume that if none are provided, then none exist (beyond any discoverable text messages to which the prosecutor is a party, of course)? The statutory discovery provisions are not crystal clear regarding the extent of a prosecutor's duty to seek out discoverable information beyond what officers provide. However, G.S. 15A-910(c) does say that when a court is considering "whether to impose personal sanctions for untimely disclosure . . . courts . . . shall presume that prosecuting attorneys . . . have acted in good faith if they have made a reasonably diligent inquiry of [investigative agencies] and disclosed the responsive materials." Furthermore, as to *Brady* material, the State is obligated to disclose evidence "known only to police investigators and not to the prosecutor." *Kyles v. Whitley*, 514 U.S. 419 (1995). Therefore, a conscientious prosecutor preparing to provide discovery to a defendant may choose to ask the investigating officer whether he or she is in possession of any text messages that might be discoverable, especially if the prosecutor knows that the officer is prone to communicate via text message. (Likewise, a conscientious defense attorney preparing a discovery request may wish to reference text messages in the request.)

Retention obligations apart from discovery. Compliance with discovery obligations is not the only reason an officer might choose to retain text messages. Agency policy may direct that the officer retain certain communications, and the **records retention schedules promulgated by the Department of Cultural and Natural Resources** <https://archives.ncdcr.gov/government/retention-schedules> might come into play. State records retention rules are outside my expertise, but my colleagues who work in the area of state and local government law can assist interested parties in exploring those issues.

How to preserve pertinent text messages. If an officer's text message is discoverable, one way to preserve it would be for the officer to take a screenshot of the message and then email the screenshot to himself or herself, or to the prosecutor handling the case. If readers are aware of a better solution, please say so. Screenshots are overinclusive in that they may mix discoverable messages with messages that are purely social or otherwise non-discoverable, and underinclusive in that they may not contain important metadata associated with the original messages. Courts do not yet seem fully attuned to the fact that text messages are not designed to be organized and retained permanently. *See United States v. Olivares*, 843 F.3d 752 (8th Cir. 2016) (defendant "requested all of the text messages exchanged between [an officer] and his confidential informant [but the] government was unable to produce the text messages because it failed to download or save them"; defendant argued on appeal that this constituted bad faith destruction of potentially exculpatory evidence; absent evidence of bad faith, the reviewing court rejected the argument; however, the court stated that it "recognize[d] [the defendant's] concern" and suggested that "[w]ith the simplicity and efficiency of modern electronic storage capacity, one could imagine a policy where inculpatory materials and potentially relevant materials created or made available in proximity to the inculpatory materials are easily saved for review").

No obligation to send text messages. With some exceptions, the discovery statutes apply to existing materials and "impose[] no duty on the State to create or continue to develop documentation concerning an investigation." *Dorman*, *supra*. In general, then, officers may avoid discovery considerations by choosing not to use text messages to engage in substantive case-related communications. At least **one U.S. Attorney's office** <https://www.justice.gov/sites/default/files/usao/pages/attachments/2015/04/01/can_discovery_policy.pdf> recommends doing exactly that:

> [S]ubstantive case-related communications may contain discoverable information . . . . [Prosecutors] should take special care to avoid creating electronic communications (including e-mails and text messages) and voice mails that contain information that may be subject to discovery [and] should also instruct the agents working on their cases to abide by the same rule. In addition, [prosecutors] and agents should not engage in substantive case discussions in e-mails, text messages, or other forms of electronic communication with witnesses or potential witnesses of any kind. As a general rule, e-mails and text messages between [prosecutors], between [prosecutors] and agents, between agents, and between witnesses and government personnel should be limited to scheduling or other procedural matters.

I imagine that some readers will view that approach as prudent and others will view it as underhanded.

What's the practice? I'd be interested to hear how officers, prosecutors, and others are handling text messages. My sense, based on the questions I've had about this topic and on the lack of North Carolina appellate cases about it, is that only a few officers and prosecutors are retaining and producing text messages, and that any defense complaints about that have not yet had much traction with the courts. But my sense could be wrong, or incomplete, so I would welcome comments or emails about this issue.

5 thoughts on "Discovery of Officers' Text Messages"

RichieM

January 9, 2018 at 3:59 PM <https://nccriminallaw.sog.unc.edu/discovery-officers-text-messages/#comment-161829>

For a prosecutor to order police to keep from making a of their actions to keep it from discovery is no different than one burglar telling another ” Don’t leave any fingerprints behind “. All the police need is another way to circumvent discovery obligations in order to make sure we keep releasing innocent victims 20 years after a bad conviction. Look at the Bundy trial out West, scuttled because prosecutors blatantly hid evidence, with the police fully involved of course, in an effort to convict at any cost. Officers personal phones should be included so that they do not use them for monkey business while leaving an issued phone pristine. Since the police and prosecutors cannot be trusted to fully disclose evidence that goes against them, vigilance is needed. Who is watching the watchers?

Reply

G

January 9, 2018 at 6:42 PM <https://nccriminallaw.sog.unc.edu/discovery-officers-text-messages/#comment-161830>

“Officers personal phones should be included so that they do not use them for monkey business…”. When you let me look at all of your personal emails, texts, pictures and Facebook profiles, I’ll let you see mine 🙂 When you put the shoe on the other foot, it doesn’t sound so good, does it? What kind of conspiracy kook are you? Yes, I maintain a personal as well as business phone for my privacy and not “to circumvent discovery”. I only do business on the business phone and everything on my phone is personal. What communications I have with my wife and family are none of your or anyone else’s business. Just because I am an officer, it doesn’t mean I forfeit my constitutional rights. And as a side note, Monkey Business was the name of a certain liberal’s boat, for those of us old enough to remember such things!

Reply

Jon

January 10, 2018 at 10:46 AM

<https://nccriminallaw.sog.unc.edu/discovery-officers-text-messages/#comment-161832>

As a LEO, I believe in the Discovery Laws. However, there are cases that information that has no bearing on a case is submitted for Discovery, or a sly defense attorney tries to use a statement against an officer that has nothing to do with the investigation or the arrest. Everyone knows that the “system” is rigged to benefit the accused, the laws and processes are surely put in place to assist the accused. I believe the system would work better if ALL the lawyers are held to the same standard. But we all know that is not the case.

Reply

RichieM

January 16, 2018 at 7:52 AM

<https://nccriminallaw.sog.unc.edu/discovery-officers-text-messages/#comment-161859>

Who decides what has no bearing on a case, you or the prosecutor? That is why we see so many Brady violations. If the system was rigged to benefit the accused, we would see far fewer convictions. If all attorneys were held to the same standard (for prosecutors that means absolute immunity) there would be far more aggressive defenses mounted, guaranteed. The system barely provides protection for defendants rights as it is; any lessening would mean even more injustices. The police believe that ALL accused are guilty no matter what, and prosecutors , instead of seeking justice, only seek convictions and act as the agent for police no matter how flimsy the charges. Without vigorous defense counsel protecting the accused our courts would be nothing more than kangaroo courts, star chambers that feed the school to prison pipeline with fresh meat for the grinder. Sorry, but the police are partisan and cannot be trusted. Neither can prosecutors; too many proven horror stories have been documented to diminish our protections.

Reply

John Towler

January 11, 2018 at 11:25 AM

<https://nccriminallaw.sog.unc.edu/discovery-officers-text-messages/#comment-161841>

As far as preserving text messages, it may be easier to simply forward the message to an email and then print it. You avoid some of the overinclusiveness in that way.

Reply

Leave a Comment

Name *

Email *

Website

Save my name, email, and website in this browser for the next time I comment.

Notify me of follow-up comments by email.

Notify me of new posts by email.

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PENNSYLVANIA v. RITCHIE: DEFENDANT'S RIGHT TO THIRD PARTY CONFIDENTIAL RECORDS

Jessica Smith, UNC School of Government (September, 2014)

Contents

I. The *Ritchie* Decision....1
II. Application to Third-Party Records Generally....2
III. How the Issue Gets to the Trial Judge....2
IV. Defendant's Burden for In Camera Review: "Some Plausible Showing"....3
A. Favorable....3
B. Material....3
V. In Camera Review, Order and Sealing of Evidence....4
Appendix: Sample Language for Court Orders....5

I. The *Ritchie* Decision

In *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), the United States Supreme Court held that the defendant had a due process right to have a judge conduct an in camera review of a child protective services agency file on the victim to determine whether it contained favorable and material evidence, and if so, to turn it over to the defense. *Id.* at 58-60. In that case, defendant Ritchie was charged with rape and other crimes committed against his daughter. During pretrial discovery, Ritchie issued a subpoena seeking access to the agency's file related to the charges against him, as well as certain records that he claimed were compiled a year earlier when the agency investigated a separate report that Ritchie's children were being abused. Ritchie argued that the file "might contain the names of favorable witnesses, as well as other, unspecified exculpatory evidence." *Id* at 44. The agency refused to comply with the subpoena, claiming that the records were privileged under state law. The relevant state statute provided that information obtained during an agency investigation was confidential, but could be disclosed pursuant to a court order. Acknowledging that he had not reviewed the entire agency file, the trial court denied Ritchie's request for disclosure. Ritchie was convicted and he appealed. As noted, the Court held that Ritchie had a due process right to have the trial court review the file in camera and disclose to him any favorable, material evidence. Noting that "the public interest in protecting this type of sensitive information is strong," the Court declined to find that "this interest necessarily prevents disclosure in all circumstances." *Id.* at 57. In this respect the Court noted that the state statute did not grant the agency "absolute authority to shield its files from all eyes," *id.*, and it expressly declined to address whether the case would have been decided differently had the state statute "protected the [agency's] files from disclosure to *anyone*, including law-enforcement and judicial personnel." *Id.* at 57 n.14. Though finding that Ritchie had a right to have the trial court conduct an in camera review, the Court expressly rejected his argument that he had a constitutional right to examine all of the confidential information in the file and present arguments in favor of disclosure. *Id.* at 59-60. Recognizing that the "eye of an advocate may be helpful" in identifying favorable and material evidence, *id.* at 59, the Court concluded that full disclosure to defense counsel would "sacrifice unnecessarily the Commonwealth's compelling interest in protecting its child-abuse information." *Id.* at 60. Thus, it endorsed a rule requiring in camera review by the trial court.

II. Application to Third-Party Records Generally

In North Carolina, *Ritchie* issues arise most frequently in child sexual abuses cases where the defendant seeks to obtain the type of agency records at issue in *Ritchie*. *See, e.g.*, State v. Tadeja, 191 N.C. App. 439, 449-50 (2008) (child sex case where the defendant sought Department of Social Services (DSS) records); State v. Johnson, 165 N.C. App. 854, 856-59 (2004) (same); State v. McGill, 141 N.C. App. 98, 101-03 (2000) (same); State v. Bailey, 89 N.C. App. 212, 222 (1988) (same). However, the courts have applied *Ritchie* to a variety of confidential records in possession of third parties, including government agencies and private parties. *See, e.g.*, Love v. Johnson, 57 F.3d 1305, 1313-14 (4th Cir. 1995) (victim's files at a medical center, county mental health department, and county DSS); State v. Johnson, 145 N.C. App. 51, 54 (2001) (public school records); State v. Henderson, 155 N.C. App. 719, 728-29 (2003) (school records); State v. Taylor, 178 N.C. App. 395, 407-08 (2006) (school records); State v. Bradley, 179 N.C. App. 551, 553 (2006) (Duke University Health Systems records); State v. Jarrett, 137 N.C. App. 256, 266 (2000) (hospital records). As the Fourth Circuit stated in one such case, "[t]he '*Brady*' right, as recognized and implemented in *Ritchie*, is not limited to information in the actual possession of the prosecutor and certainly extends to any in the possession of state agencies subject to judicial control." *Love*, 57 F.3d at 1314.

III. How the Issue Gets to the Trial Judge

The case law illustrates the variety of ways that a defendant's request for in camera review of a third party's confidential records may come to the trial judge. In some cases, the issue is brought to the judge's attention because defense counsel has issued a subpoena to the third party, which has declined to provide the requested information. *See, e.g.*, State v. Johnson, 165 N.C. App. 854, 854 (2004) (the defendant filed a subpoena for DSS records and DSS refused to provide the file); Love v. Johnson, 57 F.3d 1305, 1308 (4th Cir. 1995) (the defendant issued subpoenas for the victim's files at a medical center, county mental health department, and county DSS). In other cases, defense counsel may move for a court order requiring the third party to produce the documents for in camera review by the trial court. And in still other cases, the defendant may move for a court order requiring the third-party to turn the records over to defense counsel to review as an officer of the court. In support of such a motion, defense counsel may assert that he or she is in a better position than the judge to determine what evidence is favorable and material to the defense. The trial judge should exercise caution with regard to such a motion. As noted above, *Ritchie* rejected the defendant's argument that he had a constitutional right to full review of the file. *Ritchie,* 480 U.S. at 59-60. If the trial judge grants such a motion, the judge may wish to prohibit counsel from disclosing any evidence in the file without a court order. In any event, such a procedure is not permitted with respect to DSS records; the trial court *must* conduct any in camera review of DSS records. G.S. 7B-302(a1)(4) (trial court must conduct an in camera review before releasing DSS records).

Sometimes the defendant will file a *Ritchie* motion ex parte. No published North Carolina appellate case has addressed whether such a procedure is permissible. The North Carolina Supreme Court has held that ex parte motions are proper with respect to defense requests for experts in non-capital cases. *See* State v. Ballard, 333 N.C. 515, 519 (1993); State v. Bates, 333 N.C. 523, 526-28 (1993). The rationale that applies in that context may lend some support to an ex parte *Ritchie* request, although the situations certainly differ.

IV. Defendant's Burden for In Camera Review: "Some Plausible Showing"

Under *Ritchie,* the defendant "may not require the trial court to search through the . . . file without first establishing a basis for his claim that it contains material evidence." *Ritchie,* 480 U.S. at 58 n.15. The *Ritchie* opinion suggests that the defendant "must at least make some plausible showing of how [the evidence is] both material and favorable to his defense." *Id.* (quoting United States v. Valenzuela-Bernal, 458 U.S. 858, 867 (1982)); *see also* Love v. Johnson, 57 F.3d 1305, 1315 (4th Cir. 1995) (*Ritchie* requires a "plausible showing" that the evidence exists and is material and favorable; this standard cannot be "avoided by drawing on state-law requirements of specificity of subpoenas which may be—and undoubtedly are—considerably more stringent"). Although the "some plausible showing" standard repeats in the case law, other terms are used to articulate the relevant standard, including "substantial basis." State v. Johnson, 165 N.C. App. 854, 855 (2004) (the defendant must show that he or she has a "substantial basis for believing such evidence is material" (quotation omitted)). However, because "an accused cannot possibly know, but may only suspect, that particular information exists which meets these requirements, he is not required, in order to invoke the right, to make a particular showing of the exact information sought and how it is material and favorable." *Love*, 57 F.3d at 1313; *see also Johnson*, 165 N.C. App. at 855 ("Although asking defendant to affirmatively establish that a piece of evidence not in his possession is material might be a circular impossibility, [we] at least require[] him to have a substantial basis for believing such evidence is material." (quotation omitted)). And in fact, the standard is not terribly strenuous. In *Ritchie* the defendant made the requisite showing simply by arguing "'that he was entitled to the information because the file might contain the names of favorable witnesses, as well as other, unspecified exculpatory evidence.'" *Love*, 57 F.3d at 1313 (quoting *Ritchie,* 480 U.S. at 44). For a case where the defendant's showing "went considerably beyond the meager showing held sufficient in *Ritchie,*" see *Love*, 57 F.3d 1305 (with respect to mental health records, defendant represented to court that victim was receiving psychiatric care because of incidents of "bizarre behavior"; with respect to DSS records, defendant asserted that victim had been removed from her mother's custody because mother refused to believe her allegations).

A. Favorable

Evidence is "favorable" "when it tends substantively to negate guilt" or when it "tends to impeach the credibility of a key witness for the prosecution." *Love*, 57 F.3d at 1313 (so interpreting the *Ritchie* rule and citing Giglio v. United States, 405 U.S. 150, 154 (1972)); *see also Johnson*, 165 N.C. App. at 858 (the trial court erred by failing to disclose evidence in a DSS record that was favorable; the evidence "provide[d] an alternative explanation for [the victim's] abuse"); State v. McGill, 141 N.C. App. 98, 102-03 (2000) ("'Favorable' evidence includes evidence which tends to exculpate the accused, as well as 'any evidence adversely affecting the credibility of the government's witnesses'"; going on to conclude that the defendant was denied favorable evidence that false accusations were made against him which could have been used to impeach the credibility of the State's key witnesses (quotation omitted)); State v. Henderson, 155 N.C. App. 719, 728 (2003) (quoting same from *McGill*).

B. Material

Evidence is "material" "only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different"; "[a] 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Ritchie,* 480 U.S. at 57 (quotation omitted); *see also Love*, 57 F.3d at 1313 (quoting *Ritchie*); *McGill*, 141 N.C. App. at 103. *Compare*

McGill, 141 N.C. App. at 103 (2000) (evidence in DSS records that false accusations were made against the defendant and that could have been used to impeach the credibility of the State's key witnesses was material), State v. Martinez, 212 N.C. App. 661, 666 (2011) (trial court erred by failing to disclose material exculpatory evidence that could have been used to impeach the State's witnesses), *and* State v. Johnson, 165 N.C. App. 854, 858-59 (2004) (evidence in DSS record that provided an alternative explanation for the victim's abuse was material), *with* State v. Bradley, 179 N.C. App. 551, 557-58 (2006) (the defendant "failed to satisfy the threshold requirement of materiality" where the defendant argued that he intended to use the records to impeach the credibility of one of the State's 404(b) witnesses; the court concluded that the defendant would not have been able to impeach the witness with extrinsic evidence and noted that the witness was only one of three 404(b) witnesses offered by the State).

V. In Camera Review, Order and Sealing of Evidence

If the defendant makes the required showing, the defendant "does not become entitled to direct access to the information to determine for himself its materiality and favorability." Love v. Johnson, 57 F.3d 1305, 1313 (4th Cir. 1995) (citing *Ritchie*). Rather, the defendant has the right "to have the information he has sufficiently identified submitted to the trial court for in camera inspection and a properly reviewable judicial determination made whether any portions meet the 'material' and 'favorable' requirements for compulsory disclosure. *Id*. (citing *Ritchie*). Once the defendant makes the required showing, the court must engage in an in camera review. State v. Kelly, 118 N.C. App. 589, 594 (1995) (trial court's failure to conduct an in camera review was error).

If the court determines that there is favorable, material evidence in the records, the court should so find by written order and should provide the relevant evidence to the defendant. If the trial court conducts an in camera review but denies the defendant's request, in whole or in part, the trial court should so find by written order, seal the undisclosed evidence, and place it in the record for appellate review. *See, e.g.*, *Johnson*, 165 N.C. App. at 855-56; State v. McGill, 141 N.C. App. 98, 101 (2000). Sample language for the court's order is provided in the Appendix below.

Appendix: Sample Language for Court Orders

Sample Language Granting Defendant's Request for In Camera Review

Defendant has moved for in camera review of [*identify the confidential records at issue*] maintained by [*identify the third party that maintains the records*]. Under *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), the defendant has a due process right to have the trial court conduct an in camera review of confidential third party records to determine whether they contain favorable and material evidence. To trigger the right to an in camera review, the defendant need only make some plausible showing of how the evidence in question is both material and favorable to his or her defense. In this case the defendant asserts that the evidence is material and favorable because [*summarize the defendant's argument*]. The court finds that the defendant has made the requisite showing and hereby orders [*identify the third party that maintains the records*] to produce [*identify the confidential records at issue*] to the court under seal for in camera review and further order.

Sample Language for Order after In Camera Review

Pursuant to *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), this court by order dated [*insert date*] ordered [*identify the third party that maintains the records*] to produce under seal [*identify the confidential records at issue*] for an in camera review by the court. Having conducted the required in camera review, the court finds the defendant is entitled to portions of the [*identify the confidential records at issue*] that contain favorable, material evidence. Copies of those portions of the records that contain such evidence are attached to this order. The court finds that the remainder of the records produced by [*identify the third party that maintains the records*] do not contain favorable, material evidence. Copies of those records shall be retained by the Clerk, sealed for appellate review.

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Love v. Johnson

United States Court of Appeals for the Fourth Circuit

March 11, 1994, Argued ; June 22, 1995, Decided

No. 92-7080

Reporter
57 F.3d 1305 *; 1995 U.S. App. LEXIS 15495 **

REGINALD JEROME LOVE, Petitioner-Appellant, v. AARON JOHNSON, Secretary of Correction; LACY THORNBURG, Attorney General, Respondents-Appellees.

Prior History: [1]** Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, District Judge. (CA-92-189-HC).

Counsel: ARGUED: Paul MacAllister Green, NORTH CAROLINA PRISONER LEGAL SERVICES, INC., Raleigh, North Carolina, for Appellant.

Clarence Joe DelForge, III, Assistant Attorney General, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees.

ON BRIEF: Linda B. Weisel, NORTH CAROLINA PRISONER LEGAL SERVICES, INC., Raleigh, North Carolina, for Appellant.

Michael F. Easley, Attorney General of North Carolina, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees.

Judges: Before MURNAGHAN and HAMILTON, Circuit Judges, and PHILLIPS, Senior Circuit Judge. Senior Judge Phillips wrote the opinion in which Judge Murnaghan and Judge Hamilton joined.

Opinion by: PHILLIPS

Opinion

[*1306] OPINION

PHILLIPS, Senior Circuit Judge:

Reginald Jerome Love appeals the dismissal of a petition for writ of habeas corpus challenging his state conviction on charges of first degree rape, first degree sex offense, and taking indecent liberties with a minor. Love claims that he was denied access to **[*1307]** evidence in violation **[**2]** of rights guaranteed by the *Sixth* and *Fourteenth Amendments*. Because Love made a plausible showing that sufficiently identified state agency records might contain evidence that was material and favorable to his defense, the state court's refusal to inspect the identified records *in camera* and to seal any not disclosed for appellate review, violated Love's constitutional right to such a procedure. Accordingly, we vacate the United States District Court's dismissal of Love's petition and remand to that court for further proceedings.

I

In March 1989, the alleged victim, then a nine year-old girl ("the minor"), wrote a note to her mother indicating in explicit detail that she had been sexually abused by the petitioner, Reginald Jerome Love who, at the time, was her mother's live-in boyfriend. The couple, along with the minor, two other of the mother's children, and the minor's grandmother shared an apartment in Raleigh, North Carolina.

In the evening of the day her mother read her note, the minor, her mother, and Love discussed it. According to the minor, Love denied subjecting her to such abuse, but suggested that she be taken to see a doctor, and her mother, after first objecting, **[**3]** agreed. J.A. 239. Several days later, the minor was taken by her mother to Wake Medical Center where she was interviewed by Kimberly Crews, a counselor, and then examined by Dr. Denise Everette. A contemporaneous report of the interview prepared by Ms. Crews indicated that the minor first denied that Love had abused her but then described in detail an episode of sexual abuse by Love on March 18, 1989, that included sexual intercourse. Dr. Everette's contemporaneous report of her examination indicated discovery of healed hymenal lacerations. It also contained a marginal notation of an earlier medical examination of the minor on October 24, 1988 related to a menstrual period lasting three days and a complaint of pain upon urination for a week. Following Dr. Everette's examination, the minor repeated her accusation to a school counselor, to a Department of Social Services (DSS) staff member, and to a Raleigh police detective.

In May 1989, Love was indicted for one count of first degree rape, one count of first degree sexual offense and one count of taking indecent liberties with a minor. All of the offenses charged were alleged to have occurred on March 18, 1989, the date of the minor's **[**4]** note to her mother.

As the trial approached, Love's attorney focused his efforts on obtaining evidence to support the theory that Love was an innocent man falsely accused by a young girl who was emotionally disturbed for other reasons than his conduct. To that end, he"considered it of central importance to expose every weakness in [the minor]'s credibility, and to provide the jury with a convincing explanation for her false accusation." J.A. 77.

In pre-trial discovery, the state district attorney's office voluntarily produced the report of Dr. Everette's physical examination, the report of counselor Crews' interview, and the police report of the March 18th incident.

Believing that other possibly exculpatory material existed, Love's counsel filed in Wake County Superior Court a "Motion for Discovery [*Brady v. Maryland*]." J.A. 27. Among other things, the motion requested that "the State provide the Defendant with . . . the alleged victim's entire medical record maintained at Wake Medical Center . . . the alleged victim's entire file maintained by the Wake County Mental Health Department . . . [and] the alleged victim's entire file maintained by the Wake County Department **[**5]** of Social Services." J.A. 29. On the same day, Love's counsel also filed a"Motion for Early Disclosure of Statements of the State's Prosecuting Witnesses." J.A. 31-33.

A week later, on May 17, 1989, Superior Court Judge Donald W. Stephens presided over a hearing on these motions. At the hearing, Love's counsel, seeking to demonstrate Love's entitlement to the requested records, made several representations to the court. First, he asserted that before the date of the alleged incident, the minor had been receiving psychiatric care and counseling at the Wake Mental Health Center, presumably because of several incidents of bizarre **[*1308]** behavior, including attempts to set fires in her residence. He also asserted that the minor was presently receiving counseling at the DSS, which had taken her from her mother's custody because of the mother's original refusal to believe the child's assertions, and that the defense was entitled to all exculpatory statements made to DSS officials by the mother. J.A. 108-09. Although the state prosecutor's response characterized defense counsel's assertions as being only "allegations," she did not dispute their factual accuracy and indeed volunteered that the minor **[**6]** was "on Ritalin" because of hyperactivity and had been the subject of a recent civil proceeding which had involved a medical witness. J.A. 110-11. The prosecutor's position was essentially that her office, hence the state, had voluntarily provided defense counsel with all exculpatory statements in its possession; that her office had in its possession no reports respecting the minor's psychiatric care; and that the state therefore had provided all that it was required by law to provide. J.A. 110-12. Defense counsel then reasserted his belief that some reports concerning the minor's "treatment for mental health problems" necessarily existed and were "readily available to the state or the [DSS]." J.A. 112.

Judge Stephens then ruled from the bench on the defense motion for production of *Brady* materials. He first noted that "the [state] District Attorney has the obligation to provide what the District Attorney has, and if the District Attorney has no such reports then I can't enter an order compelling disclosure which they do not have." J.A. 112. The judge then suggested to Love's counsel an alternative means of obtaining the information: "subpoena these people you think are involved **[**7]** to trial, along with a subpoena duces tecum to bring their records. If they object, I'll have a hearing and see whether or not I will require them to disclose that to you." J.A. 112.

He then expanded on this ruling:

> If the State has not obtained or provided this information to you prior to trial, you subpoena these people, they bring in records. I will require that they at least disclose those to the Court. After examination, [if] I think you're entitled to them, and I'll provide them to you. If it appears then that you need additional time, I'll allow your motion to continue the case. If it appears then that you need additional expert assistance, I'll consider your motion for additional expert assistance.
>
> . . .
>
> I don't do any thing until I see what we're dealing with. If the State wants to avoid some of those hurdles and the possibility of continuance, maybe they'll get the reports and see what's there; if not, we'll deal with it at the time it's called for trial.
>
> . . .
>
> There may not be anything there. There may not even be any reports. We'll just have to wait and see, okay?

J.A. 113.

On June 7 and 12, 1989, Love's **[**8]** counsel then issued six subpoenas to, respectively:

> (1) Faye Suggs, Medical Records Custodian of Wake Medical Center, to appear and testify and to produce the "complete medical file of [the minor] .. . , including all reports, tests, lab results and examinations."
>
> (2) Counselor Kim Crews at Wake Medical Center, to appear and testify and to produce "all tapes, notes and records regarding your interview(s) with [the minor]."
>
> (3) Pearl Alston, Medical Records Custodian of the Wake County Mental Health Center, to appear to testify and to produce "the complete medical file of [the minor]."
>
> (4) Dr. Edward Morris of the Wake County Mental Health Center, to appear to testify and to produce "all records, files and reports concerning [the minor]."
>
> (5) Cheryl Passarrelli of the Wake County DSS, to appear to testify and to produce "all [DSS] Records relating to [the minor] . . . including but not limited to: Any written reports made by anyone connected with this case; all reports of conversations between . . . [Love], child's natural parents, foster **[*1309]** parents, the child and any member of the [DSS]; reports made to any law **[**9]** enforcement agency or medical provider."
>
> (6) Betty Cannon, Custodian of School Records for Wake County Public Schools, to appear and testify and to produce "the entire student file of [the minor]."

J.A. 34-44.

The return date on all the subpoenas was the scheduled trial date, June 19, 1989. In the interval, no person or agency named in the subpoenas objected to compliance, so that no pre-trial hearing on any of the subpoenas was required.

When the case came on for trial as scheduled, another superior court judge, Judge I. Beverly Lake, Jr., had been assigned to conduct the trial. It is obvious from the state court record that he did not have the benefit of a transcript of the proceedings before Judge Stephens or direct knowledge of those proceedings from any other source, and that he knew from the file only that a *Brady* motion had been "ruled upon" by Judge Stephens. J.A. 163. In consequence, when the matter was raised along with other motions at the call of the case, Judge Lake could only reconstruct what had earlier occurred from the sketchy and sometimes conflicting accounts of counsel. *See* J.A. 158-84. Confusion inevitably resulted that has made precise **[**10]** recon struction and evaluation of what then transpired before Judge Lake difficult for all the courts reviewing those proceedings. Certain critical aspects, sufficient for decision in this case, can, however, be summarized.

The matter of the *Brady* motion and the follow-up subpoenas was introduced by defense counsel. He advised the court that he had issued subpoenas for production of the minor's "entire medical file from Wake Medical Center [and] her records from the Wake County Public School and also the records from the Wake County Mental Health Department;" that he believed the prosecutor had the subpoenaed materials but did not intend to turn them over to the defense; and that the defense was entitled to review them in advance of trial. J.A. 158-59. He indicated an understanding that the prosecutor would move to quash the subpoenas and asked that the court either direct the prosecutor to turn over the subpoenaed material or allow him to be heard on the state's motion to quash. J.A. 159. In response, the prosecutor confirmed an "intent" to move to quash"*the* subpoena." J.A. 159 (emphasis added). She then identified "the" subpoena to which she referred as only that one issued **[**11]** to the medical records custodian of the Wake County Mental Health Center, and indicated that she, the prosecutor, had in her possession certain records mailed in by that custodian in response to the subpoena, but that she had not yet reviewed them. She then referred to state law which, she asserted, might make some of those subpoenaed records subject to a psychologist-patient privilege. J.A. 159-61. Significantly, however, she then indicated that the privilege was a qualified one which might, in appropriate cases, be overridden by court order. J.A. 161. And she suggested, without reference to Judge Stephens' specific promise of an *in camera* inspection of any records produced by subpoenas duces tecum, that this was the "appropriate route" for the court to take, and that if such an inspection revealed "exculpatory information . . . it should be turned over to [the defendant]." J.A. 161-62. Defense counsel then pressed the need for access to these Mental Health Center records in advance of trial in order to see if a court-appointed psychiatrist might be needed to help prepare Love's defense. J.A. 164-66. In response, the prosecutor asserted a recollection--incorrect in fact and **[**12]** disputed by defense counsel--that Judge Stephens had indicated that any questions of entitlement of the defense to expert assistance should be dealt with "during the course of trial" when the state called as wit ness "the psychologist who had some contact with the child." J.A. 167.

At this point, with no formal motion respecting the subpoenas for Wake County Mental Health Center records or any other having been made, discussion shifted confusedly to Wake Medical Center records. Laboriously, the court was made aware, in colloquy with counsel, of the earlier voluntary **[*1310]** disclosure to defense counsel of the reports of Counselor Crews and Dr. Everette concerning their interviews of the minor in March of 1989. Defense counsel then pointed out that he had subpoenaed all the Medical Center records, and explained his need of them, specifically pointing to the marginal notation on Dr. Everette's March 1989 notes of her medical examination that suggested an earlier medical admission that might have involved injury to the minor's genital area. J.A. 171-72. The prosecutor then denied any knowledge as to whether that subpoena had been served, J.A. 177; denied having in her possession any records **[**13]** subpoenaed from any agency other than those of the Wake Medical Center that were earlier voluntarily disclosed to defense counsel, J.A. 183-84; and repeated her contention that any questions concerning medical records involving the minor should be dealt with at trial in connection with the examination of the state's witnesses rather than in advance of trial. J.A. 175-76. At this point, it is plain from the state court record that the trial judge was badly confused as to the number of subpoenas that had been issued; the identity of the agencies whose records had been subpoenaed; which, if any, of the subpoenas had been served; which, if any, of those served had been honored by the production of subpoenaed materials on the designated return date; and who, if anyone, had possession of any records produced other than those of the Wake County Mental Health Department which the prosecutor indicated were then in her possession. J.A. 163, 169, 174, 177-79. In this state of confusion, defense counsel, who understandably had assumed throughout that, because there had been no objections or motions to quash any of his subpoenas, the materials were then available to the court, sought repeatedly **[**14]** to bring this to the court's attention and to emphasize his need for access to all the materials in advance of trial. J.A. 158, 159, 165, 168-69, 177. His efforts were, however, unsuccessful. Whether, in fact, any records other than those of the Wake Mental Health Center were actually produced in response to the subpoenas is not revealed by the record. It is plain, however, that the trial judge never sought to determine whether any other materials had been produced and were available for his inspection and that he did not inspect any of those that were known to have been produced. It is further plain that the only subpoena which the judge inspected was that issued to the Wake Mental Health Center that had produced the records that remained throughout in the prosecutor's possession.

This general state of confusion and uncertainty led finally to an equally confused series of specific rulings whose result was the actual (or assumed) quashing of all the subpoenas.

Focusing on the subpoena issued to the Wake Mental Health Department, the only one ever inspected, the judge inquired of the prosecutor whether her motion was to quash it. When she answered in the affirmative, the judge ruled **[**15]** from the bench that "after reviewing the subpoena I believe it's overbroad in asking for the complete medical file in matters relevant to trial. . . . So, the court is going to allow the Motion to Quash the subpoena ordering the complete medical file of the victim." J.A. 178-79. When defense counsel, picking up on the reference to "medical file," immediately inquired whether the ruling pertained to the subpoenas to "Wake Medical Center or Wake Mental Health Center or Department of Social Services or . . . Kim Crews," the court as immediately revealed its confusion about the subject of the specific subpoena on which it had ruled. J.A. 179. The prosecutor, sensing the court's confusion and her opportunity, quickly interceded, pointing out that it was the subpoena to"Mental Health," but then sought to amend the quashal motion to "read the quashing of all of the medical information as it relates to instances not involving the specific case that is presently before the Court." J.A. 179.

Resisting the obvious drift of matters, defense counsel again pointed out that more subpoenas than that to the Mental Health Center had been issued, and again sought to explain his need for access to the **[**16]** materials identified in them in order to prepare for trial. J.A. 180, 182. He succeeded only in getting the court's attention to his specific need for access to any medical records that might relate to the earlier medical examination **[*1311]** of the minor in October of 1988 that was suggested in Dr. Everette's notes of her March 1989 examination. J.A. 179-181. When the prosecutor then renewed her motion to quash "all of" the subpoenas on the grounds that "they are not relevant, specula tive," the judge then again ruled from the bench:"I'm going to allow the Motion to Quash the subpoena [sic] with the exception of the medical records of the Wake Medical Center . . . as they relate to the examination of the victim in October of 1988." J.A. 182-83. Later, concluding the hearing on this matter, the judge stated: "With that exception then, the Motion to Quash the four [sic] separate . . . subpoenas duces tecum are allowed." J.A. 184.

Following this hearing, the prosecutor obtained the minor's Wake Medical Center records for the month of October, 1988, from Dr. Everette and delivered copies to defense counsel and to the court immediately before trial commenced. J.A. 189. Instead of a report **[**17]** of menstrual bleeding and pain upon urination on October 24, 1988, as Dr. Everette's notation had suggested, the records revealed a hospital emergency room admission on October 10, 1988, in which the minor had complained of injuries to her knee and to her genital area from a fall during play at school. J.A. 189-90. The report did not indicate the results of any genital examination that may have been performed. J.A. 190.

At the ensuing trial, the minor, her mother, her grandmother, an investigating police officer, Counselor Crews, Dr. Everette, and Dr. Robert Kratz testified as state's witnesses. The minor testified in detail that Love had sexually abused her as charged in the indictment. The investigating police officer and Counselor Crews testified that the minor had stated to each of them in their respective investigative interviews that Love had sexually abused her on the occasion charged, though Crews conceded that the minor had first denied that any abuse occurred. Dr. Everette gave it as her medical opinion, based on her interview and physical examination of the minor and the medical history of which she was aware that she "exhibited certain characteristics of a child who had **[**18]** been sexually abused" and that the healed hymenal lacerations disclosed by her physical examination were consistent with the occurrence of sexual abuse as described by the minor. J.A. 419-20. Dr. Robert Kratz, who examined the minor upon her emergency hospital admission on October 10, 1988, testified as to that event. He confirmed that the minor had then reported to intake personnel that she had received a playground injury to both her knee and to her genital area, but stated that because she had not mentioned any genital injury to him, he made no examination of that area. Love's defense consisted of his own testimonial denial of the charged incident, and cross-examination of the state's witnesses designed to impeach the minor's general and specific credibility and to emphasize the physical implausibility of her account of the charged incidents having occurred undetected just down the hall from her grandmother's open-door room. Defense counsel was able to elicit from the minor concessions of her animosity, "hate," toward Love that pre-dated the charged incident; of her advanced sexual awareness; and of her treatment by prescription drug for hyperactivity. This supplemented earlier **[**19]** testimony elicited by the prosecutor on direct examination in which the minor had conceded attention-seeking episodes of bizarre behavior on her part--shaving her eyebrows, setting fires in her residence--that were followed by psychiatric counseling. No records concerning her conceded counseling at Wake Mental Health Center or her custody by the Department of Social

Services (the subject of two of the quashed subpoenas) were introduced. Testifying in his own behalf, Love denied any sexual encounter with the minor at any time. He claimed her account was simply false and attributed it to her animosity and resentment of his relationship with her mother.

The jury found Love guilty as charged. He was sentenced to two concurrent life terms on the two principal charges and to a five-year term on the third.

On his direct appeal in the state court system, Love's convictions were affirmed by the North Carolina Court of Appeals. *State v. Love, 100 N.C. App. 226, 395 S.E.2d 429 (N.C. App. **[*1312]** 1990)*. The court rejected Love's claim of a federal constitutional violation in the failure of the trial court to conduct an *in camera* inspection of the subpoenaed records. The court thought that because "the trial court's **[**20]** concern was the overbreadth of the subpoena [sic] and, to an extent, the lack of any showing of materiality (with the exception of the October 1988 medical report)," rather than any claim of state evidentiary privilege, *Pennsylvania v. Ritchie, 480 U.S. 39, 94 L. Ed. 2d 40, 107 S. Ct. 989 (1987)*, which in a comparable sex-abuse case upheld a defendant's right to *in camera* inspection over a claim of state evidentiary privilege, was not controlling. *Id. at 432*. The North Carolina Supreme Court denied discretionary review without opinion. *State v. Love, 328 N.C. 95, 402 S.E.2d 423 (1991)*. Love then sought federal habeas corpus relief under *28 U.S.C. § 2254* in the United States District Court, claiming a constitutional violation in the refusal of the state trial court to conduct an *in camera* inspection of the subpoenaed records to determine their possibly exculpatory nature. He relied principally, as he had on his direct appeal, on *Ritchie* as determinative of the right claimed and of its violation. On cross-motions for summary judgment, and without any evidentiary hearing, the district court rejected the claim of constitutional violation and dismissed the petition.

Addressing *Ritchie's* applicability **[**21]** to the case, the district court rejected its applicability, opining in critical part:

> In *Ritchie* the Court struck a due process balance which required the state to give the documents in its possession to the judge for his *in camera* review, notwithstanding the state confidentiality law. In the present case, the parties disagree over whether the subpoenaed documents were in the possession of the state. Assuming that they were, however, the state satisfied its obligations under *Ritchie* by offering to give them to the judge for his *in camera* review. Unlike *Ritchie*, the petitioner in the present case was denied access to the documents not because the state tried to withhold them but because the trial judge determined that the petitioner's subpoenas were overbroad.
>
> There is nothing in *Ritchie* which suggests that the trial judge was obligated to review the subpoenaed documents *in camera* after determining that the subpoenas were overbroad. Instead, the petitioner's attorney should have drafted additional, narrower subpoenas or made some other more specific request for the documents.

J.A. 91-92. On this basis, the court concluded that the **[**22]** state court did not violate any federal constitutional right in declining to inspect the subpoenaed materials *in camera* or to seal them for appellate review, and dismissed the petition.

This appeal followed. II

Love's claim of constitutional violation is, as it was in the state courts and in the United States District Court, that he was improperly denied access to possibly material evidence favorable to his defense by the state court's quashing of his various subpoenas duces tecum without having conducted any *in camera* inspection of the subpoenaed materials. He locates the source of the right violated in the *Due Process Clause of the Fourteenth Amendment* and (through incorporation) in the Compulsory Process Clause of the *Sixth Amendment*.

We agree that he properly invoked such a constitutional right and that it was violated as he claims. Supreme Court precedent locates the right he invoked in both sources, but identifies the Due Process Clause as the appropriate, necessarily broader, source for evaluating the type claim made by Love. *See Pennsylvania v. Ritchie, 480 U.S. 39, 56, 94 L. Ed. 2d 40, 107 S. Ct. 989 (1987)*.

Ritchie applied the Due Process Clause to find a violation in a situation indistinguishable **[**23]** in any material respect from that presented in this case. There, as here, a state-court defendant charged with rape and related sexual offenses of a minor (there his natural daughter) issued a subpoena duces tecum to obtain records of a state agency charged with investigating cases of suspected child abuse as they pertained to the alleged victim. **[*1313]** There, as here, a state trial judge, without inspecting the records produced by the agency, declined, there on grounds of statutory confidentiality, to order their disclosure. The Supreme Court, drawing on the line of cases including *United States v. Bagley, 473 U.S. 667, 87 L. Ed. 2d 481, 105 S. Ct. 3375 (1985)*; *United States v. Valenzuela-Bernal, 458 U.S. 858, 73 L. Ed. 2d 1193, 102 S. Ct. 3440 (1982)*; *United States v. Agurs, 427 U.S. 97, 49 L. Ed. 2d 342, 96 S. Ct. 2392 (1976)*; and *Brady v. Maryland, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963)*, that have defined the constitutional right of criminal defendants to disclosure of exculpatory evidence in the government's possession, found that right violated in the case before it.

The basic constitutional right recognized in *Ritchie* is the wellestablished right of an accused to disclosure of evidence in the prosecuting government's possession that "is both favorable to the accused and material to guilt **[**24]** or punishment." *Ritchie, 480 U.S. at 57*. In recognizing the right's applicability to the case before it, the Court pointed out that evidence is "material" in the required sense "only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different" and that "[a] 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Id*. (citing *Bagley, 473 U.S. at 682* (opinion of Blackmun, J.)). Evidence may be"favorable" in the required sense not only when it tends substantively to negate guilt but also when it tends to impeach the credibility of a key witness for the prosecution. *Giglio v. United States, 405 U.S. 150, 154, 31 L. Ed. 2d 104, 92 S. Ct. 763 (1972)*; *see Jean v. Rice, 945 F.2d 82, 87 (4th Cir. 1991)*. When, as in *Ritchie* and in the instant case, an accused cannot possibly know, but may only suspect, that particular information exists which meets these requirements, he is not required, in order to invoke the right, to make a particular showing of the exact information sought and how it is material and favorable. Instead, he need only at that stage"at least make some plausible **[**25]** showing" that it does exist and how it would be "both material and favorable to his defense." *Ritchie, 480 U.S. at 58 n.18*. Upon making such a showing, the accused does not become entitled to direct access to the information to determine for himself its materiality and favorability. *Id. at 59, 60*. Rather, he does become entitled, in order to secure the basic right, to have the information he has sufficiently identified submitted to the trial court for *in camera* inspection and a properly reviewable judicial determination made whether any portions meet the "material" and "favorable" requirements for compulsory disclosure. *Id. at 60*.

In *Ritchie*, the accused was held to have made the requisite showing when, at a trial court hearing on his motion to compel compliance with his subpoena for agency records, he simply"argued that he was entitled to the information because the file might contain the names of favorable witnesses, as well as other, unspecified exculpatory evidence." *Id. at 44*. Given the context of the case and the nature of the charges, this was enough, the Court held, to make"Ritchie . . . entitled to know whether the [agency] file contains information **[**26]** that may have changed the outcome of his trial had it been disclosed," *id. at 61*, not by personal inspection, but by *in camera* judicial inspection to make a reviewable discretionary determination of his right to disclosure. *Id. at 58, 60*.

In the instant case, Love's showing far exceeded that held sufficient by the *Ritchie* Court. His showing actually first, and sufficiently, occurred on the hearing before Judge Stephens on Love's pre-trial motion for discovery of "*Brady* material." At that hearing, Love's counsel identified, as had his written motion, three state agencies-the Wake County Medical Center, the Wake County Mental Health Department, and the Wake County Department of Social Services-whose records, he argued, might contain material evidence favorable to Love's defense. And he went considerably beyond the meager showing held sufficient in *Ritchie* to demonstrate how and why they might so **[*1314]** qualify in view of the alleged victim's undisputed involvement with each agency.

As our account of the state court proceedings reveals, much concerning the records happened thereafter, but so far as the constitutional issue is concerned, it was largely irrelevant misadventure **[**27]** that culminated in the violation of a right earlier invoked. Love's "showing" before Judge Stephens was sufficient to trigger the right to *in camera* inspection of the records at that point, and needed nothing further. Judge Stephens in fact seems to have recognized this. He promised such an inspection, but chose to require that the records sought be obtained via

subpoena duces tecum. His stated reason for doing so--that the state was required to disclose only information in the prosecutor's possession--was almost certainly erroneous as a legal proposition. The "*Brady*" right, as recognized and implemented in *Ritchie*, is not limited to information in the actual possession of the prosecutor and certainly extends to any in the possession of state agencies subject to judicial control. *See* Ritchie, 480 U.S. at 44 n.4 (pointing out that agency records held subject to *in camera* inspection were not in prosecutor's possession).

Be that as it may, the fact that Judge Stephens chose--perhaps in a wise exercise of prudence--to proceed in this way rather than by directly ordering state officials to produce the records for his inspection could not alter Love's right to inspection **[**28]** already invoked. And the fact that Love then followed the prescribed procedure by issuing subpoenas to the agencies earlier identified in his discovery motion (plus additional ones to the Wake County Public Schools and to Counselor Crews individually) could not affect or waive the right. *See* Ritchie, 480 U.S. at 43-4 (right invoked in first instance by motion to compel compliance with subpoena to agency rather than by *Brady* discovery-motion). It is clear--and ironic--that had Judge Stephens remained in the case and followed through on his stated intention, Love's constitutional right to have the records judicially inspected to determine his right to access would have been fully protected. Unfortunately, because of sheer mischance and considerable obfuscation--whether or not deliberate--by the state prosecutor, the right simply fell through the cracks in the pre-trial proceedings before the different judge assigned to try the case. Without recapitulating our account of those proceedings and attempting to locate the exact point at which Judge Stephens' adequately protective plan for proceeding went awry, it suffices to say that the right was flatly violated by the ultimate quashing **[**29]** of all of Love's subpoenas--whatever the reason that prompted the ruling. The consequence was that Love was put to trial without any judicial inspection having been undertaken to determine whether the records he had appropriately identified might contain material evidence favorable to his defense. Just as that constituted constitutional error requiring remedy in Ritchie, *see* id. at 58, so it did here.

The district court seemed to recognize *Ritchie* 's general authority in the matter at issue but thought it distinguishable because in the instant case the state prosecutor had offered to submit for *in camera* inspection such subpoenaed materials as "were in the possession of the state," [1] **[**30]** and **[*1315]** this, the court thought, "satisfied its obligations under *Ritchie*." J.A. 92. On this view, the refusal of the state trial judge then to inspect--because the subpoenas were"overbroad" [2]--was of no constitutional significance.

This cannot be right. The constitutional obligation imposed by *Ritchie* is one imposed upon the state, which means upon the judge as well as all other state actors involved in the process of insuring *in camera* inspection of evidence sufficiently shown, under *Ritchie*, to be subject to that inspection. If inspection is effectively denied by any actor in the chain, including the judge as final actor, the fact that some **[**31]** other actors in the chain may have discharged their portion of the obligation cannot insulate a violation further on. Neither can the obligation of the

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[1] As our account of the state court proceedings reveals, it is not at all clear just what materials such an offer of submission actually included. As the record indicates, the state trial judge never determined--or made inquiry as to--how many of the subpoenaed materials had actually been produced and were immediately available for his inspection were he inclined to inspect them. The state prosecutor relentlessly disclaimed any knowledge as to which of the subpoenas other than that served on the Wake Mental Health Center had been obeyed by production of materials, or indeed whether any others had been served. Whether this involved deliberate dissembling or equally surprising ignorance of those important facts is, however, irrelevant to the issue. The upshot is that, whatever the nature of the offer of submission, the state trial judge quashed all the subpoenas without determining or seeking to determine which had been honored, and, indeed without inspecting any but that served on the Wake County Mental Health Center. As the district court observed from its review of the state court proceedings: "There was confusion in the trial court regarding the number of subpoenas which the prosecutor was moving to quash . . . [and] the number of subpoenas quashed and the basis for quashing them." J.A. 86 (district court's order dismissing petition).

[2] As indicated in note 1, *supra*, there remains confusion on the state court record as to the actual basis for the order quashing all the subpoenas. The district court concluded, recognizing the difficulty, that all were quashed as "overbroad." J.A. 87. The district court then thought that this raised only a question whether, under state law, the overbreadth ruling was an abuse of discretion and held, applying state law, that it was not. J.A. 89-90. This, of course, was not the issue raised by Love's constitutional challenge, and the mere fact that a quashal might have been proper under state law would not be dispositive of the quite different constitutional issue.

judge, as final actor in the process, be avoided by drawing on state-law requirements of specificity of subpoenas which may be--and undoubtedly are--considerably more stringent than the merely "plausible showing" which, under *Ritchie* suffices to require *in camera* inspection. *See* Ritchie, 480 U.S. at 58 n.15.

III

The state seeks to avoid application of the rule we apply on the now practically inevitable claim that to do so would violate the "newrule" prohibition of Teague v. Lane, 489 U.S. 288, 103 L. Ed. 2d 334, 109 S. Ct. 1060 (1989), and its progeny. There is no merit to this claim; indeed, it borders on the frivolous. The rule applied is narrowly and only that laid down by the Supreme Court of the United States in *Ritchie*, a case decided well over two years before the state court ruling that is challenged in Love's petition. Because of the stark similarities between *Ritchie* and the instant case, the *Ritchie* rule's application here could not be con sidered "new" because of its application to a novel factual setting. *See* Butler v. McKellar, **[**32]** 494 U.S. 407, 414-15, 108 L. Ed. 2d 347, 110 S. Ct. 1212 (1990). The clearest indication that it is not a "new rule" in the sense contemplated by *Teague* is that the North Carolina courts have demonstrably been fully aware of it and its imperatives from the outset of its specific announcement in *Ritchie*. *See*, *e.g.*, State v. Bailey, 89 N.C. App. 212, 365 S.E.2d 651, 657 (N.C. App. 1988) (recognizing *Ritchie*'s authority and on its basis conducting appellate *in camera* review of agency records sufficiently identified by "plausible showing" by accused).

IV

There remains the problem of remedy for the violation we have found clearly established on our *de novo* review of the district court's judgment dismissing the petition. The right so far denied Love is, as we have shown, only the right to have an *in camera* judicial inspection made of those records and materials "plausibly shown" by Love to meet *Ritchie*'s requirements. These are all the records originally identified by Love to Judge Stephens at the hearing on Love's pretrial motion for discovery of *Brady* materials and later made the subject of subpoenas duces tecum. Specifically, they are the complete medical file of the minor maintained by the **[**33]** Wake Medical Center as of June 19, 1989; [3] the complete medical file and reports concerning the minor maintained by the Wake County Mental Health Center as of June 19, 1989; all records related to the **[*1316]** minor maintained by the Wake County Department of Social Services as of June 19, 1989; and all tapes, notes and records concerning Counselor Kim Crews' interview with the minor in March 1988. [4] Not subject to *in camera* inspec tion are the public school records of the minor as subpoenaed from the custodian of those records; Love has never made to any judicial officer the required showing of how these records might be material and favorable to his defense.

[34]** We might provide the required remedy at this stage by either of two means. We could defer remedy, or direct that the writ now issue conditioned in either event upon the state's provision of a proper *in camera* inspection of the records identified, followed by a properly reviewable determination whether any portions qualified for disclosure to the accused as material and favorable to his defense, and for a new trial if they were determined to be so.

Alternatively, we could remand to the district court with directions to secure the identified records, employing such coercive processes as are necessary, to make the reviewable determination required by *Ritchie*, and to then take whatever further remedial or other action that might be required by virtue of the inspection. *See* 28 U.S.C. § 2243 ("as law and justice require").

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[3] Some, but possibly not all, of Wake Medical Center's records were voluntarily turned over to the defense well in advance of trial. *See* Part I, *supra*. These obviously need not be subjected now to inspection for materiality and favorability, having already been directly disclosed to the accused.

[4] These records, though possibly included in Wake Medical Center records, were separately identified as records subject to inspection because of the sensitive character of Counselor Crews' interview of the minor immediately after the charged incident. If they exist, they should be included in the inspection. The fact that Counselor Crews testified and was subject to cross-examination at trial does not avoid that necessity, though it could well affect the assessment of their materiality.

Courts of Appeals, dealing with comparable situations, have gone both routes. *See*, *e.g.*, *Miller v. Dugger, 820 F.2d 1135 (11th Cir. 1987)* (remand to federal district court for *in camera* inspection of secret grand jury testimony); *Exline v. Gunter, 985 F.2d 487 (10th Cir. 1993)* (federal habeas corpus proceeding held in abeyance to allow **[**35]** state trial court to review agency files *in camera*).

For reasons well-illustrated in the awkward unfolding of the *Exline* procedure, which resulted in a United States District Court directly reviewing the state trial court's materiality determination with no intervening state court appellate review, *see id . at 491*, we opt for the latter course.

Accordingly, we will vacate the judgment of the district court dismissing the petition, and remand to that court for further proceedings as now instructed.

The court should secure the materials we have identified as those to which the petitioner has sufficiently shown a right to *in camera* inspection, either by voluntary production by the state or by such processes of the court as are required. The court should then inspect the materials *in camera* and make the determination required by *Ritchie*, sealing the materials inspected for such appellate review as may be required. The court should then take such remedial or other action as is required by its determination. If the court determines that the agency records we have identified contain information that probably would have changed the outcome of Love's trial, the writ **[**36]** should issue, either absolutely or conditioned upon the state's providing a new trial, as the district court deems proper. If the materials contain no such information or if the nondisclosure was harmless beyond a reasonable doubt, the court will be free to reinstate its dismissal of the petition. *See Ritchie, 480 U.S. at 58* (directing comparable remedial proceedings in remanding to state court on direct appeal).

SO ORDERED

STATE OF NORTH CAROLINA

COUNTY OF ALAMANCE

FILED

2023 FEB 14 A 9:10

ALAMANCE CO., C.S.C.

BY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 19 CRS 53740-42, 1257

STATE OF NORTH CAROLINA)
)
v.)
)
HYQUAN PARKER,)
Defendant.)

REQUEST FOR SPECIFIC DISCOVERY

NOW COMES Defendant, by and through counsel, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; Article I §§ 19, 23 and 27 of the North Carolina Constitution; N.C.G.S. § 15A-902 et al.; and respectfully requests the State to provide the following specific items of discovery[1]:

1) Any law enforcement files, including but not limited to the Department of Public Safety Security Risk Group intelligence, related to the gang affiliations of Jason Williams AKA "Bundy", Kaseem Peterson AKA "A-1", Tyrone Nelson AKA "Terrible" AKA "TJ", Andre Owens AKA "Pistol", Takira Thorpe AKA "Bug" AKA "Thug", DeAntonio Rhodes AKA "Ye-Yo", and Gerald Buchanan.

2) In-car camera recordings of the following officer[2]: Arcos (5672) from page LEO 38.

3) Video of non-custodial interview of Jasmine Woodard by Det. A. Smith (4607) that took place on July 1, 2019, from page LEO 33.

[1] Where possible, undersigned counsel has included the page numbers of the discovery where the requested evidence was referenced.

[2] Where possible, undersigned counsel has included the badge/identification numbers of the respective law enforcement officers in parentheses.

4) A sketch depicting the location of a firearm and the surrounding area as measured and described by CSI S.R. Barringer (5021), from page LEO 83.

5) Any and all body worn camera video from Det. J.F. Theriault (5579), to the extent that it exists, from page LEO 119.

6) The entire video surveillance seized from the main office of Pate Homes and "submitted into evidence" by Off. A.A. Shockley (5605), from page LEO 59.

7) The entire video surveillance reviewed by Officer Ashworth (32669) referenced on page LEO 51.

8) The entire video surveillance seized from Burlington Housing Authority.[3]

9) All labs from the N.C. State Crime Lab concerning this case including, but not limited to, lab numbers T201907112-2 and T201907112-3.

10) All EMS reports, including all EMS reports of treatment of the defendant and of the alleged victims on June 30, 2019.

11) Any and all written body-worn camera policies from the Burlington Police Department.

12) Any and all 911 calls from June 30, 2019, requesting assistance or providing information in this case.

13) Any and all ATF and/or U.S. Marshall reports for federal officers who responded to the crime scene or provided assistance in this investigation.

14) Any and all Homeland Security reports concerning the download of the defendant's cell phone in this case.

[3] Undersigned counsel has received clips of this video, but Officer Notes (without page numbers) provided in discovery indicate that investigators seized video beginning at 5:00 am on the day of the crime.

15) Any and all ATF print-outs, reports, or searches concerning the SKS assault rifle recovered in this case.

Respectfully submitted, this the 14th day of February, 2023.

Robert Singagliese
123 W. Main St., Ste. 601
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NC Bar # 38706
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Lamar Proctor
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ATTORNEYS FOR HYQUAN PARKER

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing **Motion** by hand delivery upon the office of:

Sean Boone
District Attorney
212 W. Elm St.
Graham, NC 27253

This the 14th day of February, 2023.

Lamar F. Proctor, Jr.

STATE OF NORTH CAROLINA

COUNTY OF ALAMANCE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 19 CRS 53740-42, 1257

STATE OF NORTH CAROLINA

v.

HYQUAN PARKER,
Defendant.

REQUEST FOR SPECIFIC DISCOVERY AND ALTERNATIVE MOTION TO COMPEL

NOW COMES the defendant in the above-entitled matter, who, through his attorneys and pursuant to N.C.G.S. §§ 15A-903 et seq. and 15A-910, Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), United States v. Bagley, 473 U.S. 667 (1985) and Cone v. Bell, 556 U.S. 449 (2009); the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; and Article I, Sections 19, 23, and 27 of the North Carolina Constitution, requests this Court issue an Order that the State provide complete discovery in this matter. Mr. Parker respectfully requests the State to provide the following specific items of discovery and alternatively asks the Court to compel such discovery.

1) We continue to request that all materials from federal cooperating agencies be provided. Previous discovery production suggests that there is additional material available from the ATF (regarding firearms examination, including NIBIN entries and hits) and the FBI (regarding a cell phone extraction) that has not previously been provided.
2) We request the following materials from investigating law enforcement agencies, to wit the Department of Public Safety and the Department of Adult Corrections:

a) All documentation, communications, and information concerning Victim Compensation Services Claims 19-72537 and 19-72538 (and any other VCS claim arising out of Burlington Police Department OCA# 2019-04309);

b) All written communication (and reduction to writing of all verbal communication) between Victim Compensation Services personnel and the Burlington Police Department (including but not limited to Det. Braja) concerning the same OCA# or concerning Hyquan Parker, Kaseem Peterson, Jason Williams, or Tyrone Nelson;

c) All disciplinary records concerning Freeman Ireland (OPUS #0606396)

d) Copies of all attachments to any and all disciplinary reports for Mr. Parker's alleged SRG status;

e) Copies of all DPS and DAC policies concerning the release of information to criminal defense attorneys, district attorneys, and release in response to court orders;

f) Copies of all internal DPS and DAC correspondence concerning the release of information to the Alamance County District Attorney's Office, the Office of the Capital Defender, Lamar Proctor, Robert Singagliese, or Christine Malumphy concerning this case;

g) Copies of all internal DPS and DAC investigations into any alleged excessive use of force by any DPS or DAC personnel against Mr. Hyquan Parker;

h) Video or photographs (including clear versions of all previously provided photographs) attached to any of Mr. Parker's disciplinary records;

i) Copies of all documents pertaining to the investigation of a disciplinary incident that occurred on December 27, 2016, at Lanesboro Correctional Institution, including any witness statements (including DC138B forms), any video or photographic evidence, any medical evidence, any OSHA claims or worker's compensation claims filed by employees as a result of the incident;

j) Electronic rounds concerning any time that Mr. Parker was in solitary confinement; and

k) Any other records in possession of either agency concerning Mr. Parker or that would tend to be exculpatory or mitigating as to Mr. Parker (including but not limited evidence that would tend to undercut witness statements against Mr. Parker).

3) We request all handwritten notes from all officers, including but not limited to Officers Annunziata, Arcos, Baulding, Comer, Griffin, Hardy, Harris, Hazelwood, Hines, Houck, Hudson, Moore, Pacheco-Matias, Scotton, Shockley, Snow, and Wright.

Accordingly, Mr. Parker requests the following relief:

1) An order compelling all outstanding discovery from the State;
2) An order setting a deadline for all outstanding discovery from the State, including a provision that precludes the use of such discovery against Mr. Parker if provided after that date and a provision that allows for this matter to be continued if new discovery

requires significant investigation or follow-up by the defense where such discovery is or may be exculpatory; and

3) A hearing on this matter.

Respectfully submitted, this the 2nd day of July, 2024.

Robert A. Singagliese
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Assistant Capital Defender
123 W. Main St., Ste. 601
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(919) 354-7220

Christine Malumphy
Bar No. 45001
Assistant Capital Defender
123 W. Main St., Ste. 601
Durham, North Carolina 27701
(919) 354-7220

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing by File and Serve through e-Courts and by e-mail to Alamance County District Attorney H. Sean Boone (haley.s.boone@nccourts.org).

This the 2nd day of July, 2024.

Christine Malumphy
Bar No. 45001
Assistant Capital Defender
123 W. Main St., Ste. 601
Durham, North Carolina 27701
(919) 354-7220

[redacted]

NOW COMES the defendant in the above-entitled matter, who, through his attorneys and pursuant to N.C.G.S. §§ 15A-903 *et seq* and 15A-910, Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), United States v. Bagley, 473 U.S. 667 (1985) and Cone v. Bell, 556 U.S. 449 (2009); the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; and Article I, Sections 19, 23, and 27 of the North Carolina Constitution requests this Court issue an Order that the District Attorney [redacted] produce and/or disclose to counsel for the Defendant all of the below listed items previously requested by the Defendant in written form on August 16, 2023, including but not limited to the following specific items, which Defendant has requested and have not been provided:

1. Provide any and all personnel records of [redacted] Firearms Examiner Kelby Glass, including but not limited to training and disciplinary records, proficiency testing results, quality assurance records, records concerning any non-conformities and any corrective actions taken concerning Forensic Firearms Examiner Kelby Glass;

2. Provide any and all personnel records of [redacted] Firearms Examiner Eugene Bishop, including but not limited to training and disciplinary records, proficiency testing results, quality assurance records, records concerning any non-conformities and any corrective actions taken concerning Forensic Firearms Examiner Eugene Bishop; and

3. Copy of letter from Leslie Cooley Dismukes, North Carolina Department of Justice Criminal Bureau Chief or any member of the North Carolina Department of Justice to the District Attorney [redacted] regarding Eugene Bishop.

WHEREFORE, the Defendant respectfully moves the Court for an Order compelling the State to disclose the aforementioned documents and things within a reasonable time, and for all other just and proper relief.

Respectfully submitted this the 28th day of August, 2023.

Emily Byrum
Assistant Capital Defender
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(910) 343-5385

Christine Malumphy
Assistant Capital Defender
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Durham, North Carolina 27701
(919) 354-7220

CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that he/she caused to be served a copy of

[redacted]

This the 28th day of August, 2023.

Emily J. Byrum
Assistant Capital Defender
401 Chestnut Street, Suite I
Wilmington, NC 28401
Phone: (910) 343-5385

Attorney for the Defendant

[redacted]

NOW COMES the defendant in the above-entitled matter, who, through his attorneys and pursuant to N.C.G.S. §§ 15A-903 *et seq* and 15A-910, Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), United States v. Bagley, 473 U.S. 667 (1985) and Cone v. Bell, 556 U.S. 449 (2009); the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; and Article I, Sections 19, 23, and 27 of the North Carolina Constitution requests this Court issue an Order that the District Attorney [redacted] produce and/or disclose to counsel for the Defendant all of the below listed items previously requested by the Defendant in written form on August 1, 2023, including but not limited to the following specific items, which Defendant has requested and have not been provided:

1. All information in the possession of any law enforcement agency, including any "Gang Intelligence" or similar units, concerning the State's witnesses and [redacted];

2. All texts and email from law enforcement officers from the investigation in this case, including correspondence with or among members of the District Attorney's Office, the [redacted] Sheriff's Office, the [redacted] Sheriff's Office, the State Bureau of Investigation, or the Department of Public Safety (State Highway Patrol);

3. All texts and emails between the members of the District Attorney's Office of [redacted] of the District Attorney's Office of [redacted] or the United States Attorney's Office regarding [redacted];

4. All texts and emails between current or former members of the District Attorney's Office of [redacted] and any lawyer or member of a lawyer's office representing any of the State's witnesses r[redacted] their testimony, and prosecution of their cases;

5. Complete file from the [redacted] Police Department regarding the gun allegedly stolen and subsequently recovered in [redacted] County ([redacted]);

6. All texts and emails between current or former members of the District Attorney's Office of [redacted] and any doctor, psychologist, employee or official at Central Regional Hospital or Cherry Hospital regarding [redacted] his case;

7. A summary of all phone conversations between current or former members of the District Attorney's Office of [redacted] and any employee or official at Central Regional Hospital [redacted] or this case, where the conversation reflects information not contained in previously provided reports or the information provided suggests that [redacted] suffers from any lack of capacity, mental illness, mental defect, or intellectual limitation;

8. A summary of all conversations and copies of all text messages and emails between current or former members of the District Attorney's Office of [redacted] and any consulting expert in this case who has provided an opinion that is exculpatory in that it is consistent with the findings of any defense expert, or suggests that [redacted] suffers from any lack of capacity, mental defect, or intellectual limitation;

9. The raw data for the phone extractions provided in this case;

10. K9 Certifications for the K9 officer who was used during the traffic stop of [redacted]

11. A recording of the interview of [redacted];

12. Detective [redacted] reports;

13. Correspondence between [redacted] and District Attorney's Office regarding [redacted];

14. All discovery for [redacted] conviction;

15. Updated criminal histories for all the State's witnesses;

16. Any information in law enforcement files about a reference to [redacted]" found

on page 49 of the discovery in this case;

17. Confirm whether the Defense has been provided all of the jail phone calls that are part of the investigatory file and/or investigators have listened to; and

18. Explain the significance of "[redacted]" to this case.

The Defendant would further request an Order from this Honorable Superior Court directing the Sheriff of [redacted] County Jail to allow undersigned counsel to tour the [redacted] County Jail to view the block and cells occupied by state witness [redacted] and the Defendant were housed, and allow undersigned counsel to take photographs of same.

WHEREFORE, the Defendant respectfully moves the Court for an Order compelling the State to disclose the aforementioned documents and things within a reasonable time, for an Order directing the Sheriff of [redacted] to allow defense counsel to tour portions of [redacted] County Jail within a reasonable time, and for all other just and proper relief.

Respectfully submitted this the 16th day of August, 2023.

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(919) 354-7220

CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that he/she caused to be served a copy of this [redacted]

[redacted]

This the 16th day of August, 2023.

Emily J. Byrum
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401 Chestnut Street, Suite I
Wilmington, NC 28401
Phone: (910) 343-5385

Attorney for the Defendant

STATE OF NORTH CAROLINA

COUNTY OF ALAMANCE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 19 CRS 53740-42, 1257

STATE OF NORTH CAROLINA

v.

HYQUAN PARKER,
Defendant.

SUPPLEMENTAL MOTION TO DISMISS FOR DESTRUCTION OF EVIDENCE AND MOTION FOR SANCTIONS

COMES NOW Defendant, Hyquan Parker, by and through counsel, and hereby moves this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1 §§ 19, 23, and 27 of the North Carolina Constitution, N.C.G.S. §15A-954(a)(4), N.C.G.S §§15A-903 and 910, N.C.G.S. §§ 8C-1, Rules 106, 401, and 403, Brady v. Maryland, 373 U.S. 83 (1963), California v. Trombetta, 467 U.S. 479 (1984), Kyles v. Whitley, 514 U.S. 419 (1995), State v. Williams, 362 N.C. 628 (2008), State v. Absher, No. COA 09-1426 (Oct. 5, 2010) (unpublished, copy attached hereto), State v. Knoll, 322 N.C. 535 (1988), and their progeny, and other related statutes and case law for sanctions for the State's failure to preserve and produce significant material evidence in this case. Mr. Parker asks that this motion be considered in light of his previously filed Motion to Dismiss for Destruction of Evidence (BHA Video), filed May 28, 2024, and in the shadow of other irregularities surrounding the production of discoverable material in this case. In support of the foregoing Motion, Mr. Parker shows unto the Court as follows:

OVERVIEW

1. Mr. Parker is charged with three counts of first-degree murder, one count of possession of firearm by felon, and violent habitual felon status. The decedents in this case are Tyrone Nelson, Kaseem Peterson, and Jason Williams.
2. The State would prefer that Mr. Parker receive the death penalty.

THE STATE'S THEORY AND SUMMARY OF EVIDENCE

3. The State has provided some discovery to Mr. Parker and has described generally for the Court the evidence against him.
4. The State's theory of the case appears to be that Andre Owens, a friend of the decedents, drove Mr. Parker from Durham to Burlington on June 30, 2019, the day of the shooting.
5. Mr. Owens, Takira Renae Thorpe, Mr. Parker, and the decedents were together for much of the day, with their activities centered around 15 Perry Circle.
6. Video from the day would have shown various parties' comings and goings, including when Mr. Parker arrived on scene, when the other parties arrived and left, whether any other crimes took place at or around Perry Circle (as suggested by the transportation and wielding of an assault rifle by one of the decedents), Mr. Parker's demeanor throughout the day, and interactions among the witnesses, decedents, and Mr. Parker.
7. A Facebook Live video created by Mr. Williams shows Mr. Parker, the decedents, some of the witnesses, and unknown potential witnesses hanging out in the parking lot at Perry Circle.[1] According to Mr. Owens and Ms. Thorpe, there was no tension in the group prior to the shooting, though Mr. Parker seemed a little "off." See Defendant's Exhibit 8/8/24 #1, "TAKIRA" at 5:21 p.m.

[1] This video was provided to the Defense on August 23, 2024.

8. The Perry Circle apartment was maintained by Pate Homes and the Burlington Housing Authority and rented by Jasmine Woodard, Mr. Williams' girlfriend. Ms. Woodard lived at the home with several others, including her young son, Tracy Holly (her mother), Mr. Nelson, and Mr. Williams. Ms. Thorpe may have also lived at the apartment.
9. Ms. Woodard and Ms. Holly came in and out of the apartment that day according to their accounts (which would be corroborated or impeached by surveillance video).
10. Around 8 p.m., a few minutes after Mr. Owens and Ms. Thorpe left the apartment to go to a convenience store, the State contends that Mr. Parker picked up the decedents' rifle and shot the three decedents.
11. Ms. Woodard is the *only* eye-witness who would attempt to give an account of what happened downstairs at 15 Perry Circle around the time of the shooting.
12. She has stated, in various iterations, that while cooking supper she overheard one of the decedents shout a warning that there was a bullet in the gun, that Mr. Parker then threatened her with the gun, that she ran upstairs, that she heard several shots, and that she saw Mr. Parker going toward the back door of the apartment. Ms. Woodard then called 911.
13. Ms. Holly was also present in the apartment and gave a different account from the time of the shooting. She told Officer Smith that Ms. Woodard brought food to her upstairs and that a few minutes passed before they both heard gunshots. Ms. Holly never lost sight of Ms. Woodard between being brought the food and hearing the gunshots. When asked to identify the potential shooter in a show-up of Mr. Parker, Ms. Holly stated that Mr. Parker was not the man who had been hanging out in the apartment and that the man was someone with "red dreds."

14. The State will likely present another Facebook Live video, allegedly created by Mr. Parker shortly before the shooting, which the State will contend shows Mr. Parker in the living room with the decedents. The State downloaded or ripped a copy of the Facebook Live video early in their investigation, obtained a copy from Facebook, and made a copy of the video by having one officer use his body camera to take a video of it playing on a computer screen. See Defendant's Exhibit 8/8/24 #1, "moore 1046."
15. The State's evidence in this case will likely include video surveillance footage from the Burlington Housing Authority ("BHA") which the State will contend shows Mr. Parker with the decedents' gun leaving the scene of the shooting shortly after it happened.
16. Mr. Parker did not make significant inculpatory statements and no witnesses claim he confessed to the shootings.
17. The State will present other evidence that they contend shows Mr. Parker fired a gun at the time of the shooting, including gun shot residue and shell casings alleged to be consistent with the rifle recovered from near where Mr. Parker ran after the shooting.
18. When investigators arrived on scene, all three decedents were dead. Gerald Buchanan, a friend of the decedents', and Ms. Woodard were present in the apartment. At one point, Mr. Buchanan was going through Mr. Peterson's pockets.
19. Evidence tends to show that Mr. Williams is a high-ranking gang member and he, Mr. Owens, Ms. Thorpe, and Mr. Buchanan were engaged in a spate of robberies during 2019 across several counties. They primarily stole guns and other valuables.
20. Some witnesses interviewed by officers pointed to the apartment next door, 13 Perry Circle, as a location where guns and drugs were stored for use by Mr. Williams and his cohort.

21. Nearly everyone involved in the case, including all three decedents, most of the witnesses, and Mr. Parker are presumed to be Crip gang members. However, none of the evidence suggests that this alleged crime was motivated by a gang rivalry. Indeed, as recently as last month, the State has made clear that a theory of motive is "still being developed." Transcript of Proceedings, July 3, 2024, at 8.

PROCEDURAL HISTORY

22. On July 1, 2019, Mr. Parker was formally charged with three counts of first degree murder.
23. On July 2, Assistant Capital Defender Lamar Proctor was provisionally appointed to Mr. Parker's case.
24. By July 11 at the latest, the District Attorney for Alamance County, Sean Boone, had decided that this matter would be capital. By that date, Sergeant Braja had been briefed on the importance of documenting a capital case, as demonstrated by multiple statements he made that day to witnesses.
25. First, Sergeant Braja was on the phone with Mr. Owens and explained that he was "tasked by the District Attorney's Office" to talk to witnesses, and that it was important to do so quickly because "we got this hearing coming up . . . the DA is going to state that he's going to do a capital case on him." Sergeant Braja went on to explain that "this is going to be a capital case. They are going to want everything sealed up. . . . You know how court systems are, bro, especially with capital cases. . . [his attorneys] are going to try to say that he's crazy. . . ." Defendant's Exhibit 8/8/24 , "snow 1046."
26. Second, later the same day to Ms. Woodard, Sergeant Braja explained that "the DA is going to say it's going to be a death penalty case" at the Rule 24 hearing and that

Sergeant Braja understood that he needed to get "every video" and "every report" to Mr. Parker's "two attorneys by the end of the month," July 2019. Defendant's Exhibit 8/8/24 #1, "TRACY JASMINE", at 2:11:41.

27. On July 17, Mr. Proctor filed a Request for Discovery and Motion to Preserve Evidence.
28. On July 22, this case was declared capital and the Motion to Preserve Evidence was allowed.
29. On September 3, October 8, November 13, 2019, and January 7, 2020, Mr. Proctor asked the State for discovery by email.
30. On November 13, 2019, Mr. Boone indicated that he had not received discovery, but nonetheless hoped to try Mr. Parker's case in 2020.
31. In January 2020, dozens of body-worn and in-car cameras were provided, along with various reports, notes from officers, and some electronic evidence from seized devices.
32. On May 17, 2022, Mr. Proctor notified the State that several items were missing from the discovery, including a recording of a July 1 interview with Ms. Woodard conducted by Detectives Smith and Snow. The State was also notified that significant footage from BHA was missing.
33. Mr. Parker filed a number of additional discovery requests in 2023 and 2024. Among the material specifically requested were the notes and communications from various officers.
34. In recent discovery productions, the State has provided documents showing that written Burlington Police Department policies include (as reflected in the attached copies of such policies):
    a. That body cameras shall not be muted;
    b. That recordings shall be retained;

c. That digital evidence shall be maintained in a manner consistent with the "NCSBI Evidence Manual for the collection of computer equipment"[2]; and

d. That all evidence will be submitted to the evidence unit with only evidence unit officers having access to such evidence.

UNPRESERVED EVIDENCE

I. Jasmine Woodard July 1, 2019, Interview

35. Ms. Woodard was interviewed at length twice in this case. The first interview was on June 30, 2019. That interview was conducted by Detectives Floyd and Thierault at BPD. Jasmine was interviewed with her friend present. This interview was recorded and provided to the defense.

36. Ms. Woodard was then interviewed on July 1, 2019, by Detectives Snow and Smith at the police station in a room with recording equipment. During that interview, according to the testimony of Detective Smith and representations by the District Attorney, neither Detective took significant notes. See Defendant's Exhibit 8/8/24 #22; Transcript of Proceedings, August 8-9, 2024, at 170.

37. Ms. Woodard was also interviewed briefly on the scene on June 30 and at the police station on July 11. These interactions were all, for the most part, recorded on body cameras or on surveillance cameras at the police station. These recordings have been provided to the defense.

38. A recording of the July 1 interview was specifically requested by Mr. Proctor on May 17, 2022. This email was attached to the previous motion to dismiss and Mr. Parker requests that such emails be accepted as evidence in this motion.

[2] This manual has not been provided to the defense, though the District Attorney has provided State Crime Lab procedures.

39. On January 19, 2023, Sergeant Braja told the District Attorney, "[t]hat video was not included in our hard files or lists. It is not in the video server. Best I can tell that video was never recorded." Defendant's Exhibit 8/8/24 #8.

40. On January 20, 2023, Mr. Boone responded to Mr. Proctor that Sergeant Braja had spoken to Detective Smith who said that he did not have a copy of the July 1 Woodard interview recording. See email correspondence attached to prior Motion to Dismiss.

41. At the July 3, 2024, the Court ordered the State to respond in writing to the discovery request for the July 1 Woodard interview recording. On July 29, 2024, Mr. Boone and Assistant District Attorney Elizabeth Olivier signed a document that was ultimately filed with the Court and which stated that the July 1 Woodard Interview video "was not originally recorded and does not exist."

42. Detective Smith conducted a number of other interviews during the investigation. He testified that he does not have a photographic memory and that his practice was to record interviews and then to review the recording in order to write his summary. This practice is amply supported in the record, as discussed in the next several paragraphs. He confirmed that the dates on his report reflect the date the report was actually written. Transcript of Proceedings, August 8-9, 2024, at 171-82.

43. On July 11, Detective Smith interviewed Tracy Holly. Detective Smith stated in his summary (admitted as Defendant's Exhibit 8/8/24 #7) that the interview was recorded, and a recording was ultimately provided to the defense (admitted as Defendant's Exhibit 8/8/24 #1, "TRACY JASMINE"). His summary was dated September 3, 2019, and Detective Smith confirmed in his testimony that his report from the July 11 interview was

written on September 3 and that his summary was based on listening to the recorded interview. Id.

44. On July 1, Detective Smith interviewed Marshel Peterson. Detective Smith stated in his summary (admitted as Defendant's Exhibit 8/8/24 #23) that the interview was recorded, and a recording was ultimately provided to the defense (admitted as Defendant's Exhibit 8/8/24 #1, "ash 1105"). His summary was dated September 6, 2019, and Detective Smith confirmed in his testimony that his report from the July 1 interview was written on September 6 and that his summary was based on listening to the recorded interview. Id.
45. On July 8, Detective Smith interviewed Takira Thorpe. Detective Smith stated in his summary (admitted as Defendant's Exhibit 8/8/24 #5) that the interview was recorded, and a recording was made and ultimately provided to the defense (admitted as Defendant's Exhibit 8/8/24 #1, "TAKIRA"). His summary was dated October 30, 2019, and Detective Smith confirmed in his testimony that his report from the July 8 interview was written on October 30 and that his summary was based on listening to the recorded interview. Id.
46. Each of these interview recordings contain material information that is not found in Detective Smith's corresponding summary. See Appendix A, attached hereto.
47. As with all of Detective Smith's other interviews, the July 1 interview with Ms. Woodard was video recorded. The July 1 summary (admitted as Defendant's Exhibit 8/8/24 #25) states that the interview was "video (audio) recorded". The summary is dated August 26, 2019, and Officer Smith confirmed that that was the date the summary was written. Transcript of Proceedings, August 8-9, 2024, at 184.

48. Officer Smith's testimony indicates that he *could not* have written that report nearly two months after the date the interview was conducted without a recording. He testified that there *was* a recording and that he had notified Sergeant Braja that a recording was made. Id. at 184, 193.

49. In four weeks since the August hearing, the State has not modified or retracted its representation that no recording was made. See N.C. Rules Prof. Conduct, Rule 3.3(a)(1).

50. The July 1 interview contained material, useful, and exculpatory content.

51. First, the recording would certainly be used to impeach Ms. Woodard.

52. For example, Jasmine denies that she knew the "other two" people in the apartment aside from Mr. Parker and the three decedents. But later in the interview she admits knowing Andre Owens, who was one of the two people. Additionally, other evidence suggests that the other person, Ms. Thorpe, used to *live* at the residence with Ms. Woodard. In other words, less than twenty-four hours after her boyfriend was killed, she was dishonest with the police about who was in the apartment with her boyfriend minutes before the shooting.

53. Similarly, Ms. Woodard in the July 1 interview states she did not think the gun was kept in the house and in a prior interview had implied she did not know much about guns. However, then she describes the gun as similar to an AK, and several other witnesses describe the gun as being kept consistently in the apartment.

54. Additionally, Ms. Woodard's timeline of the events around the actual shooting is inconsistent across her statements, with different details and omissions in each iteration. Having a verbatim version of her statement on July 1 is critical to establish those and any other inconsistencies.

55. Second, the recording would be used to demonstrate and emphasize exculpatory and mitigating information. In the interview, Ms. Woodard describes Mr. Parker shaking while holding the gun, she describes the friendly interactions between Mr. Parker and the decedents, and she describes the criminal and gang relationships of the decedents that could help show that there would be no reason for Mr. Parker to have a gang-related motive for the crime. Given the nature of the relationships between Mr. Parker and the decedents, lack of motive would be material at both phases of the trial, should a second phase be required. Having Ms. Woodard's contemporaneous description of this information in her own words would be useful and exculpatory.

56. By necessity, there is a degree of speculation as to the usefulness of missing evidence. After all, the Defense will never see or hear this recording. However, Appendix A shows that there is *significant* material and exculpatory information in *each* of Detective Smith's other recorded interviews, information that did not make it into his summaries. There is no reason to doubt that the July 1 recording would have contained similarly useful and exculpatory information.

57. The State has implied that the existence of the June 30 Woodard interview renders the destruction of the video in this case harmless. However, Detective Smith's summary makes clear that different topics were covered in the July 1 interview. Also, given that every time Ms. Woodard has told the story there have been material inconsistencies, the defense should have had the opportunity to review and compare the two interviews.

58. An analogy to Williams, 362 N.C. 628, is apposite. In Williams, which is discussed at length in the previously filed motion, it seems clear that the trial court *could* have ordered the creation of a similar or identical poster to make a nearly the same point as the

original. But the Court's holding in Williams is an acknowledgement that the substitution of similar evidence is no replacement for the original.

59. The State should not benefit, in its argument on this motion or in the trial, from its destruction of the evidence discussed herein. The Court should not entertain arguments or speculation that the lost evidence was unimportant, inculpatory, or redundant – to do so would reward the State for its misdeeds and missteps to the detriment of Mr. Parker who is on trial for his life.

II. Officers' Notes, Communications, and Original Log

60. The response to the shooting on June 30, 2019, involved multiple police agencies and dozens of officers, many of whom were operating body-worn cameras and/or taking notes.

61. Officers' notes and communication are plainly part of the State's investigation file, and discovery was requested early and often by the defense in this case.[3] Some officers' notes were provided in various discovery releases during the pendency of this case. After a request for text messages and other communications, some emails and some text messages from 2023 and 2024 were provided to defense counsel in July 2024. After a specific request for a copy of the "GroupMe" communications among officers, that conversation was provided to the defense in August 2024.

62. The Court held a motions hearing on July 3, 2024, and there was discussion of officers' notes and communications. The Court directed the State to provide an explanation in writing regarding whether any further notes or communications could be provided.

[3] The defense is, of course, not required to make such specific requests. See G.S. § 15A-902(a). But the defense's diligence may be a factor in determining the appropriateness and degree of sanctions. United States v. Bagley, 473 U.S. 667, 682-83 (1985).

63. On July 29, 2024, the State filed a written response which stated that texts and emails had been "provided to the defense."

64. The response further stated that any handwritten crime scene log did "not exist" and was "transposed to the form in the case file."

65. Regarding notes taken by officers at the scene, the response stated, that the State had "nothing additional" to provide.

66. On August 8 and 9, 2024, a second hearing was held. At the hearing, officers described their investigatory actions on and shortly after June 30, 2019. Their testimony and admitted exhibits demonstrated that substantial communications, notes, and the original crime scene log were created but have been lost or destroyed.

Handwritten Crime Scene Log

67. A handwritten crime scene log was clearly created. Former Officer Phillip Baulding testified that he began the crime scene log after being one of the first officers on the scene. However, when he realized that Officer Hardy had been tasked with completing the log, he handed the log he started over to Officer Hardy. Transcript of Proceedings, August 8-9, 2024, at 324. This can all be seen on the body camera footage that is included on Defendant's Exhibit 8/8/24 #1, a flash drive with several recordings on it.



Defendant's Exhibit 8/8/24 #1, "BWC Baulding 814" at 8:37 pm.

68. Officer Hardy testified that he transposed the handwritten log to a type-written log which was provided in discovery. Defendant's Exhibit 8/8/24 #31. However, he also testified that he would likely have followed BPD's policy on turning in notes and would not have thrown away the original log. Transcript of Proceedings, August 8-9, 2024, at 292-295.

69. Burlington Police Department policy, as described by Officer Hardy, required that officers place a physical copy of their notes in an envelope and turn them in to an inbox where they then become part of the case file. Id.

70. On his body camera, Officer Hardy can be heard telling one Alamance County Sheriff's Deputy that he "might have missed one or two" on the list and the Sheriff's deputy informed him of some of the deputies who had been in and out of the scene. Defendant's Exhibit 8/8/24 #1, "Hardy 842" at approximately 9:23:45.

71. A woman named Ebony Tyson was allowed to enter the crime scene and can only barely be seen on the various body camera recordings. Her apartment is listed as 13 Perry Circle.

72. In an interview a few days later, Keisha Thorpe, mother of Takira Thorpe, suggested to officers that Apartment 13 was where guns and drugs were stored by the decedents and witnesses, and she stated that she understood that Ms. Tyson had entered the crime scene to secret away guns and drugs belonging to Mr. Williams and the other decedents and witnesses. See Defendant's Exhibit 8/8/24 #1, "K THORPE" at 6:40.

73. A handwritten log, especially if there were any scrivener's errors in the creation of the typed log, would shed more light on the activities around the crime scene, help provide the names of officers who may have interacted with Ms. Tyson, and would show edits to the list that clearly occurred throughout the evening.

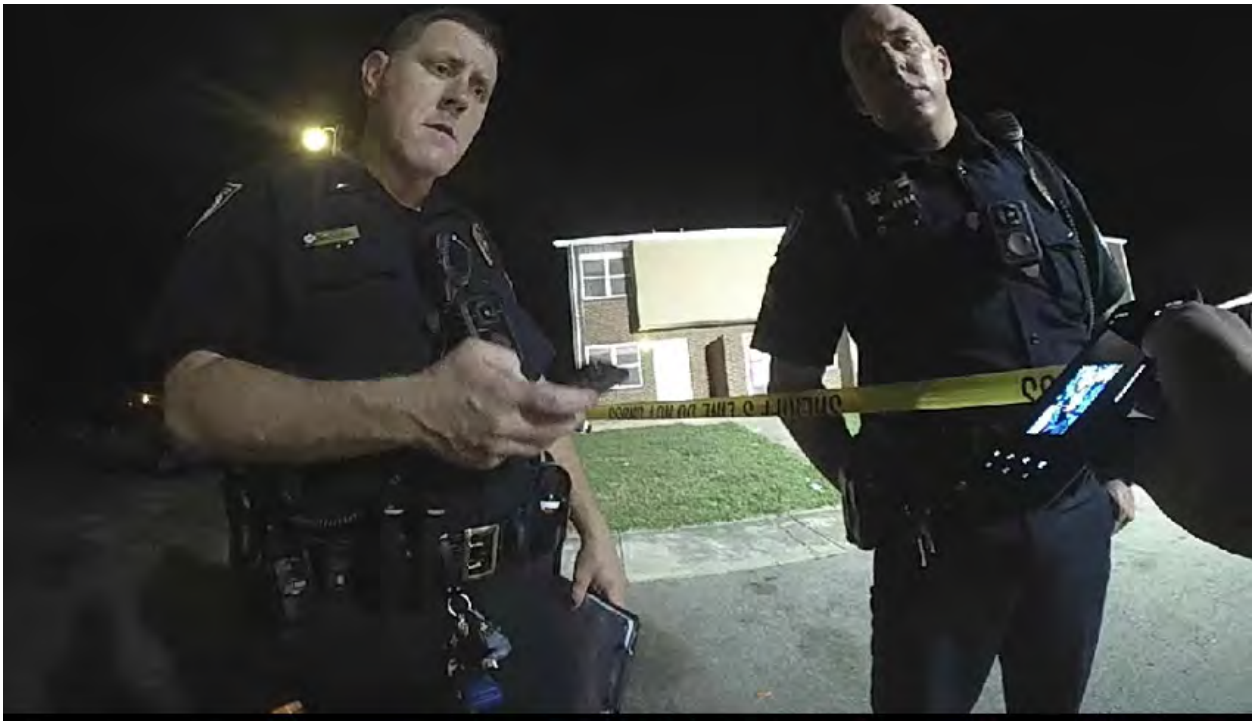
74. Officer Hardy's body camera sheds some light on these questions; that recording is included in its entirety on Defendant's Exhibit 8/8/24 #1. However, that recording did not cover all of Officer Hardy's time on scene and is only about 90 minutes long.

Electronic Communications Among Officers and Between Officers and Witnesses

75. Several officers at the August 2024 hearing testified that there was texting about the case throughout the night of June 30, 2019, and later in the investigation. Transcript of Proceedings, August 8-9, 2024, at 53-54 (Sgt. Braja), 159 (Asst. Chief Wright), 201 (Lt. Kology), 290-91 (former Ofc. Hardy).

76. Such testimony is corroborated by body camera footage. Officers are seen frequently with phones sharing images and appearing to send text messages throughout the course of the investigation. The screenshots below are by no means an exhaustion of the examples available.

77. Here, for example, Officer Staley shows Lieutenant Kology an image:



Defendant's Exhibit 8/8/24 #1, "BWC staley 810" at 10:50 pm.

78. Similarly, this unknown high-ranking officer appears to be texting:



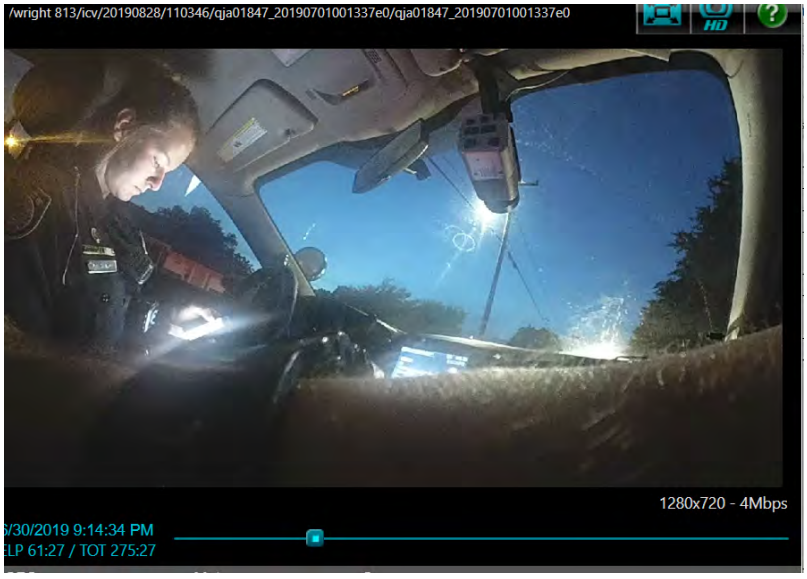
Defendant's Exhibit 8/8/24 #1, "hudson" at 9:41 pm.

79. Similarly, Officer Hardy was sending text messages during the investigation, as he admitted during the hearing and is evident from his body camera:



Defendant's Exhibit 8/8/24 #1, "hardy 842"at 9:29 pm.

80. The body cameras are replete with recordings of officers reviewing their phones and appearing to check and send text messages:



Defendant's Exhibit 8/8/24 #1, "wright 813" at 9:14:34 pm.

81. It is clear that officers also texted with witnesses as well. Five years after Mr. Parker requested discovery in this case, on July 26, 2024, the State provided an audio interview

with an unnamed aunt of decedent Mr. Nelson. On this recording, Officer Smith can be heard telling the witness "I am texting you right now." Defendant's Exhibit 8/8/24 #1, "BRAJA 07-03-19 14h11 (1)_Provided 7-26-24," at 6:13 minutes.

82. Detective Smith similarly referred to text messages back and forth between him and Ms. Woodard. Defendant's Exhibit 8/8/24 #1, "TRACY JASMINE" at 1:06:30.

83. Further, officers routinely throughout the investigation, provided witnesses with their cell phone numbers, suggesting additional text contact with witnesses.

84. Communications between officers and witnesses have obvious utility to the defense; especially, where, as with Mr. Nelson's aunt, the nature of the police follow-up with the witness would shape the ability of the defense to locate and question the witness.

85. Communications among the officers would show the manner in which the investigation unfolded, the timing of when leads were developed, and may provide more information on how investigators came to be aware of the decedents' criminal histories and social media activities, which appear in reports largely out of context.

86. Such communications are also exculpatory. A recurring theme in the case is that the police had extensive knowledge of the decedents in this case and very quickly came up to speed on their misdeeds. This appears in snippets in the discovery, but there clearly was some gathering and sharing of information about the decedents' criminal histories, gang ties, and other information that could shed light on potential motivations in this case and bolster Mr. Parker's defense and/or his mitigation.

87. Nonetheless, the only text messages provided to the defense were from 2023 and 2024, concerning attempts to respond to discovery requests rather than the substance of the investigation. The only communications from early in the investigation were an

assortment of emails from Sergeant Braja and a short group text chat through the "GroupMe" application.

Officers' Notes

88. It is also apparent from testimony and discovery provided that a number of notes taken by officers on and shortly after June 30, 2019, are now irretrievably lost or destroyed.

89. Although the State proclaimed on July 26 that there were "no additional" notes to be provided, one officer showed up with his notes after being subpoenaed by the defense to the August hearing. Assistant Chief T. Wright provided notes that he remembered he had written only when he was subpoenaed to come to court and decided to watch his body camera footage. Transcript of Proceedings, August 8-9, 2024, at 150-51.

90. Lieutenant Wright's notes were produced only because body camera footage showed him actively taking notes, and the notes were still available.

91. Other officers agreed, upon seeing body camera footage, that they too had been taking notes. Several stated that they would have turned in the notes for inclusion in the case file.

92. Officer Cousin, who did not prepare a report in this case but wore a body camera, agreed that she took notes, including when talking to witnesses. Transcript of Proceedings, August 8-9, 2024, at 237. Her notes have not been provided.



Defendant's Exhibit 8/8/24 #1, "2019-04309 06-30-19 821pm BW Cousin" at 8:57 pm.

93. Officer Raven Baulding (nee Hazelwood and hereinafter "Officer Hazelwood" to distinguish her from her husband) agreed that she wrote information on a notepad, including when talking to witnesses. Transcript of Proceedings, August 8-9, 2024, at 224. Her notes have not been provided.



Defendant's Exhibit 8/8/24 #1, "2019-04309 06-30-19 821pm BW Cousin" at 8:40:53.

94. Officer Houck agreed that he took notes for Officer Sauer during the investigation of the crime scene. Such notes were provided. However, he also took other notes, including when talking to witnesses. Transcript of Proceedings, August 8-9, 2024, at 286. These notes have not been provided.



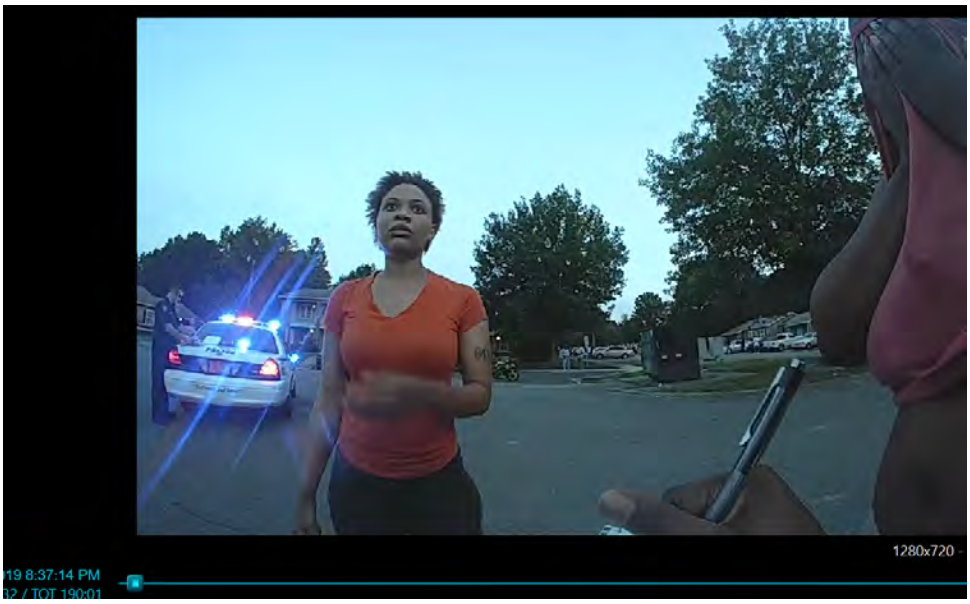
Defendant's Exhibit 8/8/24 #1, "houck 1132" at 11:37:02 pm.

95. Officer W. Wright agreed that he took notes, including when talking to witnesses. Transcript of Proceedings, August 8-9, 2024, at 276-77. His notes have not been provided.



Defendant's Exhibit 8/8/24 #1, "wright 813" at 8:58:05.

96. Officer Hudson agreed that she took notes, including when talking to witnesses. Transcript of Proceedings, August 8-9, 2024, at 233. Her notes have not been provided.



Defendant's Exhibit 8/8/24 #1, "hudson" at 8:37:14 pm.

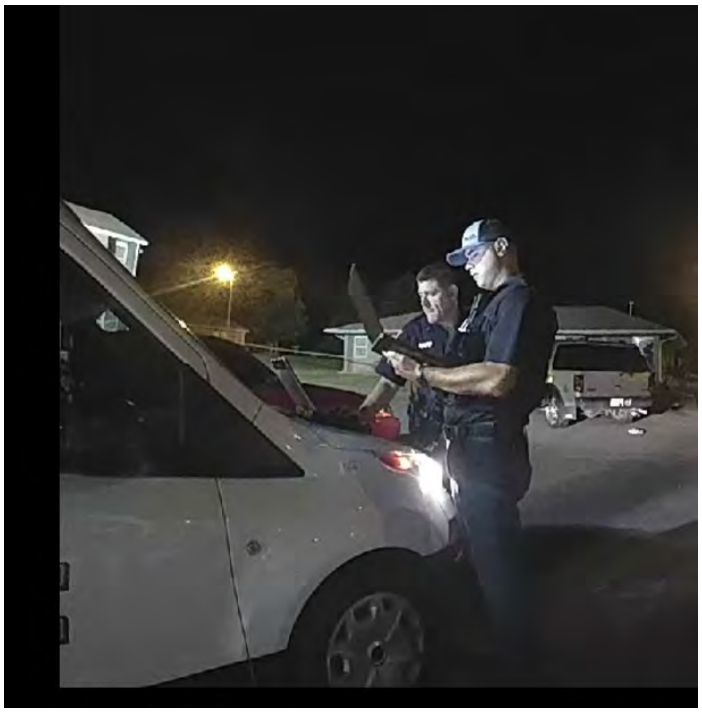
97. Each of these officers submitted body camera footage that covered portions of their time at the scene, for some of them substantial portions, but each of these officers was at the

scene *longer* than their body cameras were actively recording. Additionally, as discussed below, most officers muted their body cameras at points.

98. Some officers had no body camera, and some even wrote no report, despite being actively engaged in the investigation. For these officers, receipt of their notes is critical to know what aspects of the investigation they participated in and what leads they developed.

99. For example, Lieutenant Kology was in command and oversaw the arrest of Mr. Parker, the handling of the crime scenes, and appears to have been actively researching people involved in the case at the crime scene.

100. Here, Lt. Kology and another officer work on their computers while at the scene, presumably accessing information and communicating it to other investigators:



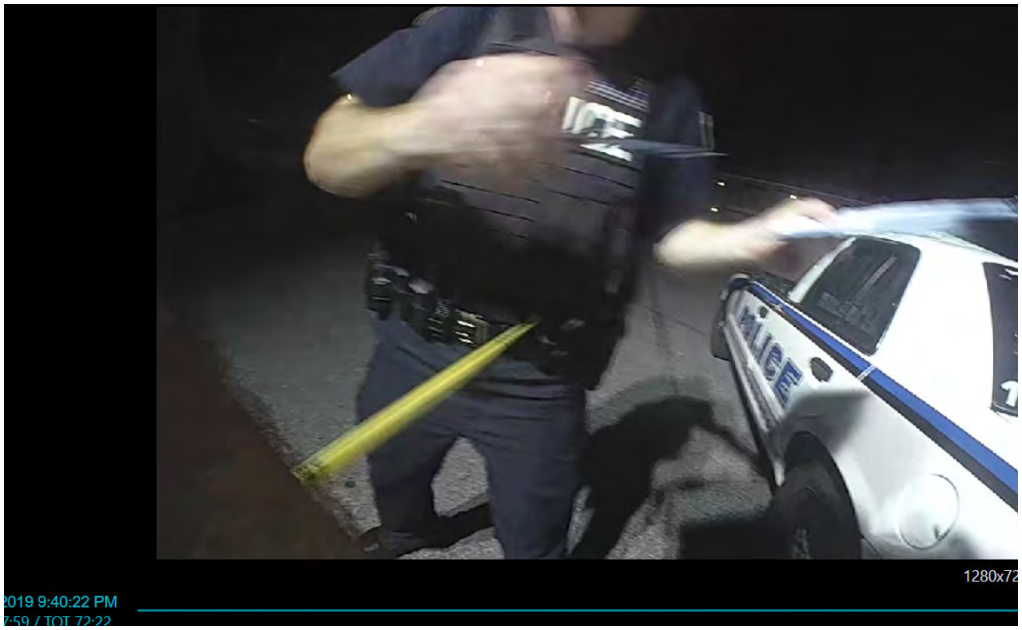
Defendant's Exhibit 8/8/24 #1, "BWC Staley" at 10:08:47 pm

101. Here, Lt. Kology is dropping off to Officer Hardy's care a clipboard with a notepad with a great deal of handwriting on the top page.



Defendant's Exhibit 8/8/24 #1, "hardy 842" at 9:38:45.

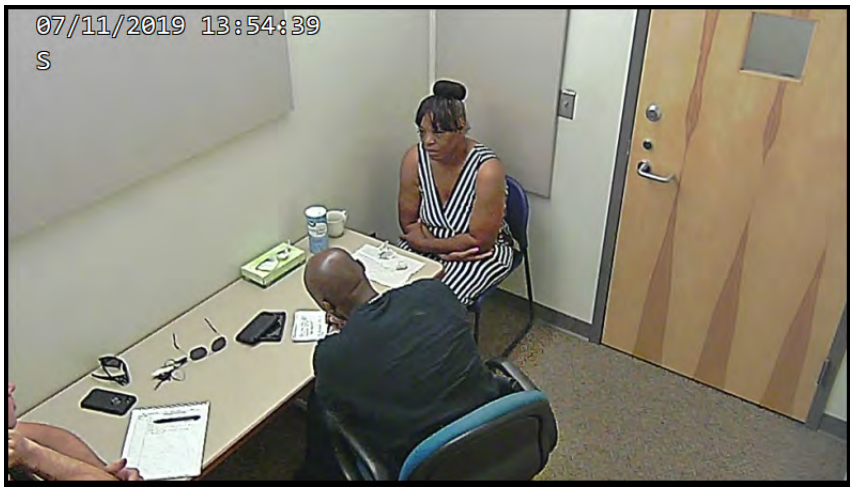
102. Lieutenant Kology returned to the scene and then retrieved his notes from Officer Hardy.



Defendat's Exhibit 8/8/24 #1, "Hardy 842" at 9:40:22 pm.

103. While on the stand, Lt. Kology equivocated about whether he had made notes; the body camera footage strongly suggests that he did.

104. In some cases, officers seem to have preserved part of their notes but not all of them. For example, Detective Smith provided a very short page of notes (submitted as Defendant's Exhibit 8/8/24 #22 during the hearing) but appears to be taking other notes that have not been provided in his interview with Ms. Holly:



Defendant's Exhibit 8/8/24 #1, "TRACY JASMINE"

105. It is important to note that the testimony provided at the August hearing is merely the tip of the iceberg. These officers were subpoenaed by the defense because it was obvious from other discovery that, despite the State's prevarication to the contrary, these officers had made notes. It remains unknown and entirely unclear how many other officers took notes at the scene, whether officers took other notes or collected other documentary evidence that did not make it to the file, and whether the notes provided for individual officers are complete.

106. What is entirely clear is that, contrary to established policy, documents were created (either on paper or in text chains) and were allowed to be destroyed in spite of BPD's full knowledge that this was a capital case and that the collection and retention of evidence was paramount.

107. The cumulative loss of the handwritten log, notes, and other communications suggests a pattern and practice of failure to preserve documentary evidence.

III. Muting of Body-worn Cameras

108. The Burlington Police Department has a clear policy regarding the use of body cameras – body cameras are not to be muted.

109. The policy states in relevant part: "Audio microphones shall be placed in the "on" position during the entire incident. Microphones should never be muted during [digital recording system] activation." Defendant's Exhibit 8/8/24 # 27 at 4.

110. Officers on the stand, including the lead investigator, and the District Attorney suggested that this might not have been the policy in July 2019; however, subsequent discovery productions included the policy created in 2016 which has the same policy.

111. Additionally, an email from a commander emphasized in September 2019 that anyone muting a body camera was in violation of the policy. This email is attached hereto.

112. It appears that the reason officers *were* muting their body cameras was to prevent defense attorneys from scrutinizing their work. In September 2019, then-Lieutenant T. Wright explained to the Assistant Chief of Operations that muting body cameras was needed to prevent preservation of material that would "just lead[] to another thing for the defense to attack."

113. A BPD meeting two days later emphasized that such action was an unacceptable violation of policy. The notes from this meeting are attached hereto.

114. Indeed, some officers admitted that this was the policy or at least that they understood they were not to mute their body cameras. Transcript of Proceedings, August 8-9, 2024, at 24 (Ofc. Griffin), 232 (Officer Hudson).

115. In spite of this policy, many officers muted their body cameras.

116. Among the officers muting their body cameras were:

a. Officer Hazelwood: One of her body camera recordings was muted while she spoke to Mr. Parker and discussed performing a GSR test on him. Her other body camera recording was muted for almost the entire duration of the recording, including when talking with civilians at the scene. Defendant's Exhibit 8/8/24 #1, "hazelwood 918" and "hazelwood 821."

b. Officer Moore: His body camera also provided a view of GSR test attempt by Officer Hazelwood, but he muted his audio as well during that interaction. Defendant's Exhibit 8/8/24 #1, "moore 815."

c. Detective Floyd's body camera is muted while talking to witnesses, including part of the time that he is speaking with Jasmine Woodard. Defendant's Exhibit 8/8/24 #1, "Interview Jasmine Woodard."

d. Officer Staley: His body camera is muted, including when talking with civilians at the scene. Defendant's Exhibit 8/8/24 #1, "BWC Staley 810."

e. Lieutenant Wright's body camera, which was only operating for a short period of time, is muted at times when he speaks with other officers. Defendant's Exhibit 8/8/24 #1, "T Wright BWC."

f. Officer Wright's body camera is muted for approximately 20 minutes while discussing possible motives for the suspect in the case. Id.

g. Officer Cousin's body camera is muted for several minutes while talking to other officers. Defendant's Exhibit 8/8/24 #1, "J Cousin BWC."

117. In her report regarding the attempt to perform a GSR test on Mr. Parker, Officer Hazelwood recounts that Mr. Parker spoke to her, telling her "he knew his rights" and that he wrote with "both" hands. He then refused to open his fists and wouldn't allow the test to be conducted. Defendant's Exhibit 8/8/24 #26.

118. This version of events cannot be corroborated or undermined by either Officer Hazelwood's or Officer Moore's muted body camera.

119. The numerous civilian witnesses who are interviewed often go unidentified because of muted body cameras. These are now potential witnesses that the defense has no way of locating.

120. As with the missing communications, muting discussions among officers further has undermined defense knowledge of the case and created an unacceptable information asymmetry. In context, one of the topics of conversation among officers appears to have been information known about the decedents and witnesses – information that could have been used by the Defense to help illuminate the relationships among the personalities in this case.

IV. BHA Surveillance Video

121. Information concerning the unpreserved BHA video is summarized in Mr. Parker's prior Motion to Dismiss for Destruction of Evidence (BHA Video).

122. In addition to the facts already alleged in the prior motion and incorporated herein, the August hearing demonstrated that BPD had significant control over the BHA video.

123. Both Officer Ashworth and Sergeant Shockley testified that they were left with the BHA video system and allowed to view whatever video they chose and that they were in control of the system. Transcript of Proceedings, August 8-9, 2024, at 134-136, 240-242.

124. Sergeant Shockley further testified that BHA would obtain, preserve, and provide video data on behalf of BPD. Transcript of Proceedings, August 8-9, 2024, at 33-36.

125. This is consistent with what the defense investigator learned when speaking with the people who maintained the BHA video system. See attached Affidavit of Bob Boykin.

126. The Executive Director of BHA explained that BHA video may be viewed by the police at any time, and the system is such that BPD is able to view BHA video from the police station.

127. Another BHA employee explained that the video system records over old footage and that, by 2023 when it had become clear that all of the footage had not been released in discovery, the footage from June 30, 2019 was no longer available.

128. Finally, an employee with Security Consulting, Inc. ("SCI"), Ron Davis, explained that SCI had a contract to maintain the video surveillance system.

129. Mr. Davis was working with SCI in 2019 and states that he personally extracted the relevant footage from the SCI hard drives and provided such footage to the police upon their request.

130. It seems possible based on the testimony from Detectives Braja, Ashworth, and Shockley, that the 5 a.m. to 2 p.m. BHA footage was never downloaded for BPD.

131. However, lack of clear memory by the officers and lack of fidelity to appropriate evidentiary procedures muddies the waters on this question.

132. Text communications among officers strongly suggest that, as recently as June 2024, no one with BPD could precisely say *where* the original data download from BHA/SCI was or where the alleged "working copy" that Sergeant Shockley created was saved. Defendant's Exhibit 8/8/24 #14.

133. The text exchange between Sergeant Shockley and Sergeant Braja reflects confusion. The two go back and forth about possible locations of the original data (the "homicide box", the "CID computer", etc.). Eventually, after Sergeant Braja sends Sergeant Shockley a screen shot of material on a hard drive that Sergeant Braja had been using for electronic data from several cases ("Braja hard drive"), the two officers appear to settle on the conclusion that the original data was most likely downloaded to the Braja hard drive.

134. The statements by Mr. Davis and Sergeant Shockley's original report suggest that the material was downloaded by Mr. Davis and then picked up by Sergeant Shockley, but it does not describe on what device this transfer was made. There is no suggestion that BPD provided the hard drive or that Sergeant Braja was involved at all with the creation of the drive.

135. Sergeant Shockley states in his report that the drive (whichever drive it was) would be put into evidence. At the hearing, Sergeant Shockley stated he did not put it into evidence and it became clear that the drive was never put into evidence.

136. Sergeant Shockley stated he was not sure where the hard drive was and thought it was with the DA or in evidence; later in his testimony he said he was "certain" that the

drive was the one in possession of Sergeant Braja. Transcript of Proceedings, August 8-9, 2024, at 253, 255.

137. In any case, to date, the original data is not stored in evidence.

138. The working copy that Sergeant Shockley made was saved to a computer, but as his testimony clarified at the hearing, that copy was deleted when more space was needed on the computer. Transcript of Proceedings, August 8-9, 2024, at 43.

139. Sergeant Shockley's and Sergeant Braja's testimony notwithstanding, their text messages make clear that neither officer knew for certain whether the Braja hard drive contains all of the data provided by BHA/SCI to BPD and whether that was the original downloaded data or another "working copy."

140. In any case, whether or not the 5 a.m. to 2 p.m. footage was ever downloaded and then lost or was simply reviewed and examined by Detective Ashworth, the State obtained information from the video evidence and did not preserve it.

141. The obvious utility, exculpatory value, and mitigating value of the BHA footage are explained in the prior motion.

142. The bad faith of the State is exacerbated by its failure to appropriately place the electronic evidence into a secure evidence room, such that the Court could be certain that the electronic evidence is in its original *complete* format.

ARGUMENT

143. Mr. Parker incorporates by reference the argument and authority provided in his previously filed Motion to Dismiss (BHA Video).

144. In addition to the explanation therein, State v. Taylor outlines the two ways in which dismissal may be appropriate where evidence is lost or destroyed. 268 N.C. App.

455 (2019) (unpublished) (copy attached hereto). Further, dismissal is also appropriate as a discovery sanction. State v. Adams, 67 N.C. App. 116 (1984). Finally, although neither suppression of evidence nor declaring this case non-capital can do justice in light of the outlined violations, these specific alternative sanctions could mitigate some of the prejudice in this case. Other remedies are not up to the task of ensuring a fair trial for Mr. Parker.

I. Dismissal is required due to destruction of exculpatory evidence or interference with Defendant's right to investigate, regardless of bad faith.

145. "[T]he State's destruction of material, favorable evidence to the Defendant, and its admission that the evidence could not be produced, warrant the conclusion that any trial commenced against the Defendant would not comport with our notions of due process" and as a result, "Defendant's constitutional rights were flagrantly violated." State v. Williams, 362 N.C. 628, 639 (2008). Dismissal is appropriate in such cases "irrespective of the good or bad faith of the prosecution." Id. at 636.

146. Exculpatory evidence, particularly at this stage, includes evidence that *could* either confirm or undermine the credibility of the State's witnesses; Mr. Parker need not prove that the evidence would be unequivocally or definitively favorable to him. Our Court of Appeals, in discussing the exculpatory nature of the selectively preserved video in State v. Absher, described the exculpatory nature of the material in the following terms:

> "[t]he original video *might* have confirmed [the Officers'] testimony or impeached it. . . . The original video *might* have explained the discrepancy [among witnesses' testimony]. . . . Moreover, the trial court's findings support its conclusion that the missing video segments were material and were favorable to his defense. The video

> would have provided better images of defendant Absher's injuries and *might* have provided evidence demonstrating his impaired mental state. In addition, the video *could* have been used to impeach some of the State's witnesses."

No. COA 09-1426 at 18-21(emphasis added).

147. The exculpatory or mitigating value of the evidence lost in this case is discussed above, and it should be considered cumulatively. See State v. Canady, 355 N.C. 242, 246 (2002) (giving a condemned defendant a new trial on the basis of cumulative constitutional violations). The accumulation of prejudice in this case is not linear; it is exponential. Information the State failed to retain included videos that would have shown witnesses the Defense could interview, notes that could have led to other leads that the police abandoned, and potentially conduct by Mr. Parker that could have been shown to experts who may have had an opinion on his mental state at the time of the offense. Moreover, where one form of evidence was lost (e.g., the Woodard video), it sometimes makes it difficult to even figure out what other evidence has been lost (e.g., the information shared by Ms. Woodard from her phone with Detective Snow). And the multiple instances of failures to follow policy, failure to preserve useful information, and the tendency to cover up such failures rather than own up to them strongly suggest that more evidence is lost than can ever be known.

148. The capital nature of this case expands vastly what could be considered "exculpatory" due to the broad definition of mitigation adopted by the United States Supreme Court and our capital punishment statute. Mitigating evidence is any reason arising from the evidence to choose life. See 15A-2000(f)(9). Indeed, mitigation is "potentially infinite." Ayers v. Belmontes, 549 U.S. 7, 34 (2006)

149. Thus, evidence that might be irrelevant to the first phase could be exculpatory in the second phase as either mitigation or to rebut circumstances that might push a jury toward the death penalty. This would be true of evidence regarding relationships among the actors in this case, the presumed motive of Mr. Parker, Mr. Parker's level of impairment, the description of the heinousness of the alleged crime, and any number of other factors that would have been elucidated by the unpreserved evidence.

150. But even if the lost evidence were not directly exculpatory, dismissal is still appropriate because the State's failure to preserve evidence and information undermined Mr. Parker's right to procure evidence and conduct his own investigation. State v. Knoll emphasizes that where the State's failure to honor its statutory and constitutional obligations interferes with a defendant's ability to gather evidence, dismissal is the only appropriate remedy. 322 N.C. 535, 547-48 (1988) ("The lost opportunities . . . constitute prejudice to the defendants in these cases. That the deprivations occurred through the inadvertence rather than the wrongful purpose of the magistrate renders them no less prejudicial."); see also State v. Hill, 277 N.C. 547 (1971) ("Before we could say that defendant was not prejudiced by the refusal of the jailer to permit his attorney to see him we would have to assume both the infallibility and credibility of the State's witnesses as well as the certitude of their tests. . . . [W]hen an officer's blunder deprives a defendant of his only opportunity to obtain evidence which might prove his innocence, the State will not be heard to say that such evidence did not exist. Defendant has been deprived of a fundamental right which the constitution guarantees to every person charged with crime. For that reason the prosecution against him must be dismissed."); State v.

Ferguson, 90 N.C. App. 513, 519 (1988) (requiring the trial court to consider a motion to dismiss under Article 1, section 23 of the North Carolina constitution).

151. In Knoll, the defendants appealing their cases all had blood alcohol concentrations that would be defined by statute as *grossly* impaired. Mr. Knoll blew a .30, which is staggeringly drunk. Id. at 538. Even in the face of such overwhelming evidence of impairment and even where the defense's "lost opportunity" likely would have yielded *inculpatory* evidence of appreciable impairment, the Court found that dismissal was appropriate. Claims of overwhelming evidence of guilt and protests that the defense has not shown that evidence would be exculpatory thus do not undermine Mr. Parker's claim.

152. Mr. Parker's statutory and Constitutional rights (and this Court's prior order) required the retention and provision of information and evidence that was instead destroyed. The failure to preserve such evidence has directly interfered with the Defense investigation, particularly as to evidence of his relationships with the decedents and witnesses and his unusual (potentially impaired) behavior leading up to the crime.

153. Additionally, while the burden is usually on the Defendant to show that destroyed evidence is exculpatory, it is appropriate for the Court to place the burden instead on the State where, as here, the State had a duty to maintain the evidence. Such shifting of the burden is appropriate to prevent the State from benefiting in this motion from its wrongful destruction of information it had a duty to maintain. See, e.g., Nayokpuk v. United States, 848 F. Supp. 2d 1030 (D. Alaska 2012) (burden-shifting in negligence cases is an appropriate response to destruction of evidence in one party's control); Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946) (superseded by statute) (shifting part of the burden in wage theft cases from employees to employers where

employers fail to maintain appropriate records); State v. Benton, 136 Ohio App. 3d 801 (2000) (holding that shifting the burden in a motion to dismiss is appropriate where state had a duty to maintain evidence and destroyed it in a routine fashion); State v. Benson, 152 Ohio App. 3d 495 (2003) (shifting the burden in a motion to dismiss where the State was ordered to maintain evidence and failed to do so).

154. The State's duty to maintain the evidence discussed herein is plain under our discovery statutes and the Brady line of cases from our courts.

155. With respect to the BHA video, it should be noted that the discovery statute defines investigatory agencies to include "any . . . private entity that obtains information on behalf of a law enforcement agency" and therefore includes BHA/SCI. G.S. § 15A-903(1)(b1). Thus, not only was it improper for the State to fail to produce the video that Detective Ashworth watched, it was also improper for them to fail to produce the video from 2 p.m. to 6 p.m.

156. The prosecutor in this matter has previously suggested that certain evidence (e.g., the BHA video) was not "collected" and therefore the investigators had no duty to preserve such evidence.

157. It is correct that the police have no duty to stray from their primary investigation and go searching for exculpatory evidence. State v. Chavis, 141 N.C. App. 553, 561 (2003) (where investigators had never reviewed witness' mental health records, they had no duty to collect them); State v. Foushee, 234 N.C. App. 71 (2014) (where investigators had never viewed surveillance video, they had no duty to collect it).

158. However, this does not equate with saying the State had no duty to collect information that it learns and uses in its investigation. Unlike in Chavis and Foushee,

investigators in this case viewed or obtained extensive surveillance video and chose not to preserve it. The State had the benefit of this information in their investigation, and Mr. Parker is deprived of it.

159. The ease with which the State collected and preserved Mr. Parker's Facebook Live video by simply taking a video of the video and the fact of the State's unfettered access to the BHA video and the willingness of BHA/SCI to download any video for them make clear the vacuousness of any distinction between uncollected and unpreserved evidence. While the State isn't required to collect every fiber at a crime scene or interview everyone who may have information about a crime, where the State *uses* such evidence in its interviews and could easily preserve the evidence, the failure to do so is no different than physical collection and destruction of evidence. See United States v. Yevakpor, 419 F. Supp. 2d 242 (N.D.N.Y. 2006) (discussing at length the consciousness and deliberation that goes into the selective retention of surveillance video).

160. In fact, any rule allowing the selective retention of some footage and failure to preserve other footage invites abuse. Investigators, cognizant that no duty has arisen, would be unfettered by Brady and our discovery statute. A rule that allows such gaming of important constitutional and statutory rights is lawless.

II. Dismissal is required due to destruction of potentially useful evidence, in light of bad faith.

161. The Court should also dismiss this case under Arizona v. Youngblood, 488 U.S. 51 (1988). Youngblood stands for the proposition that due process requires the dismissal of a case where speculatively useful evidence is destroyed due to the bad faith of State actors.

162. Evidence of bad faith in this case is manifold. First, from the outset, the State's investigators acted in violation of numerous Burlington Police Department policies, including the requirement that body cameras record all audio and not be muted, directives surrounding the collection and retention of evidence, and unwritten but apparently well-established procedures for the depositing of notes and documents in the case file. Violations of policy may amount to bad faith. See Taylor, 268 N.C. App. at 455 (determining in contrast to the dissent that a bad faith finding was possible and remanding to a trial court where Trooper failed to follow policy); see also United States v. Elliot, 83 F. Supp. 2d 637, 647 (E.D. Va. 1999) (discussing at length the violations of policy that weighed in favor of a finding of bad faith and a shift in the burden regarding whether unpreserved evidence was exculpatory).

163. BPD directives aside, failure of BPD to appropriately preserve all information obtained during the investigation runs afoul of clearly established constitutional rules (as outlined in the cases cited above) and the repeated violation of these norms strongly suggests bad faith. The strength of this claim for bad faith is enhanced by the fact that the investigators were well aware that Mr. Parker would ultimately face the death penalty if convicted. Sergeant Braja's statements indicated that he knew well the importance of a complete investigatory record in this case in particular.

164. Second, the lack of candor by investigators and the District Attorney and Assistant District Attorney in this case supports a finding of bad faith. See Napue v. Illinois, 360 U.S. 264, 269-70 (1959) ("A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth. . . . That the district attorney's

silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair."); see also State v. Benson, 152 Ohio App. 3d 495 (2003) (evasive and dishonest statements as to whether evidence existed support a finding of bad faith); Stuart v. State, 127 Idaho 806 (1995) (concealment suggests bad faith).

165. Officer Smith testified, under oath and consistent with the evidence and common sense, that his July 1 interview of Jasmine Woodard was recorded. He testified that he would not have been able to write his report nearly two months later without the recorded interview. He also testified that when Sergeant Braja, the lead detective who sat behind counsel for the State during the entire evidentiary hearing on August 8-9, 2024, asked him about the interview, Officer Smith told Sergeant Braja that it was recorded. Nevertheless, the State communicated to the defense several times in the last five years that the interview was not recorded. Further, counsel for the State filed a document with the Court on July 26, 2024, asserting that the interview "was not originally recorded and does not exist."

166. Other officers gave statements that were inconsistent with the representations of each other or with established policies (for example, officers who claimed that muting was acceptable policy) and other officers gave statements that were simply inconsistent with the evidence (for example, Sergeant Shockley's claims of "certainty" around the Braja hard drive). Officers (such as Assistant Chief Wright) were evasive on the stand, and the prosecutors were deliberately vague at times in describing the original existence or non-existence of evidence (for example, in their signed statement regarding whether officers took notes at the scene).

167. Indeed, the District Attorney's office has yet to correct its material misstatements made to this Court regarding discovery, specifically whether the July 1 Woodard interview existed. Lesser conduct in a capital case has resulted in a defense attorney being sentenced to 30 days in jail. See e.g., Trial Court Order, In re Geoffrion, Dare Co. docketed on appeal as P23-730 (holding in contempt a defense attorney who *corrected* a non-material misstatement of fact and sentencing the attorney to thirty days in jail).[4] Uncorrected misstatements by both prosecutors in this case, in addition to risking being contemptuous, may also be criminal under G.S. §15A-903(d).

168. The Court could also find bad faith because a *reasonable* officer would know that evidence of inconsistent statements by witnesses, evidence of a defendant's impairment (particularly in a capital case), and evidence concerning the relationship among the defendant and the decedents that could explain or dispel potential motives are exculpatory. This knowledge supports such a finding. State v. Banks, 125 N.C. App. 681 (1997).

169. Although Sergeant Braja testified that he has received no training on capital cases, a reasonable officer is imputed with knowledge of binding case law, City of Tahlequah v. Bond, 595 U.S. 9, 14 (2021), which would include our general statutes and capital cases defining the scope of mitigation.

170. Finally, the pattern of destroyed evidence or unpreserved information suggests that the State was determined to simplify this case. Although the State has never settled on a motive, the material destroyed frequently concerned evidence that would have clarified the relationships among the witnesses, decedents, and Mr. Parker. Such

[4] Mr. Parker is not requesting such action against the prosecutors in this case.

relationships could support a first-phase defense (self-defense based on very reasonable fear of the decedents) and would support any number of second-phase mitigators. The State attempts to re-cast failure to preserve information in this case as investigators' determination that such evidence was not *relevant*. To the contrary, it appears merely that such evidence was not *helpful to the State.* As one court wisely put it when describing selective preservation of video evidence, "[the court] does not believe that the investigatory agency would delete material that was beneficial to the Government's case." Yevakpor, 419 F. Supp. 2d at 247.

III. Dismissal is appropriate as a discovery sanction.

171. Dismissal is an appropriate sanction under our discovery statutes where there is some prejudice. Though the remedy has been called "extreme", it may be used where discovery violations impede a defendant's ability to get a fair trial. State v. Adams, 67 N.C. App. 116 (1984) (trial court acted within discretion in dismissing charges for prosecution's failure to comply timely with court order requiring statutory discovery).

172. In Adams, there was no claim that the failure of the State to comply in a timely fashion with the Court's discovery order deprived the defendant of any exculpatory evidence; indeed, in that case no evidence was destroyed. The prejudice in that case was simply that the State had deprived the defense of the ability to confer timely about the case with their client who had intellectual limitations.

173. The prejudice in Mr. Parker's case is far more severe than that in Adams. The Court in this case has set no discovery timeline, so the defense has routinely had to absorb more discovery (including as recently as the last two weeks) to review with Mr.

Parker, who, like Mr. Adams, suffers from cognitive limitations. Moreover, the failure to preserve evidence in this case has, as discussed above, impeded Mr. Parker's investigation and prevented him from presenting exculpatory or potentially useful evidence to the jury.

174. Unlike in Adams, where a continuance and other sanctions at trial likely could have remedied the discovery violations, in this case, only dismissal can prevent Mr. Parker from being subject to an unfair trial. Dismissal in this case is appropriate in light of the centrality of the unpreserved evidence to this case and the flagrancy of the statutory and constitutional violations.

IV. Suppression of certain evidence is appropriate as a discovery sanction.

175. Another remedy that would at least mitigate the prejudice in this case is exclusion of any evidence where Mr. Parker's ability to meet, rebut, or investigate such evidence has been impeded by the State's failure to preserve related evidence.

176. This remedy is permissible by our discovery statute and is required under certain circumstances. State v. James, 182 N.C. App. 698, 702 (2007) (trial court excluded witness statement produced by State after discovery deadline set by trial court); State v. Banks, 125 N.C. App. 681 (1997) (as sanction for failure to preserve evidence, trial court prohibited State from calling witness to testify about evidence, stripped prosecution of two peremptory challenges, and allowed defendant right to final argument before jury), aff'd *per curiam*, 347 N.C. 390 (1997); see also Elliot, 83 F. Supp. 2d at 649 (holding that suppression was appropriate constitutional response to destruction of evidence where the evidence could have been inculpatory or exculpatory); Yevakpor, 419 F. Supp. 2d at

246 (Rule of Completeness would require the whole video to be played so exclusion would have been appropriate)

177. Mr. Parker specifically requests:

a. Exclusion of the testimony of any officer who can be shown to have not provided their complete notes in this case; and

b. Exclusion of the testimony of any officer who muted their body camera while on scene; and

c. Exclusion of the testimony of any witness whose statements, all or in part, were lost due to the muting of a body camera; and

d. Exclusion of any statements by Officer Hazelwood or Officer Moore regarding Mr. Parker's cooperation or lack thereof with the GSR test and exclusion of any statement made by Mr. Parker during this interaction, see G.S. § 15A-211;

e. Exclusion of any GSR analysis; and

f. Exclusion of the testimony of Jasmine Woodard; and

g. Exclusion of any BHA video, see Yevakpor, 419 F. Supp. 2d at 252.

178. Exclusion of evidence is at best an incomplete remedy as it fails to adequately address the loss of investigative opportunities which underly fundamental strategic decisions such as which defense will be put forward.

V. Removing the option of a death sentence is a necessary sanction.

179. As discussed at length in Mr. Parker's previously filed Motion to Provide Exceptional Safeguards to Ensure Reliable Outcome (filed May 28, 2024), capital cases are different, which compels an additional remedy in this case: declaring that the State may not have its preferred sentence of death.

180. Taking away the option of a death sentence is not an extreme remedy and does not require a finding of bad faith. See State v. Defoe, 364 N.C. 29 (2010) (declaring a case non-capital may be a remedy for violation of Rule 24).

181. There is nothing about this case (or any case) that uniquely requires the imposition of the death penalty. See Woodson v. North Carolina, 428 U.S. 280, 304-05 (1976) (holding unconstitutional North Carolina's mandatory death penalty statute).

182. There are multiple instances where our Superior Courts have removed the option of the death penalty.

183. In State v. Bellamy, Iredell County Sup. Ct. No. 05 CRS 4713-17, the court precluded death in a double homicide where the District Attorney had unknowingly denied the existence of notes by various officers from an agency outside its control but, during the trial, numerous documents and notes were found that were exculpatory or potentially useful. The court declared a mistrial and ruled that the State, upon retrial, would not be allowed to seek the death penalty. The Court specifically found that there had been no bad faith by the local law enforcement or by the District Attorney. The court made no finding that Mr. Bellamy's future trial would be tainted by prejudice, but it nonetheless found that Mr. Bellamy could not face the death penalty in his subsequent trial. The order from this case is attached hereto.

184. In State v. Kennedy, Davidson County Sup. Ct. No. 11 CRS 57791 (Aug. 27, 2015), the Court had entered a discovery order that all concessions to co-defendants or witnesses should be turned over by the District Attorney to the defense counsel. At a bond hearing for a co-defendant/witness, the District Attorney did not agree to a lower bond but did laud the witness's cooperation which resulted in a substantial bond

reduction. Such inducement was never communicated to the defense and the trial commenced. The court in Kennedy found the State's actions to be willful, allowed the co-defendant/witness to testify but removed the option of the death penalty, even though by the time the witness testified, the defense could impeach with evidence concerning the bond hearing. A partial transcript from this case is attached hereto.

185. In State v. Montgomery, Mecklenburg County Superior Court No. 07 CRS 215042, 07 CRS 215044, a case involving the murder of *two police officers*, an investigating officer was found to have destroyed some of his original notes, although the State pointed out that the notes were not likely exculpatory and that the conducted interviews were available on video in other formats. See partial transcript of State v. Montgomery at 216-17 (attached hereto). Indeed, the notes were re-copied and only the original had been destroyed. Id. at 249. The Court, having doubts that the notes were a perfect copy of the originals, declined to dismiss the case but determined that a mere spoliation instruction was not sufficient and removed the option of the death penalty.

186. The violations in this case should be viewed for their aggregate effect, in terms of the constitutional analysis, determinations regarding good faith or lack thereof, and selection of the appropriate sanction. Standing alone some of these discovery issues may warrant lesser sanctions, but cumulatively the failures of the State to provide its complete file and the complete body of evidence it relied upon in constructing its case undermines the reliability of any potential trial in this case. See Canady, 335 N.C. 242 (cumulative errors including discovery violations warranted new trial, not merely a new sentencing hearing, in a capital case).

187. Not only does this Court have the discretion to enter an order removing the death penalty as a mild sanction for the State's actions, it is required to do so. Because "death is a punishment different from all other sanctions in kind rather than degree," it is imperative that a jury in a capital case be apprised of all "circumstances of the offense together with the character and propensities of the offender." Woodson v. North Carolina, 428 U.S. 280, 304-05 (1976). Lack of complete discovery, destruction of evidence, and false assertions about destroyed evidence render any sentencing verdict in this case unreliable and in violation of our statutes, our State constitution, and the United States Constitution.

188. This remedy, along with the exclusion of the evidence listed above, would mitigate some but not all of the prejudice presented by the State's failure to preserve evidence.

VI. Other sanctions will not remedy the statutory and constitutional violations in this case.

189. Other sanctions in this case may be issued by the Court in its discretion. Spoliation instructions, loss by the State of peremptory strikes, opportunities for the defense to depose witnesses, or a continuance might mitigate certain aspects of the prejudice in this matter but cannot ensure a fair trial for Mr. Parker.

190. For example, a spoliation instruction regarding the July 1 Woodard interview video is likely to fall on deaf ears in the face of her live testimony. The video would provide nuance that would go much farther than a generic spoliation instruction and cross-examination. The video would reveal the degree of her deviations, omissions, and additions from her previous statement, her tone and demeanor would either be convincing or unconvincing, and specific information could be used during cross-examination.

191. Additionally, an instruction does nothing to replicate the lost opportunity to investigate any leads or arguments that could have been made based on information available in the video. Particularly under the standard set in Knoll, Mr. Parker's defense has been prejudiced by the loss or destruction of the video in a manner that simply cannot be remedied with a jury instruction.

192. A continuance combined with allowing detailed depositions of State's witnesses would likely generate more evidence for this motion or evidence of other discovery violations and might provide some time for Mr. Parker to follow up on new leads generated from such depositions, but the loss of contemporaneously generated evidence from the time of the crime means that anything obtained from this point on, even testimony, will be stale and is not an appropriate substitute for the lost evidence.

193. Remedies that directly try to re-set the scales during trial including precluding the State from peremptorily striking jurors would come closer to alleviating the disadvantage at which the State's actions have left Mr. Parker. However, without the unpreserved evidence to put in front of such a jury, Mr. Parker's trial will not be fair.

WHEREFORE, Mr. Parker requests the following relief:

1. That Mr. Parker be allowed to incorporate by reference previously adduced evidence in this case at prior hearings, that the Court accept the evidence attached to this motion, and that the Court accept additional evidence if necessary at a hearing on this motion; and
2. That if the Court is disinclined to allow this motion, that the Court consider a continuance in order for Mr. Parker to adequately investigate the degree of deviation from policy (as the State has not provided all applicable policies), the routine and procedure for the retention of video evidence (the State has been unwilling or unable to provide testimony

about who administers the system and the Defense has not had the time or resources to investigate such issues), the credibility of claims made by BPD officers including Sergeant Braja's statement that he kept his hard drive "with [him] only" for the past five years (the Defense has not had the time or resources to investigate this claim), and to fully review the recently provided discovery for other possible evidence in support of this motion; and

3. That all charges be dismissed with prejudice for violation of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; Article 1 §§ 19, 23, and 27 of the North Carolina Constitution; N.C.G.S. §15A-954(4); N.C.G.S §15A-903 and 910, due to the failure to preserve material and exculpatory evidence, and the failure to comply with a preservation order; and
4. That the State be precluded from presenting evidence listed in paragraph 177 of this motion; and
5. That the optional sentence of death be precluded in the above-captioned matters; and
6. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

Respectfully submitted, this the 6th day of September, 2024.

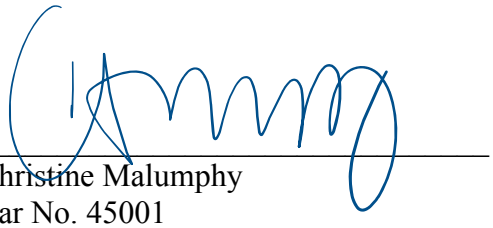
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CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing by File and Serve through e-Courts and by e-mail to Alamance County District Attorney H. Sean Boone (haley.s.boone@nccourts.org).

This the 6th day of September, 2024.



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STATE OF NORTH CAROLINA

COUNTY OF DARE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOs. 20CRS19-32

STATE OF NORTH CAROLINA

v.

WISEZAH BUCKMAN,
Defendant.

MOTION TO COMPEL DISCOVERY FROM DEPARTMENT OF PUBLIC SAFETY AND MOTION FOR SANCTIONS

COMES NOW Defendant, Wisezah Buckman, by and through counsel, and hereby moves this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1 §§ 19, 23, and 27 of the North Carolina Constitution, N.C.G.S. §15A-954(a)(4), N.C.G.S §§15A-903, 910, Brady v. Maryland, 373 U.S. 83 (1963), Arizona v. Youngblood, 488 U.S. 51 (1988), Kyles v. Whitley, 514 U.S. 419 (1995), and their progeny, for an Order dismissing all of the above-captioned charges against Mr. Buckman for the failure of the State of North Carolina to produce, and their deliberate dissimulation regarding, exculpatory evidence. Mr. Buckman's constitutional rights have been flagrantly violated and there is no way to ensure a fair trial for Mr. Buckman given that the State has actively concealed exculpatory material. In support of the foregoing Motion, Mr. Buckman would show unto the Court as follows:

FACTS

1. On October 12, 2017, Wisezah Buckman was alleged to have been involved in an escape attempt.

2. After being treated for injuries allegedly related the escape attempt, Mr. Buckman was transferred to Polk Correctional Institution (now Granville Correctional Institution) and housed in the HCON unit.
3. On November 6, 2017, Mr. Buckman requested all discovery from the State of North Carolina.
4. On October 21, 2019, co-defendant Mikel Brady was convicted of four counts of first degree murder, among other things.
5. On October 28, 2019, Mr. Brady was sentenced to death.
6. In late 2019 and early 2020, Defense counsel corresponded with Jodi Harrison, general counsel for DPS, and with Terence Steed, an assistant attorney general working with DPS. See Attached Communications at 1-14.
7. Counsel asked for information about Mr. Buckman's housing and provided an explanation for why this information is exculpatory should this case reach a sentencing hearing. Specifically, counsel pointed out that the ability of Mr. Buckman to claim that he will be securely housed was highly exculpatory (as both mitigation and as a rebuttal to implied future dangerousness). See id.
8. Counsel was told by Mr. Steed that there were "no plans" for housing Mr. Buckman. See Attached Communications at 8.
9. According to Mr. Steed, he was told this by DPS counsel, Ms. Harrison. See id.
10. On January 29, 2020, defense counsel filed a motion for discovery on the question of where Mr. Buckman would be housed ("Motion for Order to Provide Certain Department of Public Safety Records").

11. Defense counsel provided Ms. Harrison a copy of the motion. See Attached Communication at 12.

12. Mr. Steed ultimately appeared in Court on February 27, 2020, to argue the motion as well as address another DPS-related issue.

13. The motion posited that there was a plan in place for Mr. Buckman's housing somewhere other than Polk Correctional or Death Row.

14. The Court asked Mr. Steed, "has a plan already been formulated for this Mr. Buckman?" He responded, "No, Your Honor." Transcript of Proceedings, February 27, 2020 (Feb. 2020 Transcript) at 44.

15. Mr. Steed went on to explain that it was not a "plan" because there was no file created for Mr. Buckman and there had been no acceptance of Mr. Buckman's transfer by the Bureau of Prisons. He stated, it "is a process that can't begin . . . until after the trial is complete." Id. at 44-45.

16. Undersigned counsel further expressed concern that there could be a plan in place even if the formal processes had not begun. The Court did not question DPS counsel further. Id.

17. The Court did, however, order that DPS provide the name of a person in a decision-making capacity who could be interviewed about the plan. DPS provided the name of the commissioner of prisons, Todd Ishee. Id. at 47.

18. On September 13, 2021, Mr. Ishee was interviewed by undersigned counsel along with counsel for co-defendant Mr. Jonathan Monk, along with an investigator from Mr. Buckman's team and an intern from Mr. Monk's team. See McGough Affidavit attached hereto.

19. Mr. Ishee repeatedly and forcefully denied any preliminary action or meaningful conversations concerning Mr. Buckman's housing (or Mr. Brady's for that matter). Id.

20. Mr. Ishee stated that the decision to transfer Mikel Brady out of state was not made before the jury's guilt-innocence decision. Id.

21. Mr. Ishee indicated that the first contact with BOP took place after Mr. Brady's conviction. Id.

22. Mr. Ishee indicated that he was not aware that Mr. Brady would be sent to Florence, Colorado's Supermax facility ("the Supermax"). Id.

23. The Supermax is widely considered the most secure facility in the civilized world and is considered to be one of the harshest prisons in which to serve a sentence.[1]

24. Mr. Ishee denied that a decision had been made by DPS to try to send any of the other Pasquotank defendants out of state. Id.

25. Mr. Ishee indicated that, when BOP asked if there would be any more defendants transferred, he stated "no" because there had not been a guilt-innocence decision in those cases. Id.

26. Mr. Ishee claimed that he had only had "short and light" conversations about the other Pasquotank defendants and stated that DPS had not reached out to any other jurisdiction regarding the co-defendants.

27. Mr. Ishee claimed he did not have a goal of sending the co-defendants out of state. Id.

28. Multiple lawyers were present with Mr. Ishee during his interview, including DPS general counsel Ms. Harrison and at least one attorney from the Attorney General's office.

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[1] CBS Boston, "Former Warden Says Death is Better Than Life at Supermax" April 21, 2015, available at www.cbsnews.com/boston/news/i-team-former-warden-says-death-is-better-than-life-in-supermax/ (with additional full interview available at www.youtube.com/watch?v=HM854gQJi7s). See additional interview with the former warden of the Supermax here: https://www.youtube.com/watch?v=JavUyM8IA6w.

29. Ms. Harrison agreed that DPS could, if provided a court order, provide the defense with the paperwork associated with Mikel Brady's transfer.

30. Upon receipt of such an order, undersigned counsel requested the file from Ms. Harrison on January 31, 2022. Undersigned counsel sent follow-up requests for the records on March 8, March 17, and March 29. See Attached Communications at 17-23.

31. On April 13, 2022, Ms. Harrison forwarded a file to undersigned counsel. See Attached Communications at 24.

32. Included in the file is an undated email from DPS employee John Beatty to another employee Sarah Cobb. An image of this email is pasted below:



33. Also in the file is a faxed form dated October 30, 2019, signed by Sarah Cobb, suggesting that Mr. Brady was the "first of four" to be transferred to BOP. A picture from this document is pasted below.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY

DIVISION OF ADULT CORRECTION

PRISONS

Interstate Corrections Compact

Case Routing Form

[redacted]

34. On October 24, 2019, Mr. Brady was accepted for transfer and would ultimately be sent to Big Sandy, just as predicted in Mr. Beatty's email. A picture of the document memorializing this transfer is pasted below.

U.S. Department of Justice

Federal Bureau of Prisons

Designation and Sentence Computation Center

U.S. Armed Forces Reserve Complex
346 Marine Forces Drive
Grand Prairie, Texas 75051

October 24, 2019

[redacted]

35. Subsequent to this receipt of the interagency transfer file, undersigned counsel sent several follow-up questions, including asking for a dated copy of Mr. Beatty's email and any additional email correspondence. Undersigned counsel sent follow up requests on April 27 and May 23. See Attached Communications at 24-26.

36. Ms. Harrison responded that the original email was dated October 23, 2019[2] and that she was not sure how the date was removed in the creation of the document provided in April. See Attached Communications at 27.

ARGUMENT

37. Brady material includes any and all evidence "favorable to the accused" which is relevant to Mr. Buckman's guilt *or punishment*. See 373 U.S. at 87 (1963).

38. The prosecutors in this case had "a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case." Kyles v. Whitley, 514 U.S. 419, 437 (1995); see also State v. Bates, 348 N.C. 29 (1998) (Brady obligates prosecution to obtain information from agencies involved in investigation).

39. The good faith of the individual prosecutors is no defense where the prosecution fails to make diligent inquiry about the evidence, or the evidence is suppressed by another state actor aiding the prosecution. See State v. Smith, 337 N.C. 658 (1994) (prosecution deemed to have knowledge of information in possession of investigating agencies); see also Youngblood v. West Virginia, 547 U.S. 867 (2006) (per curiam) (remanding to allow state court to address Brady issue where officer suppressed exculpatory evidence); United States v. Perdomo, 929 F.2d 967 (3d Cir. 1991) (prosecutors have obligation to make thorough inquiry of all agencies that had potential connection with the witnesses); Barbee v. Warden, 331 F.2d 842 (4th Cir. 1964) (prosecutor's lack of knowledge did not excuse failure by police to reveal information).

[2] It is concerning that this plan was in place before Mr. Brady's sentencing. The plan, which would have been highly exculpatory for Mr. Brady, was not shared with Mr. Brady's lawyers or the jurors who ultimately sentenced him to death.

40. The apparent conscious and repeated acts of suppression and dissimulation by the Department of Public Safety are a particularly insidious and disturbing violation of the absolute baseline obligation of the State of North Carolina when it seeks to prosecute a person, let alone put that person to death. See Defendant's Memorandum of Support for Motion for Orders and Procedural Safeguards, filed on July 28, 2022.

41. The social and legal contract that has allowed the State of North Carolina, and other governmental entities, to continue utilizing capital punishment is based on the assumption that the entity seeking execution will provide *more* reliability and *more* fairness than in a typical prosecution. See Woodson v. North Carolina, 428 U.S. 280, 305 (1976) (death is a permissible punishment due to heightened reliability standards).

42. In this case, the Department of Public Safety engaged in conduct that may rise to a criminal level. See, e.g., 15A-903(d); State v. Taylor, 212 N.C. App. 238, 245-46 (2011) (Obstruction of justice is the commission of "an act that prevented, obstructed, impeded or hindered public or legal justice," which if done "with deceit and intent to defraud" is a Class H felony).

43. If Mr. Buckman is sentenced to death, the Department of Public Safety will be allowed to kill him, with the blessing of the law. This is untenable and outrageous.

44. The sanctions in this case should reflect the pattern of conduct that is discussed in additional detail in Mr. Buckman's Motion to Dismiss for Destruction of Exculpatory Evidence previously filed on April 21, 2022. The recent revelations discussed herein support a finding of bad faith in that motion. The pattern outlined therein supports more serious sanctions in this motion.

45. It is appropriate to dismiss this case altogether under G.S. § 15A-954(a)(4) as Mr. Buckman's rights have been flagrantly violated and there has been irreparable prejudice.

46. Defense counsel has spent nearly three years trying to extract this simple information from the Department of Public Safety. At this point, we have wasted hours of time (that should have been spent preparing for trial and conducting a thorough mitigation investigation) attempting to get information we were entitled to receive the instant it was created.

47. At this point, there is no way for the Court to trust that DPS or the State is an honest broker in this case. There is simply no way for Mr. Buckman to receive a fair trial at the hands of the State.

48. It is appropriate for the Court to dismiss this action because Mr. Buckman should not be forced to be in the custody of an agency who has actively interfered with his defense.

49. It is appropriate for the Court to dismiss this case under G.S. § 15A-910 as a sanction for a discovery violation. Dismissal should not be routinely granted as a discovery sanction and the Court should make every effort to outline the prejudice warranting dismissal. State v. Dorman, 225 N.C. App. 599 (2013). Such prejudice is patently clear here for the reasons explained above and in the related Motion to Dismiss.

50. Pursuant to the discovery statute, the Court may also issue "other appropriate orders" as sanctions. It is more than appropriate for this Court to enter an order declaring the case non-capital.

51. Factors to consider in determining whether a sanction is appropriate includes the importance of the evidence, the existence of bad faith, and prejudice to trial preparation. See State v. Jones, 296 N.C. 75 (1978) (motion for appropriate relief granted and new trial ordered for prosecution's failure to turn over critical lab report); State v. McClintick, 315

N.C. 649, 662 (1986) (trial judge "expressed his displeasure with state's tactics" and took several curative actions); State v. Jones, 295 N.C. 345 (1978) (court implied that failure of the defendant to explain how suppression of exculpatory evidence impeded trial prep was basis for denial of sanctions).

52. The importance of this evidence cannot be overstated. As discussed from the beginning, in Mr. Buckman's Motion for Order for Production of Certain Department of Public Safety Records, the threat that Mikel Brady posed to corrections officer in the future was a recurring theme in the prosecution's arguments. It is a reasonable inference that such an argument will be deployed against Mr. Buckman.

53. Even if a prosecutor does not breathe a word about future dangerousness, studies suggest that this is the most important factor for jurors considering death. See M. Sandys, H.C. Pruss & S.M. Walsh, "Aggravation and Mitigation: Findings and Implications" 37 J. Psychiatry and L. 189, 207, 225 (2009) ("[J]urors report future dangerousness concerns as not only a major part of deliberations, but as having a significant impact on their voting decisions, even when the prosecution made little to no mention of this issue."); J.H. Blume, S.P. Garvey, & S.L. Johnson, "Future Dangerousness in Capital Cases: Always 'At Issue'", 86 Cornell L. Rev 397 (2001) (discussing overwhelming evidence suggesting that even when prosecutors do not mention future dangerousness, it is an overarching and overriding concern of jurors).

54. It is indisputable that, particularly in a prison killing, incarceration at the most secure prison in the United States is a mitigating factor. See, e.g., "Special Verdict Form," United States v. Con-Ui Crim. No. 3:CR-13-123 (M.D. Penn., July 11, 2017) (Copy of one page of the verdict sheet including conditions of confinement mitigator attached hereto).

Additionally, Mr. Buckman may proffer in mitigation that he will be subject to extreme conditions of confinement which ought to satisfy even the most retributivist goals.

55. The Supreme Court has recognized the obvious point that future behavior in prison is a subject for mitigation. See Skipper v. South Carolina, 476 U.S. 1 (1986).

56. Bad faith is clearly established by the pattern of DPS conduct and the statements made by DPS officials that were knowingly false which have actively interfered with the preparation of Mr. Buckman's defense. See State v. Williams, 362 N.C. 628, 638-39 (2008) (emphasizing that the Court may give effect to Brady violations pre-trial).

57. Finally, trial preparation is irrevocably hindered as counsel has already sunk innumerable hours into attempting to extract information from DPS and, given the recent revelations, must continue to do so given the likelihood that DPS has suppressed (or destroyed) other exculpatory information.

58. Both the Motion to Dismiss statute and the Discovery statute provide a basis for dismissal, or at least rendering this case non-capital. However, the justness of such sanctions is grounded in the aforementioned provisions of the North Carolina and United States Constitutions.

59. Certainly, the Eighth Amendment to the United States Constitution and Article 1, Section 27 of the North Carolina Constitution both have a requirement of heightened reliability in death cases that simply can no longer be satisfied in this case.

WHEREFORE, Mr. Buckman respectfully prays unto this Honorable Court for the following relief:

1. That all charges be dismissed with prejudice for the violation of Mr. Buckman's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States

Constitution, Article 1 §§ 19, 23, and 27 of the North Carolina Constitution, due to the willful suppression of exculpatory evidence;

2. That the Court consider whether it has the power to place Mr. Buckman in the custody of an agency other than the Department of Public Safety for the remainder of his sentence out of Mecklenburg County.
3. That the State be precluded from seeking death in the above-captioned matters for the violation of Mr. Buckman's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1 §§ 19, 23, and 27 of the North Carolina Constitution, due to suppression of exculpatory evidence and the cumulative constitutional violations to which it has subjected Mr. Buckman;
4. That the State be precluded from arguing, implying, suggesting, hinting, or inviting the inference in any way that Mr. Buckman will have the power to injure another human being for the rest of his life;
5. That the Court provide any jury with the mandatory mitigator that Mr. Buckman will be completely incapacitated and unable to hurt another human being for the rest of his life at the Supermax;
6. That the Court issue an Order that the Department of Public Safety allow *any* of its officials or employees to be deposed under oath by Mr. Buckman;
7. That the Court Order the production of any and all communications among DPS officials or between DPS officials and any other agency, including the Bureau of Prisons and the North Carolina Department of Justice, regarding the custody of Wisezah Buckman or his co-defendants or regarding the alleged escape attempt (subject to claims of privilege to be detailed in a privilege log);

8. That the Court continue this matter indefinitely until the material already provided by DPS and material that will be provided in the future can be adequately examined and used for investigation purposes by the defense;
9. That the Court hold a hearing on this motion with sufficient notice for witnesses to be subpoenaed;
10. For such other and further relief to which Mr. Buckman may be entitled and which the Court may deem just and proper.

Respectfully submitted, this the 28th day of July, 2022.

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Christine Malumphy
Assistant Capital Defender
123 W. Main St., Ste. 601
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(919) 354-7220

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing by United States Mail to Mr. Jeff Cruden and Ms. Alexis Massengill, Assistant District Attorneys, 200 E. Colonial Ave. Elizabeth City NC 27909.

This the 20th day of July, 2022.

Christine Malumphy
Bar No. 45001
Assistant Capital Defender
123 W. Main St., Ste. 601
Durham, North Carolina 27701
(919) 354-7220

Caution
As of: March 15, 2025 12:29 PM Z

State v. Canady

Supreme Court of North Carolina

December 11, 2001, Heard In the Supreme Court ; March 7, 2002, Filed

No. 115A00

Reporter
355 N.C. 242 *; 559 S.E.2d 762 **; 2002 N.C. LEXIS 176 ***

STATE OF NORTH CAROLINA v. CARLOS CANADY

Prior History: **[***1]** Appeal as of right pursuant to *N.C.G.S. § 7A-27(a)* from a judgment imposing a sentence of death entered by Hudson, J., on 22 November 1999 in Superior Court, Robeson County, upon a jury verdict finding defendant guilty of first-degree murder. On 28 March 2001, the Supreme Court allowed defendant's motion to bypass the Court of Appeals as to his appeal of additional judgments.

Disposition: Reversed and remanded for new trial.

Counsel: Roy Cooper, Attorney General, by Joan M. Cunningham, Assistant Attorney General, and William P. Hart, Special Deputy Attorney General, for the State.

Center for Death Penalty Litigation, by Jonathan E. Broun, for defendant-appellant.

Judges: WAINWRIGHT

Opinion by: WAINWRIGHT

Opinion

[*244] **[**763]** WAINWRIGHT, Justice.

On 3 March 1997, Carlos Canady (defendant) was indicted for the murders of Hiram and Michael Burns, one count of second- degree burglary, one count of robbery with a dangerous weapon, and one count of conspiracy to commit armed robbery. Defendant was tried capitally, and the jury found him guilty of first- degree murder of **[*245]** Hiram Burns on a theory of lying in wait and guilty of first-degree murder of Michael Burns under the felony murder rule. Defendant was also found guilty of the other charges. **[***2]** In the death of Hiram Burns, the jury recommended and the trial judge sentenced defendant to death. In the death of Michael Burns, the jury recommended and the trial judge sentenced defendant to life imprisonment. The jury also found defendant guilty of the remaining charges, and the trial court sentenced defendant to consecutive terms of imprisonment.

Evidence presented at trial showed Hiram Burns (Hiram) and his son, Michael Burns (Michael), lived in Rennert, North Carolina. Michael had severe brain damage. On Sunday, 13 December 1992, the victims' dead bodies were found in their home. Each had died from gunshot wounds.

In 1996, an inmate at Pender County Correctional Unit told police defendant and a young man, eventually identified as Lacoma Locklear (Lacoma), were involved in the murders. Lacoma, who was only fourteen years old in 1992, testified that on 12 December 1992 he and defendant went to Rennert because defendant said he knew a man who ran a store there and they could rob the man. Lacoma said he and defendant entered the man's house through a

window. Defendant was carrying a rifle. A few minutes later, a man entered the house, and Lacoma heard three shots from the bathroom **[***3]** where defendant was. The man fell to the floor, and Lacoma heard two more shots. Lacoma stated that after the shooting defendant grabbed a brown paper bag from the man on the floor, and Lacoma and defendant ran out **[**764]** the front door. The bag fell and tore, and Lacoma could see it contained money. Lacoma stated defendant threw the rifle off the Kirby Bridge. Investigators subsequently found a Universal .30-caliber Carbine semiautomatic rifle near the Kirby Bridge in the Lumber River at the point Lacoma indicated.

Defendant presented evidence that Lacoma told several people he and defendant did not kill the Burnses. Lacoma said, among other things, "Me and Carlos ain't killed nobody," and "We hadn't done a thing." Two witnesses, Steve Jones (Steve) and Paladin Jones (Paladin), testified Billy Ray Jones (Billy Ray) told them he killed the Burnses. Steve testified Billy Ray told him details of the crime including who helped him, how they got in the window, and that Hiram had a money bag in his hands when he entered the house. Paladin testified that he heard Billy Ray describe details of the murders and that Billy Ray went to Paladin's house the night before the murders took **[*246]** place to borrow **[***4]** a gun which Paladin refused to lend. On rebuttal, the State called Billy Ray, who denied committing the murders.

Defendant assigns error to several of the trial court's rulings. We agree with defendant that the trial court's rulings on at least four specific issues were erroneous. Although none of the trial court's errors, when considered in isolation, were necessarily sufficiently prejudicial to require a new trial, the cumulative effect of the errors created sufficient prejudice to deny defendant a fair trial. Accordingly, a new trial is required.

First, defendant assigns error to the trial court's allowance of testimony from Detective James Carter concerning information he received from a prison inmate about the murders. Carter testified his investigation included an interview with prison inmate George Blackwell. According to Carter, Blackwell said another inmate, Woody Butler, told Blackwell defendant and another young man killed the victims. Defendant argued at trial this testimony constituted inadmissible hearsay because it was offered for "the truth of the matter asserted." The State argued the testimony was not offered for its truth, but to show the witness's conduct after **[***5]** he received the information. The trial court overruled defendant's objection and instructed the jury as follows:

COURT: All right, members of the jury, this witness is going to relate to you conversations that he had with another person.

The State is not offering the substance of that conversation for the truthfulness of what the other person asserted, but to explain to you what this witness, Mr. Carter, did as a result of receiving that information.

You should consider it for that reason, and that reason, only.

Following the trial court's instruction, Carter testified before the jury under direct examination by the State as follows:

Q. What, if anything, did George Blackwell tell you when you met with him at the Pender Correctional Institute?

MS. BIGGS [defense counsel]: Objection, Judge.

COURT: Overruled.

. . . .

A. Okay. George told me --

[*247] MS. BIGGS: Objection for the record, please.

COURT: Overruled.

A. -- a boy in prison with him, named Woody Butler, had been talking to him about a man and his son that had been killed in Rennert.

George knew -- George told us he knew who killed Hiram and his son. And he said George wanted to talk to me.

Myself and Detective Donald **[***6]** Britt went to the Pender County Correctional Institute to talk with George Blackwell. At 10:30 a.m., myself and Detective Donald Britt talked to George Blackwell in the chapel.

George told us that Woody Butler told him --

MS. BIGGS: Objection, Judge. It has exceeded the question.

COURT: Overruled.

Q. What did George Blackwell tell you in the chapel there at the prison?

[765]** A. That a young guy, he didn't know the young guy's name, and Carlos Canady had killed the man and his son in Rennert.

George went on to say that Woody Butler told him --

MS. BIGGS: Objection, Judge. Now it's double hearsay.

COURT: Overruled.

Q. What else did Mr. Blackwell tell you?

A. He went on to say that the man and the boy -- George said that Woody said Carlos and the young guy went to the man's house and broke into --

MS. BIGGS: Objection, Judge. This exceeds the scope of voir dire.

COURT: Overruled.

A. -- broke into the house through a window. Carlos had a rifle --

MS. BIGGS: Objection. Judge, we want to be heard, please.

COURT: Mr. Deputy, if you'll take the jury to the deliberation room.

[*248] At this point, outside the jury's presence, defendant argued Carter's testimony was irrelevant and was merely **[***7]** an attempt to get before the jury inadmissible hearsay and to avoid putting George Blackwell or Woody Butler on the stand. Defendant also argued Carter's testimony was double or triple hearsay, and its prejudicial effects far outweighed any probative value. Defendant further argued Carter could explain his subsequent conduct without going into the details of Blackwell's statement. The trial court overruled defendant's objection, and the State's examination continued in the jury's presence:

Q. Detective Carter, what did George Blackwell tell you about information he had relating to the murders of Hiram and Michael Burns?

MS. BIGGS [defense counsel]: Objection.

COURT: Overruled.

A. George told us that the -- Carlos and the young guy went into the house, went into the bedroom. Carlos -- the young guy went into the bedroom with a bat and Carlos went into the bathroom with a rifle.

When the man came down the hall and started in the bedroom where the young guy was, Carlos said, "I couldn't let the man go into the --

MS. BIGGS: Objection.

COURT: Overruled.

A. -- where the young guy was with the bat," and that's when he shot them.

Carlos took the money bag and ran and dropped most **[***8]** of -- some of the money in the yard.

The State correctly asserts a statement is not hearsay if it is offered for a purpose other than to prove the truth of the matter asserted. *See* N.C.G.S. § 8C-1, Rule 801(c) (1999); *State v. Braxton, 352 N.C. 158, 190, 531 S.E.2d 428, 447 (2000)*, *cert. denied*, *531 U.S. 1130, 148 L. Ed. 2d 797, 121 S. Ct. 890 (2001)*. A statement which explains a person's subsequent conduct is an example of such admissible nonhearsay. *State v. Anthony, 354 N.C. 372, 404, 555 S.E.2d 557, 579 (2001)*; *State v. Golphin, 352 N.C. 364, 440, 533 S.E.2d 168, 219 (2000)*, *cert. denied*, ___ U.S. ___, *149 L. Ed. 2d 305 (2001)*.

[*249] In the present case, however, Detective Carter's testimony provided more than a mere explanation of his subsequent actions. Carter provided details contained in Blackwell's statement including how defendant broke into the victims' house through a window, went into the bathroom with a rifle, shot one of the victims, and fled with a bag of money. Moreover, the State relied upon Carter's recitation of Blackwell's detailed statement during **[***9]** the State's closing argument. The State argued:

So he [Carter] goes and interviews George Blackwell. And Mrs. Biggs kept referring to this as hearsay, as hearsay. Hearsay is evidence that doesn't come in.

MS. BIGGS [defense counsel]: Objection, that's not the law.

THE COURT: Overruled.

MR. BRITT [prosecutor]: James Carter and Donnie Britt went to Pender County, to the prison there where they interviewed George Blackwell. George Blackwell told them he had gotten the information that Carlos Canady had committed those murders. Carlos Canady and a young boy had broken into the house; that Carlos went in there with a rifle; that the young boy went in there with a baseball bat. And they laid in wait. They were going there to rob the **[**766]** man when he came home; and on the way out, they lost some of the money.

This portion of the State's closing argument confirms that the State did not use Carter's statement merely as an explanation of subsequent actions. Instead, the State relied on Carter's testimony as substantive evidence of the details of the murders and to imply defendant had given a detailed confession of his alleged crimes. By using Carter's testimony in this manner, the State **[***10]** undoubtedly sought to prove the truth of the matter asserted. Accordingly, the testimony at issue was inadmissible hearsay. Moreover, despite the trial court's provision of a limiting instruction, we hold Detective Carter's testimony went so far beyond the confines of this instruction that the jury could not reasonably have restricted its attention to any nonhearsay elements in Carter's testimony. *See* *State v. Austin, 285 N.C. 364, 367, 204 S.E.2d 675, 677 (1974)*.

The trial court's error relating to Detective Carter's testimony was not limited to the portions of testimony outlined above. Rather, the error was greatly compounded when the trial court denied **[*250]** defendant the opportunity to fully cross-examine Carter concerning portions of his testimony.

During his cross-examination of Carter, defendant tried to ask several questions to undermine the credibility of Blackwell's information:

Q. Did you go talk with Woody Butler?

A. I didn't, but some of the other officers did.

Q. And based on Woody Butler's statement, or based on the information that you understand was taken from Woody Butler, that he never gave George Blackwell that information --

MR. BRITT [prosecutor]: **[***11]** Objection. Move to strike. Would like to be heard.

The State argued these questions solicited inadmissible hearsay. Defendant argued the State had been permitted to ask Carter about statements Butler made to Blackwell, and so it was appropriate for defendant to inquire if Carter

talked with Butler and if Butler denied making the statements at issue. After the trial court denied defendant the opportunity to continue this line of questioning, defendant made the following offer of proof:

Q. Mr. Carter, based on the information that you received from these officers that Woody Butler had denied any knowledge of this incident where he supposedly told George Blackwell this information, did you at any time go talk with George Blackwell after that?

A. No, no, I didn't.

Q. To your knowledge, did any of the other officers ever go talk with John Blackwell -- excuse me, George Blackwell again?

A. Yes.

. . . .

Q. Now, George Blackwell is serving -- is it a life sentence as a habitual felon?

A. I don't know.

Q. Did you investigate what his motives for telling you this is [sic] or investigate the source of information he received it from?

[*251] A. I don't have anything in my notes about that.

[*12]** Q. Did you even determine if he was in custody or incarcerated at the time the murders happened, or where he was living during that period of time, if he wasn't?

A. No.

. . . .

Q. Did you find out where George Blackwell was from?

A. I knew Blackwell had lived in the Saddletree community at one time. I knew that.

Q. So you knew he had a connection to Robeson County and could have had information about these murders from other sources?

A. Yes.

At this point, the trial court sustained the State's objection and stated defendant was trying to admit hearsay.

After a thorough review, we hold defendant's proposed questions were designed to impeach the segment of Carter's testimony that provided details of defendant's alleged crimes. Once the trial court permitted Carter to testify on direct examination to these **[**767]** details, the trial court should have permitted defendant to present any evidence that would have been proper to impeach Butler or Blackwell if either of them had testified. *See* *N.C.G.S. § 8C-1, Rule 806* (1999). Accordingly, because the questions defendant proposed would have been proper if Butler or Blackwell had testified, the trial **[***13]** court erred in failing to allow defendant's questions.

Additionally, during the State's examination, Carter was permitted to testify about the statements Butler made to Blackwell in order to explain Carter's subsequent actions. As such, defendant's proposed cross-examination questions also appear proper to determine whether Carter's subsequent investigation included an examination of Blackwell's motive for implicating defendant and Blackwell's other potential sources of information.

Accordingly, we conclude the trial court not only erred in permitting the State to admit details of the murders via hearsay testimony from Carter, but also erred in denying defendant an opportunity to properly cross-examine Carter concerning these details.

[*252] Defendant further contends the trial court erred when it failed to require the State to disclose names of informants with material, exculpatory information that someone other than defendant committed the offenses. We agree with defendant that this potentially exculpatory evidence was material to his defense. This suppression, combined with defendant's other assignments of error, constituted reversible error and denied defendant a fair trial.

Defendant **[***14]** filed multiple motions to require the State to disclose various exculpatory materials. In one motion, defendant specifically requested that the State provide the name of an informant who implicated five other people as being involved in the murders and indicated where the murder weapon could be found. The trial court denied defendant's motion. The trial court also denied a defense motion to disclose "the name[] and address of the subject who was brought back from Mississippi by [police] who made the statements about Thompkins being the 'big man' and had arranged the murders."

In *Brady v. Maryland*, the United States Supreme Court held "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *373 U.S. 83, 87, 10 L. Ed. 2d 215, 218, 83 S. Ct. 1194 (1963)*. "Favorable evidence is material if there is a 'reasonable probability' that its disclosure to the defense would result in a different outcome in the jury's deliberation." *State v. Strickland, 346 N.C. 443, 456, 488 S.E.2d 194, 202 (1997)*, **[***15]** *cert. denied*, *522 U.S. 1078, 139 L. Ed. 2d 757, 118 S. Ct. 858 (1998)*. The determination of the materiality of evidence must be made by examining the record as a whole. *State v. Howard, 334 N.C. 602, 605, 433 S.E.2d 742, 744 (1993)*. The State has not satisfied its duty to disclose unless the information was provided in a manner allowing defendant "to make effective use of the evidence." *State v. Taylor, 344 N.C. 31, 50, 473 S.E.2d 596, 607 (1996)*.

Here, defendant had neither the name of the informant who gave the State information about the five individuals nor the name of the subject brought back from Mississippi by police. Defendant thus could not effectively use that information at trial. Defendant needed access to these individuals to interview them and develop leads. There is a reasonable probability that if defendant had access to informants who had names of others involved in the murders, such information could have swayed the jury to reach a different outcome. **[*253]** Defendant had a right to this information in a timely manner so he could effectively use it.

Our confidence in the outcome of this case is undermined by defendant's **[***16]** inability to interview witnesses with potentially exculpatory information. Accordingly, we hold suppression of this information was error.

In another assignment of error, defendant contends his constitutional rights were violated when the trial court allowed an expert to testify without allowing defendant an opportunity to examine the expert's testing procedure and data. We agree. Considered in isolation, this error may not be sufficiently prejudicial to warrant a new trial, but taken in conjunction with defendant's other **[**768]** assignments of error, it constitutes reversible error.

The State's firearms expert, State Bureau of Investigation Agent Al Langley, testified concerning a gun found in the Lumber River over three years after the crimes occurred. According to Langley, the gun appeared to be the murder weapon. The gun was test-fired, and the spent bullets were compared to those found at the scene.

On defendant's motion, the trial court ordered the State to turn over the test-fired bullets and "underlying data examinations." The State was unable to locate the shells. Defendant requested that the State either retest the gun and provide defendant with the new tested shells or that testimony **[***17]** from the State's firearms expert be excluded. The trial court did not order the State to retest the gun but allowed the State's expert to testify.

A defendant in a criminal proceeding has the constitutional right to confront his accusers and the witnesses against him. U.S. Const. amend. VI; *N.C. Const. art. I, §§ 19*, *23* (2000). This includes the right to prepare and present a defense. *State v. Graves, 251 N.C. 550, 557, 112 S.E.2d 85, 91 (1960)*. This constitutional right "'ensures the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.'" *State v. Brewington, 352 N.C. 489, 507, 532 S.E.2d 496, 507 (2000)*, (quoting *Maryland v. Craig, 497 U.S. 836, 845, 111 L. Ed. 2d 666, 678, 110 S. Ct. 3157 (1990)*), *cert. denied*, *531 U.S. 1165, 148 L. Ed. 2d 992 (2001)*.

In the present case, defendant was not afforded the opportunity to rigorously test the State's firearms evidence, thus interfering with defendant's right to present a full defense. Therefore, we agree with **[*254]** defendant that the trial court erred in neither **[***18]** suppressing the testimony of the State's firearms expert nor ordering the State to retest the weapon. When viewed with the other erroneous actions of the trial court, a new trial is required.

In conclusion, while defendant's trial was riddled with errors, we decline to address every potential error as these errors are unlikely to recur at a new trial. We conclude that the errors outlined above, taken as a whole, deprived defendant of his due process right to a fair trial free from prejudicial error.

For the foregoing reasons, we conclude the trial court's errors were prejudicial to defendant's right to a fair trial and defendant is entitled to a new trial.

NEW TRIAL.

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As of: March 15, 2025 12:03 PM Z

State v. Adams

Court of Appeals of North Carolina

February 7, 1984, Heard in the Court of Appeals ; March 6, 1984, Filed

No. 832SC802

Reporter
67 N.C. App. 116 *; 312 S.E.2d 498 **; 1984 N.C. App. LEXIS 2983 ***

STATE OF NORTH CAROLINA v. BOBBY MITCHELL ADAMS

Prior History: [*1]** Appeal by the State from *Beaty, Judge*. Order entered 3 March 1983 in Superior Court, Beaufort County.

Disposition: Affirmed.

Syllabus

Pursuant to G.S. 15A-1445(a)(1), the State appeals from an order dismissing criminal charges, "for failure of the State to provide items subject to discovery."

Counsel: *Attorney General Edmisten, by Special Deputy Attorney General John R. B. Matthis and Assistant Attorney General John F. Maddrey, for the State, appellant*.

Charles M. Vincent and Stephen R. Ward for defendant appellee.

Judges: Willis P. Whichard, Judge, wrote the opinion. Judges Gerald Arnold and Charles L. Becton concur.

Opinion by: WHICHARD

Opinion

[*117] [498]** The issue is whether the court abused its **[***3]** discretion in dismissing criminal charges **[**499]** against defendant upon the State's failure to comply with an order for discovery. We hold that it did not.

Defendant was charged with assault with a deadly weapon upon a law enforcement officer, resisting a public officer, and failing to stop for a blue light and siren. On 18 June 1982 he filed a request for voluntary discovery. Following the State's failure timely to respond, on 8 July 1982 he filed a motion for discovery. *See* G.S. 15A-902(a).

On 12 January 1983 this motion came on for hearing before Judge Giles Clark. Defense counsel represented that he had "not received any response whatsoever" to the request or the motion. **[*118]** The assistant district attorney did not indicate the contrary. Judge Clark stated that defendant appeared entitled to everything he had requested, and ordered that the State furnish the items sought within ten days.

On 1 March 1983 defendant moved to dismiss the charges due to prosecutorial misconduct. *See* G.S. 15A-909 to -910. The motion alleged that Judge Clark's order "ha[d] been completely disregarded and no discovery ha[d] been provided as ordered by the Court." At **[***4]** a 3 March 1983 hearing on the motion before Judge Beaty, defense counsel represented that the State had disregarded Judge Clark's order. He called to the court's attention the allegation in his motion "that matters of discovery in the Second Prosecutorial District are systematically disregarded in that [items sought to be discovered] are not furnished the defense attorneys." He also called to the court's attention the defendant's low I.Q. and illiteracy, both of which evidence in the record clearly established. He then stated:

> [I]n this particular case, with this man's illiteracy and with his I.Q. the way it is, the fact that so much time has gone by without any discovery being furnished, puts defense counsel in the posture of not being able to effectively represent this man because you're dealing with someone as time goes by you can't undo . . . you can't put in his mind and talk to him and deal with him about facts and events as they might have occurred at that time; that they [the State] are aware of his mental situation and of his illiteracy and by denying, or by refusing to comply with the Orders of the Court, even if they were to come up and say, "here's your **[***5]** discovery," I don't know that I could go back and sit down with this man now that so much time has passed and put these things back together.
> . . .
>
> [Y]ou have discretion as to what you can do in this matter, and what we're asking for is a dismissal . . . . [B]ecause they have disregarded this Order, . . . it wouldn't be unusual to dismiss, especially with the fact situation as it is with [the defendant] in this condition. In other words, just to give us the information now, and I've got to go back with him with **[*119]** his mind . . . or being retarded, and try to piece together events which happened last May, I don't believe we can do it.

In response the assistant district attorney acknowledged the existence of Judge Clark's order. He indicated that he had verbally told defense counsel there were no written or oral statements by the defendant "other than the statements that were made to the officer during the process of the crime being committed, the res gestae." He did not even argue, however, that the State had formally complied with the request for discovery of defendant's statements or had complied, either formally or informally, with other aspects of **[***6]** the discovery order.

After hearing defense counsel and the assistant district attorney, Judge Beaty requested that the record show that the file contained both a request for voluntary discovery and a motion for discovery filed by defendant; that Judge Clark had ordered the State to "provide discovery as requested by the defendant"; and that "as of this date discovery has not been provided pursuant to Judge Clark's Order." He then stated: "Based upon the above findings in this case as applied to the facts of this case, the Court orders that the matters of State of **[**500]** North Carolina versus Bobby Mitchell Adams . . . be dismissed." He subsequently entered a written order of dismissal.

The State contends the court abused its discretion in imposing the sanction of dismissal, because this sanction "was not contemplated by the Legislature and was inappropriate under the particular circumstances of this case." When this matter was before the trial court, the statute entitled "Regulation of discovery -- failure to comply" read as follows:

> If at any time during the course of the proceedings the court determines that a party has failed to comply with this Article or with an **[***7]** order issued pursuant to this Article, the court in addition to exercising its contempt powers may
>
> (1) Order the party to permit the discovery or inspection, or
>
> (2) Grant a continuance or recess, or
>
> **[*120]** (3) Prohibit the party from introducing evidence not disclosed, or
>
> (4) Enter other appropriate orders.

G.S. 15A-910 (1978). Dismissal of charges was not an expressly authorized sanction, and was permissible, if at all, under the rubric of "other appropriate orders."

The legislature has since amended the statute to allow the court, in addition to the foregoing, to:

(3a) Declare a mistrial, or

(3b) Dismiss the charge, with or without prejudice . . . . Act of August 26, 1983, ch. 6 § 3, 1983 N.C. Ex. Sess. Laws --- (effective upon ratification). The sanction of dismissal thus has now been expressly authorized.

Our Supreme Court has stated:

> "An amendment to an act may be resorted to for the discovery of the legislative intention in the enactment amended, as where the act amended is ambiguous." . . . "Whereas it is logical to conclude that an amendment to an unambiguous statute indicates the intent to change the law, no such **[***8]** inference arises when the legislature amends an ambiguous provision." In such case, the purpose of the variation may be "to clarify that which was previously doubtful."

Taylor v. Crisp, 286 N.C. 488, 496-97, 212 S.E. 2d 381, 386-87 (1975). We believe clarification was the purpose of the 1983 amendment to *G.S. 15A-910*. It thus should not be construed to have changed the law so as to permit a previously prohibited sanction, but rather to have made explicit a previously implicit intent that the sanction of dismissal be among those which could be implemented by "other appropriate orders."

We thus reject the argument that when the order in question was entered dismissal was not a sanction contemplated by the legislature. We hold that dismissal was then and is now a permissible sanction for failure to comply with criminal discovery orders.

[*121] "Which sanction, if any, is the appropriate response to a party's failure to comply with a discovery order is entirely within the sound discretion of the trial court. [Its] decision . . . will not be reversed absent a showing of abuse of that discretion." *State v. Alston, 307 N.C. 321, 330, 298 S.E. 2d 631, 639 (1983)*; **[***9]** *see also State v. Brown, 306 N.C. 151, 168, 293 S.E. 2d 569, 580 (1982)*; *State v. Dukes, 305 N.C. 387, 390, 289 S.E. 2d 561, 562-63 (1982)*. The statute "gives the judge broad and flexible powers to rectify the situation if a party fails to comply with discovery orders." *G.S. 15A-910* official commentary.

Dismissal of charges is an "extreme sanction" which should not be routinely imposed. *See United States v. Sarcinelli, 667 F. 2d 5, 7 (5th Cir. 1982)*. Here, however, Judge Clark's order to permit discovery was clear and unequivocal. It afforded the State ten days for compliance. The motion to dismiss for noncompliance was heard and determined fifty days later. At that time the assistant district attorney asserted only that the State had verbally responded to defense counsel regarding the portion of the order on statements given by defendant. He did not assert that the State had complied in any way with the other portions of the order, or that it had **[**501]** formally complied with the portion regarding defendant's statements.

Further, the record clearly establishes that defendant is mentally retarded and illiterate. In view of proceedings which occurred before **[***10]** the hearing on the motion to dismiss, and of the materials in the case file, the district attorney's office could hardly have been unaware of this. Defense counsel argued that defendant's retarded and illiterate state rendered the long delay in obtaining discovery severely prejudicial to counsel's ability to confer with his client and to secure his client's assistance in his own defense. He contended that the State's noncompliance thus impacted significantly upon his ability to represent his client effectively. The validity and persuasiveness of defense counsel's argument in light of the circumstances presented was for the trial court, in the exercise of its discretion, to determine.

The court made findings only as to defendant's request for voluntary discovery and motion for discovery, Judge Clark's order for discovery, and the State's noncompliance with that order. In addition to such findings, orders dismissing charges for **[*122]** noncompliance with discovery orders preferably should contain findings which detail the perceived prejudice to the defendant which justifies the extreme sanction imposed. *See United States v. Sarcinelli, supra, 667 F. 2d at 7*. The perceived **[***11]** prejudice in this case, and its potentially irreparable nature, is apparent, however; and the failure to make such findings here thus does not merit reversal or remand.

Under the circumstances presented, we decline to hold that the trial court abused its discretion in dismissing the charges for the State's failure to comply with the order for discovery. The order of dismissal is thus

Affirmed.

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State v. Johnson

Supreme Court of North Carolina

October 5, 2021, Heard in the Supreme Court; December 17, 2021, Filed

No. 420A20

Reporter
379 N.C. 629 *; 2021-NCSC-165 **; 866 S.E.2d 725 ***; 2021 N.C. LEXIS 1278 ****

STATE OF NORTH CAROLINA v. DMARLO LEVONNE FAULK JOHNSON

Disposition: AFFIRMED IN PART AND REVERSED IN PART.

Counsel: **[****1]** Joshua H. Stein, Attorney General, by Zachary K. Dunn, Assistant Attorney General, for the State-appellee.

Marilyn G. Ozer for defendant-appellant.

Judges: BARRINGER, Justice. Justice BERGER did not participate in the consideration or decision of this case.

Opinion by: BARRINGER

Opinion

[*629] **[***726]** Appeal pursuant to *N.C.G.S. § 7A-30(2)* from the decision of a divided panel of the Court of Appeals, *273 N.C. App. 358, 846 S.E.2d 843 (2020)*, finding no error after appeal from a judgment entered on 12 May 2017 by Judge Rebecca W. Holt in Superior Court, Durham County.

BARRINGER, Justice.

[P1]** In this case, we address whether the trial court committed constitutional error when it denied defendant's motion to continue. The motion to continue was based on the State's disclosure on the eve of trial that it **[*630]** planned to use select phone calls of over 800 recorded calls made by defendant from jail **[***727]** (the calls). Previously, the State had informed defense counsel that it did not intend to introduce any of the calls and that the State had ceased reviewing the calls. We conclude that on the record before us, the trial court erred. However, the error was harmless beyond a reasonable doubt as to one of defendant's convictions, first-degree murder. The jury found defendant guilty of first-degree murder under **[****2]** the felony murder rule with assault with a firearm on a government official as the underlying felony. Because the calls were admitted as rebuttal evidence to defendant's evidence of lack of specific intent, there can be no prejudice as a matter of law to the conviction of a general-intent crime. In this case, the general-intent crime is assault with a firearm on a government official. Therefore, there is no prejudice to a felony murder conviction premised on that general-intent crime. Accordingly, we affirm that conviction, and we only order the trial court to vacate the judgment of and order a new trial on the conviction dependent on a finding of specific intent, robbery with a dangerous weapon.

I. Background

[P2]** Armed with a handgun, defendant robbed a gas station, shot the gas station attendant, and pointed a firearm at law enforcement on 4 July 2015. The gas station attendant died. The grand jury indicted defendant for robbery with a dangerous weapon, assault with a firearm on a government official, and murder. While defendant's actions were recorded by a security camera and he was apprehended fleeing the gas station, defendant's state of mind was disputed. Defendant through his counsel **[****3]** filed notice of three defenses: (1) mental infirmity and insanity under *N.C.G.S. § 15A-959(a)*, (2) mental infirmity and diminished capacity under *N.C.G.S. § 15A-959(b)*, and (3) voluntary intoxication.

[P3]** Relevant to this appeal, on 12 April 2017, the State gave defense counsel a compact disc (CD) with 335 calls made by defendant from jail. A day later, the State gave notice to defendant of its intent to offer hearsay evidence from a witness, concerning statements made by the victim about a confrontation with defendant.

[P4]** Defense counsel asked defendant's investigator to review the calls. However, the investigator for defendant could not open the contents of the CD that contained the calls. Accordingly, defense counsel contacted and informed the district attorney's office that they could not open the contents of the CD. On 18 April 2017, defense counsel followed up with the State by email. In that email, defense counsel informed and inquired of the State as follows: "I will not have time to listen to [the calls] and do **[*631]** not think I have anyone in my office that can assist. Please let me know if there are any calls which you believe are somehow relevant to your case." The State responded as follows:

> I had requested the calls once [the **[****4]** State's] Inv[estigator] informed me that there were issues securing [the appearance of a witness who encountered defendant in the gas station]. . . . I haven't listen[ed] to most of them, but it is clear that [defendant] indicates that he will not talk on the phone about certain matters and will only talk in person. At this time[,] I do not intend to use any of those calls, and I am no longer requesting anyone to continue listening to the calls.

Essentially, the State had obtained the calls to assess whether defendant knew of or had sought to intimidate the witness who encountered defendant in the gas station, but the State decided that reviewing the calls would not be helpful and stopped listening to the calls.

[P5]** That same day, the State provided a new CD of the 335 calls to defense counsel, which defendant's investigator could open. Given the State's response and the fact that it was less than a week before trial, defense counsel and defendant's investigator "dropped listening" to the calls. Defense counsel and defendant's investigator instead spent a considerable part of the week before trial trying to locate the witness identified in the State's 13 April 2017 notice.

[P6]** On 20 April 2017, **[****5]** the State gave notice to defendant of its intent to offer hearsay evidence from another witness, the gas station owner. That same day, the State filed an amended version of the 13 April 2017 notice **[***728]** and included an exhibit containing the substance of the witness's statements.

[P7]** Also on 20 April 2017, the State provided defense counsel with a CD of 545 additional calls made by defendant from jail. Defense counsel emailed the State about these calls, and the State responded, without qualification, "I do not intend to introduce any of the jail calls." The State had obtained these calls to see if defendant's girlfriend said anything during the calls which may have been helpful to the State's case. Based on the State's representation, defense counsel did not ask anyone to help him listen to the calls. April 20 was also the last day defendant's investigator was at work before the trial commenced because the investigator had contracted pneumonia. On 21 April 2017, defense counsel filed an objection to the State's offering of hearsay evidence.

[*632] **[**P8]** At 5:50 p.m. on 23 April 2017, the State emailed defense counsel stating as follows:

> [I]t occurred to us that there are recordings of the [d]efendant on **[****6]** [the day he met with defendant's expert, Dr. George Corvin], although not with Dr. Corvin. The recordings are of the jail calls. We have listened to some jail calls and decided that they are relevant material to his state of mind as well as his memory of the night of the murder.

The prosecutor also identified that the calls were "from August 12-August 14, 2015" and were "numbered 251-274."

[P9]** The next day, 24 April 2017, the matter was called for trial. Defense counsel moved for a continuance to afford him time to review the calls and deal with how they might affect the testimony of defendant's two experts. Defense counsel had not been able to listen to the twenty-three calls identified by the State. Defense counsel argued that defendant's rights would be violated under the *Fifth*, *Sixth*, and *Fourteenth Amendments of the United States Constitution* and *Article I, Sections Nineteen* and *Twenty-Three of the North Carolina Constitution*, specifically defendant's rights to due process, effective assistance of counsel, and confrontation of witnesses. Defense counsel also tendered into the record for the trial court's consideration the emails between defense counsel and the State, as summarized herein, and the CDs containing the over 800 calls.

[P10]** The trial court denied the motion to continue. **[****7]** [1] After the denial of the motion to continue, defense counsel further requested that he be given a day or a half-day after the completion of jury selection but before opening statements to listen to the four hours of calls identified by the State and to speak with his experts. Defense counsel indicated that he had spoken to his experts and they would make themselves available.

[P11]** After jury selection was completed on Friday, 28 April 2017, defense counsel, at around 11:30 a.m., renewed his request for a continuance. Defense counsel asked the trial court to delay opening statements until Monday to afford him the rest of the day and the weekend to review the calls and talk with his experts. Defense counsel argued that he had not had the time to listen to all twenty-three calls, had yet to understand them, and would be compelled to make an opening statement without **[*633]** knowledge of material rebuttal evidence. The trial court denied the request, and the State and defense counsel proceeded to present their respective opening statements.

[P12]** Ultimately, defendant was convicted of first-degree murder under the felony murder rule with the underlying felony being assault with a firearm on a government official, **[****8]** robbery with a dangerous weapon, and assault with a firearm on a government official. The trial court imposed a term of life without parole for first-degree murder and a consecutive term of 60 months to 84 months for robbery with a dangerous weapon. The trial court arrested judgment on assault with a firearm on a government official.

[P13]** On appeal, a divided panel of the Court of Appeals concluded that the trial court committed no reversible error. *State v. Johnson, 273 N.C. App. 358, 367, 846 S.E.2d 843 (2020)*. The Court of Appeals held that **[***729]** regardless of the standard of review, any error by the trial court in not allowing the motion to continue was not prejudicial to the felony murder conviction because the underlying felony was a "general[-]intent" crime, and the calls were admitted to rebut testimony from defendant's expert concerning defendant's diminished capacity. *Id. at 361-63*. The Court of Appeals also concluded that the denial of the motion to continue was not an error. *Id. at 363, 366-67*. The dissent disagreed, contending that the majority failed to apply the correct standard of review for addressing a motion to continue based on a constitutional right and that under the correct standard, defendant is entitled to a new trial. *Id. at 367-68* (Stroud, J., dissenting). Defendant appealed **[****9]** as of right based on the dissent.

II. Standard of Review

[P14]** A ruling on a motion to continue is addressed to the sound discretion of the trial court and reviewed on appeal for abuse of discretion unless the motion "raises a constitutional issue." *State v. Searles, 304 N.C. 149, 153, 282 S.E.2d 430 (1981)*. If the motion raises a constitutional issue, "the trial court's action upon it involves a question of law which is fully reviewable by an examination of the particular circumstances of each case." *Id.* However, regardless of the nature of the motion to continue, whether constitutional or not, a denial of a motion to continue is "grounds for a new trial only upon a showing by [the] defendant that the denial was erroneous and that [ ]his case was prejudiced thereby." *Id.*

[P15]** "If the defendant shows that the time allowed his counsel to prepare for trial was constitutionally inadequate, he is entitled to a new trial unless the State shows that the error was harmless beyond a reasonable

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[1] The trial court orally ruled on the motion to continue. No order with findings of fact or conclusions of law was entered.

doubt." State v. Tunstall, 334 N.C. 320, 329, 432 S.E.2d 331 (1993); *see* N.C.G.S. § 15A-1443(b) **[*634]** (2019) ("A violation of the defendant's rights under the Constitution of the United States is prejudicial unless the appellate court finds that it was harmless beyond a reasonable doubt. The burden is upon the State to demonstrate, beyond a reasonable doubt, **[****10]** that the error was harmless.").

III. Analysis

[P16]** Defendant's motion to continue raised a constitutional issue, requiring de novo review by this Court. As set forth herein, exercising our judgment anew, we conclude the trial court erred by denying the motion to continue. Defendant had constitutionally inadequate time to address the calls. Yet, the trial court's constitutional error was harmless beyond a reasonable doubt as to defendant's conviction of first-degree murder under the felony murder rule with the underlying felony being assault with a firearm on a government official. The calls were admitted as rebuttal evidence to defendant's evidence of lack of specific intent. However, the offense of assault with a firearm on a government official does not require a defendant to have a specific intent. It is a general-intent crime. Therefore, there can be no prejudice from the denial of the motion to continue as a matter of law to the conviction of assault with a firearm on a government official or felony murder resulting therefrom, because the calls were not relevant to any element of these crimes.

A. Constitutional adequacy of time to prepare for trial

[P17]** As defendant's request for a continuance **[****11]** before the trial court raised a constitutional issue, we review de novo the constitutional issue. The constitutional guarantees of assistance of counsel and confrontation of one's accusers and adverse witnesses implicitly provide that "an accused and his counsel shall have a reasonable time to investigate, prepare[,] and present his defense." State v. Rogers, 352 N.C. 119, 124, 529 S.E.2d 671 (2000) (quoting State v. McFadden, 292 N.C. 609, 616, 234 S.E.2d 742 (1977)). "To establish a constitutional violation, a defendant must show that he did not have [adequate] time to confer with counsel and to investigate, prepare[,] and present his defense." Tunstall, 334 N.C. at 329. "To demonstrate that the time allowed was inadequate, the defendant must show 'how his case would have been better prepared had the continuance been granted or that he was materially prejudiced by the **[***730]** denial of his motion.'" *Id.* (quoting State v. Covington, 317 N.C. 127, 130, 343 S.E.2d 524 (1986)). What constitutes inadequate time "must be determined upon the basis of the circumstances of each case." *Id.* (quoting State v. Harris, 290 N.C. 681, 687, 228 S.E.2d 437 (1976)).

[P18]** Exercising our judgment anew, we conclude that the trial court erred by denying defendant's motion to continue because defendant **[*635]** showed the trial court that he did not have reasonable time to address the calls, that he would have been better prepared had the continuance been granted, and that he was **[****12]** materially prejudiced by the denial of his motion.[2] In other words, defendant demonstrated to the trial court that the time allowed his counsel to prepare his defense was constitutionally inadequate.

[P19]** We first recognize that the time available to defense counsel to address the calls was limited. Defense counsel informed the trial court and tendered into the record the calls and the emails reflecting that defense counsel received notice at 5:50 p.m. the night before jury selection started that the State intended to use twenty-three of the calls—after the State had indicated that it was not using any of the calls and defense counsel and investigator had stopped reviewing them. Under these unique circumstances, where defense counsel relied on the State's representations, one of which was unqualified, and was reasonably preoccupied with other filings by the State and preparation for trial, we consider the relevant date and time for our analysis to be when the State informed defense

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[2] Here, defense counsel showed the trial court that he would be better prepared if the continuance had been granted and counsel's actual performance supports defendant's claim of material prejudice. Accordingly, we do not conclude or hold that prejudice could be presumed in this matter. *See* United States v. Cronic, 466 U.S. 648, 662, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984) ("[O]nly when surrounding circumstances justify a presumption of ineffectiveness can a Sixth Amendment claim be sufficient without inquiry into counsel's actual performance at trial."); State v. Rogers, 352 N.C. 119, 126, 529 S.E.2d 671 (2000).

counsel that the State intended to use the twenty-three calls. Thus, this case is unlike *Tunstall*, where "defendant's counsel had at least three days between notification of [two oral] statements [made by defendant **[****13]** to law enforcement] and the beginning of jury selection in the defendant's trial in which to investigate the circumstances under which the statements were made." *Id. at 332*.

[P20]** Further, defendant's sole counsel only had the early mornings of and the late evenings of five days to listen to the calls and assess their impact on defendant's defense before making his opening statement to the jury. During the day, defense counsel was in court for the pretrial proceedings and jury selection for this case and unable to listen to the 3 hours and 53 minutes of the identified twenty-three calls or any other of the more than 800 calls. Defendant's investigator was also unavailable due to pneumonia.

[P21]** We also find defendant's showing in support of his position that he would have been better prepared for trial both sufficient and compelling. Defense counsel indicated to the trial court on 28 April 2017 that **[*636]** with a delay of opening statements until the next business day, Monday, he could listen to all twenty-three calls,[3] determine their implication on defendant's defense, and then consult with his expert. Defense counsel specifically identified that he would speak to defendant's expert, Dr. Corvin, over the weekend **[****14]** to discuss the calls and their implication. The State had isolated these calls specifically to rebut Dr. Corvin's testimony and defendant's sole defense that he was incapable of forming the intent to commit the charged crimes. The twenty-three calls were communications made by defendant the day before, the day of, and the day after Dr. Corvin first met with defendant on 13 August 2015, and Dr. Corvin noted unusual behaviors relevant to his opinions.[4]

[P22]** Finally, defendant has met his burden to show that he was prejudiced by the denial of the motion to continue. Defendant argues **[***731]** that the denial of the motion to continue impaired defense counsel's ability to give an "accurate forecast of his expert testimony and his anticipated response to the [S]tate's use of [the] calls" in his opening statement. Under the circumstances of this case and upon review of defense counsel's actual performance at trial, we agree.[5] As defendant identified, the calls were intended to undermine defendant's only defense to the charge of robbery with a dangerous weapon—his state of mind as impacted by his mental health and consumption of impairing substances. And this defense was complicated and involved experts.

[P23]** **[****15]** Examining defense counsel's actual performance, the opening statement of defense counsel also reflects a vagueness regarding the evidence from defendant's experts. The opening statement concerned testimony about the impact of mental health conditions generally rather than specific details concerning defendant, even though Dr. Corvin ultimately testified as an expert in forensic psychiatry that the combination of bipolar disorder, an intellectual disability, and intoxication, which he found defendant to have on 4 July 2015 at the time of the alleged crimes, rendered defendant without the ability to form specific intent. Robbery with a dangerous weapon is a specific-intent offense, requiring the State to prove that defendant had the intent to steal. *State v. Smith, 268 N.C. 167, 169, 150 S.E.2d 194 (1966)*. Further, even though defendant had retained and noticed **[*637]** two mental health experts, Dr. Corvin and Dr. Jennifer Sapia, the opening statement did not refer to experts. Instead, the singular, expert, was used. Thus, at the time of opening statements, defense counsel's ability to provide meaningful adversarial testing of the State's case against defendant concerning the robbery with a dangerous weapon charge was compromised by the inadequacy of time afforded him to prepare his defense.[6] *Cf.* *United States v. Cronic, 466*

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[3] The State ultimately decided to tender as rebuttal evidence only nine of the twenty-three calls. The State did not notify defendant of this until 8 May 2017, which was after opening statements were made.

[4] Dr. Corvin also met with defendant on 20 April 2016.

[5] However, as addressed in section B of this opinion, this error was not prejudicial as a matter of law to the conviction of first-degree murder under the felony murder rule.

[6] Notably, the jury found defendant not guilty of the other charged specific-intent offense—first-degree murder based on malice, premeditation, and deliberation. *See* *State v. Chapman, 359 N.C. 328, 374, 611 S.E.2d 794 (2005)* ("Specific intent to kill is an essential element of first[-]degree murder, but it is also a necessary constituent of the elements of premeditation and deliberation." (cleaned up)). Thus, this is not a case where the evidence was overwhelming in the favor of the State concerning defendant's state of mind. Therefore, an impact on defense counsel's opening statement could have been prejudicial.

U.S. 648, 656, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984) ("When a true adversarial criminal trial has been conducted—even if defense counsel may have made demonstrable errors—the kind of testing envisioned by the Sixth Amendment has occurred." (footnote omitted)). Thus, we are persuaded that the impact of the denial of the motion to continue was material and prejudicial.

[P24]** Ultimately, what amount of time is constitutionally adequate or constitutionally inadequate depends on the circumstances of the case and requires a case-by-case assessment. Here, the assessment of the circumstances leads to our holding that the amount of time afforded defendant was constitutionally **[****16]** inadequate. Hence, we conclude that defendant has shown that the trial court committed constitutional error by denying defendant's justifiable request for delay in his motion to continue.[7]

B. Harmless error

[P25]** Since we conclude from our de novo review of the constitutional issue in defendant's request for a continuance that the trial court erred, the State bears the burden of showing that the error was harmless beyond a reasonable doubt. However, any error by the trial court was harmless beyond a reasonable doubt as a matter of law regarding the conviction of first-degree murder **[***732]** based on the felony murder rule because there **[*638]** was no factual dispute regarding whether or not defendant committed the offense—the evidence supporting his conviction was uncontroverted[8]—and the admitted evidence that solely addressed defendant's mental state was entirely irrelevant to this offense given that the legal elements of this conviction do not require anything more than general intent. *See* Johnson, 273 N.C. App. at 361-63. In this matter, the underlying felony supporting the jury's felony murder conviction—assault with a firearm on a government official—is a "general-intent offense." State v. Page, 346 N.C. 689, 700, 488 S.E.2d 225 (1997) (holding the offense of assault with a firearm on a **[****17]** government official is a general-intent offense). A felony murder conviction requires no intent other than the intent necessary to secure conviction of the underlying felony. State v. Richardson, 341 N.C. 658, 666-67, 462 S.E.2d 492 (1995). Accordingly, defendant's conviction of first-degree murder under the felony murder rule with the underlying felony being assault with a firearm on a government official is also a general-intent offense.

[P26]** General-intent offenses are offense**s** "which only require the doing of some act." State v. Jones, 339 N.C. 114, 148, 451 S.E.2d 826 (1994). In contrast, specific-intent offenses are offenses "which have as an essential element a specific intent that a result be reached." *Id.* Thus, any evidence in this case[9] supporting or negating that defendant was incapable of forming intent at the time of the crime is not relevant to a general-intent offense. *See id.* (holding intoxication defense is not available for general-intent offense); Page, 346 N.C. at 700 (holding diminished-capacity defense is not available for a general-intent offense).

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[7] The Supreme Court of the United States has recognized that the amount of time the government spends investigating a case or the number of documents that the government reviews is not necessarily relevant to the constitutional adequacy of defense counsel's preparation time. Cronic, 466 U.S. at 663. Here, the State intended to use twenty-three calls recorded on the day of, the day before, and the day after Dr. Corvin first met with defendant as rebuttal evidence. Therefore, especially in this context, our holding that the trial court erred by not granting a continuance until Monday for opening statements in no way endorses the contention that effective assistance of counsel necessitates review of all the calls.

[8] In fact, in both the opening statement and closing argument at trial, defense counsel did not contest any element of the offenses charged except intent. His sole defense was that defendant did not act with the requisite intent because of his diminished capacity from a mixture of a manic bipolar episode, mental disability, alcohol intoxication, and cocaine digestion. Later at the jury charge conference, defense counsel acknowledged that a diminished capacity argument was unavailable with respect to the general intent charges. Nevertheless, he still argued that the jury should receive an instruction that they could consider the facts allegedly demonstrating diminished capacity in connection with the knowledge element of the general intent crime.

[9] The jury was not instructed on the defense of insanity, and defense counsel did not argue that defendant was legally insane.

[P27]** Here, the calls were introduced as rebuttal evidence to the testimony of defendant's expert, Dr. Corvin, who opined on defendant's mental health diagnosis and capacity to form intent for the purposes of defendant's defense. As a matter of law, Dr. Corvin's testimony **[****18]** and the State's rebuttal evidence of the calls are irrelevant to the assault with a firearm on a government official conviction and resulting felony murder conviction. **[*639]** Therefore, we conclude that the trial court's error in denying the motion to continue for defense counsel to review the calls and consult with the experts was harmless beyond a reasonable doubt as to the conviction of felony murder based on the underlying felony of assault with a firearm on a government official conviction. We hold that defendant is entitled to a new trial only on the charge of robbery with a dangerous weapon.

IV. Conclusion

[P28]** For the reasons set forth herein, we conclude that the Court of Appeals erred as the trial court committed constitutional error by denying the motion to continue. However, the error by the trial court was harmless beyond a reasonable doubt as a matter of law to the conviction of first-degree murder under the felony murder rule where the underlying felony was a general-intent crime. Therefore, we affirm in part and reverse in part the decision of the Court of Appeals and direct the trial court to vacate the judgment as to the robbery with a dangerous weapon conviction for a new trial. **[****19]**

AFFIRMED IN PART AND REVERSED IN PART.

Justice BERGER did not participate in the consideration or decision of this case.

End of Document

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA09-1426

NORTH CAROLINA COURT OF APPEALS

Filed: 5 October 2010

STATE OF NORTH CAROLINA

v. Wilkes County
No. 07 CRS 053968
07 CRS 053969

PAUL DOUGLAS ABSHER JR.
and GEORGIA LOGAN MINTON,

Defendants.

Appeal by the State from order entered 3 September 2009 by Judge Carl R. Fox in Wilkes County Superior Court. Heard in the Court of Appeals 29 April 2010.

Attorney General Roy Cooper, by Assistant Attorney General Derrick C. Mertz, for the State.

Morrow, Alexander, & Porter PLLC, by John C. Vermitsky, for defendants.

ELMORE, Judge.

The State appeals from an order dismissing, with prejudice, charges of assault on a government official and resisting a public officer against Paul Douglas Absher, Jr. (defendant Absher), and the charge of resisting a public officer against Georgia L. Minton (defendant Minton). We affirm.

Background

The following facts are undisputed: On the night of 19-20 September 2007, defendant Absher was involved in an altercation with the Wilkes County Sheriff's Department (Sheriff's Department) and the Wilkesboro Police Department (Police Department). As a result of this altercation, defendant Absher "allegedly suffered serious injuries including a fractured skull, lacerations, a serious brain injury and bleeding on the brain, a collapsed lung[,] and other life threatening injuries." For his part in the altercation, defendant was charged with assault on a government official and resisting and delaying an officer in the performance of his duties. Both defendants were tried for these offenses in district court, and defendant Absher was found guilty of both; defendant Minton was found guilty only of resisting and delaying an officer. Defendants appealed their convictions to the Superior Court Division of Wilkes County for a trial *de novo*.

Before trial, defense counsel filed a motion to dismiss the charges based on loss and destruction of exculpatory evidence by the State. According to the motion, when defendant Absher was arrested, he was brought to the intake center and then was shackled to a chair and assaulted by law enforcement officers. The intake center's closed circuit television video feed recorded all of these events. On 1 October 2007, defense counsel sent letters to the Sheriff's Department and the Wilkes County District Attorney's Office. Those letters stated, in relevant part:

> It is my understanding that your office is in possession of several videotapes and unfinished reports regarding the incident that led to my client's injuries on 9/20/07.

> It is my understanding that among these reports and videos is a videotape of my client which was taken while he was detained by the Wilkes County Sheriff's office for a period of about 30-40 minutes prior to his admission to Wilkes General Hospital.
>
> This letter represents the formal request and demand of our office that said materials be made available for inspection at a mutually convenient time and location. In the alternative, should your office not wish to cooperate with this request, please take this letter as our office's formal demand that all such materials be preserved and not taped over, destroyed, or altered in any way. Please confirm the receipt of this letter no later than Friday October 5, 2007.

Defense counsel followed these letters with a request for voluntary disclosure and written request for *Brady* material. Specifically, defendant sought the State's permission to allow his attorney to "inspect and copy . . . motion pictures . . . which are within the possession, custody, or control of the State, . . . [s]pecifically including but not limited to, all videos of the defendant at the time he was being held by the Wilkes County Sheriff's office in a holding cell prior to hospitalization." (Emphasis removed.)

On 9 October 2007, an assistant district attorney responded to defense counsel's letter and request. In his letter, he stated that "[t]he rules of pre-trial discovery in criminal cases only apply to cases within the original jurisdiction of the Superior Court . . . . There are no rules requiring pre-trial discovery for cases within the original jurisdiction of the District Court, such as [defendant's] case." He further explained, "Our office does not

generally maintain files or other evidence for offenses charged as misdemeanors."

On 23 October 27, defense counsel sent a subpoena to the Sheriff's Department requesting "[a]ll Sheriff Department reports, video's [*sic*] of the Defendant, Paul Absher, Jr., and any other documents related to the arrest and injuries that Mr. Absher sustained on September 20, 2007." In response, the Sheriff's Department produced reports by two deputies. On 25 July 2008, defendant sent another subpoena to the Sheriff's Department asking it to "forward to [his attorney] any and all video recordings from the intake of the jail facility pertaining to the incident of September 19, 2007, which formed the basis of [defendant's charges.]" On 15 August 2008, defense counsel sent an identical subpoena to the Wilkes County Emergency Management Department (Emergency Management Department).

According to the motion to dismiss, Suzanne Hamby from the Emergency Management Department responded to the subpoena by calling defense counsel. During this phone call, defense counsel learned that the original video had been destroyed, a "new video" had been created, and the "new video" was in the possession of the Sheriff's Department. The motion to dismiss described the creation of the new video as follows:

> [T]he Wilkes County Sheriff's Department took affirmative steps to ensure that the video in its original form was erased and modified into a "new video" which consisted of a series of photographs which were put together into a type of "flipbook" of what occurred on that evening. After selectively choosing what images to include in this "new video" the

> Sheriff's Department ordered the old video to be destroyed and took possession of the new video.

When the case was called to trial on 27 July 2009, the court first addressed the motion to dismiss in a pretrial hearing, which it granted after hearing both sides' arguments and the testimony of six State's witnesses. The trial court entered its order dismissing both defendants' charges on 3 August 2009. The State now appeals.

ARGUMENTS

We note at the outset that the State directs all of its arguments toward defendant Absher, rather than both defendants. However, both defendants have appealed. Because the State addresses defendant Absher in its arguments and defendants' brief responds in kind, we also primarily address the arguments as they apply to defendant Absher. We address defendant Minter's appeal in section III below.

I. Motion to Dismiss.

The State first argues that the trial court erred by dismissing the prosecution against defendants because the trial court's findings of fact and conclusions of law were unsupported and erroneous. The trial court's order contained thirty-nine findings of fact and seven conclusions of law, most of which the State now challenges on appeal. Specifically, the State challenges findings of fact 3, 6, 7, 8, 13, 14, 15, 17, 18, 21, 24, 26, 27,

28, 29, 35, 36, 37, 38, and 39 and conclusions of law 4, 5, 6, and 7.

General Statute section 15A-954(a)(4) governs a criminal defendant's motion to dismiss if he alleges that his "constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution." N.C. Gen. Stat. § 15A-954(a)(4) (2009). If, on the defendant's motion, a trial court makes a determination that such a violation has occurred, it must dismiss the charges against the defendant. *Id.*

> In reviewing a trial judge's findings of fact, we are strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law. Even if evidence is conflicting, the trial judge is in the best position to resolve the conflict. The decision that defendant has met the statutory requirements of N.C.G.S. § 15A-954(a)(4) and is entitled to a dismissal of the charge against him is a conclusion of law. Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal. Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.

State v. Williams, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quotations and citations omitted).

A. Findings of Fact

1. Finding of fact 3. We begin our analysis with finding of fact 3. The finding states:

> The intake facility was subject to video surveillance by way of a DVR system maintained by the Wilkes County Government by and through the Wilkes County Sheriff's department in conjunction with the Wilkes County Emergency Management Department. This DVR was located in both the Wilkes County Courthouse as well as in the office of Suzanne Hamby, the Director of the Emergency Management Department of Wilkes County.

The State argues that there was no evidence that the video system was "maintained" by the Sheriff's Department; the State alleges that the system was owned by the county and maintained by the Emergency Management Department. We disagree.

In her deposition, Hamby testified that the videos at the intake facility recorded simultaneously to two DVRs — one located in the intake facility and the second located in Hamby's office. She explained that this back-up recording took place in her office because the U.S. Department of Homeland Security had provided money to the Emergency Management Department to upgrade cameras in various locations around the county. She explained that after the Emergency Management Department "got the money with the Homeland Security, we just — we — they needed a backup place, and that's just where it was put was in my office because we got the grant money to do it, and that's all I know." When asked, she confirmed that "[s]upervising the intake facility and the sheriff's department is not part of [her] responsibility of [her] department." When asked who was "directed and tasked with supervising that intake facility recording," she responded, "I would say the sheriff's — it's under the sheriff." Accordingly, we hold that finding of fact 3 is supported by competent evidence.

2. Findings of fact 6 and 7. The State next challenges findings of fact 6 and 7, which state:

> 6. According to the testimony of James Brian Griffith, the third party security vendor who installed and maintains the security system, this system was installed on the computers of several Wilkes County Sheriff's deputies and could be accessed by any individual with the Wilkes County Sheriff's Department via any county computer if the individual had both a password and IP (Internet Protocol) address which was provided by Mr. Griffith.
>
> 7. The installation of this password and IP address could be completed by Mr. Griffith in less than 5 minutes.

The State argues that findings of fact 6 and 7 are not supported by competent evidence because there was no evidence that "any more than one deputy had on his computer access to the video feed." We disagree.

During the hearing, Griffith testified that Hamby's "backup system" was not a true back-up system, but instead Hamby had "the IP addresses and the program downloaded on her computer, which will allow her, through the internet or through the county network, to access and to connect to the digital video records over here in the Breathalyzer room." Griffith explained that "anywhere in the county, with the proper software, you can reach and read and do every function that the recorder is capable of." When asked if Hamby's office was the only office with that capability, Griffith replied:

> Well, originally, whenever I installed it, I installed it in Mr. Huffman's office and a deputy that was across from him, and I showed them how to operate the system. And from that point, the software was disseminated further,

> and there was a couple other deputies that got a hold of it. I know they downloaded it on their computers.
>
> Suzanne wanted it on her computer so in case there was ever, you know, something like a hostage situation or something like that, that she would have the capability and access to it to — to use at her disposal.

When asked how long it would take to install the software necessary to connect to the digital video records, Griffith responded, "Three minutes or less." Accordingly, we hold that findings of fact 6 and 7 are supported by competent evidence.

3. Finding of fact 8. The State next challenges finding of fact 8, which states:

> On October 1, 2007, while this video was still in its original form and unmodified, counsel for the Defendants sent a letter to the Wilkes County Sheriff's Department as well as the Wilkes County District Attorney's Office asking both agencies to preserve all video images of the intake center and incident in question and specifically requesting that these images not be taped over, destroyed or altered in any way due to their exculpatory value.

The State argues that neither letter made any mention of the exculpatory value of the alleged evidence. We acknowledge that neither letter used the phrase "exculpatory value," but defense counsel's meaning was plain when he wrote that the requested video related to the incident "which led to [his] client's injuries," that the video showed defendant Absher, and that the video "was taken while [defendant Absher] was detained . . . for a period of about 30-40 minutes prior to his admission to Wilkes General

Hospital." Accordingly, we hold that finding of fact 8 was supported by competent evidence.

4. Findings of fact 13, 14, and 15. The State next challenges findings of fact 13, 14, and 15, which state:

> 13. Despite the letter to the Sheriff, Chief Deputy Chris Shue[1] made no mention to Ms. Hamby of the need to preserve the video in its original form or the letter received from this office and instead agreed to have a third party agent (Mr. James Brian Griffith) review the video and use it to create a new video that only maintained what Mr. Griffith determined in his sole discretion to be the "points of contact" between the Defendant and members of the Wilkes County Sheriff's Office.
>
> 14. At Chief Deputy Shue's direction and with his consent, Ms. Hamby called Mr. James Brian Griffith, owner of Griffith Security. Mr. Griffith looked at the video and determined that it contained between 7 and 9 gigabytes of information. Mr. Griffith talked with Suzanne Hamby and together along with Chief Deputy Shue they determined that it would be appropriate to modify the video to only preserve the portions where the officers were in physical contact with the Defendant Absher.
>
> 15. At Ms. Hamby and Chief Deputy Shue's direction, Mr. Griffith then created a new video. Mr. Griffith created a new video using this method, removing all of the images where Mr. Absher was purportedly in a room alone or where Mr. Griffith determined in his own discretion that there was no "physical contact" between Mr. Absher and the deputies involved. In doing this, Mr. Griffith admittedly failed to download scenes where Mr. Absher was visible on camera in a room alone for some extended period of time and at least 2 minutes and 34 seconds where Mr. Absher was in a room with 2-3 deputies and two paramedics.

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[1] The order misspells Chief Deputy Shew's name throughout. For ease of reading, we have not indicated each mistake.

The State argues that no evidence was presented that only "points of contact" were saved at the direction of Chief Deputy Chris Shew. We disagree. During her deposition, Hamby testified that she first learned of the video in question when Chief Deputy Shew called her and asked to view the video of a particular day and time, which corresponded to the time that defendant Absher was in custody. Chief Deputy Shew watched the video, but he did not ask her to do anything further with the video. When Hamby was eventually asked to copy the video, she and Griffith did not copy the entire video; instead, they only copied the frames that showed "somebody had their hands on" defendant Absher. She confirmed that Griffith "changed the video from it's [*sic*] original form to the form where it only had hands-on contact points per his discretion."

However, Hamby's testimony was inconsistent as to whether the Sheriff's Department asked Hamby and Griffith to edit the video. During her deposition, she testified that Griffith decided to edit the video because the full video would have "crashed the system." During that exchange, she stated that she did not communicate that decision with the Sheriff's Department, but also that the Sheriff's Department had never informed her that it needed the entire video. Later during the deposition, she testified that "Mr. Shue [*sic*] might have said to do the hands-on thing if we could have because of it crashing my system." She also testified that she informed Chief Deputy Shew that Griffith was only copying those parts of the video that showed "hands on" defendant Absher, and that she informed Chief Deputy Shew of this fact *before* her department

copied over the original, complete video. During the hearing, defense counsel reviewed this deposition testimony with Hamby while she was on the stand. Defense counsel asked, "So at the time . . . Chief Deputy Shew asked you to preserve only contact hands-on points and was told that's what you had done and said that it was okay, there was still an original version that he could have asked you to copy in its entirety; correct?" Hamby responded, "Yes, sir. As far as I know, that original was still on the view playback." Accordingly, we hold that findings of fact 13, 14, and 15 are supported by competent evidence.

5. Findings of fact 17 and 18. The State next challenges findings of fact 17 and 18, which state:

> 18. Neither Chief Deputy Shue, nor Ms. Suzanne Hamby ever asked Mr. Griffith to maintain the entire unmodified video on a memory stick of this type or by any other means despite receiving the letter sent by counsel for defendant on October 1, 2007.
>
> 19. This modified video removed a sufficient amount of video data to shorten the video from its original 8 gigabytes to less than 750 megabytes, less than one-tenth of the original size of the video. This shortened video was submitted for review to Major Greg Minton of the Wilkes County Sheriff's Department who picked up the video and then according to his testimony did not look at it.

The State argues that there was no evidence that downloading the entire video would be "simple or cheap" or that the Sheriff's Department had the ability to do so in 2007. Neither of the challenged findings of fact states that downloading the entire video would have been either simple or cheap; they merely state that neither Chief Deputy Shew nor Hamby asked Griffith to copy the

entire video. Accordingly, the State's challenge to these findings of fact fails.

6. Finding of fact 21. The State next challenges finding of fact 21, which states, "At no time did any member of the Wilkes County Sheriff's Department make any attempt to go onto a county computer and download or preserve the entire video on a hard drive or other device."

The State argues that "there was no evidence presented, aside from speculative questions, that anyone in the [Sheriff's Department] had the actual, rather than theoretical, capability and knowledge to burn or copy any of the video." As set out above, Griffith testified that several deputies had access to the computer software necessary to access the video feed. Moreover, the State does not argue that the finding itself is not supported by competent evidence; it merely argues that had a member of the Sheriff's Department attempted to download or preserve the entire video, there was no evidence to indicate that he would succeed in such an attempt. Accordingly, the State's challenge to this finding of fact fails.

7. Finding of fact 24. The State next challenges finding of fact 24, which states, "Major Minton testified that in the 4th and 5th gaps of 9 minutes and 3 seconds long and 6 minutes and 3 seconds long, Defendant Absher was clearly visible and that these videos would have been the closest and clearest images and best opportunity to view any injuries that were visible on Mr. Absher's person."

The State argues that there was no evidence that the missing video "would have been the closest and clearest images" of defendant Absher or the "best opportunity" to view his injuries because Major Minton never saw the entire video "and had no idea what the missing portions might contain." We disagree. During the hearing, defense counsel asked Major Minton about several stills from the video that showed defendant Absher's injuries. Major Minton concurred with counsel that the images were "not real clear." Defense counsel asked if Major Minton knew "if there [was] a better picture of those injuries on the period of time that were not kept or maintained." Major Minton responded, "No, sir," and agreed with defense counsel's next question, "Because we have no way of knowing that?" Defense counsel then asked about a particular section of the video, and the following colloquy ensued:

> Q. Now, in the picture, the first time there is a nine-minute break between 11:24 and 11:33, he is in a cell with the door shut?
>
> A. Yes, sir.
>
> Q. Okay. He's pretty close on that camera picture, isn't it?
>
> A. Yes.
>
> Q. And he is farther away every time he is taken out of that room?
>
> A. From that angle, yes, sir, but then another angle picks him up.
>
> Q. But on the other angle, there is people around him all the time; correct?
>
> A. Yes, sir.

> Q. Okay. So in that nine minutes we have the closest view of him of any of these pictures; correct?
>
> A. Yes.
>
> Q. And that's gone?
>
> A. Yes.

Major Minton's testimony indicates that he reached his conclusion about the "closest view" of defendant by inferring that the same camera and camera angle captured defendant during the nine missing minutes. Given the clarity and closeness of the other images captured by that particular camera and camera angle, Major Minton inferred that the clarity and closeness would have been similar during the missing nine minutes of video. This inference is proper, and it supports the challenged finding. Accordingly, we hold that finding of fact 24 is supported by competent evidence.

8. Findings of fact 27 and 28. The State next challenges findings of fact 27 and 28, which state:

> 27. After this video was modified on or about October 20th 2007 and while the video was still available for download in its original unmodified form Ms. Hamby discussed the shortening of the video with Chief Deputy Shue who made no objection to this modification.
>
> 28. Despite having this conversation with Ms. Hamby, and despite both the Sheriff Department's receipt of the letter dated October 1, 2007, Chief Deputy Shue approved the modified video and took no steps to preserve the original video.

The State argues that Chief Deputy Shew testified that he did not know about or approve the modified video, and Hamby testified that any misunderstanding to that respect was a miscommunication.

As explained above in our analysis of findings of fact 13, 14, and 15, competent evidence supports both finding 27 and finding 28.

9. Finding of fact 29. The State next challenges finding of fact 29, which states, "Prior to the modification of this video, a Brady Motion was filed on October 3, 2007. This motion requested all potentially exculpatory evidence including the video in its original form." The State argues that the "motion" was actually a voluntary request for disclosure and it did not specifically request "the video in its original form."

We agree that the *Brady* "motion" was a voluntary request for disclosure, and it appears that defense counsel sent the request to the District Attorney's Office, but did not file it with the court. However, the form is irrelevant; as the U.S. Supreme Court has explained, a *Brady* claim may arise "where the Government failed to accede to a defense request for disclosure of some specific kind of exculpatory evidence," *or* "where the Government failed to volunteer exculpatory evidence never requested, or requested only in a general way." *Kyles v. Whitley*, 514 U.S. 419, 433, 131 L. Ed. 2d 490, 505 (1995) (citations omitted). The government has a duty to volunteer exculpatory evidence even when it is not specifically requested "when suppression of the evidence would be 'of sufficient significance to result in the denial of the defendant's right to a fair trial.'" *Id.* We conclude that, in this case, the trial court's inapt use of the word "motion" does not render the finding of fact unsupported by competent evidence.

We also agree that the voluntary request for disclosure does not specify that the video be "in its original form," but that is a reasonable inference. Defense counsel specifically asked for "all videos of the defendant at the time he was being held by the Wilkes County Sheriff's office in a holding cell prior to hospitalization." "All videos" of defendant during that time period does not mean a redacted or truncated version of the existing videos, especially without any means for defendant to verify that the missing portions were not exculpatory. Accordingly, we hold that finding of fact 29 is supported by competent evidence.

10. Findings of fact 35, 36, 37, 38, and 39. The State next challenges findings of fact 35 through 39, which state:

> 35. This video could have provided videographic evidence of Mr. Absher's injuries and could have served to contradict the testimony of the deputies as to Mr. Absher's conduct on the night in question.
>
> 36. Specifically, Lieutenant Harold Martin testified that at the intake center he punched Defendant Absher in the stomach because he was being violent and aggressive, that Mr. Absher broke free of a handcuff while he was placed on a medical gurney, and that Mr. Absher tipped over the gurney violently and then fell to the ground and had to be picked up by the deputies at the intake.
>
> 37. Upon viewing the modified video at the hearing, Major Minton testified that none of these events were shown on the video portion where Mr. Absher was transferred to the gurney or on any other portion of the video.
>
> 38. These images and/or events do not appear on the video, which was produced by the Wilkes County Sheriff's Department contrary to the testimony of Lieutenant Martin.

> 39) When asked if the fact that these events were not on the video meant that they had not occurred both Lieutenant Martin and Major Minton relied on the erased portions of the videotape to explain why they would not say that these actions had not occurred.

The State argues that "there was absolutely no evidence produced by counsel that the missing portions could have 'served to contradict the testimony' of any State's witness." We disagree. The trial judge watched the modified video, which did not show defendant Absher breaking free of a handcuff, tipping a gurney over, or falling to the ground. Both Major Minton and Lieutenant Harold Martin testified that the modified video did not show these events, although Lieutenant Martin testified that they occurred. The original video might have confirmed their testimony or impeached it. Lieutenant Martin also testified that he did not see any injuries on defendant Absher's face while he was at the intake center. A paramedic examined defendant Absher five minutes later and noted swelling, contusions, bleeding, a fractured skull, and two black eyes. As discussed above, Major Minton testified that the clearest views of defendant's injuries had not been included on the modified video. The original video might have explained the discrepancy between Lieutenant Martin's observations and the

paramedic's.[2] Accordingly, we hold that the challenged findings of fact are supported by competent evidence.

B. Conclusions of Law

Having determined that the challenged findings of fact are supported by competent evidence, we now turn to the challenged conclusions of law. Specifically, the State argues that conclusions of law 4, 5, 6, and 7 are not supported by the findings of fact. We disagree.

1. Conclusion of law 4: Irreparable prejudice. The State argues that the trial court improperly concluded that,

> due to the destruction or failure of the Wilkes County Sheriff's Department to provide this evidence which is material and exculpatory in nature, the Defendant's rights pursuant to the Constitution of the United States and the North Carolina Constitution have been flagrantly violated and there is such irreparable prejudice to the Defendants' preparation of their case that there is no remedy but to dismiss the prosecution.

---

[2]The injuries sustained by defendant Absher were quite serious; although he was initially transported to Wilkes Regional Hospital, that hospital did not have the facilities to treat him, so he was transported to Baptist Hospital in Winston-Salem, where he spent ten days in a medically induced coma. Defense counsel planned to introduce evidence that defendant Absher sustained the kind of traumatic head injury that causes subarachnoid hemorrhages. Defense counsel explained that his expert would testify that subarachnoid hemorrhages often cause posttraumatic amnesia, which can last from thirty minutes to four hours, "and during that period of time an individual can walk and talk and have their basic fight or flight responses but ha[ve] no ability to recognize or perceive persons for who they are, whether they are officers, whether they're persons of authority, and has no ability to form a requisite intent to assault anyone."

When a defendant makes numerous requests for "specific items of evidence that were favorable to him and material to his defense, but the State failed to provide the evidence, destroyed it, and then stated it could not be produced," a flagrant violation of the defendant's constitutional rights has occurred. *Williams*, 362 N.C. at 636, 669 S.E.2d at 296. Here, defendant Absher made numerous requests to see the video showing his time at the intake center followed by numerous requests for copies of that video. The State failed to provide the complete video, instead creating a modified copy that excluded twenty-four minutes and seventeen seconds of the original video. The State destroyed the original video, which rendered producing the original video impossible. Thus, a flagrant violation of defendant's constitutional rights occurred.

Irreparable prejudice occurs when a defendant is "denied material evidence favorable to his defense." *Id.*, 362 N.C. at 639, 669 S.E.2d at 298. "As the party moving for dismissal, defendant has the burden of showing irreparable prejudice to the preparation of his case." *Id.* A defendant can meet this burden by demonstrating that the situation cannot be remedied "by ordering or permitting [the] defendant to re-create an item of evidence he did not originally create and for which he does not possess the raw materials." *Id.* at 639, 669 S.E.2d at 299. Here, it is undisputed that defendant Absher never had access to the original video; it cannot be recreated by the State, much less by him. Moreover, the trial court's findings support its conclusion that the missing video segments were material and were favorable to his defense.

The video would have provided better images of defendant Absher's injuries and might have provided evidence demonstrating his impaired mental state. In addition, the video could have been used to impeach some of the State's witnesses. Accordingly, we hold that this conclusion of law is supported by the findings of fact.

2. Conclusion of law 5: *Arizona v. Youngblood*. The State next challenges the trial court's conclusion that the "destruction of evidence violated *Arizona v. Youngblood* in that the evidence was destroyed in bad faith by the Wilkes County Sheriff's Department." We hold that *Arizona v. Youngblood* is not applicable, so no showing of bad faith was required.

In *Arizona v. Youngblood*, the U.S. Supreme Court held that the police's "failure to preserve potentially useful evidence" only constitutes a due process violation if the defendant "can show bad faith on the part of the police." *Ariz. v. Youngblood*, 488 U.S. 51, 57-58, 102 L. Ed. 2d 281, 289 (1988). This rule applies only to "potentially useful evidence," not to "material exculpatory evidence," which does not require a showing of bad faith in order to constitute a due process violation. *Id.* Here, we have already concluded that the missing evidence was material exculpatory evidence, not merely "potentially useful" evidence. Indeed, the trial court had concluded in the previous conclusion of law, discussed above, that the evidence was "material and exculpatory in nature." Accordingly, the *Arizona v. Youngblood* standard does not apply, and defendant Absher was not required to make a showing of bad faith.

3. Conclusion of law 6: *Brady v. Maryland*. The State next challenges the trial court's conclusion that

> [t]his destruction of evidence also violated Brady v. Maryland because the videotapes and images would have been admissible at trial for impeachment purposes during the defendants' cross examination of the State's witnesses, tended to show that the defendant was the subject of a conspiracy to conceal the vicious beating of Defendant Absher and the violation of his federal civil rights, tended to show the physical extent of his injuries in support of his claim of automatism or inability to form the requisite mens rea necessary to commit this crime, and/or tended to prove the partial or complete defense of self defense against the assault charge. This violation of Brady v. Maryland requires dismissal of the charges against both defendants.

Specifically, the State argues that defendant failed to establish that the evidence was favorable to the defense or otherwise "material" to the outcome of the trial. We disagree.

Our Supreme Court explained that, in *Brady v. Maryland*,

> the Supreme Court of the United States determined that the Due Process Clause of the Fourteenth Amendment to the United States Constitution required in state criminal cases "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." [*Brady*, 373 U.S. 83, 87 (1963)] (citing U.S. Const. amend. XIV, § 1). Evidence favorable to an accused can be either impeachment evidence or exculpatory evidence. "Evidence is considered 'material' if there is a 'reasonable probability' of a different result had the evidence been disclosed." *State v. Berry*, 356 N.C. 490, 517, 573 S.E.2d 132, 149 (2002) (quoting *Kyles v. Whitley*, 514 U.S. 419, 434, 131 L. Ed. 2d 490 (1995)). Materiality does not require a "demonstration by a preponderance that disclosure of the suppressed evidence would have resulted

> ultimately in the defendant's acquittal." *Kyles*, 514 U.S. at 434 (citation omitted).

Williams, 362 N.C. at 636, 669 S.E.2d at 296 (additional quotations and citations omitted). Instead, the defendant "must show that the government's suppression of evidence would undermine confidence in the outcome of the trial." *Id.* (quotations and citation omitted).

Here, the trial court found as fact that the "video could have provided videographic evidence of Mr. Absher's injuries and could have served to contradict the testimony of the Deputies as to Mr. Absher's conduct on the night in question." This evidence would have supported defendant Absher's argument that he lacked the *mens rea* to commit the offense charged, and it also would have provided impeachment evidence against the deputies. *See also id.*, 362 N.C. at 637, 669 S.E.2d at 297 ("The evidence also would have tended to prove the partial or complete defense of self-defense against the assault charge, because proof of the injuries sustained at the Union County Jail would have tended to show that defendant was not the aggressor."). Accordingly, the trial court properly concluded that the evidence was material, and this conclusion is supported by the trial court's findings of fact. The trial court properly concluded that the State's suppression of this material evidence violated due process as explained in *Brady*.

4. Conclusion of law 7: *State v. Williams*. The State next challenges the trial court's conclusion that "the destruction of this evidence violated *State v. Williams* and requires dismissal of the charges against both defendants." In *Williams*, the Supreme Court applied N.C. Gen. Stat. § 15A-954(a)(4), which requires a

finding of "such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution," N.C. Gen. Stat. § 15A-954(a)(4) (2009), in addition to a flagrant constitutional violation before a trial court can grant a criminal defendant's motion to dismiss. *Williams*, 362 N.C. at 639, 669 S.E.2d at 298. As the Supreme Court noted, this requirement stemmed from "*State v. Hill*, in which the defendant was charged with drunken driving, but was not allowed to immediately meet with counsel or witnesses who could have observed him 'with reference to his alleged intoxication.'" *Id.* (quoting *State v. Hill*, 277 N.C. 547, 553, 178 S.E.2d 462, 466 (1971). In *Williams*, the Supreme Court found its "concern in *Hill* regarding the irreparable prejudice to the defendant's ability to 'obtain evidence which might prove his innocence" analogous to its concern for the "defendant regarding the effect of his being denied material evidence favorable to his defense." *Id.* (quoting *Hill*, 277 N.C. at 553, 178 S.E.2d at 466). In *Williams*, the defendant made the necessary showing of irreparable prejudice because competent evidence demonstrated that he was never in possession or control of the original photographic evidence at issue, so the court could not remedy the situation by "ordering or permitting [the] defendant to re-create an item of evidence he did not originally create and for which he does not possess the raw materials." *Id.* at 639, 669 S.E.2d at 299. Here, as in *Williams*, defendant Absher was never in possession or control of the videographic evidence at issue, so the court could not remedy the

situation by ordering or permitting defendant Absher to re-create the missing video. Accordingly, we find support for the trial court's conclusion that the State violated *Williams*, which required dismissal of the charges against defendant Absher.

C. Discovery Violation

The State argues that defendant waived his statutory right to discovery by failing to file a motion for discovery or motion to compel, and by failing to secure an order from the trial court ordering discovery. This argument lacks merit.

Defendant's failure to move to compel pursuant to our discovery rules did not affect his right to *Brady* material. As explained in subsection I.A.9 above, with respect to *Brady* material, the State's affirmative duty to disclose exculpatory or impeachment evidence exists even when a defendant does not act under the rules of discovery.

D. Improper Burden

The State argues that the trial court "predetermined the case and improperly put the burden on the State to convince him not to grant defendants' motion to dismiss" by presuming "bad faith on the part of the State." The State bases this argument on the following statements made by Judge Fox after defense counsel summarized its evidence and arguments at the beginning of the pretrial hearing:

> THE COURT: Okay. Mr. [Prosecutor], I'll hear from you, but let me say this and let me say this before you start. Given what I read here, two things; one, I realize that some

> things are done — sometimes the Prosecutor's job is sort of like that of a mortician, all the damage has been done and all you are trying to do is put your best face on it, but let me say this before you start, I am not persuaded by any arguments given with regard to discovery with regard to this.
>
> The question is whether there was some hardships [*sic*] that was going to be imposed based upon the preservation of this - this evidence or whether there was something - that it was - there was some notice that wasn't received or someone was not aware. But this Court is abundantly aware that - I mean, I don't - I don't for a second presume necessarily bad faith on someone's — anyone's part, generally speaking. But on the other hand, I also don't think evidence generally disappears because it has nothing unfavorable to disclose. So given those parameters, why don't you tell me why I shouldn't allow this motion to dismiss.

"As the movant, defendant bears the burden of showing the flagrant constitutional violation and of showing irreparable prejudice to the preparation of his case." *State v. Williams*, 362 N.C. at 634, 669 S.E.2d at 295. As explained above, a defendant need not show bad faith on the part of the State if he shows that the State possessed "specific items of evidence that were favorable to him and material to his defense, but the State failed to provide the evidence, destroyed it, and then stated it could not be produced[.]" *Id.*, 362 N.C. at 636, 669 S.E.2d at 296.

Here, Judge Fox had reviewed defendant Absher's motion to dismiss and its attendant exhibits. These materials showed a flagrant constitutional violation and irreparable prejudice to the preparation of his case. Judge Fox's statements demonstrate that he acknowledged this showing by defendant Absher and sought

rebuttal by the State. Moreover, Judge Fox's thorough findings demonstrate that defendant Absher met his burden of showing a flagrant constitutional violation and irreparable prejudice to the preparation of his case. We read Judge Fox's statement that he was "not persuaded by any arguments given with regard to discovery" as a response to the State's assertion that defendant Absher's failure to file a motion to compel negated the State's duty to disclose exculpatory or impeachment material under *Brady*. As discussed above, defendant Absher's failure to file a motion to compel did not affect his rights under *Brady*.

II. Consideration of Outside Matters

The State argues that Judge Fox improperly considered matters that arose in an unrelated case. The State asserts that Judge Fox "was swayed by the happenings of another case set before him in Wilkes County on that day." The State bases this argument on a statement by Judge Fox that referenced an earlier case in which a juror had contact with one of the bailiffs but later denied the contact when Judge Fox asked about it. When asked again, the juror admitted that he and the bailiff had made contact, but that he had not thought it was "that big a deal," so did not disclose it to the court. Judge Fox concluded, "[H]e was willing to be untruthful to the Court in open court about what had transpired, and I'm sure part of it was so that he didn't get the deputy in trouble. That's not lost on this Court."

Having read the context of those statements, it appears that Judge Fox used this story to illustrate how a few seemingly minor transgressions could snowball into a very serious problem. We see no evidence that Judge Fox improperly considered the other matter when deciding this case, but instead used the incident to express how disturbed he was by the government's actions in this matter.

III. Defendant Minton

The trial court's order, as well as both sets of briefs, focused on defendant Absher's role in this matter. However, both defendants appealed. In its brief, the State's arguments address only defendant Absher until the thirty-fifth page of its brief, which contains a single paragraph addressing defendant Minton's appeal. The essence of the State's argument, such as it is, is that defendant Minton was not affected by the State's destruction of the video because she was not in the video. We disagree. As discussed above, the video could have been used as impeachment evidence against several of the deputies involved in defendants' arrests. The loss of this impeachment evidence affected defendant Minton's constitutional rights as well as defendant Absher's. Accordingly, we affirm the order dismissing the charges against defendant Minton.

IV. Conclusion

Accordingly, we affirm the order of the trial court with respect to both defendants.

Affirmed.

Judges BRYANT and BEASLEY concur.

Report per Rule 30(e).

Last updated April 26, 2018 04:09:05 pm GMT

State v. Williams

Supreme Court of North Carolina

October 13, 2008, Heard in the Supreme Court; December 12, 2008, Filed

No. 256A08

Reporter
362 N.C. 628 *; 669 S.E.2d 290 **; 2008 N.C. LEXIS 978 ***

STATE OF NORTH CAROLINA v. THEODORE JERRY WILLIAMS

Prior History: *State v. Williams, 660 S.E.2d 189, 2008 N.C. App. LEXIS 856 (N.C. Ct. App., 2008)*

Disposition: [*1]** AFFIRMED.

Counsel: Roy Cooper, Attorney General, by Derrick C. Mertz, Assistant Attorney General, for the State-appellant.

Richard E. Jester for defendant-appellee.

Judges: BRADY, Justice.

Opinion by: BRADY

Opinion

[292] [*629]** Appeal pursuant to *N.C.G.S. § 7A-30(2)* from the decision of a divided panel of the *Court of Appeals, N.C. App. , 660 S.E.2d 189 (2008)*, affirming an order entered 18 January 2007 by Judge James E. Hardin in Superior Court, Union County. Heard in the Supreme Court 13 October 2008.

BRADY, Justice.

This case requires us to decide whether dismissal of a criminal charge against defendant was appropriate under *N.C.G.S. § 15A-954(a)(4)*. In a pretrial hearing, the State admitted to the existence, possession, and destruction of material evidence favorable to defendant and acknowledged that it was impossible to produce the evidence at that time or, by implication, at any future trial. Based on these circumstances, we conclude that the State flagrantly violated defendant's constitutional rights and irreparably prejudiced the preparation of his defense. Accordingly, we find the requirements of *N.C.G.S. § 15A-954(a)(4)* satisfied and affirm the Court of Appeals.

BACKGROUND

Theodore Jerry Williams (defendant) was arrested and **[***2]** placed in the Stanly County Detention Center on 17 November 2003 on charges unrelated to the present matter. During February and March 2004 and while in custody in Stanly County, defendant initiated actions in various courts naming an assistant district attorney for Stanly County, the Stanly County Sheriff, and the Stanly County Commissioners for alleged civil rights violations.

After filing these actions, defendant was transferred to the Union County Jail on 19 April 2004. Even though defendant made numerous requests, he received neither the paperwork authorizing nor an explanation for his transfer. Less than twenty-four hours after his arrival at the Union County Jail, defendant was charged with misdemeanor assault on a government official at that facility. The State alleged that defendant punched Union County Sheriff's Deputy Brad Moseley when Deputy Moseley attempted to remove defendant from a holding cell. Defendant denied the allegation and testified that in the early morning hours of 20 April 2004, he was maced and beaten by multiple officers at the Union County Jail, where he sustained severe injuries, **[*630]** including a broken arm. Defendant testified he was then transferred back **[***3]** to the Stanly County **[**293]** Detention Center midday on 20 April 2004, and photographs were taken of him at that time for reprocessing purposes. The photographs showed the bruises and wounds defendant sustained at the Union County Jail.

Defendant further testified that after the events of 20 April 2004 and while he was being held in Stanly County, two individuals, one of whom was defendant's attorney, informed defendant of a poster they had seen on a wall in the offices of the District Attorney for the Twentieth Prosecutorial District, which included Stanly and Union Counties at the time. The poster contained two photographs of defendant. The first depicted defendant without any injuries as he appeared when processed into the Stanly County Detention Center on 17 November 2003, with a caption stating: "Before he sued the D.A.'s office." The second photograph depicted the injured defendant as he appeared when processed back into the Stanly County Detention Center on 20 April 2004, with a caption stating: "After he sued the D.A.'s office." Defendant testified that after viewing the poster, his attorney began making requests and serving subpoenas to obtain the poster and the photographs used to **[***4]** create the poster. However, defendant never received any of the requested items. At a pretrial hearing in Stanly County on 11 July 2005 concerning charges in that jurisdiction, Assistant District Attorney Stephen Higdon (ADA Higdon) admitted to the existence of the poster, its removal and destruction, and the impossibility of producing it or the original photographs that appeared on the poster.

After defendant was indicted for having attained habitual felon status, the Union County Grand Jury returned a superseding true bill of indictment on 30 October 2006, charging defendant with felony assault on a government officer or employee. Proceeding *pro se,* on 28 November 2006, defendant filed a Motion to Dismiss for Prosecutorial Misconduct and *Brady* [1] Violation, in accordance with *N.C.G.S. § 15A-954*. A hearing was held on the motion on 18 January 2007. Defendant testified that he helped fill out and serve the subpoenas and that the poster existed at the time the initial subpoenas were served. The State declined to cross-examine or otherwise rebut defendant's evidence and presented no evidence of its own. Instead, the State opposed defendant's motion solely on legal grounds.

[*631] The salient portions of the trial judge's findings of fact from the hearing include the following:

> 4) That on April the 19th of 2004 the Defendant was transported to Union County . . . .
>
> . . . .
>
> 6) The Defendant alleges that he was assaulted by various officers and members of the Union County Jail. . . . That on April the 20th, 2004, the Defendant was photographed by the staff of the Stanly County Jail . . .
>
> 7) That the photograph of the Defendant made on April 20th, 2004, showed the Defendant's condition during a time relevant to the subject prosecution.
>
> 8) That in May of 2004, Detention Officer Becky Green of the Stanly County Sheriff's Office went on an unrelated matter to the Stanly County office of the District Attorney for the 20th Prosecutorial District, that while in the office Ms. Green saw a poster which contained two photographs of the Defendant. One photograph . . . was made when the Defendant was processed into **[***6]** the jail on November 17th of 2003, with a caption saying, in quotation, "Before suing the District Attorney's office," closed quotation, and a second photograph . . . that was made when the Defendant was processed back into the Stanly County Jail between April 19th and

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[1] Referring to **[***5]** *Brady v. Maryland,* in which the United States Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment." *373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)*.

20th of 2004, which showed the Defendant's injuries and was captioned, quotation, "After he sued the District Attorney's office" . . . .

9) That during proceedings regarding this case and upon the request of the Defendant for discovery and disclosure that [ADA] Higdon stated in open court **[**294]** that the poster had been destroyed and was not available, and that the subject photographs originally taken at the Stanly County Jail were not available as well.

Based on these findings of fact, the trial judge concluded the following as a matter of law:

1) That the photographs of the Defendant made during his processing into the Stanly County Jail on November 17th of 2003 and again between April the 19th and 20th of 2004 are relevant and material to the defense of the subject prosecution.

[*632] 2) That the poster of the photographs described herein was willfully destroyed and not made available to the Defendant although the Defendant made a **[***7]** valid and timely request for same.

3) That the original photographs described herein have not been made available and as represented by the State of North Carolina are unavailable to the Defendant, even though implicitly requested by the Defendant.

4) That due to the destruction or failure of the State to provide this evidence, which is material and may be exculpatory in nature, the Defendant's rights pursuant to the Constitution of the United States and the North Carolina Constitution have been flagrantly violated and there is such irreparable prejudice to the Defendant's preparation of his case that there is no remedy but to dismiss the prosecution.

The State timely appealed to the Court of Appeals, where a majority affirmed the trial court's ruling. *State v. Williams, N.C. App. , , 660 S.E.2d 189, 190 (2008)*. The dissenting judge at the Court of Appeals argued that finding of fact number nine was not supported by competent evidence and that the trial judge's conclusions of law were erroneous. *Id. at , 660 S.E.2d at 196-97* (Tyson, J., dissenting). The State timely appealed to this Court based on the dissent.

ANALYSIS

In reviewing a trial judge's findings of fact, we are "strictly **[***8]** limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Cooke, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982)* (citations omitted). Even if "evidence is conflicting," the trial judge is in the best position to "resolve the conflict." *State v. Smith, 278 N.C. 36, 41, 178 S.E.2d 597, 601*, *cert. denied, 403 U.S. 934, 91 S. Ct. 2266, 29 L. Ed. 2d 715 (1971)*. The decision that defendant has met the statutory requirements of *N.C.G.S. § 15A-954(a)(4)* and is entitled to a dismissal of the charge against him is a conclusion of law. "Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal." *Carolina Power & Light Co. v. City of Asheville, 358 N.C. 512, 517, 597 S.E.2d 717, 721 (2004)* (citing *Humphries v. City of Jacksonville, 300 N.C. 186, 187, 265 S.E.2d 189, 190 (1980)*). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment" for that of **[*633]** the lower tribunal. *In re Appeal of The Greens of Pine Glen Ltd. P'ship, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)* **[***9]** (citing *Mann Media, Inc. v. Randolph Cty. Planning Bd., 356 N.C. 1, 13, 565 S.E.2d 9, 17 (2002)*.

I. FINDING OF FACT NUMBER NINE IS SUPPORTED BY COMPETENT EVIDENCE

The trial judge's order does not falter on finding of fact number nine. That finding of fact states:

That during proceedings regarding this case and upon the request of the Defendant for discovery and disclosure that [ADA] Higdon stated in open court that the poster had been destroyed and was not available, and that the subject photographs originally taken at the Stanly County Jail were not available as well.

The trial judge found defendant's testimony to be credible. Moreover, defendant's evidence was uncontroverted in that the State offered no evidence and no witnesses at the hearing on 18 January 2007; the State made only a

legal argument against the motion to dismiss. Although much of the evidence **[**295]** was ambiguous and the sequence of events was never entirely clarified, the trial court's consideration is limited to the evidence actually presented and matters as to which the court takes judicial notice. Here, an examination of the record shows that the trial judge had several pieces of competent evidence before him to support **[***10]** finding of fact number nine. Defendant testified that his attorney began requesting copies of the poster and pictures after first viewing the poster. Without objection by the State, defendant stated that the poster existed when subpoenas were initially served. One subpoena included in the record was issued to Assistant District Attorneys Nicholas Vlahos and Stephen Higdon dated 31 May 2005. The subpoena ordered ADAs Vlahos and Higdon to appear and testify on 6 June 2005 and to produce the poster or the computer hard drive used to create the poster. After this subpoena was served, a pretrial hearing was conducted on 11 July 2005 in Stanly County concerning several cases against defendant in that jurisdiction. The transcript from that hearing was admitted into evidence before the trial judge in the instant matter. During the 11 July 2005 hearing, ADA Higdon confirmed that the poster did exist, but that it had been "removed" and "destroyed." ADA Higdon made this admission in response to defendant's request for the evidence. The State offered no evidence that the poster was already destroyed before defendant requested it.

[*634] As to the unavailability of the subject photographs, defendant clearly **[***11]** testified that he did not have the photographs used in the poster and that he never personally saw the poster. Conversely, the State contended for the first time on appeal that defendant and his former counsel admitted to possessing copies of the photographs used in the poster.

On this point, the transcripts reflect that defendant's former counsel stated he had a Stanly County Sheriff's Office booking report with defendant's picture on it. This booking report, however, was never offered as evidence by either side, and furthermore, a former officer of the Stanly County Sheriff's Office, Becky Green, saw the poster and testified that it was "like a mug shot from the jail" but "larger than what the mug shots are." Ms. Green testified that each photograph on the poster was about four by six inches in size. Additionally, the State highlights that defendant appears to have possessed a *side view* photograph of himself when questioning a witness on 18 January 2007. However, the poster in question contained a front view of defendant's face and not a side view. The Court of Appeals majority pointed out that ADA Higdon represented on 11 July 2005 that the actual "photographs" used for the poster **[***12]** "had been 'given to [Assistant District Attorney Nicholas] Vlahos' and had been 'destroyed.'" *State v. Williams, N.C. App. at , 660 S.E.2d at 193* (brackets in original). Regardless, defendant's unrebutted testimony to the trial judge was that he never possessed copies of the photographs.

Based on this evidence, the trial court's finding of fact number nine was supported by competent evidence and is binding on appeal. *See* *Cooke, 306 N.C. at 134, 291 S.E.2d at 619*.

II. THERE IS NO REMEDY BUT TO DISMISS THE PROSECUTION

N.C.G.S. § 15A-954(a)(4) requires that upon a defendant's motion, the trial court "must dismiss the charges stated in a criminal pleading if it determines that . . [a] defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution." As the movant, defendant bears the burden of showing the flagrant constitutional violation and of showing irreparable prejudice to the preparation of his case. This statutory provision "contemplates drastic relief," such that "a motion to dismiss under its terms should be granted sparingly." *State v. Joyner, 295 N.C. 55, 59, 243 S.E.2d 367, 370 (1978)*.

[*635] *Section 15A-954(a)(4)* **[***13]** was "intended to embody the holding of this Court in *State v. Hill." Id.* (citing Official Commentary to *N.C.G.S. § 15A-954*). In *Hill,* this Court concluded that the defendant's pretrial motion to dismiss should have been allowed because the defendant was denied his constitutional **[**296]** rights to counsel and to obtain witnesses on his behalf. *277 N.C. 547, 552-54, 178 S.E.2d 462, 465-66 (1971)*. The denial of the defendant's rights to counsel and to obtain witnesses was particularly egregious because it deprived the defendant in *Hill* of the "only opportunity to obtain evidence which might prove his innocence." *Id. at 555, 178 S.E.2d at 467*.

We share a similar concern in the instant case regarding defendant's ability to secure material and favorable evidence.

A. Flagrant Violation of Constitutional Rights

The trial judge concluded that the State violated defendant's rights under the United States and North Carolina Constitutions. The making and public display of this poster was unprofessional behavior. [2] "[T]he citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law . . . and who approaches his task with humility." Robert **[***14]** H. Jackson, *The Federal Prosecutor, in* 31 J. Am. Inst. of Crim. L. & Criminology 3, 6 (1940-41) [hereinafter *The Federal Prosecutor]* (address delivered by the then Attorney General of the United States at the Second Annual Conference of U.S. Attorneys on 1 April 1940 in Washington, D.C.). [3] The mere making of the poster, however, is not a **[*636]** violation of defendant's constitutional rights for purposes of his motion under *Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)*. The flagrant violation of defendant's constitutional rights is found in that on numerous occasions defendant requested specific items of evidence that were favorable to him and material to his defense, but the State failed to provide that evidence, destroyed it, and then stated it could not be produced.

In *Brady,* the Supreme Court of the United States determined that the *Due Process Clause of the Fourteenth Amendment to the United States Constitution* **[***16]** required in state criminal cases "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id. at 87* (citing U.S. Const. amend. XIV, § 1). Evidence favorable to an accused can be either impeachment evidence or exculpatory evidence. *United States v. Bagley, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985)*. "Evidence is considered 'material' if there is a 'reasonable probability' of a different result had the evidence been disclosed." *State v. Berry, 356 N.C. 490, 517, 573 S.E.2d 132, 149 (2002)* (quoting *Kyles v. Whitley, 514 U.S. 419, 434, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995)*). Materiality does not require a "demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal." *Kyles, 514 U.S. at 434* (citation omitted). Rather, defendant must show that the government's suppression of evidence would "'undermine[] confidence in the outcome of the trial.'" *Id.* (quoting *Bagley, 473 U.S. at 678*).

[297]** Although *Brady* does not require that a defendant make a specific request for favorable and material evidence, **[***17]** *see id. at 433* (citing *Bagley and United States v. Agurs, 427 U.S. 97, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976)*), the record indicates that on numerous occasions preceding the 11 July 2005 hearing, defendant requested specific items of material evidence favorable to his defense. Moreover, public records show subpoenas

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[2] After hearing the evidence, the trial judge, the Honorable James E. Hardin, commented:

I've been in the system now in one form or another since 1979. I spent more than twenty years in the D.A.'s office; I filled five different positions, eleven and a half years as the [elected] D.A. Frankly, if I had two assistants that put together a photographic array like this and made a poster and posted it on the wall making fun of a defendant, **[***15]** even if they can't stand him, they would have had a real problem with me. I got a real problem with this poster . . . . There's no excuse for that. We're going to treat people with dignity and respect even if they're charged with crimes. That's the right thing to do and I think frankly, as prosecutors, we're held to that responsibility ethically, morally and legally.

> During oral argument, counsel for the State firmly acknowledged how "inappropriate" it was that this poster had been made and displayed.

[3] The making and public display of this poster bring to mind the comments of former United States Attorney General and former United States Supreme Court Justice Robert H. Jackson: "While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst." *The Federal Prosecutor* at 3. A prosecutor "can have no better asset than to have his profession recognize that his attitude toward those who feel his power has been dispassionate, reasonable and just." *Id.* at 4.

seeking this evidence dated 20 September 2004, 31 May 2005, 27 January 2006, and 20 February 2006. [4] The subpoenas order that the poster or the computer hard drive used to create the poster be produced. **[*637]** Yet, defendant never received the requested evidence because the State. destroyed it.

Additionally, the evidence was favorable **[***18]** to defendant. As to the assault charge, the evidence would have been admissible at trial for impeachment purposes during defendant's cross-examination of the State's witnesses. Moreover, defendant alleged in his motion that since 19 April 2004, he had been "the victim of a vicious conspiracy between Stanly and Union County Law Enforcement and Prosecutors . . . to retaliate against [him] for the filing of a civil rights complaint in Stanly County Superior Court . . . and a civil rights complaint in the United States District Court." The poster and photographs were certainly relevant to defendant's theory of this conspiracy against him. The evidence also would have tended to prove the partial or complete defense of self-defense against the assault charge, because proof of the injuries sustained at the Union County Jail would have tended to show that defendant was not the aggressor. Therefore, defendant established that the "constitutional duty" of producing this evidence was "triggered." *See* Kyles, 514 U.S. at 434.

Moreover, the evidence was material. In its absence, we cannot say that defendant would receive a fair trial "resulting in a verdict worthy of confidence." *Id.* By demonstrating **[***19]** the value of the evidence for impeachment purposes and to show self-defense, defendant has raised the reasonable probability that confidence in the outcome of a guilty verdict at trial would be undermined because "the favorable evidence could reasonably be taken to put the whole case in such a different light." Kyles, 514 U.S. at 435; *see* Bagley, 473 U.S. at 678; Berry, 356 N.C. at 517, 573 S.E.2d at 149. Thus, "the constitutional duty" to produce the evidence in the instant matter was "triggered by the potential impact of favorable but undisclosed evidence." Kyles, 514 U.S. at 434. "[T]he prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable." Id. at 438.

Relying on State v. Hunt, 339 N.C. 622, 657, 457 S.E.2d 276, 296 (1994), State v. Alston, 307 N.C. 321, 337, 298 S.E.2d 631, 642 (1983), and State v. Hardy, 293 N.C. 105, 127, 235 S.E.2d 828, 841 (1977), the State argues that *Brady* is inapposite to the instant matter because *Brady* only requires the State to turn over evidence at trial. We disagree for purposes of the instant matter. At its most fundamental level, the due process principle *Brady* and its **[***20]** progeny protect is concerned with the "avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials **[*638]** are fair; our system of the administration of justice suffers when any accused is treated unfairly." Brady, 373 U.S. at 87; *see* Bagley, 473 U.S. at 675 (The prosecutor's duty is "to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial."). The question is whether in the absence of the suppressed evidence a defendant receives a fair trial, "understood as a trial resulting in a verdict worthy of **[**298]** confidence." Kyles, 514 U.S. at 434.

> Every person charged with a crime has an absolute right to a fair trial. By this it is meant that he is entitled to a trial before an impartial judge and an unprejudiced jury in keeping with substantive and procedural due process requirements of the Fourteenth Amendment. It is the duty of both the court and the prosecuting attorney to see that this right is sustained.

State v. Britt, 288 N.C. 699, 710, 220 S.E.2d 283, 290 (1975) (citations omitted).

Here, ADA Higdon stated that the evidence had been "destroyed" and that he "cannot produce something **[***21]** that does not exist." Accordingly, we conclude that when the State makes *a pretrial* admission to the existence and destruction of evidence requested by the accused which is favorable to him and material to his guilt or punishment, and when the State further discloses that it is impossible to produce the evidence at that time or, by

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[4] While the September 2004, January 2006, and February 2006 subpoenas do not appear to be included as part of the record in the case *sub judice,* they are part of the record in another action arising out of Stanly County. State v. Williams, 186 N.C. App. 233, 650 S.E.2d 607 (2007). We take judicial notice of these subpoenas in accordance with our practice of taking "judicial notice of the public records of other courts within the state judicial system." State v. Thompson, 349 N.C. 483, 497, 508 S.E.2d 277, 286 (1998) (citing Alpine Motors Corp. v. Hagwood, 233 N.C. 57, 62 S.E.2d 518 (1950)).

implication, at trial, then in the interest of judicial economy, the trial judge does not need to await a trial and verdict before deciding that a due process violation exists. The violation is already apparent, and any subsequent trial would be fundamentally unfair to defendant. As the Court in *Brady* recognized,

> [a] prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice . . . .

373 U.S. at 87-88. If the architecture of injustice is apparent, then the trial judge does not need to allow the prosecution to design the trial any further. [5]

[*639] Indeed, the statute under which we are granting relief contemplates injuries occurring pretrial, during defendant's *"preparation of his* case." *N.C.G.S. § 15A-954(a)(4)* (2007) (emphasis added). The statute is the procedural mechanism that allows us to give effect to the *Brady* violation before a trial begins. Finally, we note again that *section 15A-954(a)(4)* was intended to embody the holding in *State v. Hill,* in which this Court held that the trial judge should have allowed the defendant's *pretrial* motion to dismiss based on the deprivation of the defendant's constitutional rights. *See* *277 N.C. at 550, 556, 178 S.E.2d at 464, 467*.

In sum, the State's destruction of material, favorable evidence to defendant, and its admission that the evidence could not be produced, warrant the conclusion that any trial commenced against defendant would not comport with our notions of due **[***23]** process. Defendant's constitutional rights were flagrantly violated.

B. Irreparable Prejudice

Besides a flagrant constitutional violation, to grant defendant relief we must also find "such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution." *N.C.G.S. § 15A-954(a)(4)*. This requirement also derives from *State v. Hill,* in which the defendant was charged with drunken driving, but was not allowed to immediately meet with counsel or witnesses who could have observed him "with reference to his alleged intoxication." *277 N.C. at 553, 178 S.E.2d at 466*. This Court's concern in *Hill* regarding the irreparable prejudice to the defendant's ability to "obtain evidence which might prove his innocence," *id. at 555, 178 S.E.2d at 467*, is analogous to our concern for defendant regarding the effect of his being denied material evidence favorable to his defense.

As the party moving for dismissal, defendant has the burden of showing irreparable prejudice to the preparation of his case. Defendant has met his burden in two ways. First, competent evidence supports the trial judge's conclusion that defendant never possessed the original photographs **[***24]** from which **[**299]** the poster was made. Consequently, we cannot remedy this situation by ordering or permitting defendant to re-create an item of evidence he did not originally create and for which he does not possess the raw materials. The State ardently contends that defendant can reproduce the poster, but has offered no evidence to support this claim. Based on defendant's testimony, the evidence before the trial judge was that defendant could not re-create the evidence. Therefore, as this Court said in *Hill,* we **[*640]** cannot "[u]nder these circumstances . . . assume that which is incapable of proof." *Id. at 554, 178 S.E.2d at 466*.

Second, defendant has demonstrated the futility of relying on witness testimony to prove the contents of the poster. Several of defendant's subpoenas called for ADA Nicholas Vlahos, an alleged creator of the poster, to appear with the poster *and testify,* but Mr. Vlahos never did either. Additionally, defendant presented the transcript of a trial in Stanly County on unrelated charges, during which defendant attempted to question a witness regarding the existence and contents of the poster. At every turn, the State objected to the questions, and the trial judge

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[5] Ensuring that justice is done is not only the goal of this Court, but **[***22]** it is ultimately an interest of the State itself. *See* *Berger v. United States, 295 U.S. 78, 88, 55 S. Ct. 629, 79 L. Ed. 1314 (1935)*. The State of North Carolina "'wins its point whenever justice is done its citizens in the courts.'" *See* *Brady, 373 U.S. at 87* (quoting an inscription on the walls of the United States Department of Justice building).

sustained **[***25]** the objections. Thus, the record reflects that any attempt to introduce witness testimony about the poster at a trial in the instant case would likely be similarly unfruitful. Based on defendant's uncontroverted evidence, the unavoidable conclusion is that he was irreparably prejudiced in the preparation of his case because of the State's destruction of material, favorable evidence.

CONCLUSION

Beyond the unprofessional nature of this poster, we are satisfied that defendant has met the elements of *N.C.G.S. § 15A-954(a)(4)*. We conclude that no other remedy exists but for the assault charge against defendant to be dismissed. Accordingly, we affirm the Court of Appeals.

AFFIRMED.

End of Document

State v. Taylor

Court of Appeals of North Carolina

June 5, 2019, Heard in the Court of Appeals; November 19, 2019, Filed

No. COA18-1242

Reporter
268 N.C. App. 455 *; 836 S.E.2d 658 **; 2019 N.C. App. LEXIS 963 ***; 2019 WL 6124503

STATE OF NORTH CAROLINA v. BRANDISS TAYLOR

Notice: PURSUANT TO RULE 32(b), NORTH CAROLINA RULES OF APPELLATE PROCEDURE, THIS DECISION IS NOT FINAL UNTIL EXPIRATION OF THE TWENTY-ONE DAY REHEARING PERIOD.

Prior History: **[***1]** Wayne County, No. 16 CRS 55186.

Disposition: VACATED AND REMANDED.

Counsel: Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.

Strickland Agner Pittman, by Dustin B. Pittman, for defendant-appellee.

Judges: HAMPSON, Judge. Judge BERGER dissents in a separate opinion. Judge DIETZ concurs.

Opinion by: HAMPSON

Opinion

[*456] **[**659]** Appeal by State from Order entered 12 June 2018 by Judge Phyllis M. Gorham in Wayne County Superior Court. Heard in the Court of Appeals 5 June 2019.

HAMPSON, Judge.

Factual and Procedural Background

The State appeals from the trial court's Order granting Defendant's Motion to Dismiss Based on Loss and Destruction of Exculpatory Evidence (Motion to Dismiss). The Record tends to show the following:

On 27 November 2016, Brandiss Taylor (Defendant) was arrested and given a citation for Impaired Driving and Failure to Maintain Lane Control. On 4 December 2017, a Wayne County Grand Jury returned an Indictment charging Defendant with Habitual Impaired Driving, Driving While License Revoked, and Driving Left of Center. On 25 April 2018, Defendant filed her Motion to Dismiss, which came on for a hearing in Wayne County Superior Court on 11 June 2018. At the beginning of this hearing, both the State **[***2]** and Defendant stipulated to the following Factual Allegations from Defendant's Motion to Dismiss:

1. On 27 November 2016 at approximately 1:20 A.M., Trooper Adam J. Hostinsky of the North Carolina Highway Patrol [(Trooper Hostinsky)] observed a truck merge onto U.S. 117 South from a parking area;

2. The truck made a number of maneuvers that alerted [Trooper Hostinsky] to its presence and he began to follow. [Trooper Hostinsky] noted varying speeds, failure to maintain lane and the truck drive left of the center line twice with sharp corrections back. In [Trooper Hostinsky's] words "it appeared the driver may be lost or unsure of where they are going;"

[*457] 3. Based on those observed traffic violations, [Trooper Hostinsky] conducted a traffic stop on the truck and it pulled to the side of the road and the "truck was put into park while still travelling about 15 MPH;"
4. When [Trooper Hostinsky] approached the truck, he found two people sitting on the passenger side of the truck, [Defendant] and another individual named Roy Lee;

5. [Trooper Hostinsky] indicates in his written notes that he identified [Defendant] as the driver and that he "saw the driver make their way to the passenger side of **[***3]** the vehicle" after the traffic stop was conducted;
6. [Defendant] has from the very beginning denied driving the truck that night and has maintained that throughout the life of this case;
7. As early as 28 November 2016, Trooper Hostinsky notes that [Defendant] was being considered for the felony charge of Habitual Impaired Driving;
8. On 16 December 2016, less than 30 days after the initial DWI charge was filed, agents of the Office of the District Attorney began requesting certified copies of records of prior convictions of [Defendant], presumably to prepare an indictment for Felony Habitual Impaired Driving; . . . .

9. On 29 December 2016, thirty-two (32) days after the traffic stop was conducted, Trooper Hostinsky submitted his investigative file to the Office of the District Attorney and certified his compliance with *N.C. Gen. Stat. § 15A-501(6)* in gathering "all materials and information acquired in the course of all felony investigations;" . . . .
10. On 28 July 2017, [defense counsel] filed a "Request for Voluntary Discovery (Alternative Motion to Compel Discovery) in a Driving While Impaired Case; . . . .

11. Even though the investigative file was submitted some seven months before the request, discovery was **[***4]** not released to [defense counsel] until 6 December **[**660]** 2017 as [defense counsel] has been informed multiple times **[*458]** by Assistant District Attorneys and their staff that "discovery does not exist in district court" especially as it relates to Driving While Impaired offenses;
12. In the request for discovery, Defendant makes specific request for any and all video including Dash Camera and Body Camera footage;
13. The case was submitted to the Grand Jury in December 2017 and a true bill of indictment was returned for Felony Habitual Impaired Driving;
14. [Defense counsel] made additional request of the State for the Dash Camera footage in January of 2018;
15. [Defense counsel] was informed in February 2018 that the video had been deleted from the "local server" and the Highway Patrol was attempting to locate it from other sources;
16. [Defense counsel] was informed in March of 2018 that the video had been "purged" and was not available for release;
17. Upon information and belief, it is the policy of the North Carolina Highway Patrol to only download and release dash camera footage upon request of the Office of the District Attorney;

18. Upon information and belief, it is the policy of the North Carolina **[***5]** Highway Patrol to maintain video for ninety (90) days following its creation unless such a request is made;
19. Upon information and belief, the Office of the District Attorney was notified of this policy and the existence of this video while it was still in existence, at least prior to 3 February 2017, and failed to take adequate steps to ensure its preservation.

After hearing testimony from Trooper Hostinsky and arguments from the State and defense counsel, the trial court took the matter under advisement. On 12 June 2018, the trial court entered its Order granting Defendant's Motion to Dismiss. In this Order, the trial court concluded that the dash camera footage was relevant, "material[,] and exculpatory in nature" and that the State's failure to provide this evidence flagrantly violated Defendant's constitutional rights and caused **[*459]** irreparable prejudice to Defendant. Based on this conclusion, the trial court

dismissed the charges against Defendant pursuant to N.C. Gen. Stat. § 15A-954(a)(4). On 14 June 2018, the State timely filed Notice of Appeal. *See* N.C. Gen. Stat. § 15A-1445(a)(1) (2017) (allowing the State to appeal "[w]hen there has been a decision . . . dismissing criminal charges as to one or more counts").

Issue

The sole issue on appeal **[***6]** is whether the trial court erred by concluding the destruction of the dash camera footage violated Defendant's *Brady* protections,[1] requiring dismissal of the charges against Defendant.

Analysis

I. Standard of Review

In reviewing a trial court's grant of a criminal defendant's motion to dismiss, we are "strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." State v. Williams, 362 N.C. 628, 632, 669 S.E.2d 290, 294 (2008) (citation and quotation marks omitted). We, however, review a trial court's conclusions of law de novo. *See* State v. Biber, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citations omitted).

II. Motion to Dismiss

Section 15A-954(a)(4) of our General Statutes requires a trial court to dismiss criminal charges where a "defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution." N.C. Gen. Stat. § 15A-954(a)(4) (2017). Defendant has "the burden of showing the flagrant constitutional violation and of showing irreparable prejudice to the preparation of his case." **[**661]** Williams, 362 N.C. at 634, 669 S.E.2d at 295. Because this Statute "contemplates drastic relief," **[***7]** our Supreme Court has cautioned that "a motion to dismiss under its terms should be granted sparingly." *Id.* (citation and quotation marks omitted).

"Whether a failure to make evidence available to a defendant violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Sections 19 and 23 of the North Carolina Constitution **[*460]** depends in part on the nature of the evidence at issue." State v. Taylor, 362 N.C. 514, 525, 669 S.E.2d 239, 252 (2008) (citation omitted). In *Brady*, the United States Supreme Court held that "suppression by the prosecution of evidence *favorable* to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87, 10 L. Ed. 2d at 218 (emphasis added). However, "when the evidence is only *potentially useful* or when no more can be said of the evidence than that it could have been subjected to tests, the results of which might have exonerated the defendant, the state's failure to preserve the evidence does not violate the defendant's constitutional rights unless the defendant shows bad faith on the part of the state." Taylor, 362 N.C. at 525, 669 S.E.2d at 253 (emphasis added) (alteration, citations, and quotation marks omitted).

Here, the trial court concluded the destruction of the dash camera footage constituted a *Brady* violation, requiring dismissal of Defendant's charges. **[***8]** In reaching this conclusion, the trial court determined the dash camera footage was "material and exculpatory in nature[.]" However, the trial court made no findings concerning what the dash camera footage would have shown and, on this record, could not have made such a finding because there is no actual record of what it may have shown. Rather, the dash camera footage was only "potentially useful" to

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[1] *See* Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

Defendant, which requires Defendant to establish bad faith on the part of the State in order to show a constitutional violation. *Id.* (citations and quotation marks omitted); *see* State v. Dorman, 225 N.C. App. 599, 621, 737 S.E.2d 452, 466-67 (2013) (holding bones of the alleged victim that were destroyed prior to the defendant being able to examine them made it "speculative to evaluate to what degree, if at all, those bones would have been material and favorable to [the defendant's] case . . . [and thus the defendant] cannot meet his burden of demonstrating the evidence was actually, as opposed to potentially, material and favorable to his defense"). Therefore, because the dash camera footage was not exculpatory but rather only *potentially* exculpatory, the trial court erred by applying the *Brady* analysis and by concluding its destruction warranted dismissal, **[***9]** irrespective of bad faith on the part of the State. *See* Taylor, 362 N.C. at 525, 669 S.E.2d at 253 (citations omitted).

Instead, the trial court was required to assess whether or not the footage was destroyed in bad faith. Here, because the trial court perceived the destruction of the dash camera footage to constitute a *Brady* violation, the trial court made no findings or conclusions relating to whether the State's destruction of the dash camera footage was in bad **[*461]** faith. Therefore, because the trial court erroneously based its ruling on the dash camera footage, in fact, being exculpatory and thus controlled by *Brady*, we remand the matter to the trial court for a determination of whether, on these facts, the State's destruction of the footage was done in bad faith. *See* State v. Young, 368 N.C. 188, 215, 775 S.E.2d 291, 309 (2015) ("According to well-established North Carolina law, where a ruling is based upon a misapprehension of the applicable law, the cause will be remanded in order that the matter may be considered in its true legal light." (alteration, citation, and quotation marks omitted)).

Conclusion

Accordingly, for the foregoing reasons, we vacate the trial court's Order and remand this matter for a determination of whether bad faith existed on the part of the State in failing **[***10]** to preserve the dash camera footage.

VACATED AND REMANDED.

[662]** Judge DIETZ concurs.

Judge BERGER dissents in a separate opinion.

Dissent by: BERGER

Dissent

BERGER, Judge, dissenting in separate opinion.

I respectfully dissent because we should take the additional step of reversing the trial court's order.

Section 15A-954(a)(4) of the North Carolina General Statutes requires a trial court to dismiss criminal charges where a "defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution." N.C. Gen. Stat. § 15A-954(a)(4) (2017). The "defendant bears the burden of showing the flagrant constitutional violation and of showing irreparable prejudice to the preparation of his case. This statutory provision contemplates drastic relief, such that a motion to dismiss under its terms should be granted sparingly. " State v. Williams, 362 N.C. 628, 634, 669 S.E.2d 290, 295 (2008) (citation and quotation marks omitted).

In *Brady v. Maryland*, the Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of **[*462]** the prosecution." 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). However, the Supreme Court subsequently clarified **[***11]** that "the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material . . . which might have

exonerated the defendant." *Arizona v. Youngblood, 488 U.S. 51, 57, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988)*. "[U]nless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." *Id. at 58*. "However, evidence of bad faith standing alone, even if supported by competent evidence, is not sufficient to support a dismissal under *N.C. Gen. Stat. § 15A-954(a)(4)*." *State v. Hamilton, N.C. App. , , 822 S.E.2d 548, 552 (2018)* (citation and quotation marks omitted), *review dismissed*, *372 N.C. 697, 830 S.E.2d 822 (2019)*, and *review denied*, *372 N.C. 697, 830 S.E.2d 824 (2019)*. Thus, a defendant must demonstrate not only that the State's failure to preserve potentially exculpatory evidence was done in bad faith, but also that he was irreparably prejudiced in the preparation of his case in order to show a violation of due process sufficient to justify dismissal.

In *State v. Hamilton*, this Court analyzed a similar issue to the present action. In *Hamilton*, the Macon County Sheriff's Department received a drug trafficking tip that contained specific information identifying the individuals and vehicles involved. *Id. at , 822 S.E.2d at 550*. After locating one of the aforementioned vehicles, the officer stopped the vehicle for failing **[***12]** to stop at a stop sign and conducted a free air sniff of the car with a K9 unit. *Id. at , 822 S.E.2d at 550*. The K9 unit alerted on the vehicle and the occupants of the vehicle were arrested with more than two pounds of methamphetamine in their possession. *Id. at , 822 S.E.2d at 550*. The officer asked the occupants if they would assist in proving that the defendant was involved in the drug trafficking, and the occupants agreed. *Id. at , 822 S.E.2d at 550*. The officer attempted to record the phone call between the defendant and the occupants, however, no audio was captured because the officer was not familiar with the new equipment. *Id. at , 822 S.E.2d at 551*. At trial, the defendant filed a motion to dismiss which was denied, and on appeal, the defendant argued that the trial court erred in denying the motion to dismiss because the State failed to preserve and disclose the audio recording. *Id. at , 822 S.E.2d at 551*. This Court affirmed the trial court's denial and found no bad faith on behalf of the State because the defendant (1) "had the opportunity to question [the occupant] about his phone call with [d]efendant," (2) "cross-examine [the officer] about destruction of the blank audio recording, and argue the significance of the blank audio recording to the jury," and (3) the defendant "failed to show bad faith **[***13]** on the part of [the officer]." *Id. at , 822 S.E.2d at 552*.

[*463] **[**663]** Here, Defendant had the opportunity to cross-examine Trooper Hostinsky about the loss of the dash camera footage and argue its significance to the jury. Further, Defendant failed to make a showing that Trooper Hostinsky exercised bad faith in failing to preserve the dash camera footage. At trial, Trooper Hostinsky testified to his understanding of the dash camera recording system as follows:

> [Trooper Hostinsky]. So at the initial point in time, this is a newer technology for the highway patrol, we were given training by a WatchGuard company representative, he told us that the way the cameras were to be set up was that if we tagged, tagged the videos, whether it be a warning stop, a stop for speeding, seatbelts, et cetera, that it would be a 90 day retention schedule on the server. He said there were four events that which we tagged it would remain on the server for three years. As I was initially understanding it, the four events for the three year retention schedule was anything involving a pursuit, an emergency response, a use of force, or a driving while impaired offense.
>
> [The State]. And since that time have you come to understand something different **[***14]** about the retention policy?
> [Trooper Hostinsky]. Yes, sir.
> [The State]. Could you describe that for the Court?
> [Trooper Hostinsky]. Just earlier this year after speaking with our technical services units I learned that the only incidences that are saved for the three year period is a chase or a use of force. The emergency response and the driving while impaired are actually just a 90 day retention schedule.
> [The State]. And, and how did you mark this video?
> [Trooper Hostinsky]. As a DWI.
> [The State]. Okay. And so, per your knowledge, how long was this video retained?
> [Trooper Hostinsky]. I, I assumed the video would be available for three years at the time of the incident. . . .
> [The State]. Okay. And when did you first speak to the Wayne County DA's office about this video?
>
> **[*464]** [Trooper Hostinsky]. The, the earliest recollection I have of it was either January or February of this year, of 2018.

[The State]. Okay. And could you just sort of briefly summarize what that was for the Court?

[Trooper Hostinsky]. I was reached out to by Ms. Tracy Moore asking how she could get a copy of the video, I told her just simply go to the district office and ask one of the sergeants to pull it from the server and **[***15]** burn it onto a DVR. I was contacted after that, told that the video was not available, so I began to personally reach out to my sergeant when I was located here. He said he could not locate the video. I then called our technical services unit in Raleigh and got ahold of the gentleman who runs the WatchGuard platform for us, and after going back and forth with him, he attempted to locate it, and the video was not available on either the main server or any of their redundancy servers.

. . . .

[The State]. Did anyone at the DA'S office ever tell you to delete this video?

[Trooper Hostinsky]. Absolutely not.

[The State]. Did you ever take any action to delete this video?

[Trooper Hostinsky]. No, sir.

[The State]. Did you ever . . . did you ever specifically choose not to take an action because you had an intention to deprive the Defendant of the video in this case?

[Trooper Hostinsky]. No, sir.

[The State]. Are you aware of such an intention on the part of anybody else in the DA's office or in law enforcement?

[Trooper Hostinsky]. No, sir.

From this testimony, it is apparent that Trooper Hostinsky was given conflicting information regarding the dash camera recording system, and he was simply operating **[***16]** under a misunderstanding about how the new system worked. As in *Hamilton*, there is no evidence in the record **[*465]** that Trooper Hostinsky deleted the dash camera footage in bad faith. Rather, the testimony at the suppression **[**664]** hearing tends to show that he made a mistake because he was using a new recording system without adequate training.

Defendant failed to demonstrate bad faith on the part of Trooper Hostinsky or the prosecutor at the hearing. This is plainly evident because the trial court did not make a finding that either Trooper Hostinsky or the prosecutor acted in bad faith. Because the evidence presented could not support a finding of bad faith, Defendant cannot satisfy *Youngblood* and has failed to show irreparable prejudice. The trial court's order of dismissal should be reversed.

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State v. Hill

Supreme Court of North Carolina

January 20, 1971, Filed

No. 63

Reporter
277 N.C. 547 *; 178 S.E.2d 462 **; 1971 N.C. LEXIS 1052 ***

STATE OF NORTH CAROLINA v. CHARLES G. HILL III

Prior History: **[***1]** On *certiorari* to review the decision of the Court of Appeals reported in 9 N.C. App. 279, 176 S.E. 2d 41, which found no error in the trial before *Johnston, J.*, at the 19 January 1970 Session of the Superior Court of Forsyth. Defendant appeals a conviction under G.S. 20-138.

Defendant was first tried in the Municipal Court of the City of Winston-Salem upon a charge that on or about 14 March 1968 he unlawfully operated a motor vehicle on a public street of Winston-Salem while under the influence of intoxicating liquor. Upon his conviction he appealed to the Superior Court. There, when the case was called for trial, defendant moved (1) that the prosecution be dismissed because he had been denied counsel at a critical stage of the proceedings; and (2) that a motion picture of him, together with its sound tract, and the results of a breathalyzer test be suppresesd because made while he was under illegal arrest. Judge Johnston conducted a *voir dire* and overruled both motions. The evidence adduced on *voir dire* will be discussed in the opinion.

The State's evidence which was before the jury tended to show: At approximately 10:45 p.m. on 13 March 1968, W. E. Stroupe, **[***2]** accompanied by Wayne Stafford, was driving his automobile on Reynolda Road, a four-lane street in Winston-Salem. The weather was clear and the street well lighted. As Stroupe came over a hill he saw an unlighted Lincoln Continental approaching him from the opposite direction. The vehicle was swerving "broadside" from left to right. In an effort to avoid a collision Stroupe stopped his automobile at the right curb, but notwithstanding the approaching car struck it at the left front door. Defendant Hill appeared from the rear of his vehicle and said repeatedly, "I don't think I hit you, but if I did I am sorry." Stroupe testified that he was so incensed by the collision that he feared to get close to defendant. Therefore, he did not smell his breath, and he could not say how he walked. Wayne Stafford also testified that he did not observe Hill walk, smell his breath, or have any conversation with him.

At 10:47 p.m. Police Officer G. E. Tierney, Jr., arrived at the scene and began an investigation. Defendant told the officer "that he was operating the 1964 Lincoln Continental." According to Tierney's testimony: Defendant's speech was slow; he staggered; his face was red. The **[***3]** odor of alcohol was on his breath and, in his opinion, defendant was under the influence of an intoxicating beverage to the extent that his mental and physical faculties were appreciably impaired.

Although he had not seen defendant operate the motor vehicle Tierney arrested him for drunken driving. After advising him of his constitutional right to counsel and to remain silent, Tierney took defendant to the Forsyth County Jail.

Defendant was again advised of his rights at the jail. When asked if he wanted a lawyer he replied that he was all right and didn't need one. He was then "filmed," and his answers to "certain questions" were recorded. After that procedure defendant was asked if he would take the breathalyzer test. He consented, and the test was administered at approximately 11:45 p.m. It "indicated a reading between .23 and .24%." Immediately thereafter a

warrant charging defendant with drunken driving was served upon him. The film, which was introduced in evidence, showed that defendant "sort of staggered and he was slow talking and his writing on the board was impaired."

Defendant offered no evidence before the jury. His motion for nonsuit was overruled. The jury **[***4]** returned a verdict of guilty as charged in the warrant, and from the judgment that he pay a fine of $ 100.00 and the costs defendant appealed. The Court of Appeals found no error in the trial, and we allowed *certiorari*.

Disposition: Reversed.

Counsel: *Attorney General Robert Morgan, Assistant Attorneys General William W. Melvin and T. Buie Costen for the State*.

Craige, Brawley by Alvin A. Thomas and C. Thomas Ross for defendant appellant.

Judges: Sharp, Justice. Justice Moore did not participate in the consideration or decision of this case. Justice Huskins dissenting. Justice Lake dissenting.

Opinion by: SHARP

Opinion

[*550] **[**464]** Defendant assigns as error the court's denial of his pretrial motions. At the *voir dire* which Judge Johnston conducted upon these motions the evidence for the State tended to show: Officer Tierney, who arrested defendant at the scene of the collision, did not at any time see him drive his automobile. Defendant was taken to jail, filmed, and given the breathalyzer test before a warrant charging him with drunken driving was served upon him. While the film was being made, and during the breathalyzer test, only police officers and employees of the police department were present. As soon as these procedures had been accomplished Tierney permitted defendant to telephone his attorney, and he was present when defendant **[***8]** made the phone call.

Defendant testified: He was arrested about 10:30 p.m. and after his arrest he requested counsel. At no time did he say he did not want an attorney. He was "finally permitted to call a lawyer a little after midnight. . . . They only offered (him) the right to make a telephone call one time." He immediately called his attorney, William T. Graham, "and he was supposed to come down." Mr. Graham is defendant's brother-in-law and has represented him for the past eight years.

Mr. Graham testified that he received a telephone call from defendant a few minutes after midnight, and he talked to both him and Officer Tierney. The officer told Graham that defendant had been charged with drunken driving, and he could take him home if he would come to the jail. Mr. Graham went immediately to the jail, arranged defendant's bond, and requested the jailer, Deputy Sheriff Weldon Keyser, to release his client to him. The jailer refused because of "the four-hour rule." In **[*551]** response to Graham's request for an explanation of that rule, Keyser said, "Well we can't let the man out until he has been locked up for four hours." The attorney protested that defendant's bond **[***9]** had been posted and that the arresting officer had told him he could take defendant home. The jailer's reply was, "Well, I am running this jail and you are not going to get him out of here until the four hours are up." After Graham's further efforts, which included a call to Winston-Salem's Chief of Police, had failed to secure defendant's release on bond, he requested permission to see his client. The jailer's response was, "The son of a bitch is so **[**465]** drunk he can't stand up. . . . You are not going to see him, git." Graham "got, and that was the end of it." Defendant was released about 7:00 a.m. the following morning.

At the conclusion of the *voir dire*, Judge Johnston denied defendant's motion upon findings (a) that defendant was arrested without a warrant by an officer who had not seen him operating a motor vehicle on the occasion in question; (b) that defendant was not "arrested falsely"; (c) that defendant voluntarily submitted to the breathalyzer

test and "was photographed by the police officers at that point"; and (d) that defendant was not at any time denied the right to counsel. Judge Johnston's finding that defendant was not "arrested falsely" was clearly **[***10]** intended to be a ruling that he was not illegally arrested. As such it was erroneous.

N. C. Gen. Stats. § 15-41 provides: "A peace officer may without warrant arrest a person:

"(1) When the person to be arrested has committed a felony or misdemeanor *in the presence* of the officer, or when the officer has reasonable ground to believe that the person to be arrested has committed a felony or misdemeanor *in his presence*." (Emphasis added.)

All the State's evidence tends to show that when Officer Tierney arrived at the scene he had reasonable grounds to believe that defendant had committed the offense of operating a motor vehicle on a public highway while under the influence of an intoxicant. Notwithstanding, under G.S. 15-41 the arrest was illegal because defendant had not operated the vehicle in the officer's presence. "[T]he rule is that where the right and power of arrest without warrant is regulated by statute, an arrest without warrant except as authorized by statute is illegal." **[*552]** State v. Mobley, 240 N.C. 476, 480, 83 S.E. 2d 100, 103. That defendant might have been legally arrested without a warrant for public drunkenness is beside the point; he was **[***11]** not arrested for that offense.

The Attorney General concedes that defendant's arrest was illegal. However, citing State v. Moore, 275 N.C. 141, 166 S.E. 2d 53, he contends that the illegal arrest did not *ipso facto* render the questioned evidence incompetent, since there were no oppressive circumstances surrounding the arrest. He argues that defendant voluntarily consented to the breathalyzer test and did not object to being photographed, and -- since the sound motion picture was not made a part of the case on appeal -- that the exception to its admission in evidence is not presented. These contentions are not without merit. However, because we base our decision upon the denial of defendant's motion to dismiss, we will not discuss further the motion to suppress evidence.

Both the state and federal constitutions declare that in *all* criminal prosecutions an accused has the right to have counsel for his defense and to obtain witnesses in his behalf. U. S. Const. amend. VI; N.C. Const. art. I § 23. In pertinent part the specific language of the North Carolina Constitution is that "every person charged with crime has the right . . . to confront the accusers and witnesses **[***12]** with other testimony and to have counsel for defense. . . ." To implement these constitutional rights the General Assembly enacted G.S. 15-47, which provides in pertinent part: "Upon the arrest, detention, or deprivation of the liberties of any person by an officer in this State with or without warrant, it shall be the duty of the officer making the arrest . . . to permit the person so arrested to communicate with counsel and friends *immediately, and the right of such person to communicate with counsel and friends shall not be denied*."

Under these constitutional and statutory provisions a defendant's communication and contacts with the outside world are not limited to receiving professional advice from his attorney. He is, of **[**466]** course, entitled to counsel at every critical stage of the proceedings against him. Gasque v. State, 271 N.C. 323, 156 S.E. 2d 740. He is also entitled to consult with friends and relatives and to have them make observations of his person. The right to communicate with counsel and friends necessarily includes the right of access to them.

[*553] Justice Higgins called attention to the provisions of G.S. 15-47, in State v. Wheeler ***[***13]*** , 249 N.C. 187, 192-193, 105 S.E. 2d 615, 620. He said: "The rights of communication go with the man into the jail, and reasonable opportunity to exercise them must be afforded by the restraining authorities. . . . The denial of an opportunity to exercise a right is a denial of the right." One who is detained by police officers under a charge of driving while under the influence of an intoxicant has the same constitutional and statutory rights as any other accused. State v. Morris, 275 N.C. 50, 165 S.E. 2d 245.

All the evidence in this case tends to show (1) that defendant was not "permitted" to telephone his attorney until after the breathalyzer testing and photographic procedures were completed and the warrant was served; (2) that he called Mr. Graham, his attorney and brother-in-law, who came to the jail; (3) that Mr. Graham's request to see his client and relative was peremptorily and categatorically denied; and (4) that from the time defendant was arrested

about 11:00 p.m. until he was released about 7:00 a.m. the following morning only law enforcement officers had seen or had access to him.

When one is taken into police custody for an offense of which intoxication is an **[***14]** essential element, time is of the essence. Intoxication does not last. Ordinarily a drunken man will "sleep it off" in a few hours. Thus, if one accused of driving while intoxicated is to have witnesses for his defense, he must have access to his counsel, friends, relatives, or some disinterested person within a relatively short time after his arrest. The statute says he is entitled to communicate with them *immediately*, and this is true whether he is arrested at 2:00 in the morning or 2:00 in the afternoon.

Defendant's guilt or innocence depends upon whether he was intoxicated at the time of his arrest. His condition then was the crucial and decisive fact to be proven. Permission to communicate with counsel and friends is of no avail if those who come to the jail in response to a prisoner's call are not permitted to see for themselves whether he is intoxicated. In this factual situation, the right of a defendant to communicate with counsel and friends implies, at the very least, the right to have them see him, observe and examine him, with reference to his alleged intoxication. The fact that Mr. Graham was defendant's lawyer, **[*554]** as well as his friend, did not **[***15]** impair his right to observe defendant at this critical time.

The evidence in this case will support no conclusion other than that defendant was denied his constitutional and statutory right to communicate with both counsel and friends at a time when the denial deprived him of any opportunity to confront the State's witnesses with other testimony. Under these circumstances, to say that the denial was not prejudicial is to assume that which is incapable of proof. Decisions from other jurisdictions, discussed below, support this conclusion.

City of Tacoma v. Heater, 67 Wash. 2d 733, 409 P. 2d 867, involved a situation practically identical with the one we consider. In that case the defendant was arrested for driving while intoxicated. Upon arrival at the jail he requested permission to telephone his attorney. His repeated requests were refused because police department regulations authorized officers to deny a person charged with an offense involving intoxication the right to use the telephone for four hours. The jury found the defendant guilty as charged.

[467]** In reviewing his conviction the Supreme Court of Washington said, "This issue to be determined on this appeal **[***16]** is: Is the denial of a request for permission to contact counsel as soon as a person is charged with a crime involving the element of intoxication, the denial of a constitutional right resulting in irreparable prejudice to his defense?" *Id. at 735, 409 P. 2d at 869*. In answering the question Yes, the Court said that a critical stage had been reached in the defendant's case when, immediately after the officers had interrogated the defendant and conducted their test for sobriety, they charged him with the offense. The rationale was that the denial of counsel at this point made it impossible for defendant to have disinterested witnesses observe his condition and to obtain a blood test by a doctor -- the only means by which defendant might have proved his innocence. "The evidence of intoxication dissipates with the passage of time. The 4-hour rule imposed by the police regulation recognizes that after 4 hours a person under the influence of intoxicating liquor will have reached a state of sobriety so that he is safe to be released, and may use a telephone. . . . It will not do to say that a person who is denied an opportunity to secure the most convincing kind of evidence has been **[***17]** deprived of a constitutional **[*555]** right but that such deprivation did not harm him. . . ." *Id. at 739, 740, 409 P. 2d at 871*. "Under the 'critical stage' rule, the denial to the defendant of the assistance of his attorney after the officers had conducted their test and questioning, violated his constitutional right to have counsel and due process, and any conviction obtained thereafter was void." *Id. at 741, 409 P. 2d at 872*.

The opinion in *City of Tacoma* collects the pertinent decisions. We approve the Washington court's exposition and that of the Supreme Court of Appeals of Virginia in *Winston v. Commonwealth, 188 Va. 386, 49 S.E. 2d 611*, one of the cases cited in *Tacoma*. In *Winston*, the defendant was arrested for driving while intoxicated and jailed for nearly five hours before he was taken before a judicial officer authorized to issue warrants and fix bail. The applicable Virginia statute required that he be taken "forthwith." In reversing the defendant's conviction and dismissing the prosecution the Supreme Court of Appeals of Virginia pointed out that as a result of his illegal detention the defendant had been forever deprived of material evidence **[***18]** which *might* have supported his claim of

innocence; that after the lapse of the time during which he was held in jail a physical examination and blood test would have been useless. The court said: "[W]here, as here, the effect of the failure of the arresting officer and of the custodian of the arrested person to perform their respective duties is such as to deprive a person of the constitutional right to call for evidence in his favor, his subsequent conviction lacks the required due process of law and cannot stand." *Id. at 396, 49 S.E. 2d at 616*.

Before we could say that defendant was not prejudiced by the refusal of the jailer to permit his attorney to see him we would have to assume both the infallibility and credibility of the State's witnesses as well as the certitude of their tests. Even if the assumption be true in this case, it will not always be so. However, the rule we now formulate will be uniformly applicable hereafter. It may well be that here "the criminal is to go free because the constable blundered." *People v. Defore, 242 N.Y. 13, 21, 150 N.E. 585, 587*. Notwithstanding, when an officer's blunder deprives a defendant of his only opportunity to obtain **[***19]** evidence which might prove his innocence, the State will not be heard to say that such evidence did not exist. *In re Newbern, 175 Cal. App. 2d 862, 1 Cal. Rptr. 80*. Defendant has **[*556]** been deprived of a fundamental right which the constitution guarantees to every person charged with crime. For that reason the prosecution against him must be dismissed.

Reversed.

Dissent by: HUSKINS; LAKE

Dissent

Justice Huskins dissenting:

Defendant was convicted of drunken driving. Upon the facts in this record his guilt is so obvious that reasonable men, women or children could not arrive at a different conclusion. Therefore, unless his rights have been prejudicially violated, amounting to a denial of due process, his conviction should be sustained.

The record shows: (1) Officer Tierney arrived on the scene *two minutes* after defendant had driven his 1964 Lincoln Continental into the Stroupe vehicle, which Mr. Stroupe had stopped at the right curb on a *four-lane street* in an effort to avoid the collision; (2) defendant told the officer he was driving the Lincoln, a fact already known to Mr. Stroupe; (3) defendant's speech was slow, his face was red, the odor of alcohol was on his **[***20]** breath, he staggered when he walked -- in short, he was drunk; (4) the officer arrested him without a warrant for drunken driving, advised him of his rights, took him to the Forsyth County Jail and again advised him of his rights, whereupon he stated that he was all right and didn't need a lawyer; (5) defendant then consented to take the Breathalyzer test and it "indicated a reading between . **[**469]** 23% and .24%"; (6) immediately thereafter defendant was served with a warrant charging him with drunken driving; (7) a few minutes after midnight defendant telephoned his lawyer who went to the jail and arranged bond, but the jailer refused to release defendant until he sobered up and also refused to allow counsel to see defendant, stating that "the s.o.b. is so drunk he can't stand up"; (8) at his trial defendant did not testify and *offered no evidence*; (9) defendant makes no attack whatsoever on the accuracy of the Breathalyzer test and makes no contention that the test was improperly administered; (10) defendant contends, but does not reveal in what way, the failure to permit counsel to talk to him at midnight prejudiced his defense.

[*557] On the facts outlined, I am **[***21]** unwilling to "let the criminal go free because the constable blundered." The determinative question is not whether defendant was denied access to his counsel at a critical stage of the proceeding against him. Rather, the question is whether denial of temporary access to counsel prejudiced this defendant in the preparation and trial of his case? *Coleman v. Alabama, 399 U.S. 1, 26 L. Ed. 2d 387, 90 S.Ct. 1999 (1970)*. I say not. Admittedly, defendant's constitutional right to counsel was violated by an arrogant, overbearing jailer whose discharge might well serve the orderly administration of criminal justice. Even so, every violation of a constitutional right is not prejudicial. Some constitutional errors are deemed harmless in the setting of a particular case, not requiring the automatic reversal of a conviction, when the court can declare a belief that it was

harmless beyond a reasonable doubt. *Chapman v. California, 386 U.S. 18, 17 L. Ed. 2d 705, 87 S.Ct. 824 (1967)*; *Harrington v. California, 395 U.S. 250, 23 L. Ed. 2d 284, 89 S.Ct. 1726 (1969)*; *Coleman v. Alabama, supra*; *State v. Brinson, 277 N.C. 286, 177 S.E. 2d 398 (1970)*. See: Note, Harmless Constitutional **[***22]** Error: A Reappraisal, 83 Harv. L. Rev. 814 (1970).

In fashioning a harmless error rule in *Chapman*, the Court said: "We prefer the approach of this Court in deciding what was harmless error in our recent case of *Fahy v. Connecticut, 375 U.S. 85, 11 L. Ed. 2d 171, 84 S.Ct. 229*. There we said: 'The question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction.'" In *Coleman v. Alabama, supra*, defendant was not provided counsel at his preliminary hearing and, in remanding the case to the state court to determine whether defendant had been prejudiced by the absence of counsel, the Court said: "The test to be applied is whether the denial of counsel at the preliminary hearing was harmless error under *Chapman v. California*. . . ." Applying that test to the facts in this case, I see no *reasonable possibility* that temporary exclusion of defendant's counsel on the night in question could have contributed even remotely to his conviction. Under statutory law of this State, .10% alcoholic content in the blood raises a legal presumption that the person is under the influence of intoxicants. *G.S. 20-139.1*. Here, **[***23]** in the face of an unchallenged Breathalyzer reading of .23% to .24% alcoholic content in defendant's blood, corroborated by slow speech, a red face, alcoholic breath and a staggered gait, it **[*558]** is not perceived how denial of access to "midnight counsel" was prejudicial in the slightest degree. He had access to counsel from 7 a.m. the following morning until his trial was completed in Forsyth Superior Court in January 1970 -- twenty-two months later! Had his lawyer been admitted, he would have seen only a client with a red face, a thick tongue, smelling of alcohol, too drunk to stand, and probably half asleep. Had his lawyer called a doctor and other witnesses, their eyes would have fallen upon the same cheerful sight. How, then, did the jailer's blunder deprive this defendant of "his only opportunity to obtain evidence which might prove his *innocence?*" (Emphasis ours) The truth is, it did not. I believe it was harmless beyond a reasonable doubt, and defendant's conviction should stand. **[**470]** Where an officer's conduct does not adversely affect the outcome of a trial and does not result in a miscarriage of justice, courts should not reverse just to penalize **[***24]** erring authorities.

In the following cases, even though the defendant's right to consult with his counsel had been delayed or denied, the appellate court held that in the absence of evidence that such misconduct on the part of the authorities adversely affected the outcome of the trial or resulted in a miscarriage of justice, defendant's conviction should stand: *Welk v. State, 99 Tex. Crim. 235, 265 S.W. 914 (1924)*; *Ellis v. State, 149 Tex. Crim. 583, 197 S.W. 2d 351 (1946)*; *Sims v. State, 194 Ark. 702, 109 S.W. 2d 668 (1937)*; *Guerin v. Commonwealth, 339 Mass. 731, 162 N.E. 2d 38 (1959)*. Accord: *Coleman v. Alabama, supra*; *Vanater v. Boles, Warden, 377 F. 2d 898 (1967)*; *State v. Youngblood, 217 So. 2d 98 (Fla. 1968)*. See Annotation: Right to Counsel -- Communication, *5 A.L.R. 3d 1360 (1966)*.

It is significant that after defendant had freely consulted with his counsel for twenty-two months, and after he and his counsel had heard the State's evidence during the trial, defendant has never claimed that he did, in fact, have a defense to the charge against him, or that, had he been permitted to see his counsel on the night of his arrest, he could have presented **[***25]** evidence tending to prove his innocence. He just elected to try the jailer instead.

"The basic purpose of a trial is the determination of truth. . . ." *Tehan v. Shott, 382 U.S. 406, 15 L. Ed. 2d 453, 86 S.Ct. 459 (1966)*. The truth has been determined in this case by the verdict of the jury. Yet the majority permits defendant to use the Constitution not as a shield against injustice but as **[*559]** a sword to avoid the penalty of the law. Such rigid application of constitutional principles is inappropriate in this instance and encourages the vicious habit of drunken driving which has become all too prevalent throughout the State. "There is danger that the criminal law will be brought into contempt -- that discredit will even touch the great immunities assured by the Fourteenth Amendment -- if gossamer possibilities of prejudice to a defendant are to nullify a sentence pronounced by a court of competent jurisdiction in obedience to local law, and set the guilty free." *Snyder v. Massachusetts, 291 U.S. 97, 78 L. Ed. 674, 54 S.Ct. 330, 90 A.L.R. 575 (1934)*.

For these reasons I respectfully dissent from the majority view and vote to affirm the well-reasoned opinion of Chief **[***26]** Judge Mallard in the Court of Appeals upholding defendant's conviction.

[468]** Justice Lake dissenting:

In my view the defendant's constitutional right to counsel has not been violated. At the time his lawyer was at the jail, no police interrogation of the defendant was in progress or contemplated. No such interrogation followed. This distinguishes the present case from *Escobedo v. Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L. Ed. 2d 977*. No lineup for identification, no legal proceeding, such as a preliminary hearing, or other step in the prosecution was being conducted or in preparation. The attorney was not denied access to any such proceeding. I am aware of no previous decision of this Court or of the Supreme Court of the United States which extends the constitutional right of counsel to the right of unlimited jail visitation by counsel at 2 o'clock in the morning, irrespective of the desires of other inmates of the jail to sleep. The defendant was released some five or six hours later.

What this defendant lost by the act of the jailer was not the opportunity for legal advice or counselling but the opportunity to be inspected by a person, not part of the law enforcement **[***27]** personnel, during the period when his drunkenness or sobriety could most readily be determined. For this purpose, a doctor, minister, plumber or school teacher would have served as well as a lawyer. The jailer's denial of such inspection has nothing to do with the constitutional right to counsel. I am aware of no previous decision by this Court or by the Supreme Court **[*560]** of the United States extending the Fourteenth Amendment, or any other provision of the Federal or State Constitution, so far as to require a drunk driver to be set free, and rendered immune to prosecution for his offense, merely because a rude and unaccommodating jailer denied some friend or relative the right to visit his jail cell at 2 a.m. to smell his breath.

This defendant was permitted to telephone his lawyer and did so. Had the lawyer, as a result of that conversation, believed that the defendant was as sober as a judge ought to be and was being framed by the police and the other driver in an automobile accident, it is obvious that, when the jailer denied the lawyer the opportunity to see him, the telephones of the solicitor, the chief of police or sheriff and the mayor would have been immediately **[***28]** and insistently ringing. No such suggestion appears in this record. This record leaves no reasonable doubt but that the defendant was exceedingly drunk. It is clear that, as the opinion of Justice Huskins demonstrates, his defense at his trial was not prejudiced by the inability of his lawyer to confer with him in the jail.

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State v. Knoll

Supreme Court of North Carolina

September 11, 1987, Heard in the Supreme Court ; June 30, 1988, Filed

Nos. 119PA87, 120PA87, 121PA87

Reporter
322 N.C. 535 *; 369 S.E.2d 558 **; 1988 N.C. LEXIS 474 ***

STATE OF NORTH CAROLINA v. CRAIG RAYMOND KNOLL; STATE OF NORTH CAROLINA v. SAMSON WARREN, JR.; STATE OF NORTH CAROLINA v. BENNIE GARLAND HICKS

Prior History: [*1]** On discretionary review pursuant to *N.C.G.S. § 7A-31* of three unanimous decisions of the Court of Appeals reversing orders entered in the Superior Court, Wake County, by *Farmer, J.*, on 19 February 1986 affirming the dismissal of driving while impaired charges by judges in the district court division in each of the cases and remanding each of the same for trial. *State v. Hicks, 84 N.C. App. 237, 352 S.E. 2d 275 (1987)*; *State v. Knoll, 84 N.C. App. 228, 352 S.E. 2d 463 (1987)*; *State v. Warren, 84 N.C. App. 235, 352 S.E. 2d 276 (1987)*.

Disposition: Reversed.

Counsel: *Lacy H. Thornburg, Attorney General, by Isaac T. Avery, III, Special Deputy Attorney General, and Linda Anne Morris, Associate Attorney General, for the State*.

Crumpler & Scherer, by Sally H. Scherer and William B. Crumpler, for defendant-appellants.

Judges: Meyer, Justice

Opinion by: [*3]** MEYER

Opinion

[*536] [559]** Defendant in each of these consolidated cases was charged with driving while impaired (DWI) in violation of *N.C.G.S. § 20-138.1*. Each defendant thereafter made a pretrial motion in Wake County District Court to dismiss the charge against him for violation of certain statutory and constitutional rights. The presiding judge in each case made findings of fact and conclusions of law and granted the motion to dismiss. The State appealed in all three cases to the Superior Court, Wake County, and because of the common questions of law involved, the State's appeals were consolidated for hearing.

At a hearing in Wake County Superior Court, Judge Robert L. Farmer adopted the findings and conclusions of the district court judges, made additional findings and conclusions, and affirmed the dismissals entered by the judges in the district court division. The State appealed, and the Court of Appeals reversed the judgments of the superior court and remanded all three cases for trial. We granted discretionary review in all three cases on 5 May 1987, and upon motion of the State (with consent of defendants), the cases were consolidated for briefing and oral argument. **[***4]** Concluding, as we do, that the Court of Appeals erred in reversing the judgments entered by the trial judge in each of the three cases, we reverse.

Before reviewing the three cases individually, we note, by way of background, the general obligations of the magistrate in such cases. Upon a defendant's arrest for DWI, the magistrate is obligated to inform him of the charges against him, of his right to communicate with counsel and friends, and of the general circumstances under which he may secure his release. *N.C.G.S. § 15A-511(b)* (1983). A defendant may be confined or otherwise **[*537]** secured if he is so unruly as to disrupt and impede the proceedings, becomes unconscious, is grossly intoxicated, or is otherwise unable to understand the procedural rights afforded by the initial appearance before the magistrate. *N.C.G.S. § 15A-511(a)(3)* (1983).

The magistrate must also determine conditions for pretrial release of the defendant, *N.C.G.S. § 15A-533(b)* (1983), by adhering to one of the following courses: (1) release the defendant on his written promise to appear; (2) release the defendant upon his execution of an unsecured appearance bond; (3) place the defendant in the custody **[***5]** of a designated person or organization; or (4) require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage, or by at least one solvent surety, *N.C.G.S. § 15A-534(a)* **[**560]** (1983). In determining the particular pretrial condition to impose, the magistrate must take into account the nature and circumstances of the offense charged, the weight of the evidence against the defendant, whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision, and any other evidence relevant to the issue of pretrial release. *N.C.G.S. § 15A-534(c)* (1983). We now proceed to review the three cases *seriatim*.

Knoll Case

David Knoll was stopped by Officer T. C. Dunn of the Raleigh Police Department on South Saunders Street in Raleigh at 1:15 p.m. on 17 April 1984 and charged with driving while impaired. He was taken to the Wake County Courthouse, where he was administered an intoxilyzer test at 2:31 p.m. The results of the analysis showed defendant to have an alcohol concentration of 0.30. He was taken before a magistrate who set bond at $ 300.00. Between 4:00 p.m. **[***6]** and 5:00 p.m., Knoll asked several times to be allowed to telephone his father. He was allowed to make the call at about 5:00 p.m. Defendant's father stated that the magistrate informed him over the phone that his son could not be released until 11:00 p.m. and that, as a result, he did not go to the police station immediately but, rather, posted his son's $ 300.00 bail later that night at 11:00 p.m.

At a hearing on defendant's Motion to Dismiss, the trial judge made, inter alia, the following findings of fact:

> **[*538]** 4. After taking the intoxilyzer test, the defendant appeared with Officer Dunn before a magistrate who formally charged the defendant with driving while impaired. The magistrate asked the defendant no questions about his family ties, employment, financial resources, length of residence in the community, record of convictions, or any other matter relating to conditions that would affect a bond in his case. . . .
> . . . .
>
> 6. When the defendant was placed in jail, he let the jailer know that he would like to call his father at 4:00 P.M. when he knew his father would be home. He reasonably believed that his father would be the best person to call to come get him **[***7]** and to make arrangements for his bond. He made several requests of the jail staff to be allowed to call his father before and around 4:00 P.M., but it was shortly after 5:00 P.M. before he was given an opportunity to make a phone call. He did call his father and inform him of his situation, including the amount of the bond.
>
> 7. . . . Mr. Knoll introduced himself to the magistrate on the phone and specifically identified himself as the defendant's father and stated that he wanted to come get his son. The magistrate responded that he could not come and get the defendant until 11:00 P.M. Mr. Knoll made it clear that he would like to get his son out right then, that he did not want him to have to stay in jail, and that he could come right away and post his bond. The magistrate responded, "The subject is not debatable." Therefore, Mr. Knoll waited until 11:00 P.M. to secure his son's release, and he posted a cash bond for him. . . . It appeared to Mr. Knoll when he talked with his son on the phone that his son was oriented and coherent and not noticeably impaired in either his manner of speech

or in the substance of what he said. He detected nothing in talking with him on the phone **[***8]** that would indicate that the defendant would cause any problem if he were released immediately to Mr. Knoll's custody.

8. . . . [Mr. Knoll] was an appropriate person to take custody of his son when he talked with the magistrate at approximately 5:00 P.M., and it was not reasonable for the magistrate **[*539]** to deny him any opportunity to secure his son's release forthwith. Because the magistrate made it clear to Mr. Knoll that he could not get his son out of jail before 11:00 P.M., Mr. Knoll reasonably assumed nothing else could be done at that time. He therefore made no further efforts to obtain his sons's [sic] release before 11:00 P.M.

[561]** Warren Case

On Thursday, 29 March 1984, at 10:11 p.m., defendant Samson Warren, Jr., was operating his 1981 Ford truck on Dan Allen Drive near Yarboro Drive on or near the campus of North Carolina State University (NCSU). Officer Scaringelli of the NCSU Campus Police stopped the defendant and later charged him with DWI.

The defendant was taken to the Wake County Courthouse and was administered an intoxilyzer test at 11:08 p.m. The results of this test showed that defendant had an alcohol concentration of 0.25. The defendant was **[***9]** brought before a magistrate, and a secured bond of $ 500.00 was set.

A Dr. Martin, the head of the Computer Science Department at NCSU, and his son had arrived at the magistrate's office between 11:00 p.m. and 11:30 p.m. while the defendant was in the intoxilyzer room. They spoke with the defendant and observed his condition. Dr. Martin had on his person $ 300.00 and was willing to assume responsibility for the defendant. The magistrate informed Dr. Martin that the defendant would have to go to jail until 6:00 the following morning in order to sober up.

John Green Lewis, III, also went to the Wake County Courthouse that night to attempt to secure the defendant's release. Mr. Lewis arrived at the courthouse between 1:00 a.m. and 1:30 a.m. on Friday, 30 March 1984, and was informed that a release was not possible until 6:00 a.m. that morning. Mr. Lewis had on his person some $ 200.00 to post bond for the defendant. He made no further attempt to secure the defendant's release upon learning that release was not imminent and did not request to see Warren.

At approximately 2:00 a.m., the defendant was committed to the Wake County Jail. He was released at about 8:00 a.m. when Dr. **[***10]** Martin posted bond for him.

[*540] At the hearing on defendant's Motion to Dismiss, the trial judge made, inter alia, the following findings of fact:

3. Officer Scaringelli brought the defendant to the Wake County Courthouse and processed him in a routine manner, including administration of an intoxilyzer test. While the defendant and Officer Scaringelli were in the room used for administration of chemical tests in DWI cases in the basement of the Wake County Courthouse, Dr. Donald C. Martin and his nineteen year old son arrived at the magistrate's office to offer assistance to the defendant. They arrived between 11:00 P.M. and 11:30 P.M. after Dr. Martin had been notified of the defendant's arrest, and they informed the magistrate of their purpose.

4. After taking the intoxilyzer test, the defendant appeared with Officer Scaringelli before the magistrate shortly before 11:30 P.M. The magistrate formally charged the defendant with driving while impaired and transporting spirituous liquor in his vehicle. The magistrate did not advise the defendant concerning his right of communication with counsel and friends. . . .

. . . .

6. Dr. Martin and his son were sober, responsible **[***11]** adults who were willing and able to assume responsibility for the defendant for as long as required. Further, they could have arranged his pretrial release within a short period of time if permitted by the magistrate. Dr. Martin had some $ 300.00 on his person, which would have been more than adequate to secure the defendant's appearance in court. The magistrate was aware of these circumstances or should have been aware of them, and he nevertheless committed the defendant to the Wake County Jail notwithstanding the ability and willingness of Dr. Martin and his son to assist

the defendant in gaining pretrial release immediately. The magistrate stated that the defendant would have to remain in the jail until 6:00 o'clock the following morning. Mr. Warren was committed to the jail at approximately 11:30 P.M. Dr. Martin and his son left since the magistrate made his intention clear. Dr. Martin arranged the release of the defendant at about 8:00 o'clock the following morning.

[*541] **[**562]** 7. Between 1:00 A.M. and 1:30 A.M. on Friday, March 30, John G. Lewis, III and a friend arrived at the Wake County Courthouse to confirm the arrest of the defendant and to try to arrange for his **[***12]** release on bond. They approached the magistrate and were told that Mr. Warren was in jail. When they inquired about his bond, they were told something to the effect that he could not be released until around 6:00 o'clock that morning. Mr. Lewis and his friend had about $ 200.00 between them to apply toward his bond and could have arranged if necessary for additional funds or for the services of a bondsman in order to obtain the release of the defendant. Mr. Lewis and his friend were sober, responsible adults and were willing and able to assume responsibility for the defendant as long as required. They left when advised by the magistrate that the defendant could not be released until 6:00 o'clock that morning.

Hicks Case

Defendant Hicks was arrested for driving while impaired at 12:45 a.m. on 28 April 1984 in or near Knightdale by Officer Dail of the Knightdale Police Department. He was taken to the Wake County Courthouse; was given an intoxilyzer test, which indicated an alcohol concentration of 0.18; and was taken before a magistrate. Defendant was allowed to call his wife at their home in Wendell at 1:30 a.m., but she did not have a vehicle at the time and could **[***13]** not come to the courthouse to pick him up. When he was charged with DWI, he was not allowed to post his own $ 200.00 bond, though he had on his person over $ 2,000 in cash. Defendant remained in jail until 6:00 a.m. that morning.

At a hearing on Hicks' Motion to Dismiss, the trial judge made, inter alia, the following findings of fact:

4. After taking the intoxilyzer test, the defendant appeared with Officer Dail before a magistrate who formally charged the defendant with driving while impaired. From what the court can determine from the available records and evidence, the magistrate apparently did not inform the defendant concerning his rights about communication with counsel and friends and apparently asked neither him nor the arresting officer any questions about matters that would affect the bond in this case. . . .

[*542] 5. When he advised the defendant that his bond was $ 200.00, the magistrate asked him if he had any money. The defendant responded that he did have enough money on him to post a $ 200.00 bond and showed him at least $ 200.00. In fact, he then had some $ 2,200.00 on his person. . . . [T]he magistrate committed the defendant to jail apparently based **[***14]** upon the inability of the defendant's wife to come pick him up at that time. The time of commitment was between 1:45 A.M. and 2:00 A.M. and the defendant remained in jail thereafter until about 6:00 A.M. the same morning.

. . . .

7. Had the defendant been released immediately upon posting bond for himself, he could have caught a taxi to go home and could have been in the presence of his wife within a short period of time, probably within 30 mintues [sic] considering the distance between Raleigh and Wendell. Too, there were others that he could have gone to see and have observe his condition had he chosen to do so, and they could have been possible witnesses for him. Moreover, he would have had the opportunity upon release to secure further chemical testing in an attempt to gather evidence in his behalf as to his alcohol concentration.

In each of the three cases, the trial judge made specific findings to the effect that the defendant created no disturbance and was cooperative and polite; that there was no clear and convincing evidence that, if he were released, he would create a threat of physical injury to himself or others or of damage to property; and that therefore **[***15]** the defendant should have been released.

While a magistrate may refuse to release one who is intoxicated to such a degree that he would be endangered by being released **[**563]** "without supervision," here it is quite clear that such was not the situation in any of the three

cases. In the case of Knoll, whose intoxilyzer reading was 0.30, and in the case of Warren, whose reading was 0.25, neither would have been released "without supervision" but into the custody of appropriate people who were seeking their release. In the case of Hicks, whose reading was 0.18 and whose wife was temporarily unavailable to pick him up, he could have, by the use of a taxi, been in the presence of his wife within a short period of time.

With only insignificant variations in the three judgments, the specific finding in each case was substantially as follows:

> **[*543]** At no time . . . did the defendant create any disturbance. He cooperated as required during his processing and was polite. His condition was not such to suggest that he would create problems of any kind if released without commitment to jail. There was no clear and convincing evidence that any impairment of his mental or physical faculties **[***16]** presented a danger, if he were released, of physical injury to himself or others or damage to property, and there was no apparent reason for him not to be released forthwith in accordance with Article 26 of Chapter 15A of the General Statutes.

Also *in each of the three cases*, the trial judge found that the defendant's confinement was at a time crucial to his ability to gather evidence and have witnesses to his condition at the time. This finding in each case reads substantially as follows:

> The defendant's confinement in jail came at a crucial time when he could have gathered evidence in his behalf by having friends or others who he could have contacted observe him and form opinions as to his condition. That opportunity to gather evidence was lost because of his commitment to jail and because of his not being informed properly by the officials processing him of his various rights. The defendant has been seriously prejudiced in preparing his defense because of his commitment to jail, which was unnecessary and contrary to standards of pretrial release. . . . To assume that his lost opportunity to gather evidence in his behalf was not prejudicial is to assume that which **[***17]** is incapable of proof. The Court cannot assume the infallability [sic] and credibility of the State's witnesses or the certitude of their tests.

It is to be noted further that *in each of the three cases* the trial judge found that the magistrate failed to carry out his responsibilities regarding pretrial release under N.C.G.S. §§ 15A-511(b), -533(b), and -534(c). The trial judge found in each of the cases substantially as follows:

> [T]he magistrate failed to inform the defendant of the circumstances under which he could secure pretrial release as required by G.S. 15A-511(b). Further, the magistrate failed to determine conditions of pretrial release in accordance with G.S. 15A-533(b) and by [-]534(c).

[*544] It is quite clear that the magistrates involved in these particular cases were on special notice of each defendant's right to be released upon meeting certain conditions. In the findings of fact *in each of the three cases*, this finding was made:

> The Honorable James H. Pou Bailey and the Honorable George F. Bason by joint order dated January 11, 1978, have required in Wake County that "a defendant being held for public intoxication or driving under **[***18]** the influence must be released as soon as the defendant is able to meet a magistrate's conditions of pretrial release."

With regard to this standing order, the trial judge *in each of these three cases* made a specific finding of fact that "[t]he magistrate did not carry out the spirit and intent of this requirement adequately."

Finally, the trial judge *in each of the three cases* made the following conclusions of law:

> 1. The facts of this case demonstrate that the defendant has been deprived of certain constitutional and statutory rights as claimed in his Motion to Dismiss . . . . Such deprivation has prejudiced him in the preparation of his defense and has resulted in an unwarranted **[**564]** loss of liberty for a significant period of time. . . .

2. The only effective remedy for the violations of the defendant's rights is dismissal of the driving while impaired charge that led to his confinement.

In reversing the dismissal of the DWI charges and remanding the cases for trial, the Court of Appeals agreed with the findings of the trial judge in each case that the magistrate failed to inform defendant of the circumstances under which he could secure his pretrial release **[***19]** as required by N.C.G.S. § 15A-511(b)(3); that the magistrate failed to determine conditions of pretrial release in accordance with N.C.G.S. §§ 15A-533(b) and -534(c); and that, but for these statutory deprivations, each defendant could have secured his release from jail and could have had access to friends and family.

The Court of Appeals further concluded that the *per se* prejudice rule of State v. Hill, 277 N.C. 547, 178 S.E. 2d 462 (1971), **[*545]** does not apply when a person is charged under N.C.G.S. § 20-138.1(a)(2) with driving "[a]fter having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.10 or more." *See* N.C.G.S. § 20-138.1(a)(2) (1983). The panel below further concluded in each case that the district court therefore erred in applying the *per se* prejudice rule of *Hill* and that, though each defendant had been substantially deprived of his statutory rights, the evidence in each case was insufficient to support the trial judge's finding of prejudice and was therefore inadequate to support the dismissal of the case.

We agree with the Court of Appeals that application **[***20]** of a *per se* prejudice rule as set out in *Hill* is inappropriate in cases involving a violation of N.C.G.S. § 20-138.1(a)(2) (driving with an alcohol concentration of 0.10 or more). As the Court of Appeals correctly stated in its opinion below:

> Because of the change in North Carolina's driving while intoxicated laws, denial of access is no longer inherently prejudicial to a defendant's ability to gather evidence in support of his innocence in every driving while impaired case. While denial of access was clearly prejudicial in *Hill*, under the current 0.10 statute, a defendant's only opportunity to obtain evidence is not lost automatically when he is detained, and improperly denied access to friends and family. Prejudice may or may not occur since a chemical analysis result of 0.10 or more is sufficient, on its face, to convict.

State v. Knoll, 84 N.C. App. 228, 233, 352 S.E. 2d 463, 466. We therefore agree with the Court of Appeals that, in those cases arising under N.C.G.S. § 20-138.1(a)(2), prejudice will not be assumed to accompany a violation of defendant's statutory rights, but rather, defendant must make a showing that he **[***21]** was prejudiced in order to gain relief.

Having so stated, we hasten to add that, in the view of the Court, each of the defendants in these cases made a sufficient showing of a substantial statutory violation and of the prejudice arising therefrom to warrant relief. More precisely, we conclude that the findings of the district court in each case were in no way challenged, that the evidence presented in each case was adequate to support the finding of fact that the defendant was prejudiced, and that this finding in turn supports the trial judge's **[*546]** conclusion that defendant was irreparably prejudiced. Accordingly, we reverse the decision below.

The Court of Appeals correctly concluded that there are three statutes that are applicable to the issue of whether there was a substantial violation of defendant's statutory right of access to counsel and friends. First, N.C.G.S. § 15A-511(b) states:

> (b) Statement by the Magistrate. -- The magistrate must inform the defendant of:
>
> (1) The charges against him;
>
> (2) His right to communicate with counsel and friends; and
>
> (3) The general circumstances under which he may secure release under the provisions of Article 26, **[***22]** Bail.

[565]** Second, N.C.G.S. § 15A-533(b) reads in applicable part as follows:

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

Third, N.C.G.S. § 15A-534(c) provides in pertinent part the following:

> (c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; . . . whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; . . . and any other evidence relevant to the issue of pretrial release.

The Court of Appeals also correctly concluded (1) that the trial judge properly found in each case that the magistrate failed to inform the defendant of the circumstances under which he could secure his pretrial release and failed to determine conditions of pretrial release and (2) that, but for these failures and the resulting deprivation of his statutory rights, each defendant could have secured his release from jail and could have had access **[***23]** to friends and family.

[*547] These findings, supported by the evidence of record, and indeed unchallenged by any evidence to the contrary, are conclusive on appeal. Fast v. Gulley, 271 N.C. 208, 155 S.E. 2d 507 (1967). Thus, as the Court of Appeals recognized, it is established in this case that each defendant was substantially deprived of his rights. The panel below erroneously concluded, however, that the substantial deprivation of defendants' statutory rights did not result in prejudice to them. In effect, the Court of Appeals concluded that each trial judge's findings did not support his conclusion that the substantial deprivation of each defendant's rights "prejudiced him in the preparation of his defense and has resulted in an unwarranted loss of liberty for a significant period of time" and that "[t]he only effective remedy for the violations of the defendant's rights is dismissal of the driving while impaired charge that led to his confinement." It is in this latter conclusion that the panel below erred.

We find that the trial judges' conclusions of prejudice are amply supported by the unchallenged findings, which are themselves amply **[***24]** supported by the evidence. The Court of Appeals itself, in its opinion below, stated that a defendant in a case such as this

> must show that "lost evidence or testimony would have been helpful to his defense, that the evidence would have been significant, and that the evidence or testimony was lost" as a result of the statutory deprivations of which he complains.

State v. Knoll, 84 N.C. App. 228, 234, 352 S.E. 2d 463, 466 (1987) (quoting State v. Dietz, 289 N.C. 488, 493, 223 S.E. 2d 357, 360 (1976)). Such was exactly the situation in the three cases now before us, and the several trial judges correctly so found.

Each defendant's confinement in jail indeed came during the crucial period in which he could have gathered evidence in his behalf by having friends and family observe him and form opinions as to his condition following arrest. This opportunity to gather evidence and to prepare a case in his own defense was lost to each defendant as a direct result of a lack of information during processing as to numerous important rights and because of the commitment to jail. The lost opportunities, in all three **[***25]** cases, to secure independent proof of sobriety, and the lost chance, in one of the cases, to secure a second test for blood alcohol content **[*548]** constitute prejudice to the defendants in these cases. That the deprivations occurred through the inadvertence rather than the wrongful purpose of the magistrate renders them no less prejudicial. State v. Graves, 251 N.C. 550, 112 S.E. 2d 85 (1960).

Accordingly, the decision of the Court of Appeals is reversed, and the cases are remanded to the Court of Appeals for further remand to the Superior Court, Wake County, **[**566]** for reinstatement of the judgment of dismissal in each of the cases.

Reversed.



Law of Self-Defense*
2025 Update

By Daniel Shatz and Sterling Rozear

Assistant Appellate Defenders

* "The Lawful Use of Defensive Force"

Austin and *Phillips*

- N.C.G.S. § 14-51.2(e) provides that a person meeting the castle doctrine criteria "is immune from civil or criminal liability.“
- Does this mean a person could get a pre-trial determination of immunity and get charges dismissed without going to trial?
- In *State v. Austin*, the Court of Appeals held “Nope.”
- “it creates not merely an assurance that no judgment can be entered against the person, but a right not to be forced into court to defend oneself.”
  - *State v. Austin*, 279 N.C. App. 377, 381 (2021)

Austin and *Phillips*

- N.C.G.S. § 14-51.2 also provides that the presumptions given by the castle doctrine are rebuttable and do not apply in certain listed circumstances.
- Does this mean the presumptions are only rebuttable by those 5 listed circumstances?
- In *Austin*, the COA held "Nope again."
- "[T]he castle doctrine's rebuttable presumption is not limited to the five scenarios listed in the statute."
  - *State v. Austin*, 279 N.C. App. 377, 384 (2021).

Austin and *Phillips*

- *Austin* was wrong. On both counts.
- On rebutting presumptions:
  - "The plain language of subsection (c), and the legislature's clear intent to significantly broaden castle doctrine protections by repealing section 14-51.1 and enacting section 14-51.2, compels the conclusion that **the presumption of reasonable fear may be rebutted only by the circumstances set forth in subsection (c)**."
    - *State v. Phillips*, 386 N.C. 513, 524 (2024).
- And possibly, pretrial determination of immunity available
  - Thus, absent a pretrial determination of immunity, when a defendant asserts the castle doctrine defense at trial, the jury must first determine whether the defendant is entitled to the presumption as set forth in section 14-51.2(b).
    - *State v. Phillips*, 386 N.C. 513, 525 (2024)

Austin and *Phillips*

- *"But, Dan and Sterling, the Supreme Court didn't say anything about overruling Austin in Philips,"* you may say…
- And you'd be right.
- But…
- You'd also sound like an attorney general.
- SCONC doesn't have to be explicit to overrule COA cases.
- *State v. Allison*, 293 N.C. App. 182 (2024) – Court of Appeals followed *Austin*
- SCONC Granted Def.'s PDR
- In SCONC, State is asking court to overturn *Phillips*

Austin and *Phillips*

- https://www.youtube.com/live/LG8jv3RfQ14?si=Wi--oGJhZj3Nz0zh&t=1452

Phillips – Key Takeaway

- "If the jury finds that the State has rebutted the presumption, the jury must determine whether the defendant's use of force was proportional. However, if the jury finds that the State failed to rebut the presumption, the defendant *must* be acquitted in accordance with section 14-51.2(e)."

- *Phillips*, 386 N.C. at 525 (emphasis in original)

Austin and *Phillips*

Practice Tips:

- If you can show that the presumptions apply and are not rebutted, that is an automatic win under Phillips
- Remember that the State is very limited as to what it may use to rebut the presumptions under N.C.G.S. § 14-51.2
- Prepare custom instructions in every case, before the trial starts, that accurately explains the law based on what you expect the evidence to be.
  - Use names, describe what makes the entry forcible and unlawful, etc.
- Instructions should very clearly state: if the jury finds the presumptions are triggered and not rebutted, the jury must return a verdict of not guilty
- Request pretrial determinations of immunity

SPECIAL VERDICT

We, the jury, unanimously answer the specified questions and return a verdict as follows:

1. Did Ms. Phillips assault Ms. Dunlap?

(To answer this question yes, the State must have convinced the jury beyond a reasonable doubt that yes is the correct answer to this question).

_____ Yes

_____ No

[if the answer is Yes, proceed to question 2. If the answer is No, proceed to the verdict, question 7, and check not guilty]

2. Did Ms. Phillips use a deadly weapon?

(To answer this question yes, the State must have convinced the jury beyond a reasonable doubt that yes is the correct answer to this question).

_____ Yes

_____ No

[if the answer is Yes, proceed to question 3. If the answer is No, proceed to the verdict, question 7, and check not guilty]

3. Did Ms. Phillips inflict serious injury on Ms. Dunlap?

(To answer this question yes, the State must have convinced the jury beyond a reasonable doubt that yes is the correct answer to this question).

_____ Yes

_____ No

[if the answer is Yes, proceed to question 4. If the answer is No, proceed to the verdict, question 7, and check not guilty]

4. Did Ms. Dunlap unlawfully and forcibly enter Ms. Phillips' home, including the curtilage, or was she in the process of unlawfully and forcefully entering Ms. Phillips' home?

(To answer this question no, the State must have convinced the jury beyond a reasonable doubt that no is the correct answer to this question).

_____ Yes

_____ No

[If the answer is Yes, proceed to the verdict, question 7, and check not guilty. If the answer is No, proceed to question 5.]

5. Did Ms. Phillips reasonably fear imminent death or great bodily harm when she assaulted Ms. Dunlap?

(To answer this question no, the State must have convinced the jury beyond a reasonable doubt that no is the correct answer to this question).

_____ Yes

_____ No

[If the answer is Yes, proceed to question 6. If the answer is No, proceed to the verdict, question 7, and check guilty.]

6. Did Ms. Phillips use excessive force?

(To answer this question yes, the State must have convinced the jury beyond a reasonable doubt that yes is the correct answer to this question).

_____ Yes

_____ No

[if the answer is Yes, proceed to the verdict, question 7, and check guilty. If the answer is No, proceed to the verdict and check not guilty]

* * *

7 (Verdict). Based on the foregoing answers we the jury unanimously find the defendant, Ms. Phillips,

_____ Guilty

_____ Not Guilty

This the _____ day of _____, 2025.

_____

Jury Foreperson

State v. Williams, 283 N.C. App. 538 (2022)

- **Hypothetical:**
- You and your violent cousin are driving around with your girlfriends. Your cousin's girlfriend, Ciara, is driving and your cousin suddenly starts beating her and saying he is going to kill her. He hits Ciara in the head with a beer bottle and punches her. You have been convicted of a felony but you have a gun. Ciara pulls over and you break up the fight. You get back in the car and the fight starts again, so Ciara pulls over again. After the fight spills out onto the street, you shoot him.
  - **Are you entitled to use defensive force?**

State v. Williams, 283 N.C. App. 538 (2022)

- **Yes!**
- **Followed *McLymore***
  - "Moreover, in light of this evidence, there is a reasonable possibility that, had the jury been instructed on defense of others and the causal nexus requirement, the jury would have determined both that there was no causal nexus between Defendant's felonious possession of a firearm and Defendant's use of defensive force such that defense of others was available to justify Defendant's force, and that Defendant acted in defense of Ciara when he used force against Michael. Accordingly, the trial court erred by failing to instruct the jury on perfect defense-of-another and failing to instruct the jury that the State was required to prove an immediate causal nexus between his commission of possession of a firearm by a felon and the circumstances giving rise to his perceived need to use defensive force."
    - *State v. Williams*, 283 N.C. App. 538, 544 (2022)
- *And – defense of another*
  - "Viewed in the light most favorable to the State, this was sufficient evidence from which a rational juror could conclude that Defendant did not act in defense of Ciara. Accordingly, the trial court did not err by denying Defendant's motion to dismiss the charges of first-degree and second-degree murder."
    - *State v. Williams*, 283 N.C. App. 538, 546 (2022)

State v. Williams, 911 S.E.2d 286 (2024) (temp stay allowed 2025 N.C. LEXIS 32, Jan. 15 2025)

- **Hypothetical:**
- You're in your car, outside of your girlfriend's house, when her ex comes up to your passenger door, reaches in with a gun, and starts hitting you. You get the gun away from them and they walk around to your side of the car. You open the door, get out, and shoot them.
- **Are you entitled to the castle doctrine?**

State v. Williams, 911 S.E.2d 286 (2024) (temp stay allowed 2025 N.C. LEXIS 32, Jan. 15 2025)

- **YES!**
- **You are, because you are "an occupant" of the vehicle, defending against an unlawful and forcible entry, even though you stepped out of the car and the attacker was no longer reaching into it.**
- Upon our assessment of the statutory castle doctrine's language, object, and spirit, considering and interpreting as a whole the material provisions of N.C. Gen. § 14-51.2, we conclude the following interpretation of the statutory castle doctrine to be consistent with its legislative intent: the lawful occupant "of" a home, motor vehicle, or workplace is not bound to become a fugitive from these locations, and therefore is not required to flee or remain in his home, motor vehicle, or workplace until his assailant is upon him. . . . **Rather, the lawful occupant, under specific circumstances—including those where he is no longer within the home, motor vehicle, or workplace—may exercise deadly defensive force against his assailant."**
- *State v. Williams*, 911 S.E.2d 286, 297-98 (N.C. Ct. App. 2024)

State v. Carwile, 909 S.E.2d 913 (N.C. Ct. App. 2024)

- **Hypothetical:**
- It's 5 in the morning. You're in your house, when a masked man breaks in and attacks you with a chainsaw and a sock filled with rocks. You, improbably, fight him off and he runs away. You, your wife, and a friend chase him 500 yards away to a used car dealership parking lot where the three of you beat him to death with a wrench you took from him, a trash can, and a sock filled with rocks (unclear if it is his or if you had your own).
- **Are you entitled to the castle doctrine?**

State v. Carwile, 909 S.E.2d 913 (N.C. Ct. App. 2024)

- **NO!**
- "The question, then, is whether Easter had "discontinued all efforts to unlawfully and forcefully enter the home[.]" N.C. Gen. Stat. § 14-51.2(c)(5) (2023). Viewing the evidence in the light most favorable to Defendant, we conclude that he had and, consequently, that the Castle Doctrine does not apply to the present case."
- *State v. Carwile*, 909 S.E.2d 913, 920 (N.C. Ct. App. 2024)

State v. Copley, 386 N.C. 111 (2024)

- **Hypothetical:**
- You are in your home when you hear people outside. You holler out at them and tell them to keep it the fuck down. They tell you to shut the fuck up. You see guns in the crowd and see some of the group lifting up their shirts to flash weapons. You call the police and report hoodlums vandalizing the property, and then post up in the garage with a shotgun. One of the people then runs across your lawn and you shoot him.
- **Are you entitled to the castle doctrine, or did you commit murder by laying in wait?**

State v. Copley, 386 N.C. 111 (2024)

- **Castle Doctrine applies**
- "When a defendant lawfully defends his home in line with section 14-51.2 and the State does not rebut the statutory presumption of reasonableness, his force is a justified defensive measure immune from criminal culpability. For that reason, section 14-51.2 cannot coexist in the same case with the common-law crime of murder by lying in wait. If the statutory castle doctrine applies, it disclaims the elements of lying in wait and displaces that offense. When the legislature has withdrawn criminal culpability, the common law may not attach it."

- *State v. Copley*, 386 N.C. 111, 124 (2024)

State v. Hicks, 385 N.C. 52 (2023)

- There is still tension in the Courts about what all of this actually means
- *Hicks* seems to conflict with *Phillips* and *Copley*
  - "Majority" seems to ignore the initial unlawful and forcible entry by decedent
- Weird split –
  - "Majority" = Earls, Newby, Allen;
  - "Concur [(in result)]" = Dietz, Berger;
  - Dissent = Morgan, Barringer
- Dietz's concurring opinion clearly says that the common law is dead, and yet…

State v. Myers, 909 S.E.2d 378 (N.C. Ct. App. 2024)

- **Hypothetical:**
- You and your friend go to a gas station and see two men you know. Your friend approaches one of the men and pistol whips him. The other man goes to their car and gets a gun. You follow and try to stop him from getting the gun and you hear shots. The man runs into the store, and you believe he will shoot you. You shoot him.
- **Are you entitled to act in self defense?**

State v. Myers, 909 S.E.2d 378 (N.C. Ct. App. 2024)

- **Yes (sort of)!**
- "Viewed in the light most favorable to Defendant, the evidence is sufficient to support an instruction of at least imperfect self-defense, if not perfect self-defense. Presuming a conflict in the evidence of the identity of the initial aggressor exists, it is be resolved by the jury, after being fully and properly instructed."
- *State v. Myers*, 909 S.E.2d 378, 383 (N.C. Ct. App. 2024)
- Notably, the court explicitly held you were at least entitled to imperfect self defense, clarifying the common law/statutory issue from earlier.

What is left of the Common Law?

- Somewhat unclear – McLymore suggests there is no more common law for "perfect self-defense", but that common law remains for anything not otherwise addressed by statute.
- "We conclude that after the General Assembly's enactment of N.C.G.S. § 14-51.3, there is only one way a criminal defendant can claim perfect self-defense: by invoking the statutory right to perfect self-defense. Section 14-51.3 supplants the common law on all aspects of the law of self-defense addressed by its provisions."
  - *McLymore*, 2022-NCSC-12, ¶ 12
- "However, to the extent the relevant statutory provisions do not address an aspect of the common law of self-defense, the common law remains intact."
  - *McLymore*, 2022-NCSC-12, ¶ 12, n.2

What is left of the Common Law?

- But the Courts have applied this rule unpredictably:
- Dietz, concurring in *State v. Hicks*, 385 N.C. 52, 66 (2023), wrote
- "In other words, McLymore made clear that these statutes [(N.C.G.S. § 14-51.2 and 51.3)] ***entirely supplanted the common law***. When addressing self-defense under these statutes, there is no common law, there is only the language of the statute."

What is left of the Common Law?

- Does excessive force still apply?
- Statutes make it seem like it wouldn't.
- But the Courts disagree -
- *See*, *State v. Benner*, 2022-NCSC-28 (2022), ¶ 29 ("[T]he proportionality rule inherent in the requirement that the defendant not use excessive force continues to exist even in instances in which a defendant is entitled to stand his or her ground.").
- *State v. Walker*, 2022-NCCOA-745, ¶26 (2022) *(Benner* "makes clear that the use of deadly force cannot be excessive and must still be proportional even when the defendant has no duty to retreat and is entitled to stand his ground.").
- And *State v. Myers*, 909 S.E.2d 378, 383 (N.C. Ct. App. 2024) (citing statutes but applying common law principles).

What is left of the Common Law?

- Does excessive force still apply?
- And most importantly:
- **T**he common law prohibition against excessive force is a proportionality requirement under which a defendant must demonstrate their reasonable belief that the degree of force used was necessary to prevent the threatened harm. **T**his common law principle is now codified in the general self-defense statute, which justifies "the use of deadly force" where the defendant "reasonably believe[d] that such force [wa]s necessary to prevent imminent death or great bodily harm to himself or herself or another." N.C.G.S. § 14-51.3(a)(1).
  - *State v. Phillips*, 386 N.C. 513, 526 (2024)

What is left of the Common Law?

- Does imperfect self-defense still exist?
  - **For excessive force - Possibly?**
    - **If you are claiming imperfect self-defense based on excessive force, you could argue that the common law was not abrogated as described in *McLymore*.**
    - **You could claim that "excessive force" now applies in situations where a person's belief that defensive force was reasonable, but their belief that *deadly force* was necessary was mistaken or unreasonable (and thus excessive or not proportional under *Phillips***
    - **This would be an update from the common law understanding of "excessive force" but that's probably a good thing as nobody really understood what "excessive force" meant under the common law.**

What is left of the Common Law?

- Does imperfect self-defense still exist?
  - **For "aggressor"?**
  - **Or the felony bar?**
  - **You can try…**
    - Consider arguing that you were prohibited from claiming statutory perfect self defense by N.C.G.S. § 14-51.4, and thus your use of force was excessive, entitling you to an instruction on common law imperfect self defense.

Overall Takeaways

- If presumptions apply and are not rebutted, not guilty
- Rebutting presumptions is limited
- Custom instructions in every case
- Special Verdict Sheet
- Imperfect Self Defense
- Request pretrial determinations of immunity



Meredith Norris Vuotto

Lawyer by day, cuisine & wine connoisseur by night, juggling my a.d.d. like a circus act while keeping my restaurateur Italian husband in line, and my clients' expectations managed - multitasking is my cardio!

I've been with the PD's office one year - we are a new office under the leadership of Chief Janna Allison for the past year.

I have only ever practiced criminal defense, and specialized in license restoration while in private practice, and can't stop helping clients holistically, instead of one charge at a time. It is the most gratifying thing in the world to be the last piece of the puzzle helping people's life get back on track after sometimes decades without a license.

I love all sorts of animals and have too many to count: cats, my Afghan Hound Barbie, fish, frogs, parakeets, finches, canaries, Ricarda the raccoon, chickens, a majorly huge turkey named Steven, dozens of deer, and a skunk that has decided to make a permanent home with me.

I'm A Tar Heel Born, I'm A Tar Heel Bred.
And When I Die, I'm A Tar Heel Dead.
So It's Rah-Rah, Car'lina-'lina!
Rah-Rah, Car'lina-'lina!
Rah-Rah, Car'lina-'lina!
Rah, Rah, Rah!

meredith.n.vuotto@nccourts.org
828-454-6564





Driving Record Refresher and all things DMV

Special thanks to my colleague APD Rhonda Laorr for making the presentation really POP!!!

Every DA be asking :



Why doesn't your client have their license back yet?

Official NCDMV: Driver License | NCDMV Online Appointment

skiptheline.ncdot.gov/Webapp/Appointment/Index/a7ade79b-996d-4971-8766-97feb75254de

NORTH CAROLINA
The Official North Carolina DMV Web

Home | Find, Cancel or Reschedule

Location

HIDE SUMMARY

APPOINTMENT TYPE: Driver License - First Time

NORTH CAROLINA
The Official North Carolina DMV Website

Select a Location

Map View

Search for a location

Aberdeen
We're sorry, we don't have availability at this moment.
521 S. Sandhills Blvd., Aberdeen, NC 28315

Ahoskie
We're sorry, we don't have availability at this moment.
242 N.C. 42 W., Ahoskie, NC 27910

Albemarle
We're sorry, we don't have availability at this moment.
611 Concord Road, Albemarle, NC 28001

Andrews | Asheboro | Asheville

NC 28315

27910

28001

Andrews

We're sorry, we don't have availability at this moment.

1440 Main St., Andrews, NC 28901

Asheboro

We're sorry, we don't have availability at this moment.

2754 U.S. 220 Business South, Asheboro, NC 27205

Asheville

We're sorry, we don't have availability at this moment.

1624 Patton Ave., Asheville, NC 28806

Boone

We're sorry, we don't have availability at this moment.

4469 Bamboo Road, Suite 103, Boone, NC 28607

Brevard

We're sorry, we don't have availability at this moment.

50 Commerce St., Unit 4, Brevard, NC 28712

Bryson City

We're sorry, we don't have availability at this moment.

2650 Governor's Island Road, Bryson City, NC 28713

Burgaw

We're sorry, we don't have availability at this moment.

781 U.S. 117 S., Burgaw, NC 28425

Burnsville

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116 N. Main St., Burnsville, NC 28714

Carrboro

We're sorry, we don't have availability at this moment.

100 N.C. 54, Suite 104JJ, Carrboro, NC 27510

Cary

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Charlotte East

We're sorry, we don't have availability at this moment.

Charlotte North

We're sorry, we don't have availability at this moment.

Cary

We're sorry, we don't have availability at this moment.

1387 S.E. Maynard Road, Cary, NC 27511

Charlotte East

We're sorry, we don't have availability at this moment.

6635 Executive Circle, Suite 130, Charlotte, NC 28212

Charlotte North

We're sorry, we don't have availability at this moment.

9711 David Taylor Dr., Charlotte, NC 28269

Charlotte South

We're sorry, we don't have availability at this moment.

201-H W. Arrowood Road, Charlotte, NC 28217

Charlotte West

We're sorry, we don't have availability at this moment.

6016 Brookshire Blvd., Charlotte, NC 28216

Clayton

We're sorry, we don't have availability at this moment.

1665 Old U.S. 70, Clayton, NC 27520

Clinton

We're sorry, we don't have availability at this moment.

305 North Blvd., Clinton, NC 28328

Clyde

We're sorry, we don't have availability at this moment.

290 Lee Road, Clyde, NC 28721

Concord

We're sorry, we don't have availability at this moment.

2192 Kannapolis Highway, Concord, NC 28027

Durham East

We're sorry, we don't have availability at this moment.

101 South Miami Blvd., Durham, NC 27703

Durham South

We're sorry, we don't have availability at this moment.

3825 S. Roxboro St., Suite 119, Durham, NC 27713

Elizabeth City

We're sorry, we don't have availability at this moment.

1164 U.S. 17 S., Elizabeth City, NC 27909

Elizabethtown

We're sorry, we don't have availability at this moment.

Elkin

We're sorry, we don't have availability at this moment.

Erwin

We're sorry, we don't have availability at this moment.

Elizabethtown
We're sorry, we don't have availability at this moment.
197 N. Pine St., Elizabethtown, NC 28337

Elkin
We're sorry, we don't have availability at this moment.
1687 N. Bridge St., Elkin, NC 28621

Erwin
We're sorry, we don't have availability at this moment.
125 W. Jackson Blvd., Erwin, NC 28339

Fayetteville South
We're sorry, we don't have availability at this moment.
2439 Gillespie St., Fayetteville, NC 28306

Fayetteville West
We're sorry, we don't have availability at this moment.
Eutaw Village Shopping Center, 831 Elm St., Fayetteville, NC 28303

Forest City
We're sorry, we don't have availability at this moment.
596 Withrow Road, Forest City, NC 28043

Franklin
We're sorry, we don't have availability at this moment.
16 Patton Ave. Franklin, NC 28734

Fuquay-Varina
Old Municipal Building, 131 S. Fuquay Ave., Fuquay-Varina, NC 27526

arner
We're
22

One in Wake County!!

Gastonia
We're sorry, we don't have availability at this moment.
2560 W. Franklin Ave., Gastonia, NC 28052

Goldsboro
We're sorry, we don't have availability at this moment.
701 W. Grantham St., Goldsboro, NC 27530

Graham
We're sorry, we don't have availability at this moment.
111 E. Crescent Square, Graham, NC 27253

Greensboro East
We're sorry, we don't have availability at

Greensboro West
We're sorry, we don't have availability at

Greenville
We're sorry, we don't have availability at

Gastonia

We're sorry, we don't have availability at this moment.

2560 W. Franklin Ave., Gastonia, NC 28052

Goldsboro

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701 W. Grantham St., Goldsboro, NC 27530

Graham

We're sorry, we don't have availability at this moment.

111 E. Crescent Square, Graham, NC 27253

Greensboro East

We're sorry, we don't have availability at this moment.

2527 E. Market St., Greensboro, NC 27401

Greensboro West

We're sorry, we don't have availability at this moment.

2391 Coliseum Blvd., Greensboro, NC 27403

Greenville

We're sorry, we don't have availability at this moment.

4651 North creek Drive., Greenville, NC 27834

Hamlet

We're sorry, we don't have availability at this moment.

200 College Drive, Hamlet, NC 28345

Havelock

We're sorry, we don't have availability at this moment.

300 Miller Blvd., Havelock, NC 28532

Henderson

We're sorry, we don't have availability at this moment.

1080 Eastern Blvd., Henderson, NC 27536

Hendersonville

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125 Baystone Dr., Hendersonville, NC 28791

Hickory

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1158 Lenoir-Rhyne Blvd., SE Hickory, NC 28602

High Point

We're sorry, we don't have availability at this moment.

650 Francis St., High Point, NC 27263

Hillsborough

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Hudson

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Huntersville

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Hillsborough

We're sorry, we don't have availability at this moment.

1201 U.S. 70 W., Hillsborough, NC 27278

Hudson

We're sorry, we don't have availability at this moment.

309 Pine Mountain Road, Hudson, NC 28638

Huntersville

We're sorry, we don't have availability at this moment.

12101 Mt. Holly-Huntersville Road, Huntersville, NC 28078

Jacksonville

We're sorry, we don't have availability at this moment.

299 Wilmington Highway, Jacksonville, NC 28540

Jefferson

We're sorry, we don't have availability at this moment.

140 Government Circle, Jefferson, NC 28640

Kernersville

We're sorry, we don't have availability at this moment.

810A N. Main St., Kernersville, NC 27284

Kinston

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2214 W. Vernon Ave., U.S. 70 W., Kinston, NC 28501

Lexington

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U.S. 29 and 70 Business, 2314 S. Main St., Lexington, NC 27292

Lincolnton

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1450 N. Aspen St., Lincolnton, NC 28092

Louisburg

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90 Tanglewood Dr., Louisburg, NC 27549

Lumberton

We're sorry, we don't have availability at this moment.

95 N., 4650 Kahn Dr., Lumberton, NC 28358

Marion

We're sorry, we don't have availability at this moment.

3975 N.C. 226 S., Marion, NC 28752

Marshall

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Mocksville

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Monroe

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Marshall

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1685 NC-213 Marshall, NC 28753

We're sorry, we don't have availability at this moment.

161 Poplar St., Suite 101, Mocksville, NC 27028

We're sorry, we don't have availability at this moment.

3122 U.S. 74 W., Monroe, NC 28110

Mooresville

We're sorry, we don't have availability at this moment.

533 Patterson Ave., Suite 100, Mooresville, NC 28115

Morehead City

We're sorry, we don't have availability at this moment.

5347 U.S. 70 W. Morehead City, NC 28557

Morganton

We're sorry, we don't have availability at this moment.

115 Government Dr., Morganton, NC 28655

Mount Airy

We're sorry, we don't have availability at this moment.

155 Patrol Station Road, Mount Airy, NC 27030

Mount Holly

We're sorry, we don't have availability at this moment.

Municipal Building, 785 W. Charlotte Ave., Unit 2, Mount Holly, NC 28120

Nags Head

We're sorry, we don't have availability at this moment.

2808 S. Croatan Highway, Nags Head, NC 27959

New Bern

We're sorry, we don't have availability at this moment.

1001 Downey Drive., New Bern, NC 28562

Newton

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1033 Smyre Farm Road, Newton, NC 28658

Oxford

We're sorry, we don't have availability at this moment.

100 Providence Road, Oxford, NC 27565

Polkton

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Raeford

We're sorry, we don't have availability at

Raleigh North

We're sorry, we don't have availability at

Raleigh West

We're sorry, we don't have availability at this moment.

Avent Ferry Shopping Center, 3231 Avent Ferry Road, Raleigh, NC 27606

Roanoke Rapids

We're sorry, we don't have availability at this moment.

26 Three Bridges Road, Roanoke Rapids, NC 27870

Rocky Mount

We're sorry, we don't have availability at this moment.

2617 North Wesleyan Blvd., 301 N, Rocky Mount 27804

Roxboro

We're sorry, we don't have availability at this moment.

3434 Burlington Road, Roxboro, NC 27573

Salisbury

We're sorry, we don't have availability at this moment.

U.S. 29 S., 5780 S. Main St., Salisbury, NC 28147

Sanford

We're sorry, we don't have availability at this moment.

2210 Carthage St., Sanford, NC 27330

Shallotte

We're sorry, we don't have availability at this moment.

5298 Main St., Shallotte, NC 28459

Shelby

We're sorry, we don't have availability at this moment.

U.S. 74 Bypass, 1914 E. Dixon Blvd., Shelby, NC 28152

Siler City

We're sorry, we don't have availability at this moment.

U.S. 421 S. and U.S. 64 W., N. 2nd Ave. Extension, Siler City, NC 27344

Smithfield

We're sorry, we don't have availability at this moment.

3783 U.S. 301 S., Smithfield, NC 27577

Statesville

We're sorry, we don't have availability at this moment.

U.S. 21 N. at I-40, 905 Carolina Ave., Statesville, NC 28677

Stedman

We're sorry, we don't have availability at this moment.

4705 Clinton Road, Fayetteville, NC 28312

Sylva

We're sorry, we don't have availability at this moment.

876 Skyland Dr., Suite 2, Sylva, NC 28779

Tarboro

We're sorry, we don't have availability at this moment.

100 East Hope Lodge Street. Tarboro, NC 27886

Taylorsville

We're sorry, we don't have availability at this moment.

2390 N.C. 90 E., Taylorsville, NC 28681

Thomasville

We're sorry, we don't have availability at this moment.

1650 Liberty Dr Suite 500, Thomasville 27360

Troy

We're sorry, we don't have availability at this moment.

168 Glen Road, Troy, NC 27371

Washington

We're sorry, we don't have availability at this moment.

1821 Carolina Ave., Washington, NC 27889

Wendell

We're sorry, we don't have availability at this moment.

2851 Wendell Blvd., Wendell, NC 27591

Wentworth

We're sorry, we don't have availability at this moment.

111 Wilson-Way Road, Wentworth, NC 27375

Whiteville

We're sorry, we don't have availability at this moment.

917 Washington St., Whiteville, NC 28472

Wilkesboro

We're sorry, we don't have availability at this moment.

1230 School St., Wilkesboro, NC

Williamston

We're sorry, we don't have availability at this moment.

305 E. Main St., Williamston, NC

Wilmington North

We're sorry, we don't have availability at this moment.

U.S. 17 N., 1 Station Road,

We're sorry, we don't have availability at this moment.

1230 School St., Wilkesboro, NC 28697

We're sorry, we don't have availability at this moment.

305 E. Main St., Williamston, NC 27892

We're sorry, we don't have availability at this moment.

U.S. 17 N., 1 Station Road, Wilmington, NC 28405

Wilmington South

We're sorry, we don't have availability at this moment.

2390 Carolina Beach Road, #104, Wilmington, NC 28401

Wilson

We're sorry, we don't have availability at this moment.

1822 Goldsboro St. S.W., Wilson, NC 27893

Winston Salem North

We're sorry, we don't have availability at this moment.

3637 N. Patterson Ave., Winston-Salem, NC 27105

Winston Salem South

We're sorry, we don't have availability at this moment.

2001 Silas Creek Parkway, Winston-Salem, NC 27103

Yadkinville

We're sorry, we don't have availability at this moment.

225 Ash St., Yadkinville, NC 27055

Back

For additional questions or concerns, send a message.
Those seeking a Commercial Driver License road test or services requiring a language or ASL interpreter must call 919-715-7000 to schedule the appointment.


I THINK YOU
GET THE IDEA

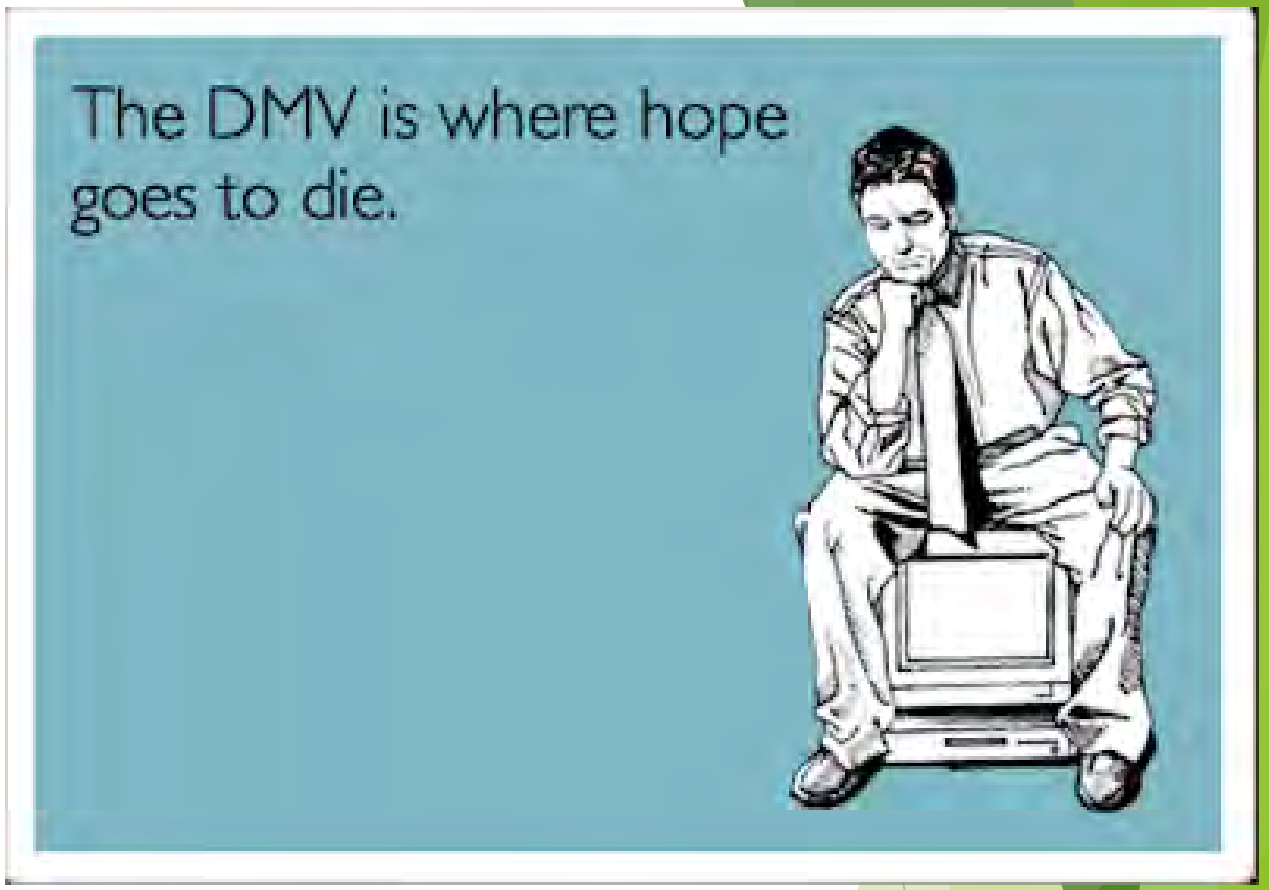


NORTH CAROLINA
The Official North Carolina DMV Website



Welcome To The Best Hour Of Your Life!!! Learning About All Things Related To DMV…





Seriously you guys, this is going to be fun!!!



Ooops – how did that get in there?

What Are Moving Violations In North Carolina?

A. Violations while operating a motor vehicle are listed in: Https://www.Ncleg.Net/enactedlegislation/statutes/html/bysection/chapter_20/gs_20-16.Html

A. But many other offenses are listed throughout Chapter 20

B. And there are violations that are neither motor vehicle offenses or moving offenses – this is your goal in pleading to stop further suspensions and get a PERM client in a position to be eligible for a hearing (page 8 of electronic handout).

C. Convictions either result in points or suspensions

D. Driver's license points vs. Insurance points




HAHA
PICKS



Revocations & Suspensions – multiple suspensions run like clocks on an airport wall

Revocations & Suspensions

Mandatory Revocations § 20-17

Indefinite Suspensions § 20-24.14

Revocations For FTAs And FTCs

For FTAs And FTCs Request For Relief From Fines - AOC-CR-415, and AOC-CR-345, Application And Order For Limited Driving Privilege - Failure To Comply Revocation



Suspensions For DWLR

Suspension Times For Class 3 vs. Class 1 DWLR § 20-28

Waiting Period For Relicensure vs. DWLR LDP, § 20-28.1 vs. § 20- 20.1

Pages 5 -37 in electronic handout

Other Suspensions, Including DWI Suspensions § 20-19

A Conviction Of Impaired Driving Under G.S. 20-138.1 (Including Convictions At Levels One And Two) Results In A One-Year Revocations **Unless**:

- The Person Has Been Convicted Of Another Offense Involving Impaired Driving That Occurred Within Three Years Preceding The Current Offense (In That Case The Revocation Is For Four Years, See G.S. 20-19(D));
- The Person Has Two Or More Previous Impaired Driving Offenses, One Of Which Occurred Within The Five Years Immediately Preceding The Date Of The Current Offense (In That Case The Revocation Is Permanent, See G.S. 20-19(E)); Or
- The Person Is Sentenced At Aggravated Level One (In That Case The Revocation Is Permanent, See G.S. 20-19(E)).



Civil Revocations

Side Bar: Civil Revocations (A Separate Type of Suspension)

- NCGS § 20-16.5
- The $100 MUST be paid, whether the person is guilty or innocent
- The Civil Revocation itself can be contested within the first 10 days of the DWI arrest, and that hearing is WITHOUT PREJUDICE to the Defendant or the State
- If a Defendant attempts to apply for a new license within the Civil Revocation period, that will cancel his license entirely.
- A defendant can apply for a LDP during the civil revocation period under two different circumstances (more later in Limited Driving Privileges section)
    - Pages 38 - 43 in electronic handout



Let’s put this all together and look at driving records

The proper name for a driving record is Motor Vehicle Report (MVR)

- Pages 44 – 82 in electronic handout

North Carolina Division of Motor Vehicles
Driver License Section

Request for Motor Vehicle Record
Official Record of Convictions for Violations of Motor Vehicle Laws and Departmental Action

Please type or print clearly

I am hereby requesting the Motor Vehicle Record (MVR) of the below listed person:

Name _____ Sex _____ Race _____ Date of Birth _____
(First) (Middle or Maiden) (Last)

_____ _____ _____
(Street Address) (City / Town) (State)

Driver License No. _____ Date Issued _____ Expiration Date _____

Optional:

☐ Copies of Suspension Orders are also requested.

Requested by: _____ Date: _____ Position: _____

Agency Name: _____ Phone No. _____

Mailing Address: _____ **OR** State Courier No. _____

City _____ State _____ Zip Code _____

Mail this form to: NCDMV, Driver License Records, 3113 Mail Service Center, Raleigh, NC 27699
Form DL-49 Revised Sep 2004 ***previous editions are obsolete DO NOT USE***

EMAIL TO: DLRECORDS@NCDOT.GOV

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD PAGE NO: 1
REPORT TYPE: CERTIFIED REPORT DATE: 03-05-25

[redacted] 64 POTATO PATCH DRIVE
CITY: CHEROKEE STATE: NC ZIP: 28719 TOTAL POINTS:
DOB:09-04-92 HEIGHT: 6 FT. 00 IN. SEX: M EYES: BRO HAIR: BLK RACE: A
PRIMARY LICENSE NO: 000038261012
SECONDARY LICENSE NO: NON-RESIDENT MILITARY: N REAL ID: N
ORG. ISS.DT: 09-13-10 OS DL NO: OS STATE:

*** DRIVER LICENSE STATUS: CLS C SUSPENDED - PICK UP LICENSE ***

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV	COND RESTR	STATUS
C		D	12-31-24	09-04-26	N	N	N	N	N	SUSPENDED

ENDORS:
RSTR: 1 CORRECTIVE LENSES
CRD TRNS:0039757164

OCCUR/ BEG DATE	CONV/ END DATE	NATURE OF RECORD OR DIVISION ACTION	POI
		SCHBUS: NOT ELIG FOR SCHOOL BUS DRIVER CERTIFICATION	
12-31-24	INDEF	CANC: FAIL TO COMPLY WITH CIVIL REVOCATION	
12-30-24	INDEF	SUSP: 30 DAY CIVIL REVOCATION(SUSPENSION)	
12-30-24	INDEF	SUSP: 30 DAY CIVIL REVOCATION(SUSPENSION)	
12-30-24	12-30-24	CONV: (028)30 DAY CIVIL	
		COURT: JACKSON COUNTY COURT	
		COURT: AOC #: 2024CR 490315 CITATION ID: Y0259248	
11-02-22	11-02-22	CONV: (028)ADMIN PER SE .04 BAC → DWI was dismissed per call with Tribal Clerk on 3-7-25	
		COURT: CHEROKEE INDIAN COURT	
		COURT: AOC #: 2022CR 001409 CITATION ID: C0022475	
11-02-22	03-11-24	CONV: (408)RECKLESS DRIVING 3-11-24 DWI dismissed per plea to reckless drv.	
		COURT: CHEROKEE INDIAN COURT	
		COURT: AOC #: 2022CR 001409 CITATION ID: C0022475	
09-13-19	09-13-19	CONV: (028)ADMIN PER SE .04 BAC 4-13-2021 DWI dismissed	
		COURT: CHEROKEE INDIAN COURT	
		COURT: AOC #: 2019CR 001870 CITATION ID: C0006362	

**** CONTINUE ON TO PAGE 2 ****

Example of client that attempted to get a driver's license the day after his DWI arrest = cancelation of license itself

Note about 508's & civil revocations



Remind your clients that do not have valid licenses (&/or are here without legal presence) that they MUST pay their $100 civil revocations and clear their 508s (or else they will always be charged with Class 1 DWLRS in the future = possible jail time, probation, deportation…

THERE ARE MANY TYPES OF LDP's in Chapter 20

- Importance Of Using Correct Privilege
- Various Types Of Limited Privileges
- NCGS § 20-20.1 (DWLR)
- NCGS § 20-179.3 - DWI Specific Privileges
- NCGS § 20-16.5 CVR LDP



Limited Driving Privileges



I cannot stress enough the need to select the correct privilege.

Lawyers routinely do not use the correct privilege for their clients, and the drivers do not get the proper credit with DMV.

For example, client is convicted of Level IV DWI, first offense, and had a BAC of .21. Therefore, Ignition Interlock Device (IID) is required. Lawyer tells client he has to have IID installed before he can petition for a LDP. Client has IID installed. Lawyer presents to the Court LDP AOC-CR-312, instead of AOC-CR-340.

312 allowed the Client to legally drive for a year, but he receives ZERO (0) credit for the IID because the wrong form was used.

Client then becomes majorly pissed when he spent roughly $700 to $1,400 for a year of IID that he received no credit for and has to spend that same money again to be in compliance.



Additionally, hammer home to the client that the LDP is valid at-most for a year, and ONLY until the DWI suspension ends.

Scenario (1): Lawyer uses correct LDP on day of conviction of DWI. That privilege lasts one year (assuming 1 year DWI suspension). Client needs to be relicensed at DMV one year after the DWI.

Scenario (2): Lawyer uses correct LDP 3 months after DWI conviction for whatever reason; client just found money for a car / Client just was then able to afford LDP; etc. **That LDP is ONLY valid for 9 months - not 12.**

Please highlight this language on the privilege in the lower left hand corner:

NOTE TO APPLICANT: This privilege is no longer valid after the revocation period for the offense of which you were convicted has ended, or if your drivers license remains revoked solely because the Division of Motor Vehicles has not obtained a certificate of your completion of a substance abuse treatment program or an alcohol and drug education traffic school.



Remind client to be at the DMV on the morning of their end-date of court conviction to reapply for their license - and obviously to already have completed their Substance Abuse Assessment and Treatment which can ONLY be done by a provider on this list to receive credit:

https://dmhdsohf.ncdhhs.gov/PROVIDERLIST/

I personally recommend A Fresh Start, which can be found in the Orange County block. I have used them for 15 years with no complaints and all 508 treatments can be done virtually from start to finish.

A Fresh Start is also on the small list of approved providers for DWI Restoration Hearings with NC DMV. Highly recommended. (919) 260-0629

Pages 83 - 101 in electronic handout

DWLR Suspension Lengths

§ 20-28.1. Conviction of moving offense committed while driving during period of suspension or revocation of license.

(a) Upon receipt of notice of conviction of any person of a motor vehicle moving offense, such offense having been committed while such person's driving privilege was in a state of suspension or revocation, the Division shall revoke such person's driving privilege for an additional period of time as set forth in subsection (b) hereof. For purposes of this section a violation of G.S. 20-7(a), 20-24.1, or 20-28(a) or (a2) shall not be considered a "motor vehicle moving offense" unless the offense occurred in a commercial motor vehicle or the person held a commercial drivers license at the time of the offense.

(b) When a driving privilege is subject to revocation under this section, the additional period of revocation shall be as follows:

(1) A first such revocation shall be for one year;

(2) A second such revocation shall be for two years; and

(3) A third or subsequent such revocation shall be permanent.

(c) A person whose license has been revoked under this section for one year may apply for a license after 90 days. A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years. Upon the filing of an application, the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, or a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provision of the drug laws of this State or another state when any of these violations occurred during the revocation period. The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(d) Repealed by Session Laws 1979, c. 378, s. 2. (1965, c. 286; 1969, c. 348; 1971, c. 163; 1973, c. 47, s. 2; 1975, c. 716, s. 5; 1979, c. 378, ss. 1, 2; 1981, c. 412, s. 4; c. 747, s. 66; 1991, c. 509, s. 1; c. 682, s. 6; c. 726, s. 22.1; 2015-186, s. 3; 2015-264, s. 86.)

MY ADVICE FOR CLIENTS IS TO PETITION UNDER §20-20.1 FOR A LDP

MAY VS. MUST

AOC-CV-353, Civil Forms (CV)
Petition For Limited Driving Privilege Driving While License Revoked Or Committing Moving Offense While Driving During Period Of Revocation

AOC-CV-354, Civil Forms (CV)
Limited Driving Privilege Driving While License Revoked Or Committing Moving Offense While Driving During Period Of Revocation

Motion And | cr208b.pdf | Spring Public | Download fi | Petition For | cv353_0.pdf | cv354.pdf

s/forms/cv353_0.pdf?VersionId=W4L03TsHSwSW_DOecB3ZEmX46R3CJrN

with... | Donklephant » Blog... | Absolute Best Risott... | lawschool.westlaw.c... | LEGAL | Suggested Sites | Web Slice Gallery | Collision Reports -... | All Bookmarks

1 / 2 — 100% +

Offense(s) For Which License Was Revoked At Time Of Charge Under G.S. 20-28 Or G.S. 20-28.1	*Date(s) And Jurisdiction(s) Of Offense(s)*
Offense(s) Petitioner Was Convicted Of Committing During Period Of Revocation	*Date(s) And Jurisdiction(s) Of Offense(s)*

Spoken Language Court Interpreter Needed For Any Party, Victim, Or Witness? (If Yes, identify person(s) and language(s). Interpreters provided for all court proceedings at no cost.)

☐ No ☐ Yes: *(explain)*

NOTE: ***THIS IS A CIVIL DISTRICT COURT ACTION. Civil costs requirements must be satisfied when this Petition is filed.*** *Use this form to petition the court for a limited driving privilege under G.S. 20-20.1 for a revocation under G.S. 20-28 (driving while license revoked) or G.S. 20-28.1 (committing moving offense while driving during period of revocation). Complete this form and file it in the county in which you reside. Attach a copy of your driving record, certified by the North Carolina Division of Motor Vehicles. If the judge determines that a limited driving privilege is appropriate, form AOC-CV-354 should be used for the limited driving privilege.*

I, the undersigned petitioner, request the Court to issue a limited driving privilege for the revocation indicated below and hereby present the following:

1. My license was revoked by the North Carolina Division of Motor Vehicles under
   - ☐ G.S. 20-28 (driving while license revoked).
   - ☐ G.S. 20-28.1 (committing moving offense while driving during period of revocation).

   The revocation became effective on *(date)* _____.
2. The revocation is
   - ☐ for one year and I have complied with the revocation for at least 90 days.
   - ☐ for two years and I have complied with the revocation for at least one year.
   - ☐ a permanent revocation and I have complied with the revocation for at least two years.



3. The offense for which my drivers license was revoked when I was charged under G.S. 20-28 or G.S. 20-28.1 was not an offense involving impaired driving. ☐ My drivers license is revoked under G.S. 20-28.1 and the moving offense that I was convicted of committing during a period of revocation was not an offense involving impaired driving.
4. The revocation for the offense for which my drivers license was revoked when I was charged under G.S. 20-28 or G.S. 20-28.1 has expired.
5. The revocation of my drivers license under G.S. 20-28 or G.S. 20-28.1 is the only revocation currently in effect.
6. I am not eligible to receive a limited driving privilege under any law other than G.S. 20-20.1.
7. I have not held a limited driving privilege issued under G.S. 20-20.1 at any time during the three years prior to the date of this

DWLR LDP

*client may not have any prior DWI convictions to use this LDP

DMV HEARINGS



- Different Types of Hearings
- Fees
- Affidavit of Indigency for Relief from Hearing Fees

Pages 102 – 108 in electronic handout



Pages 109 - 120 in electronic handout for highlights of the two documents below

“Wealth Of Knowledge”

Et Cetera…

NC State Highway Patrol Policy Manual

Pages 121 – 1446 in the electronic handout

DMV 349 Crash Report Dictionary (Very Helpful In Defending Criminal Cases)

Pages 1447 – 1553 in the electronic handout



That’s all folks!

Clap for the birthday girl.
LOL!





Thank You - Hope Everyone is as Excited About Suspensions, Restorations, Points, and Privileges as I am!

Meredith Norris Vuotto
Assistant Public Defender

The 43rd District Includes Seven Counties, Cherokee, Clay, Graham, Haywood, Jackson, Macon, and Swain Counties in Beautiful Western North Carolina.

828-454-6564
meredith.n.vuotto@nccourts.org

Thank you again Rhonda for helping me! Couldn't imagine a better colleague or friend!

Welcome To The Best Hour Of Your Life!!! Learning About All Things Related To DMV



No, Seriously, this is going to be FUN!!!

I. Starting With - What Are Moving Violations In North Carolina?
   A. Violations While Operating A Motor Vehicle Are Listed In Https://Www.Ncleg.Net/Enactedlegislation/Statutes/Html/Bysection/Chapter_20/Gs_20-16.Html
   B. But Many Other Offenses Are Listed Throughout Chapter 20

C. Convictions Either Result In Points Or Suspensions

D. Driver's License Points vs. Insurance Points

II. Revocations And Suspensions

A. Multiple Suspensions Run Like Clocks On An Airport Wall



B. § 20-17 Lists Mandatory Revocations

C. Indefinite Suspensions

1. NCGS § 20-24.14 Lists Revocations For FTAs And FTCs
2. Request For Relief From Fines - Aoc-Cr-415
3. Aoc-Cr-345, Application And Order For Limited Driving Privilege - Failure To Comply Revocation

D. Suspensions For Dwlrs

1. Suspension Times For Class 3 vs. Class 1 Dwlr § 20-28
2. Waiting Period For Relicensure vs. DWLR LDP, § 20-28.1 vs. § 20-20.1

E. Other Suspensions, Including DWI Suspensions § 20-19

A Conviction Of Impaired Driving Under G.S. 20-138.1 (Including Convictions At Levels One And Two) Results In A One-Year Revocation Unless:

i. The Person Has Been Convicted Of Another Offense Involving Impaired Driving That Occurred Within Three Years Preceding The Current Offense (In That Case The Revocation Is For Four Years, See G.S. 20-19(D));
ii. The Person Has Two Or More Previous Impaired Driving Offenses, One Of Which Occurred Within The Five Years Immediately Preceding The Date Of The Current Offense (In That Case The Revocation Is Permanent, See G.S. 20-19(E)); Or
iii. The Person Is Sentenced At Aggravated Level One (In That Case The Revocation Is Permanent, See G.S. 20-19(E)).

III. Side Bar: Civil Revocations (A Different Type Of Suspension) NCGS § 20-16.5
IV. Let's Put It All Together And Looks At Driving Records
    A. Have Three Different Examples Of "Not Clean" Driving Records
V. Remind your clients that do not have valid licenses / are here without legal presence that they MUST pay their civil revocations and clear their 508s (or else they will always be charged with Class 1 DWLRS in the future = possible jail time, probation, deportation…
VI. Limited Driving Privileges
    A. Importance Of Using Correct Privilege
    B. Various Types Of Limited Privileges
    C. NCGS § 20-179.3 - DWI Specific Privileges
VII. NC DMV Hearings
    A. Different Types Of Hearings
    B. Waiver For Relief From Hearing Cost
VIII. "Wealth Of Knowledge" Et Cetera

A. NC State Highway Patrol Policy Manual (PDF Attachment)
B. DMV 349 Crash Report Dictionary (PDF Attachment; Very Helpful In Defending Criminal Cases)

IX. Thank You - Hope Everyone Is As Excited About Suspensions, Restorations, Points, And Privileges As I Am

What Counts as a "Moving Violation" in North Carolina?

Statute	Offense
N.C.G.S. §20-7	Driving with No License/Aid and Abet in License Violation/Learners Permit Violation
N.C.G.S. §20-7(a1)	Driving a motorcycle without endorsement
N.C.G.S. §20-7(e)	Non-Compliance with License Restrictions
N.C.G.S. §20-12.1	Impaired Supervising Driver
N.C.G.S. §20-16.1(b1)	Non-Compliance with License Restrictions or Limited Privilege
N.C.G.S. §20-17(a)(1)	Manslaughter Resulting from Operation of a Vehicle (Voluntary or Involuntary)
N.C.G.S. §20-21	Operating Under Foreign License with Revoked NC Driver's License
N.C.G.S. §20-28(a)	Driving with Revoked License
N.C.G.S. §20-28(d)	Driving While Disqualified
N.C.G.S. §20-29	Refusing to Surrender License
N.C.G.S. §20-32	Permitting an Unlicensed Minor to Drive
N.C.G.S. §20-34	Permitting an Unlicensed Person to Drive
N.C.G.S. §20-37.12(a)	No Certified Driver's License
N.C.G.S. §20-63(g)	Unlawful Altering or Covering of License Plate
N.C.G.S. §20-79(e)	Violating Restrictions of Dealer Plates
N.C.G.S. §20-111	Registration Violation
N.C.G.S. §20-111(1)	Expired Tags/ No Registration
N.C.G.S. §20-114.1	Failure to Obey Law Enforcement or Traffic Enforcement
N.C.G.S. §20-115.1	Violation of Tandem/Semitrailer Restrictions
N.C.G.S. §20-116	Violation of Size/Load Restrictions
N.C.G.S. §20-116(g)	Violation of Loading/Covering Regulations
N.C.G.S. §20-117	No Flag/Light at End of Load
N.C.G.S. §20-118.1	Violation of Weight Restrictions
N.C.G.S. §20-122	Improper Equipment
N.C.G.S. §20-122.1	Unsafe Tires
N.C.G.S. §20-123	Violation of Towing Regulations
N.C.G.S. §20-123.2	Improper Speedometer
N.C.G.S. §20-124	Improper Brakes
N.C.G.S. §20-125(a)	Improper Horn/Warning Device
N.C.G.S. §20-126	Improper Mirrors
N.C.G.S. §20-127(a)	Improper Windshield Wipers
N.C.G.S. §20-128	Improper Exhaust System/Emissions Control Device
N.C.G.S. §20-129	Improper Vehicle Lights
N.C.G.S. §20-129(a)	Driving Without Burning Headlights
N.C.G.S. §20-129(b)	Driving Without Two Headlights
N.C.G.S. §20-129(c)	Driving Without Headlight (Motorcycle)
N.C.G.S. §20-129(d)	Driving Without Rear Lights
N.C.G.S. §20-130.3	White/Clear Lights in Rear

must look at each Statute for class of (M) OR IF and cross-reference with assigned points in NCGS 20-16

N.C.G.S. §20-136	Smoke Screen Violation
N.C.G.S. §20-136.1	Driving While Watching Video/Television/Computer
N.C.G.S. §20-137.1	Driving with Unrestrained Child (<16)
N.C.G.S. §20-137.2	Operating Vehicle that Resembles Law Enforcement
N.C.G.S. §20-138.1	Impaired Driving / Aiding and Abetting Impaired Driving
N.C.G.S. §20-138.2(a)	DWI (Commercial Vehicle)
N.C.G.S. §20-138.2B	DWI (School Bus)
N.C.G.S. §20-138.5	Habitual DWI
N.C.G.S. §20-138.7	Open Container
N.C.G.S. §20-140	Reckless Driving
N.C.G.S. §20-140.2	Overloaded/Overcrowded Vehicle
N.C.G.S. §20-140.3	Violation of Highway/Interstate Regulations
N.C.G.S. §20-140.4(a)	Motorcycle/Moped Provisions Violation (Helmet/Overcrowded Vehicle)
N.C.G.S. §20-141	Speeding
N.C.G.S. §20-141(a)	Exceeding Safe Speed
N.C.G.S. §20-141(c)	Driving Below Minimum Speed
N.C.G.S. §20-141(e1)	Speeding on School Property
N.C.G.S. §20-141(h)	Impeding Traffic (Slow Speed)
N.C.G.S. §20-141(j2)	Speeding in a Work Zone
N.C.G.S. §20-141(m)	Failure to Reduce Speed
N.C.G.S. §20-141.1	Speeding in a School Zone
N.C.G.S. §20-141.3	Illegal Racing
N.C.G.S. §20-141.4	Death by Motor Vehicle / Serious Injury by Motor Vehicle
N.C.G.S. §20-141.5	Speeding (Eluding Arrest)
N.C.G.S. §20-142.1	Violation of Railroad Signal
N.C.G.S. §20-146(a)	Driving on Wrong Side
N.C.G.S. §20-146(c)	Driving on Wrong Side (Dual Highway)
N.C.G.S. §20-146(d)	Driving Outside Designated Lane
N.C.G.S. §20-149(a)	Illegal Passing of Another Vehicle
N.C.G.S. §20-149(b)	Failure to Reduce Speed for Passing Vehicle
N.C.G.S. §20-150	Improper Passing
N.C.G.S. §20-152	Following Too Closely
N.C.G.S. §20-153	Illegal Turn
N.C.G.S. §20-154	Unsafe Movement / Failure to Signal Start/Stop/Turn
N.C.G.S. §20-155(a)	Failure to Yield on Left Turn
N.C.G.S. §20-155(b)	Failure to Yield to Right-of-Way
N.C.G.S. §20-157(a)	Failure to Yield to Emergency Vehicle
N.C.G.S. §20-157(b)	Following/Parking Too Closely to Fire Emergency Vehicle
N.C.G.S. §20-157(c)	Obstructing Fire Operations
N.C.G.S. §20-157(d)	Driving Over Fire Hose or Blocking Fire Equipment
N.C.G.S. §20-158	Failure to Heed Vehicle Control Sign
N.C.G.S. §20-158(b)&(c)	Violating Traffic Control Device

N.C.G.S. §20-160	Driving on Sidewalk/Safety Zone
N.C.G.S. §20-162	Improper Parking (Fire Hydrant/Lane/Station, Intersection, or Private Driveway)
N.C.G.S. §20-163	Unattended Motor Vehicle
N.C.G.S. §20-165.1	Driving Opposite One-Way Traffic
N.C.G.S. §20-166	Hit-and-Run/Failure to Report Hit-and-Run
N.C.G.S. §20-173	Failure to Yield (Pedestrian)
N.C.G.S. §20-181	Failure to Dim Headlights
N.C.G.S. §20-183.8(a)	Violation of Inspection Requirements
N.C.G.S. §20-217	Not Stopping for School Bus
N.C.G.S. §20-218(b)	Speeding (School Bus)
N.C.G.S. §20-313	Operating with No Insurance/ Permitting Operation of MV with No Insurance
N.C.G.S. §136-26	Driving on Closed/Unopened Highway

Okay… So What Motor Vehicle Offenses ARE NOT Moving Violations?

Statute	Offense
N.C.G.S. §14-72(a), 20-17(a)(3)	Theft of a Motor Vehicle (May also be a moving violation)
N.C.G.S. §14-399(f1)	Littering from a Motor Vehicle
N.C.G.S. §20-29	Refusing to Exhibit License to Law Officer/ Giving Fictitious Details to Officer
N.C.G.S. §20-50	Lack of Registration/Title
N.C.G.S. §20-57	No Registration Card
N.C.G.S. §20-59	Failure of Lienor to Surrender Title to Legally Entitled Owner
N.C.G.S. §20-67	Failure to Note Change of Address
N.C.G.S. §20-71	Altered/Forged Title, Registration Card, Application or Assignment
N.C.G.S. §20-72(a)	Failure to Surrender Tags/Plates
N.C.G.S. §20-72(b)	Title Delivery Violations
N.C.G.S. §20-73	Failure to Obtain New Title
N.C.G.S. §20-101	Unmarked Business Vehicle
N.C.G.S. §20-102.1	Fraudulent Report of Motor Vehicle Theft or Conversion
N.C.G.S. §20-106	Receiving/Transferring Stolen Vehicle
N.C.G.S. §20-106.1	Motor Vehicle Rental Fraud
N.C.G.S. §20-106.2(b)	Motor Vehicle Sublease Violation
N.C.G.S. §20-107	Tampering or Causing Harm to Vehicle
N.C.G.S. §20-109(b)	Concealment/Misrepresentation of Motor Vehicle Identity
N.C.G.S. §20-111(3)	Lending/Borrowing License Plate for Other Vehicle
N.C.G.S. §20-125.1	Registering Vehicle with No Directional Signals
N.C.G.S. §20-130.1(c)	Possession or Installment of Blue Light on a Non-Law Enforcement Vehicle

N.C.G.S. §20-134	No Lights on Parked Vehicle
N.C.G.S. §20-183.8	Violation of Inspection Requirements
N.C.G.S. §20-287	Mover Vehicle Dealer/Sales Representative without License
N.C.G.S. §20-290	Violating Specified Places of Business on Sales License
N.C.G.S. §20-309	No Vehicle Insurance
N.C.G.S. §20-342 – 347.1	Unlawful Tampering With/Change to Odometer
N.C.G.S. §20-396	Unlawful Motor Carrier Operations

Violations that are Neither Motor Vehicle Offenses NOR Moving Offenses

great choice

Statute	Offense
N.C.G.S. §20-7.1	Failure to Notify of Address Change
N.C.G.S. §20-30(1)	Display Revoked/Fictitious/Suspended/Altered License/ID Card
N.C.G.S. §20-30(2)	Counterfeit/Sell/Lend False Driver's License/ ID Card
N.C.G.S. §20-30(3)	Displaying Someone Else's Driver's License/ID Card
N.C.G.S. §20-30(5)	Using Fictitious Name/Information in Obtaining Driver's License
N.C.G.S. §20-30(7)	Sale of License or ID Card by Someone Other than DMV
N.C.G.S. §20-37.6(c3)	Selling Handicapped Placard
N.C.G.S. §20- 37.7, 37.8	Fraudulent Special ID Card
N.C.G.S. §20-174.1	Standing/Sitting/Lying upon Highway or Street
N.C.G.S. §20-175	Soliciting from Highway

YOUR GOAL to not cause further license SUSPENSIONS

Offenses that Cannot Disqualify for a Hearing

Statute	Offense
N.C.G.S. §20-37.6	Handicapped Parking Violation
N.C.G.S. §20-135.2A	Seatbelt Violation
N.C.G.S. §20-162.1	Parking Violation

Driver License Points

If an individual is convicted in North Carolina of certain motor vehicle violations, driver license points are assessed on their driving record based on the date of the offense. (Insurance companies use a different point system to determine insurance rates.)

- An individual's license may be suspended if they accumulate as many as 12 points within a three-year period.
- Eight points within three years following the reinstatement of a license can result in an additional suspension.
- When a driving privilege is reinstated, all previous points on an individual's record are canceled.

A driver can see the status of their license, including the number of points assessed on their record, through their MyDMV account.

Offense*	Length of Suspension or Revocation	Description Statute(s)	Suspension Statute(s)
First suspension	60 days	G.S. 20-16(a)(5)	G.S. 20-16(c)
Second suspension	6 months	G.S. 20-16(a)(5)	G.S. 20-16(c)
Third or subsequent suspension	1 year	G.S. 20-16(a)(5)	G.S. 20-16(c)

**Every driving record is unique and might contain multiple suspensions, which can change eligibility dates for hearings or reinstatements. For current information about an individual driving record, including eligibility dates and any outstanding fines, call (919) 715-7000.*

Last updated Jul. 20, 2019

§ 20-16. Authority of Division to suspend license.

(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) through (4) Repealed by Session Laws 1979, c. 36;

(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;

(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;

(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) Has been convicted of illegal transportation of alcoholic beverages;

(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially similar to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of (i) two or more charges of speeding in excess of 55 and not more than 80 miles per hour, (ii) one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour, or (iii) one or more charges of aggressive driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing.

(b) Pending an appeal from a conviction of any violation of the motor vehicle laws of this State, no driver's license shall be suspended by the Division of Motor Vehicles because of such conviction or because of evidence of the commission of the offense for which the conviction has been had.

(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus 5
Aggressive driving 5
Reckless driving 4
Hit and run, property damage only 4
Following too close 4
Driving on wrong side of road 4
Illegal passing 4
Failure to yield right-of-way to pedestrian
pursuant to G.S. 20-158(b)(2)b. 4
Failure to yield right-of-way to bicycle,

motor scooter, or motorcycle 4
Running through stop sign 3
Speeding in excess of 55 miles per hour 3
Failing to yield right-of-way 3
Running through red light 3
No driver's license or license expired more than one year 3
Failure to stop for siren 3
Driving through safety zone 3
No liability insurance 3
Failure to report accident where such report is required 3
Speeding in a school zone in excess of the posted school zone speed limit 3
Failure to properly restrain a child in a restraint or seat belt 2
All other moving violations 2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

Passing stopped school bus 8
Rail-highway crossing violation 6
Careless and reckless driving in violation of G.S. 20-140(f) 6
Speeding in violation of G.S. 20-141(j3) 6
Aggressive driving 6
Reckless driving 5
Hit and run, property damage only 5
Following too close 5
Driving on wrong side of road 5
Illegal passing 5
Failure to yield right-of-way to pedestrian pursuant to G.S. 20-158(b)(2)b. 5
Failure to yield right-of-way to bicycle, motor scooter, or motorcycle 5
Running through stop sign 4
Speeding in excess of 55 miles per hour 4
Failing to yield right-of-way 4
Running through red light 4
No driver's license or license expired more than one year 4
Failure to stop for siren 4
Driving through safety zone 4
No liability insurance 4
Failure to report accident where such report is required 4
Speeding in a school zone in excess of the posted school zone speed limit 4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle 4
All other moving violations 3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina. The Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle shall not apply to any commercial motor vehicle known as an "aerial lift truck" having a hydraulic arm and bucket station, and to any commercial motor vehicle known as a "line truck" having a hydraulic lift for cable, if the vehicle is owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and used in connection with installation, restoration or maintenance of utility services.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation.

(d) Upon suspending the license of any person as authorized in this section, the Division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, not to exceed 60 days after receipt of the request, unless a preliminary hearing was held before his license was suspended. Upon such hearing the duly authorized agents of the Division may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the Division shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license. Provided further upon such hearing, preliminary or otherwise, involving subsections (a)(1) through (a)(10a) of this section, the Division may for good cause appearing in its discretion substitute a period of probation not to exceed one year for the suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Division and such period of probation shall not exceed one year, and any violation of the probation agreement during the probation period shall result in a suspension for the unexpired remainder of the suspension period. The authorized agents of the Division shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provided in connection with hearings held after suspension. These agents shall also have the authority to take possession of a surrendered license on behalf of the Division if the suspension is upheld and the licensee requests that the suspension begin immediately.

(e) The Division may conduct driver improvement clinics for the benefit of those who have been convicted of one or more violations of this Chapter. Each driver attending a driver improvement clinic shall pay a fee of seventy dollars ($70.00).

(e1) Notwithstanding any other provision of this Chapter, if the Division suspends the license of an operator pursuant to subdivisions (a)(9), (a)(10), or (a)(10a) of this section, upon the first suspension only, a district court judge may allow the licensee a limited driving privilege or license for a period not to exceed 12 months, provided he has not been convicted of any other motor vehicle moving violation within the previous 12 months. The limited driving privilege shall be issued in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b)(1), (2), (3), (4), and (5).

(e2) If the Division revokes a person's drivers license pursuant to G.S. 20-17(a)(16), a judge may allow the licensee a limited driving privilege for a period not to exceed the period of revocation. The limited driving privilege shall be issued in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b)(1), (2), (3), (4), (5), and (g). (1935, c. 52, s. 11; 1947, c. 893, ss. 1, 2; c. 1067, s. 13; 1949, c. 373, ss. 1, 2; c. 1032, s. 2; 1953, c. 450; 1955, c. 1152, s. 15; c. 1187, ss. 9-12; 1957, c. 499, s. 1; 1959, c. 1242, ss. 1-2; 1961, c. 460, ss. 1, 2(a); 1963, c. 1115; 1965, c. 130; 1967, c. 16; 1971, c. 234, ss. 1, 2; c. 793, ss. 1, 2; c. 1198, ss. 1, 2; 1973, c. 17, ss. 1, 2; 1975, c. 716, s. 5; 1977, c. 902, s. 1; 1979, c. 36; c. 667, ss. 18, 41; 1981, c. 412, s. 4; c. 747, ss. 33, 66; 1981 (Reg. Sess., 1982), c. 1256; 1983, c. 435, s. 10; c. 538, ss. 3-5; c. 798; 1983 (Reg. Sess., 1984), c. 1101, s. 4; 1987, c. 744, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1037, s. 75; 1989, c. 784, s. 9; 1991, c. 682, s. 3; 1999-330, s. 7; 1999-452, s. 10; 2000-109, s. 7(d); 2000-117, s. 2; 2000-155, s. 10; 2001-352, s. 2; 2004-172, s. 3; 2004-193, ss. 2, 3; 2005-276, s. 44.1(d); 2015-241, s. 29.30(d).)

Chapter 3
Your Driving Privilege

Points

Driver License Points

If you are convicted of certain motor vehicle violations in North Carolina, driver license points are placed against your driving record. If you accumulate seven points, you may be assigned to a driver improvement clinic. The clinic fee is $83.50. Upon satisfactory completion of the clinic, three points are deducted from your driving record. If you accumulate as many as 12 points within a three-year period, your license may be suspended. The accumulation of eight points within three years following the reinstatement of your license can result in a second suspension.

If your driver license is suspended by the point system, it may be taken for:

- 60 days for the first suspension;
- 6 months for the second; and
- 12 months for the third.

When your driving privilege is reinstated, all previous driver license points are canceled. This does not pertain to insurance points.

Points are given for the following offenses:

Conviction	*Point Value*
Passing a stopped school bus	5
Aggressive driving	5
Reckless driving	4
Hit and run, property damage only	4
Following too closely	4
Driving on wrong side of road	4
Illegal passing	4
Failure to yield right of way to pedestrian pursuant to G.S. 20-158 (b) (2) b.	4
Failure to yield right of way to bicycle, motor scooter or motorcycle	4
Running through stop sign	3
Speeding in excess of 55 mph	3
Failure to yield right of way	3
Running through red light	3
No driver license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3

No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
Failure to properly restrain a child in a restraint or seat belt	2
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

Schedule of point values for conviction of violations while operating a commercial motor vehicle:

Conviction	*Point Value*
Passing stopped school bus	8
Rail-highway crossing violation	6
Careless and reckless driving in violation of G.S.20-140(f)	6
Speeding in violation of G.S. 20-141(j3)	6
Aggressive driving	6
Reckless driving	5
Hit and run, property damage only	5
Following too closely	5
Driving on wrong side of road	5
Illegal passing	5
Failure to yield right of way to pedestrian pursuant to G.S. 20-158 (b) (2) b.	5
Failure to yield right of way to bicycle, motor scooter or motorcycle	5
Running through stop sign	4
Speeding in excess of 55 miles per hour	4
Failure to yield right of way	4
Running through red light	4
No driver license or license expired more than one year	4
Failure to stop for siren	4
Driving through safety zone	4
No liability insurance	4
Failure to report accident where such report is required	4
Speeding in a school zone in excess of the posted school zone speed limit	4
Possessing alcoholic beverage in the passenger area of a commercial motor vehicle	4
All other moving violations	3

Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

No points shall be assessed for convictions of the following offenses:

- Overload;
- Overlength;
- Overwidth;
- Overheight;
- Illegal parking;
- Carrying concealed weapon;
- Improper plates;
- Improper registration;
- Improper muffler;
- Improper display of license plates or dealer's tags;
- Unlawful display of emblems and insignia; and
- Failure to display a current inspection certificate.

Any person who commits an offense for which points may be assessed for violations while operating a commercial motor vehicle may be assessed double the amount of any fine or penalty authorized by statute.

Insurance Points

Insurance companies use a different point system to determine insurance rates. If you have any questions concerning insurance points, contact your insurance agent.

Suspensions

In addition to criminal penalties that the court might order, conviction of certain traffic offenses will result in the loss of your driving privilege.

Your driving privilege will be revoked for at least 30 days if you are convicted of:

- Driving any vehicle more than 15 miles per hour over the speed limit, if you are driving at a speed higher than 55 mph.

It will be taken for 60 days if you are convicted of:

- A second charge of speeding over 55 mph and more than 15 mph above the speed limit within one year; or
- Speeding plus reckless driving on the same occasion.

The DMV can also suspend your license for the following:

- Two convictions of speeding over 55 mph within a period of 12 months;
- One conviction of speeding over 55 mph and one conviction of reckless driving within a year;
- A conviction of willful racing with another motor vehicle, whether it is prearranged or unplanned;

- A suspended court sentence or part of a sentence ordering that you must not operate a motor vehicle for a specified period of time; and/or
- A conviction for speeding over 75 mph, in certain cases

In cases like the above, the DMV may suspend your driving privilege as soon as it receives the conviction report from the court. If your driving privilege is revoked, you may have the right to a hearing in the judicial district where you reside. To request a hearing, call at 919-715-7000 or click on Contact Us at MyNCDMV.gov. You will be notified by mail of the time and place for the hearing. At the hearing you may state any facts that you think should entitle you to driving privileges or to a reduction of the suspension period.

If you believe your driving privilege should not have been revoked and the hearing gives you no help, you may appeal the DMV's decision within 30 days to the Superior Court of the county where you live. The court will review your case to see if there were proper grounds for revoking your driving privilege.

Offense	*Suspension Time*
Manslaughter	1 year
Death by vehicle	1 year
Manslaughter while under the influence of an impairing substance	Permanent
Assault with a motor vehicle	1 year
Failure to stop and give aid when involved in an accident	1 year
Speeding in excess of 55 mph and at least 15 mph over the legal limit while attempting to avoid arrest	1 year
Prearranged racing with another motor vehicle on the highway	*3 years
Watching, betting on or loaning a car for prearranged racing	*3 years
Willful refusal to submit to a blood or breath alcohol test	1 year
Two charges of reckless driving committed within 12 months	1 year
Attempting to obtain a license or learner permit under false pretense	1 year
Failure to yield right of way when entering an intersection, turning at a stop or yield sign, entering a roadway, upon the approach of an emergency vehicle or at a highway construction or maintenance area when the offense results in serious bodily injury	90 days and $500

When an officer finds that someone has loaned or is operating a motor vehicle willfully in prearranged racing, he/she will seize the vehicle. If the person is convicted, the court may order the vehicle sold at public auction.
NOTE: *If the court makes a finding that a longer period of revocation is appropriate, the division must revoke for two years.*

Out-of-State Conviction

Convictions occurring outside North Carolina may result in your license being suspended or revoked just as if the violations occurred in this state. If a suspension occurs, the Division must notify you by correspondence of the effective date of the suspension.

Failure to Appear and/or to Pay a Fine

When the Division receives notification that you failed to appear in court or pay court fines for a citation received in North Carolina or in another state, you will be notified of the effective date of the revocation if the fines are not paid or waived prior to the date indicated on the correspondence. The revocation will remain in effect until the division is notified by the court that the citation or fine has been paid or waived, and may result in you having to pay appropriate fees to the DMV to obtain a duplicate license. Complying with the citation does not relieve you of the consequences for the actual offense if convicted.

You can prevent the suspension for Failure to Pay by choosing Option A or B:

Option A: I CAN'T Afford to Pay Now.

When people have a hard time paying off tickets, they follow the steps below to ask the court to reduce or waive the amount owed.

Step 1: Fill out the Motion for Relief. AOC-CR-415. You can download the motion at https://www.nccourts.gov/assets/documents/forms/cr415_2.pdf. For help filling out the motion, go to www.resolvetrafficdebtnc.org.

Step 2: Go to the clerk's office at the court of the county in which you received your motor vehicle offense and give the clerk the motion. Ask the clerk for a hearing ASAP.

Step 3: Attend the hearing (you do not need a lawyer but may use one) and tell the judge why you cannot afford to pay. The judge might reduce the amount you owe, give you a payment plan you can afford, or waive what you owe.

Final step: The court will notify DMV once you have either obtained a waiver of the amount owed or fully paid off your new payment amount, and DMV will stop your suspension.

Option B: I CAN Afford to Fully Pay Now.

When people can pay off their ticket, they follow the steps below to stop the suspension of their license.

Step 1: Call the clerk's office in the court of the county in which you received your motor vehicle offense to ask how to pay.

Step 2: Pay the court the full amount owed. Online you can pay by credit card at https://www3.nccourts.org/onlinepayments/menu.sp. In person you can usually pay by cash, debit card, credit card, money order, certified check, or cashier's check but confirm with the court.

Final Step: The court will notify DMV after you pay the amount in full, and DMV will stop your suspension.

Provisional Licensee (under age 18)

There are other rules that apply to persons under 18 years of age. If you are a provisional licensee, your license may be suspended for:

- 30 days, upon conviction of a second moving violation occurring within a 12-month period;
- 90 days, upon conviction of a third moving violation occurring within a 12-month period; and
- Six months, upon conviction of a fourth moving violation occurring within a 12-month period.

Some examples of moving violations:

- Passing a stopped school bus;
- Reckless driving;
- Hit-and-run;
- Following too closely;
- Driving on the wrong side of the road;
- Illegal passing;
- Running through a stop sign or red light;
- Failure to yield right of way;
- Failure to stop for an emergency siren; and
- Speeding.

Driver License Restoration

North Carolina law requires that a restoration fee of $83.50 be paid to the DMV before a suspension or revocation can be cleared. (This fee is not required if the license was taken for medical or health reasons following a medical evaluation.) A $167.25 restoration fee is required when the revocation results from a DWI conviction. Also, a service fee of $50 is required upon restoration of a revoked or suspended driver license unless the license was surrendered to the court or mailed to the DMV before the effective date of the suspension or revocation.

For the reinstatement of your driving privilege:

1. Visit any driver license office;
2. Provide proof of identity, i.e., driver license or two (2) other acceptable forms of i.d.;
3. Pay a restoration and/or service fee;
4. Reapply for a driver license;
5. Take required tests, if applicable;
6. Provide proof of insurance if required, and
7. Pay for new license issuance.

SAFE DRIVER INCENTIVE PLAN

Driving safely saves lives and money. The North Carolina Safe Driver Incentive Plan (SDIP) was created by state law to give drivers a financial incentive to practice safe driving habits. SDIP points are charged as follows for convictions and at-fault accidents occurring during the Experience Period (the three-year period preceding either the date an individual applies for coverage or the insurance company prepares to renew an existing policy). (NCGS 58-36-65 and 58-36-75)

SDIP POINTS	CONVICTIONS AND AT-FAULT ACCIDENTS POINTS	% OF RATE INCREASE
1	• All other moving violations. • Speeding 10 mph or less over a speed limit in a speed zone under 55 mph. • At-fault accident resulting in bodily injury (to all persons) of $1,800 or less; OR resulting in total damage to all property, including the insured's own, of $2,300 or less. • No Insurance Points will apply for bodily injury if medical costs were incurred solely for diagnostic purposes.	40%
2	• Illegal passing. • Following too closely. • Driving on wrong side of the road. • At-fault accident resulting in total property damage (including damage to insured's own property) over $2,300 but less than $3,850. • Speeding more than 10 mph over the speed limit at a total speed of more than 55 mph and less than 76 mph. • Speeding 10 mph or less over the speed limit in a speed zone of 55 mph or higher.	55%
3	• At-fault accident resulting in death or total bodily injury (to all persons) in excess of $1,800; or that result in total damage to all property, (including the insured's own), of $3,850 or more. • No Insurance Points will apply for bodily injury if the medical costs were incurred solely for diagnostic purposes.	70%
4	• Reckless driving. • Hit-and-run resulting in property damage only. • Passing a stopped school bus. • Speeding in excess of 75 mph when the speed limit is less than 70 mph. • Speeding in excess of 80 mph when the speed limit is 70 mph or higher. • Driving by a person less than age 21 after consuming alcohol or drugs.	90%
8	• Driving during revocation or suspension of license or registration. • Aggressive driving.	200%
10	• Highway racing or knowingly lending a motor vehicle for highway racing. • Speeding to elude arrest.	260%
12	• Manslaughter or negligent homicide. • Prearranged highway racing or knowingly lending a motor vehicle for prearranged highway racing. • Hit-and-run resulting in bodily injury or death. • Driving with a blood-alcohol level of .08 or more	340%

SPECIAL EXEMPTIONS -

An accident provided all of t
- There is property damage
- The amount of damage is
- There is no conviction for
- No licensed operators in t
  insurance company may

Speeding 10 mph or less ove
- The violation did not occu
- There is not another mov
  (PJC) will not count as a p

One PJC for each household
- A second PJC may cause p

You will no longer meet the
conviction or a second at-fau



§ 20-17. Mandatory revocation of license by Division.

(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

(1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.

(2) Either of the following impaired driving offenses:

a. Impaired driving under G.S. 20-138.1. — Commercial DWI

b. Impaired driving under G.S. 20-138.2, if the driver's alcohol concentration level was .06 or higher. For the purposes of this sub-subdivision, the driver's alcohol concentration level result, obtained by chemical analysis, shall be conclusive and is not subject to modification by any party, with or without approval by the court.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

(5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.

(6) Conviction, within a period of 12 months, of (i) two charges of reckless driving, (ii) two charges of aggressive driving, or (iii) one or more charges of reckless driving and one or more charges of aggressive driving.

(7) Conviction upon one charge of aggressive driving or reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.

(9) Any offense set forth under G.S. 20-141.4. (F) & (M) death by vehicle or serious injury by vehicle

(10) Repealed by Session Laws 1997-443, s. 19.26(b).

(11) Conviction of assault with a motor vehicle.

(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7.

(13) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(14) A conviction of driving a school bus, school activity bus, or child care vehicle after consuming alcohol under G.S. 20-138.2B.

(15) A conviction of malicious use of an explosive or incendiary device to damage property (G.S. 14-49(b) and (b1)); making a false report concerning a destructive device in a public building (G.S. 14-69.1(c)); perpetrating a hoax concerning a destructive device in a public building (G.S. 14-69.2(c)); possessing or carrying a dynamite cartridge, bomb, grenade, mine, or powerful explosive on educational property (G.S. 14-269.2(b1)); or causing, encouraging, or aiding a minor to possess or carry a dynamite cartridge, bomb, grenade, mine, or powerful explosive on educational property (G.S. 14-269.2(c1)).

(16) A second or subsequent conviction of larceny of motor fuel under G.S. 14-72.5. A conviction for violating G.S. 14-72.5 is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under G.S. 14-72.5 that occurred in the seven years immediately preceding the date of the current offense.

(17) A third or subsequent conviction of operating a private passenger automobile with prohibited modifications on any highway or public vehicular area under G.S. 20-135.4(d). A conviction for violating G.S. 20-135.4(d) is a third or subsequent conviction if at the time of the current infraction the person has two or more previous convictions under G.S. 20-135.4 that occurred in the 12 months immediately preceding the date of the current infraction.

(b) On the basis of information provided by the child support enforcement agency or the clerk of court, the Division shall:

(1) Ensure that no license or right to operate a motor vehicle under this Chapter is renewed or issued to an obligor who is delinquent in making child support payments when a court of record has issued a revocation order pursuant to G.S. 110-142.2 or G.S. 50-13.12. The obligor shall not be entitled to any other hearing before the Division as a result of the revocation of his license pursuant to G.S. 110-142.2 or G.S. 50-13.12; or



(2) Revoke the drivers license of any person who has willfully failed to complete court-ordered community service and a court has issued a revocation order. This revocation shall continue until the Division receives certification from the clerk of court that the person has completed the court-ordered community service. No person whose drivers license is revoked pursuant to this subdivision shall be entitled to any other hearing before the Division as a result of this revocation. (1935, c. 52, s. 12; 1947, c. 1067, s. 14; 1967, c. 1098, s. 2; 1971, c. 619, s. 7; 1973, c. 18, s. 1; c. 1081, s. 3; c. 1330, s. 2; 1975, c. 716, s. 5; c. 831; 1979, c. 667, ss. 20, 41; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 15; 1989, c. 771, s. 11; 1991, c. 726, s. 7; 1993 (Reg. Sess., 1994), c. 761, s. 1; 1995, c. 506, s. 7; c. 538, s. 2(b); 1997-234, s. 3; 1997-443, s. 19.26(b); 1998-182, s. 18; 1999-257, s. 4.1; 2001-352, s. 3; 2001-487, s. 52; 2004-193, ss. 4, 5; 2006-253, s. 22.2; 2007-493, s. 2; 2021-128, s. 2.)

§ 20-24.1. Revocation for failure to appear or pay fine, penalty or costs for motor vehicle offenses.

(a) The Division must revoke the driver's license of a person upon receipt of notice from a court that the person was charged with a motor vehicle offense and he:

(1) failed to appear, after being notified to do so, when the case was called for a trial or hearing; or

(2) failed to pay a fine, penalty, or court costs ordered by the court.

Revocation orders entered under the authority of this section are effective on the sixtieth day after the order is mailed or personally delivered to the person.

(b) A license revoked under this section remains revoked until the person whose license has been revoked:

(1) disposes of the charge in the trial division in which he failed to appear when the case was last called for trial or hearing; or

(2) demonstrates to the court that he is not the person charged with the offense; or

(3) pays the penalty, fine, or costs ordered by the court; or

(4) demonstrates to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted.

Upon receipt of notice from the court that the person has satisfied the conditions of this subsection applicable to his case, the Division must restore the person's license as provided in subsection (c). In addition, if the person whose license is revoked is not a resident of this State, the Division may notify the driver licensing agency in the person's state of residence that the person's license to drive in this State has been revoked.

(b1) A defendant must be afforded an opportunity for a trial or a hearing within a reasonable time of the defendant's appearance. Upon motion of a defendant, the court must order that a hearing or a trial be heard within a reasonable time.

(c) If the person satisfies the conditions of subsection (b) that are applicable to his case before the effective date of the revocation order, the revocation order and any entries on his driving record relating to it shall be deleted and the person does not have to pay the restoration fee set by G.S. 20-7(i1). For all other revocation orders issued pursuant to this section, G.S. 50-13.12 or G.S. 110-142.2, the person must pay the restoration fee and satisfy any other applicable requirements of this Article before the person may be relicensed.

(d) To facilitate the prompt return of licenses and to prevent unjustified charges of driving while license revoked, the clerk of court, upon request, must give the person a copy of the notice it sends to the Division to indicate that the person has complied with the conditions of subsection (b) applicable to his case. If the person complies with the condition before the effective date of the revocation, the notice must indicate that the person is eligible to drive if he is otherwise validly licensed.

(e) As used in this section and in G.S. 20-24.2, the word offense includes crimes and infractions created by this Chapter.

(f) If a license is revoked under subdivision (2) of subsection (a) of this section, and for no other reason, the person subject to the order may apply to the court for a limited driving privilege valid for up to one year or until any fine, penalty, or court costs ordered by the court are paid. The court may grant the limited driving privilege in the same manner and under the terms and conditions prescribed in G.S. 20-16.1. A person is eligible to apply for a limited driving privilege under this subsection only if the person has not had a limited driving privilege granted under this subsection within the three years prior to application. (1985, c. 764, s. 19; 1985 (Reg. Sess., 1986), c. 852, ss. 4-6, 9, 17; 1987, c. 581, s. 4; 1991, c. 682, s. 4; 1993, c. 313, s. 1; 1995, c. 538, s. 2(d); 2020-77, s. 6.5(a).)

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
☐ District ☐ Superior Court Division

STATE VERSUS

Name Of Defendant

Defendant's Telephone No. | *Defendant's Date Of Birth*

Defendant's Street Address ☐ I am homeless.

REQUEST FOR RELIEF FROM FINES, FEES AND OTHER MONETARY OBLIGATIONS, AND ORDER ON REQUEST

Rule 28 of the General Rules of Practice for the Superior and District Courts

Name And Address Of Attorney ☐ I am self-represented.

Attorney's Telephone No.

ABILITY TO PAY WORKSHEET

Employment Income (per month) ☐ I am unemployed. *List employer(s):*	$
Other Income (per month) *Specify, including for example rental income, investment income, pension, spouse's income, and gifts and financial support from family:*	$
How many people, including yourself, does this income support?	
What is the total value of your cash on hand and in bank accounts?	$
What is the total value of all real property you own?	$
What is the total value of all major personal property you own (vehicles, jewelry)?	$
Rent/mortgage you pay monthly	$
Childcare/child support payments you pay monthly	$

(check all that apply)

I receive the following public assistance:

- ☐ TANF (Temporary Assistance for Needy Families)
- ☐ Supplemental Security Income (SSI)
- ☐ Social Security Disability Insurance (SSDI)
- ☐ SNAP/Food Stamps
- ☐ Veterans' Benefits

- ☐ I have been homeless in the past 6 months
- ☐ I have been incarcerated on an active sentence in the past 6 months
- ☐ I am under 18
- ☐ I am a full-time student

Use the space below to provide any additional information about other circumstances the court should consider when evaluating your ability to pay, such as a disability or illness, a change in work hours, or other support obligations or significant expenses:

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(Over)

REQUEST/MOTION

Based on the information presented above, I make the following request(s): *(check all that apply)*

☐ That the Court allow relief from all costs, fines, fees, and restitution, to the extent allowed by law.

☐ That I be given until at least _____ *(enter date)* to pay any imposed monetary obligation.

☐ A payment plan requiring a total money payment of no more than $ _____ per month.

Under penalty of perjury, I declare that the information on this form is true and correct to the best of my knowledge.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME			Date	Name Of Defendant (type or print)
Date	Name (type or print)		Signature Of Defendant	
☐ Notary	Signature			
SEAL	Date Commission Expires	County Where Notarized		

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
☐ District Court Judge ☐ Superior Court Judge ☐ Magistrate

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Request was served on the date below upon the District Attorney for the above-captioned county by:

☐ hand delivery to *(name)* _____.

☐ leaving a copy with an employee of the District Attorney.

Name Of Person With Whom Copy Left (type or print)

☐ by depositing a copy in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, addressed to the District Attorney's office.

☐ by email to the District Attorney at _____ *(email address).*
NOTE: *Service by email upon counsel must be to an email address of record with the court. Service by email upon a party is permitted only if the party has consented to receive email service at a particular address, and that consent is filed with the court. Service by email* ***sent*** *after 5:00 PM Eastern Time on a regular business day will be deemed sent on the next business day.*

☐ by telefacsimile (fax) to the District Attorney's office at _____ *(fax number)*, as evidenced by fax receipt confirmation, attached. **NOTE:** *Service by fax* ***received*** *after 5:00 PM Eastern Time on a regular business day will be deemed completed on the next business day.*

☐ acceptance of service.

Date Service Accepted	Name Of Person Accepting Service (type or print)	Signature	Title

Date	Name Of Person Serving (type or print)	Signature Of Person Serving	☐ Defendant ☐ Defendant's Attorney ☐ Other:

ORDER ON REQUEST FOR RELIEF

NOTE TO COURT: *If this motion is made at or before sentencing and some relief is granted from monetary obligations that otherwise would be imposed in the judgment of conviction/responsibility, this ORDER should not be used to impose those obligations. Monetary obligations should be imposed in the actual judgment. Any findings or conclusions of law necessary to reduced or waived monetary obligations can be made (i) in the judgment or, (ii) if made here or on another instrument, incorporated in the judgment by reference.*

Having considered the record in the above-captioned case, the evidence presented, and any statements of the State and the defendant, the Court hereby finds based on the defendant's ability to pay that *(check one)*

☐ 1. the relief requested is not appropriate at this time. Any monetary obligations previously imposed in a judgment of the court remain in effect and as originally ordered.

☐ 2. there is good and just cause to grant the motion in whole or in part and therefore orders: *(Specify in the space below the substance of the relief granted and any additional findings and conclusions of law necessary to that relief.)*

See attached ☐ AOC-CR-305, ☐ Other: _____, incorporated herein by reference.

SIGNATURE OF JUDGE

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge

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§ 20-28. Unlawful to drive while license revoked, after notification, or while disqualified.

(a) Driving While License Revoked. – Except as provided in subsections (a1) or (a2) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 3 misdemeanor.

(a1) Driving While License Revoked for Impaired Driving. – Any person whose drivers license has been revoked for an impaired driving revocation as defined in G.S. 20-28.2(a) and who drives any motor vehicle upon the highways of the State is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

If the person's license was originally revoked for an impaired driving revocation, the court may order as a condition of probation that the offender abstain from alcohol consumption and verify compliance by use of a continuous alcohol monitoring system, of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction, for a minimum period of 90 days.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a2) Driving Without Reclaiming License. – A person convicted under subsection (a) or (a1) of this section shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either of the following is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5 and one of the following applies:
   a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or
   b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5.

(2) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(a3) Driving After Notification or Failure to Appear. – A person shall be guilty of a Class 1 misdemeanor if:

(1) The person operates a motor vehicle upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

(2) The person fails to appear for two years from the date of the charge after being charged with an implied-consent offense.

Upon conviction, the person's drivers license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a1) of this section for one year, the person may apply for a license after 90 days.

(2) If punished under subsection (a2) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a3) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period. For purposes of this subsection, a violation of subsection (a) of this section shall not be considered a moving violation.

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) A person whose license is revoked for violation of subsection (a1) of this section where the person's license was originally revoked for an impaired driving revocation, or a person whose license is revoked for a violation of subsection (a3) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time that the conditional restoration is active.

(c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of this section, the Division shall cancel the license and impose the remaining revocation period if any of the following occur:

(1) The person violates any condition of the restoration.

(2) The person is convicted of any moving offense in this or another state.

(3) The person is convicted for a violation of the alcoholic beverage or controlled substance laws of this or any other state.

(d) Driving While Disqualified. – A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in subsection (a1) of this section. A person who has been disqualified who drives a commercial motor vehicle during the

disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified. (1935, c. 52, s. 22; 1945, c. 635; 1947, c. 1067, s. 16; 1955, c. 1020, s. 1; c. 1152, s. 18; c. 1187, s. 20; 1957, c. 1046; 1959, c. 515; 1967, c. 447; 1973, c. 47, s. 2; cc. 71, 1132; 1975, c. 716, s. 5; 1979, c 377, ss. 1, 2; c. 667, s. 41; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 51; 1983 (Reg. Sess., 1984), c. 1101, s. 18A; 1989, c. 771, s. 4; 1991, c. 509, s. 2; c. 726, s. 12; 1993, c. 539, ss. 320-322; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, ss. 2, 3; 1995, c. 538, s. 2(e), (f); 2002-159, s. 6; 2006-253, s. 22.1; 2007-493, ss. 4, 19; 2012-146, s. 8; 2013-360, s. 18B.14(f); 2015-186, s. 2; 2015-264, ss. 38(a), 86; 2017-186, s. 2(kkkk); 2021-180, s. 19C.9(t).)

§ 20-28.1. Conviction of moving offense committed while driving during period of suspension or revocation of license.

(a) Upon receipt of notice of conviction of any person of a motor vehicle moving offense, such offense having been committed while such person's driving privilege was in a state of suspension or revocation, the Division shall revoke such person's driving privilege for an additional period of time as set forth in subsection (b) hereof. For purposes of this section a violation of G.S. 20-7(a), 20-24.1, or 20-28(a) or (a2) shall not be considered a "motor vehicle moving offense" unless the offense occurred in a commercial motor vehicle or the person held a commercial drivers license at the time of the offense.

(b) When a driving privilege is subject to revocation under this section, the additional period of revocation shall be as follows:

(1) A first such revocation shall be for one year;

(2) A second such revocation shall be for two years; and

(3) A third or subsequent such revocation shall be permanent.

(c) A person whose license has been revoked under this section for one year may apply for a license after 90 days. A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years. Upon the filing of an application, the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, or a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provision of the drug laws of this State or another state when any of these violations occurred during the revocation period. The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(d) Repealed by Session Laws 1979, c. 378, s. 2. (1965, c. 286; 1969, c. 348; 1971, c. 163; 1973, c. 47, s. 2; 1975, c. 716, s. 5; 1979, c. 378, ss. 1, 2; 1981, c. 412, s. 4; c. 747, s. 66; 1991, c. 509, s. 1; c. 682, s. 6; c. 726, s. 22.1; 2015-186, s. 3; 2015-264, s. 86.)

MY ADVICE FOR CLIENTS IS TO PETITION UNDER §20-20.1 FOR A LDP

MAY VS. MUST

NIVÅ 10 WINCH

Y FDb

BEHILLOW CUNDER (.30-30) 20rb

WEA VORICE BOK CRIEWLO 12 20

§ 20-20.1. Limited driving privilege for certain revocations.

(a) Definitions. - The following definitions apply in this section:

(1) Limited driving privilege. - A judgment issued by a court authorizing a person with a revoked drivers license to drive under specified terms and conditions.

(2) Nonstandard working hours. - Anytime other than 6:00 A.M. until 8:00 P.M. on Monday through Friday.

(3) Standard working hours. - Anytime from 6:00 A.M. until 8:00 P.M. on Monday through Friday.

(4) Underlying offense. - The offense for which a person's drivers license was revoked when the person was charged under G.S. 20-28(a), driving with a revoked license, or under G.S. 20-28.1, committing a motor vehicle moving offense while driving with a revoked license.

(b) Eligibility. - A person is eligible to apply for a limited driving privilege under this section if all of the following conditions apply:

(1) The person's license is currently revoked under G.S. 20-28(a) or G.S. 20-28.1.

(2) The person has complied with the revocation for the period required in subsection (c) of this section immediately preceding the date the person files a petition for a limited driving privilege under this section.

(3) The person's underlying offense is not an offense involving impaired driving and, if the person's license is revoked under G.S. 20-28.1 for committing a motor vehicle moving offense while driving with a revoked license, the moving offense is not an offense involving impaired driving.

(4) The revocation period for the underlying offense has expired.

(5) The revocation under G.S. 20-28(a) or G.S. 20-28.1 is the only revocation in effect.

(6) The person is not eligible to receive a limited driving privilege under any other law.

(7) The person has not held a limited driving privilege issued under this section at anytime during the three years prior to the date the person files the current petition.

(8) The person has no pending charges for any motor vehicle offense in this or in any other state and has no unpaid motor vehicle fines or penalties in this or in any other state.

(9) The person's drivers license issued by another state has not been revoked by that state.

(10) G.S. 20-9(e) or G.S. 20-9(f) does not prohibit the Division from issuing the person a license.

(c) Compliance Period. - The following table sets out the period during which a person must comply with a revocation under G.S. 20-28(a) or G.S. 20-28.1 to be eligible for a limited driving privilege under this section:

Revocation Period	Compliance Period
1 Year	90 Days
2 Years	1 Year
Permanent	2 Years

(d) Petition. - A person may apply for a limited driving privilege under this section by filing a petition. A petition filed under this section is separate from the action that resulted in the initial revocation and is a civil action. A petition must be filed in district court in the county of the person's residence as reflected by the Division's records or, if the Division's records are inaccurate, in the county of the person's actual residence. A person must attach to a petition a copy of the person's motor vehicle record. A petition must include a sworn statement that the person filing the petition is eligible for a limited driving privilege under this section.

A court, for good cause shown, may issue a limited driving privilege to an eligible person in accordance with this section. The costs required under G.S. 7A-305(a) and G.S. 20-20.2 apply to a petition filed under this section. The clerk of court for the court that issues a limited driving privilege under this section must send a copy of the limited driving privilege to the Division.

(e) Scope of Privilege. - A limited driving privilege restricts the person to essential driving related to one or more of the purposes listed in this subsection. Any driving that is not related to the purposes authorized in this subsection is unlawful even though done at times and upon routes that may be authorized by the privilege. Except as otherwise provided, all driving must be for a purpose and done within the restrictions specified in the privilege.

The permissible purposes for a limited driving privilege are:

(1) Travel to and from the person's place of employment and in the course of employment.

(2) Travel necessary for maintenance of the person's household.

(3) Travel to provide emergency medical care for the person or for an immediate family member of the person who resides in the same household with the person. Driving related to emergency medical care is authorized at anytime and without restriction as to routes.

(f) Employment Driving in Standard Working Hours. - The court may authorize driving for employment-related purposes during standard working hours without specifying times and routes for the driving. If the person is required to drive for

essential employment-related purposes only during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or for authorized household maintenance. The limited driving privilege must state the name and address of the person's employer and may, in the discretion of the court, include other information and restrictions applicable to employment-related driving.

(g) Employment Driving in Nonstandard Working Hours. - If a person is required to drive during nonstandard working hours for an essential employment-related purpose and the person provides documentation of that fact to the court, the court may authorize the person to drive for that purpose during those hours. If the person is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the person is employed by another, the limited driving privilege must state the name and address of the person's employer and may, in the discretion of the court, include other information and restrictions applicable to employment-related driving. If the court determines that it is necessary for the person to drive during nonstandard working hours for an employment-related purpose, the court may authorize the person to drive subject to these limitations:

(1) If the person is required to drive to and from a specific place of employment at regular times, the limited driving privilege must specify the general times and routes by which the person may drive to and from work and must restrict driving to those times and routes.

(2) If the person is required to drive to and from work at a specific place but is unable to specify the times during which the driving will occur, the limited driving privilege must specify the general routes by which the person may drive to and from work and must restrict driving to those general routes.

(3) If the person is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries within which the person may drive and must restrict driving to those times and boundaries.

(4) If the person can specify neither the times nor places in which the person will be driving to and from work, the limited driving privilege must specify the geographic boundaries within which the person may drive and must restrict driving to those boundaries.

(h) Household Maintenance. - A limited driving privilege may allow driving for maintenance of the household only during standard working hours. The court, at its

discretion, may impose additional restrictions on driving for the maintenance of the household.

(i) Restrictions. - A limited driving privilege that is not authorized by this section or that does not contain the restrictions required by law is invalid. A limited driving privilege issued under this section is subject to the following conditions:

(1) Financial responsibility. - A person applying for a limited driving privilege under this section must provide the court proof of financial responsibility acceptable under G.S. 20-16.1(g) and must maintain the financial responsibility during the period of the limited driving privilege.

(2) Alcohol restrictions. - A person who received a limited driving privilege under this section may not consume alcohol while driving or drive at anytime while the person has remaining in the person's body any alcohol or controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts.

(3) Others. - The court may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(j) Term and Reinstatement. - The term of a limited driving privilege issued under this section is the shorter of one year or the length of time remaining in the revocation period imposed under G.S. 20-28(a) or G.S. 20-28.1. **When the term of the limited driving privilege expires, the Division *must* reinstate the person's license if the person meets all of the conditions listed in this subsection.** The Division may impose restrictions or conditions on the new license in accordance with G.S. 20-7(e). The conditions are:

(1) Payment of the restoration fee as required under G.S. 20-7(i1).

(2) Providing proof of financial responsibility as required under G.S. 20-7(c1).

(3) Providing the proof required for reinstatement of a license under G.S. 20-28(c1).

(k) Modification. - A court may modify or revoke a person's limited driving privilege issued under this section upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke the privilege. The judge must indicate in the order of modification or revocation the reasons for the order or make specific findings indicating the reason for the order and enter those findings in the record of

the case. When a court issues an order of modification or revocation, the clerk of court must send a copy of the order to the Division.

(l) Effect of Violation. - A violation of a limited driving privilege issued under this section constitutes the offense of driving while license revoked under G.S. 20-28. When a person is charged with operating a motor vehicle in violation of the limited driving privilege, the limited driving privilege is suspended pending the final disposition of the charge. (2007-293, s. 1; 2007-323, s. 30.11(d); 2007-345, s. 9.1(c); 2008-118, s. 2.9(b).)

§ 20-19. Period of suspension or revocation; conditions of restoration.

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

(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, G.S. 20-138.5(d), 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 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, habitual impaired driving, G.S. 20-138.5, 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 0.02 at any relevant time after the driving.

(3a) For any restoration of a drivers license (i) for a person convicted of driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, or (ii) 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 less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, 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 a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

(5) For any restoration of a drivers license pursuant to G.S. 20-17.8 requiring an ignition interlock system, that the person not operate a vehicle with an alcohol concentration of 0.02 or more at any relevant time after the driving during the period that the ignition interlock is required.

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 while consuming alcohol or at any time while the

person has remaining in the person's body any alcohol or controlled substance previously consumed. 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 this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), or G.S. 20-138.5(d), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c4) Applicable Procedures. - When a person has violated a condition of restoration by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply. When a person has submitted to a chemical analysis and the results show a violation of the alcohol concentration restriction, the notification and hearing procedures of this section apply.

(c5) Right to Hearing Before Division; Issues. - Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the thirtieth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether all of the following conditions exist:

(1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration restriction.
(2) The person was notified of the person's rights as required by G.S. 20-16.2(a).
(3) The drivers license of the person had an alcohol concentration restriction.
(4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's drivers license.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or (4) is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division.

(c6) Appeal to Court. - There is no right to appeal the decision of the Division. However, if the person properly requested a hearing before the Division under subsection (c5) and the Division held such a hearing, the person may within 30 days of the date the Division's decision is mailed to the person, petition the superior court of the county in which the hearing took place for discretionary review on the record of the revocation. The superior court may stay the imposition of the revocation only if the court finds that the person is likely to succeed on the merits of the case and will suffer irreparable harm if such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall review the record only and shall be limited to determining if the Division hearing officer followed proper procedures and if the hearing officer made sufficient findings of fact to support the revocation. There shall be no further appeal.

(d) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which the person has been convicted, which offense occurred within three years immediately preceding the date of the offense for which the person's license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a3), the period of revocation is four years, and this period may be reduced only as provided

in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if the person provides the Division with satisfactory proof that both of the following requirements are met:

(1) The person has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(2) The person is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance. The person may voluntarily submit themselves to continuous alcohol monitoring for the purpose of proving abstinence from alcohol consumption during a period of revocation immediately prior to the restoration consideration. All of the following requirements apply when providing proof that the requirement set forth in this subdivision has been met:

a. Monitoring periods of 120 days or longer shall be accepted by the Division as evidence of abstinence if the Division receives sufficient documentation that reflects that the person abstained from alcohol use during the monitoring period.

b. The continuous alcohol monitoring system shall be a system approved under G.S. 15A-1343.3.

c. The Division may establish guidelines for the acceptance of evidence of abstinence under this subdivision.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

3+ DWI's

(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which the person has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which the person's license is being revoked, (ii) G.S. 20-17(a)(2) and the person was sentenced pursuant to G.S. 20-179(f3) for the offense resulting in the revocation, or (iii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the revocation is permanent.

(e1) Notwithstanding subsection (e) of this section, the Division may conditionally restore the license of a person to whom subsection (e) applies after it has been revoked for at least three years under subsection (e) if the person provides the Division with satisfactory proof of all of the following:

(1) In the three years immediately preceding the person's application for a restored license, the person has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs.

(2) The person is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance. The person may voluntarily submit themselves to continuous alcohol monitoring for the purpose of proving abstinence from alcohol consumption during a period of revocation immediately prior to the restoration consideration. All of the following requirements apply when providing proof that the requirement set forth in this subdivision has been met:

a. Monitoring periods of 120 days or longer shall be accepted by the Division as evidence of abstinence if the Division receives sufficient documentation that reflects that the person abstained from alcohol use during the monitoring period.

b. The continuous alcohol monitoring system shall be a system approved under G.S. 15A-1343.3.

c. The Division may establish guidelines for the acceptance of evidence of abstinence under this subdivision.

(e2) Notwithstanding subsection (e) of this section, the Division may conditionally restore the license of a person to whom subsection (e) applies after it has been revoked for at least 24 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory proof of all of the following:

(1) The person has not consumed any alcohol for the 12 months preceding the restoration while being monitored by a continuous alcohol monitoring device of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction.

(2) The person has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) The person is not currently an excessive user of drugs or prescription drugs.

(4) The person is not unlawfully using any controlled substance.

(e3) If the Division restores a person's license under subsection (e1), (e2), or (e4) of this section, it may place reasonable conditions or restrictions on the person for any period up to five years from the date of restoration.

(e4) When a person's license is revoked under G.S. 20-138.5(d), the Division may conditionally restore the license of that person after it has been revoked for at least 10 years after the completion of any sentence imposed by the court, if the person provides the Division with satisfactory proof of all of the following: HABITUAL DWI

(1) In the 10 years immediately preceding the person's application for a restored license, the person has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any other criminal offense.

(2) The person is not currently a user of alcohol, unlawfully using any controlled substance, or an excessive user of prescription drugs.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(g2) When a license is revoked under G.S. 20-17(a)(16), the period of revocation is 90 days for a second conviction and six months for a third or subsequent conviction. The term "second or subsequent conviction" shall have the same meaning as found in G.S. 20-17(a)(16).

(g3) When a license is revoked under G.S. 20-17(a)(17), the period of revocation shall be not less than one year.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under G.S. 20-17(a)(1) or G.S. 20-17(a)(9), and the offense is one involving impaired driving and a fatality, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least five years under this subsection if the person provides the Division with satisfactory proof that both of the following requirements are met:

(1) In the five years immediately preceding the person's application for a restored license, the person has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs.

(2) The person is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to seven years from the date of restoration.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under G.S. 20-138.5(d), or under any provision of this Article, other than G.S. 20-24.1, the person seeking to have the person's driver's license restored shall submit to the Division proof that the person has notified the person's insurance agent or company that the person is seeking the restoration and that the person is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

Subdivisions (1) and (2) of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration

application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of 30 days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1935, c. 52, s. 13; 1947, c. 1067, s. 15; 1951, c. 1202, ss. 2-4; 1953, c. 1138; 1955, c. 1187, ss. 13, 17, 18; 1957, c. 499, s. 2; c. 515, s. 1; 1959, c. 1264, s. 11A; 1969, c. 242; 1971, c. 619, ss. 8-10; 1973, c. 1445, ss. 1-4; 1975, c. 716, s. 5; 1979, c. 903, ss. 4-6; 1981, c. 412, s. 4; c. 747, ss. 34, 66; 1983, c. 435, s. 17; 1983 (Reg. Sess., 1984), c. 1101, s. 18; 1987, c. 869, s. 12; 1987 (Reg. Sess., 1988), c. 1112; 1989, c. 436, s. 5; c. 771, s. 18; 1995, c. 506, s. 8; 1998-182, s. 21; 1999-406, s. 2; 1999-452, ss. 11, 12; 2000-140, ss. 3, 4; 2000-155, s. 6; 2001-352, s. 4; 2007-165, ss. 1(a), (b); 2007-493, ss. 11-14; 2008-187, s. 9; 2009-99, s. 1; 2009-369, ss. 1-4; 2009-500, ss. 1, 2; 2011-145, s. 19.1(h); 2011-191, s. 2; 2014-115, s. 61.5; 2017-176, s. 2(b); 2017-186, s. 2(jjjj); 2021-128, s. 3; 2021-134, s. 9(c); 2021-180, s. 19C.9(t); 2021-182, s. 1(d); 2021-185, s. 11.)

§ 20-16.5. Immediate civil license revocation for certain persons charged with implied-consent offenses.

(a) Definitions. - As used in this section the following words and phrases have the following meanings:

(1) Law Enforcement Officer. - As described in G.S. 20-16.2(a1).

(2) Clerk. - As defined in G.S. 15A-101(2).

(3) Judicial Official. - As defined in G.S. 15A-101(5).

(4) Revocation Report. - A sworn statement by a law enforcement officer and a chemical analyst containing facts indicating that the conditions of subsection (b) have been met, and whether the person has a pending offense for which the person's license had been or is revoked under this section. When one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the report must include the statements of both analysts.

(5) Surrender of a Driver's License. - The act of turning over to a court or a law-enforcement officer the person's most recent, valid driver's license or learner's permit issued by the Division or by a similar agency in another jurisdiction, or a limited driving privilege issued by a North Carolina court. A person who is validly licensed but who is unable to locate his license card may file an affidavit with the clerk setting out facts that indicate that he is unable to locate his license card and that he is validly licensed; the filing of the affidavit constitutes a surrender of the person's license.

(b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With Certain Implied-Consent Offenses. - A person's driver's license is subject to revocation under this section if:

(1) A law enforcement officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The law enforcement officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving;

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age.

(b1) Precharge Test Results as Basis for Revocation. - Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

(1) The person requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and

(2) The person has:

a. An alcohol concentration of 0.08 or more at any relevant time after driving;

b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; or

c. Any alcohol concentration at any relevant time after driving and the person is under 21 years of age; and

(3) The person is charged with an implied-consent offense.

(c) Duty of Law Enforcement Officers and Chemical Analysts to Report to Judicial Officials. - If a person's driver's license is subject to revocation under this section, the law enforcement officer and the chemical analyst must execute a revocation report. If the person has refused to submit to a chemical analysis, a copy of the affidavit to be submitted to the Division under G.S. 20-16.2(c) may be substituted for the revocation report if it contains the information required by this section. It is the specific duty of the law enforcement officer to make sure that the report is expeditiously filed with a judicial official as required by this section.

(d) Which Judicial Official Must Receive Report. - The judicial official with whom the revocation report must be filed is:

(1) The judicial official conducting the initial appearance on the underlying criminal charge if:

a. No revocation report has previously been filed; and

b. At the time of the initial appearance the results of the chemical analysis, if administered, or the reports indicating a refusal, are available.

(2) A judicial official conducting any other proceeding relating to the underlying criminal charge at which the person is present, if no report has previously been filed.

(3) The clerk of superior court in the county in which the underlying criminal charge has been brought if subdivisions (1) and (2) are not applicable at the time the law enforcement officer must file the report.

(e) Procedure if Report Filed with Judicial Official When Person Is Present. - If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In

no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the law enforcement officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division.

(f) Procedure if Report Filed with Clerk of Court When Person Not Present. - When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. For purposes of this subsection, a properly executed report under subdivision (d)(3) may include a sworn statement by the law enforcement officer along with an affidavit received directly by the Clerk from the chemical analyst. If he determines that there is such probable cause, he shall mail to the person a revocation order by first-class mail. The order shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. If the person has no pending offenses for which his license had been or is revoked under this section, the period of revocation under this subsection is:

(1) Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Forty-five days from the time:

a. The person's drivers license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's drivers license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days

after the effective date of the revocation order.

If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event may the period of revocation for the current offense be less than the applicable period of revocation in subdivision (1), (2), or (3) of this subsection. When a pick-up order is issued, it shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order shall deposit it with the clerk within three days of the surrender.

The Client May Contest the Civil Revocation!
The judicial official's findings are *without prejudice* to the driver contesting the revocation and to any other potential party, e.g., the District Attorney.

(g) Hearing before Magistrate or Judge if Person Contests Validity of Revocation. - A person whose license is revoked under this section may request in writing a hearing to contest the validity of the revocation. The request may be made at the time of the person's initial appearance, or within 10 days of the effective date of the revocation to the clerk or a magistrate designated by the clerk, and may specifically request that the hearing be conducted by a district court judge. The Administrative Office of the Courts must develop a hearing request form for any person requesting a hearing. Unless a district court judge is requested, the hearing must be conducted within the county by a magistrate assigned by the chief district court judge to conduct such hearings. If the person requests that a district court judge hold the hearing, the hearing must be conducted within the district court district as defined in G.S. 7A-133 by a district court judge assigned to conduct such hearings. The revocation remains in effect pending the hearing, but the hearing must be held within three working days following the request if the hearing is before a magistrate or within five working days if the hearing is before a district court judge. The request for the hearing must specify the grounds upon which the validity of the revocation is challenged and the hearing must be limited to the grounds specified in the request. A witness may submit his evidence by affidavit unless he is subpoenaed to appear. Any person who appears and testifies is subject to questioning by the judicial official conducting the hearing, and the judicial official may adjourn the hearing to seek additional evidence if he is not satisfied with the accuracy or completeness of evidence. The person contesting the validity of the revocation may, but is not required to, testify in his own behalf. Unless contested by the person requesting the hearing, the judicial official may accept as true any matter stated in the revocation report. If any relevant condition under subsection (b) is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation. At the conclusion of the hearing the judicial official must enter an order sustaining or rescinding the revocation. The judicial official's findings are without prejudice to the person contesting the revocation and to any other potential party as to any other proceedings, civil or criminal, that may involve facts bearing upon the conditions in

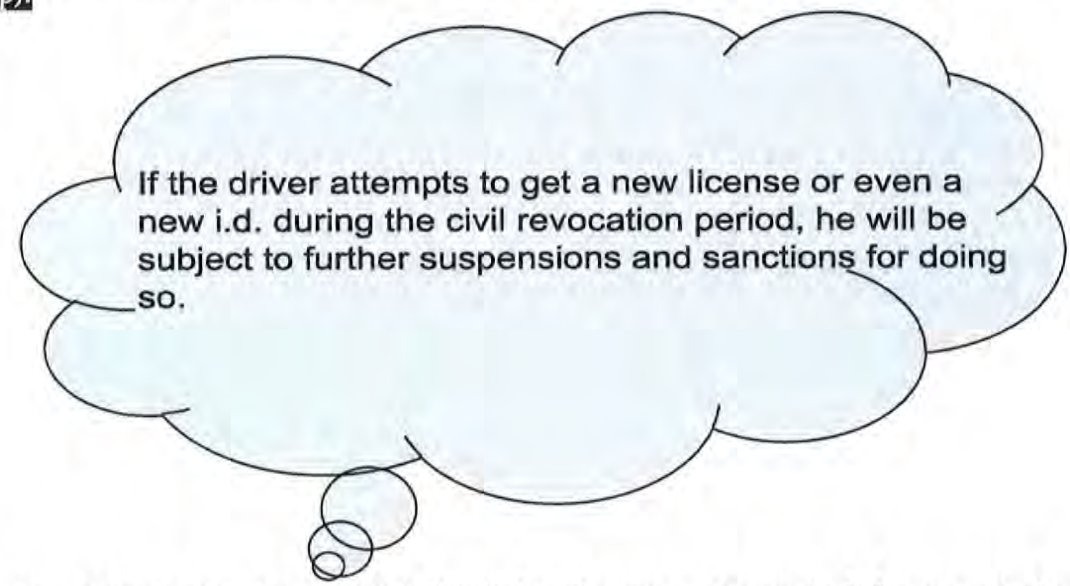
eligible to use the surrendered license, he must return it if:

(1) The applicable period of revocation has passed and the person has tendered payment for the costs under subsection (j); or

(2) The magistrate or judge has ordered the revocation rescinded.

If the license has expired, he may return it to the person with a caution that it is no longer valid. Otherwise, if the person is not eligible to use the license and the license was issued by the Division or in another state, the clerk must mail it to the Division. If the person has surrendered his copy of a limited driving privilege and he is no longer eligible to use it, the clerk must make a record that he has withheld the limited driving privilege and forward that record to the clerk in the county in which the limited driving privilege was issued for filing in the case file. If the person's license is revoked under this section and under another section of this Chapter, the clerk must surrender the license to the Division if the revocation under this section can terminate before the other revocation; in such cases, the costs required by subsection (j) must still be paid before the revocation under this section is terminated.

(i) Effect of Revocations. - A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. A person whose license is revoked pursuant to this section is not eligible to receive a limited driving privilege except as specifically authorized by G.S. 20-16.5(p).



(j) Costs. - Unless the magistrate or judge orders the revocation rescinded, a person whose license is revoked under this section must pay a fee of one hundred dollars ($100.00) as costs for the action before the person's license may be returned under subsection (h) of this section. Fifty percent (50%) of the costs collected under this section shall be credited to the General Fund. Twenty-five percent (25%) of the costs collected under this section shall be used to fund a statewide chemical alcohol testing program administered by the Injury Control Section of the Department of Health and Human Services. The remaining twenty-five percent (25%) of the costs collected under this section shall be remitted to the county for the sole purpose of reimbursing the county for jail expenses incurred due to enforcement of the impaired driving laws.

(k) Report to Division. - Except as provided below, the clerk shall mail a report to the Division:

(1) If the license is revoked indefinitely, within 10 working days of the revocation of

license is revoked under this section must pay a fee of one hundred dollars ($100.00) as costs for the action before the person's license may be returned under subsection (h) of this section. Fifty percent (50%) of the costs collected under this section shall be credited to the General Fund. Twenty-five percent (25%) of the costs collected under this section shall be used to fund a statewide chemical alcohol testing program administered by the Injury Control Section of the Department of Health and Human Services. The remaining twenty-five percent (25%) of the costs collected under this section shall be remitted to the county for the sole purpose of reimbursing the county for jail expenses incurred due to enforcement of the impaired driving laws.

(k) Report to Division. - Except as provided below, the clerk shall mail a report to the Division:

(1) If the license is revoked indefinitely, within 10 working days of the revocation of the license; and

(2) In all cases, within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed.

The report shall identify the person whose license has been revoked, specify the date on which his license was revoked, and indicate whether the license has been returned. The report must also provide, if applicable, whether the license is revoked indefinitely. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the 30-day period had elapsed.

(l) Restoration Fee for Unlicensed Persons. - If a person whose license is revoked under this section has no valid license, he must pay the restoration fee required by G.S. 20-7 before he may apply for a license from the Division.

(m) Modification of Revocation Order. - Any judicial official presiding over a proceeding under this section may issue a modified order if he determines that an inappropriate order has been issued.

North Carolina Division of Motor Vehicles
Driver License Section

Request for Motor Vehicle Record
Official Record of Convictions for Violations of Motor Vehicle Laws and Departmental Action

Please type or print clearly

I am hereby requesting the Motor Vehicle Record (MVR) of the below listed person:

Name _____ Sex _____ Race _____ Date of Birth _____
(First) (Middle or Maiden) (Last)

_____ , _____ , _____
(Street Address) (City / Town) (State)

Driver License No. _____ Date Issued _____ Expiration Date _____

Optional:

☐ Copies of Suspension Orders are also requested.

Requested by: _____ Date: _____ Position: _____

Agency Name: _____ Phone No. _____

Mailing Address: _____ **OR** State Courier No. _____

City _____ State _____ Zip Code _____

Mail this form to: NCDMV, Driver License Records, 3113 Mail Service Center, Raleigh, NC 27699
Form DL-49 Revised Sep 2004 ***previous editions are obsolete DO NOT USE***

EMAIL TO: DLRECORDS@NCDOT.GOV

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NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD PAGE NO: 1
REPORT TYPE: CERTIFIED REPORT DATE: 04-20-25

CITY: WAYNESVILLE STATE: NC ZIP: 287859609 TOTAL POINTS: 2
DOB:08-18-81 HEIGHT: 6 FT. 00 IN. SEX: M EYES: GRN HAIR: BLO RACE: W
PRIMARY LICENSE NO: 000026326053
SECONDARY LICENSE NO: NON-RESIDENT MILITARY: N REAL ID: N
ORG. ISS.DT: 08-18-97 OS DL NO: 96517483 OS STATE: TN

*** DRIVER LICENSE STATUS: CLS C SUSPENDED ***

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV	COND RESTR	STATUS
	I	D	01-03-25	08-18-30	N	N	N	N		

ENDORS:
CRD TRNS:0039780808

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV
C		D	08-14-09	08-18-11	N	N	N	N

ENDORS:
RSTR: 0 NONE
CRD TRNS:0000163382

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV
C		D	10-03-08	08-18-11	N	N	N	N

ENDORS:
RSTR: 0 NONE

the good thing about this record is driver is only INDEF Suspended

OCCUR/ BEG DATE	CONV/ END DATE	NATURE OF RECORD OR DIVISION ACTION	POINTS
		SCHBUS: NOT ELIG FOR SCHOOL BUS DRIVER CERTIFICATION	
11-25-24	INDEF	SUSP: FAILURE TO PAY FINE	
09-29-18	09-25-24	CONV: (635)FAIL TO PAY	
		COURT: BUNCOMBE COUNTY COURT	
		COURT: AOC #: 2018CR 091773 CITATION ID: WARRANT	
09-23-24	08-18-30	DUP ISS: ID EN:	

**** CONTINUE ON TO PAGE 2 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin
Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

CUST ID 000026326053
DATE: 04-20-25

04-17-24	08-18-30	DUP ISS: ID	EN:	
08-23-23	08-18-30	DUP ISS: ID	EN:	
06-02-23	07-06-24	SUSP: FAILURE TO APPEAR		
09-05-22	03-31-23	CONV: (634)FAIL TO APPEAR		
		COURT: BUNCOMBE COUNTY COURT		
		COURT: AOC #: 2022CR 709004	CITATION ID: 00J37818	
06-02-23	07-06-24	SUSP: FAILURE TO APPEAR		
09-05-22	03-31-23	CONV: (634)FAIL TO APPEAR		
		COURT: BUNCOMBE COUNTY COURT		
		COURT: AOC #: 2022CR 709004	CITATION ID: 00J37818	
12-11-22	INDEF	SUSP: FAILURE TO APPEAR		
07-20-22	10-11-22	CONV: (634)FAIL TO APPEAR		
		COURT: HAYWOOD COUNTY COURT		
		COURT: AOC #: 2022CR 702582	CITATION ID: 0814H498	
11-15-22	08-18-30	REN ISS: ID	EN:	
09-29-22	10-11-23	CONV: (663)DRV WHILE LIC REVOKED-NO ACTION		2
		COURT: HAYWOOD COUNTY COURT		
		COURT: AOC #: 2022CR 703641	CITATION ID: 0J539575	
08-20-21	08-18-22	DUP ISS: ID	EN:	
10-18-19	08-18-22	DUP ISS: ID	EN:	
07-09-19	07-06-24	SUSP: FAILURE TO APPEAR		
01-07-19	05-09-19	CONV: (634)FAIL TO APPEAR		
		COURT: BUNCOMBE COUNTY COURT		
		COURT: AOC #: 2019IF 700228	CITATION ID: 0760G313	
05-24-19	05-24-20	SUSP: 1ST MOVING VIOLATION WHILE LICENSE SUSPENDED		
09-29-18	05-13-19	CONV: (408)RECKLESS DRIVING		
		COURT: BUNCOMBE COUNTY COURT		
		COURT: AOC #: 2018CR 091773	CITATION ID: WARRANT	
07-03-18	INDEF	SUSP: FAILURE TO APPEAR		
09-29-18	05-13-19	CONV: (663)DRV WHILE LIC REVOKED-NO ACTION		2
		COURT: BUNCOMBE COUNTY COURT		

**** CONTINUE ON TO PAGE 3 ****

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Signed Wayne Goodwin

Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

CUST ID 000026326053

DATE: 04-20-25

		COURT: AOC #: 2018CR 091774	CITATION ID: WARRANT
07-03-18	INDEF	SUSP: FAILURE TO APPEAR	
02-18-18	05-03-18	CONV: (634)FAIL TO APPEAR	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2018IF 700499	CITATION ID: 037G4669
07-01-18	02-01-19	SUSP: FAILURE TO APPEAR	
01-13-18	05-01-18	CONV: (634)FAIL TO APPEAR	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2018CR 050139	CITATION ID: MAGISORD
06-19-18	04-23-19	SUSP: FAILURE TO APPEAR	
11-01-17	04-19-18	CONV: (634)FAIL TO APPEAR	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2017CR 704492	CITATION ID: 07G38928
06-19-18	04-23-19	SUSP: FAILURE TO APPEAR	
11-01-17	04-19-18	CONV: (634)FAIL TO APPEAR	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2017CR 704492	CITATION ID: 07G38928
06-09-18	05-13-19	SUSP: FAILURE TO APPEAR	
01-19-18	04-09-18	CONV: (634)FAIL TO APPEAR	
		COURT: BUNCOMBE COUNTY COURT	
		COURT: AOC #: 2018CR 700714	CITATION ID: 020G1938
06-09-18	05-13-19	SUSP: FAILURE TO APPEAR	
01-02-18	04-09-18	CONV: (634)FAIL TO APPEAR	
		COURT: BUNCOMBE COUNTY COURT	
		COURT: AOC #: 2018CR 080036	CITATION ID: MAGISORD
06-09-18	05-13-19	SUSP: FAILURE TO APPEAR	
01-02-18	04-09-18	CONV: (634)FAIL TO APPEAR	
		COURT: BUNCOMBE COUNTY COURT	
		COURT: AOC #: 2018CR 080036	CITATION ID: MAGISORD
01-19-18		ACDNT: BUNCOMBE COUNTY, NC	
		ACDNT: CASE ID:105357014	
12-02-17	INDEF	SUSP: FAILURE TO APPEAR	
06-29-17	09-27-17	CONV: (634)FAIL TO APPEAR	

**** CONTINUE ON TO PAGE 4 ****

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Signed Wayne Goodwin

Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

PAGE NO: 4
CUST ID 000026326053
DATE: 04-20-25

COURT: HAYWOOD COUNTY COURT
COURT: AOC #: 2017CR 702752 CITATION ID: 02G83300

10-16-14 08-18-22 ORG ISS: ID EN:

08-24-13 INDEF SUSP: FAILURE TO PAY FINE
09-25-12 06-24-13 CONV: (635)FAIL TO PAY
COURT: HAYWOOD COUNTY COURT
COURT: AOC #: 2012CR 703353 CITATION ID: 0F948682

09-25-12 05-07-13 CONV: (302)DRIVING NO OPERATOR LICENSE 3
COURT: HAYWOOD COUNTY COURT
COURT: AOC #: 2012CR 703353 CITATION ID: 0F948682

08-14-09 08-18-11 DUP ISS: CLS C EN:
RSTR:0 NONE

NEVER RENEWED LICENSE AFTER 2011

04-12-09 08-14-09 SUSP: FAILURE TO PAY FINE
05-20-08 02-10-09 CONV: (635)FAIL TO PAY
COURT: HAYWOOD COUNTY COURT
COURT: AOC #: 2008CR 701632 CITATION ID: 012E1582

10-03-08 08-18-11 DUP ISS: CLS C EN:
RSTR:0 NONE

03-31-08 10-03-08 SUSP: FAILURE TO APPEAR
10-31-07 01-30-08 CONV: (634)FAIL TO APPEAR
COURT: HAYWOOD COUNTY COURT
COURT: AOC #: 2007IF 704013 CITATION ID: 05E88409

11-09-07 08-18-11 DUP ISS: CLS C EN:
RSTR:0 NONE

07-25-07 08-18-11 DUP ISS: CLS C EN:
RSTR:0 NONE

09-08-06 08-18-11 REN ISS: CLS C EN:
RSTR:0 NONE

06-18-04 08-18-06 DUP ISS: CLS C EN:
RSTR:0 NONE

**** CONTINUE ON TO PAGE 5 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin
Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

CUST ID 000026326053

DATE: 04-20-25

07-18-03	08-18-06	DUP ISS: CLS C	EN:
			RSTR:0 NONE
08-06-02	08-18-06	DUP ISS: CLS C	EN:
			RSTR:0 NONE
05-01-02	08-18-06	DUP ISS: CLS C	EN:
			RSTR:0 NONE
02-19-02	04-30-02	SUSP: FAILURE TO PAY FINE	
10-10-01	12-20-01	CONV: (635)FAIL TO PAY	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 01IF 005682	CITATION ID: 00946896
10-10-01	11-09-01	CONV: (313)SPEEDING (55 MPH IN A 50)	2
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 01IF 005682	CITATION ID: 00946896
08-17-01	08-18-06	REN ISS: CLS C	EN:
			RSTR:0 NONE
11-27-00	08-18-01	DUP ISS: CLS C	EN:
			RSTR:0 NONE
08-18-97	08-18-01	ORG ISS: CLS C	EN:
			RSTR:0 NONE
04-18-97	10-18-98	ORG ISS: CLS C	PRMT EN:
			RSTR:11 FLEET VEHICLES ONLY

ACCIDENTS NOTED ON THIS DOCUMENT SHALL NOT BE
CONSIDERED DETERMINATIVE OF FAULT OR NEGLIGENCE
ON THE PART OF THE INDIVIDUAL

**** CONTINUE ON TO PAGE 6 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

PAGE NO: 6
DATE: 04-20-25

CUST ID 000026326053

WITHDRAWALS
NO WITHDRAWAL DATA TO REPORT

CONVICTIONS
NO CONVICTION DATA TO REPORT

ACCIDENTS
NO ACCIDENT DATA TO REPORT

* * END OF DR * *

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

Commissioner of Motor Vehicles

during video first appearance in 25CR 262928-430, Δ apparently said the reason he spit on the detention officer was because he was really, really drunk.....
3/26/25

STATE: NC ZIP: 288069787 TOTAL POINTS: 0
DOB:01-25-93 HEIGHT: 6 FT. 01 IN. SEX: M EYES: BRO HAIR: BRO RACE: W
PRIMARY LICENSE NO: 000031941125
SECONDARY LICENSE NO: NON-RESIDENT MILITARY: N REAL ID: N
ORG. ISS.DT: 04-14-09 OS DL NO: OS STATE:

*** DRIVER LICENSE STATUS: CLS C SUSPENDED ***

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV	COND RESTR	STATUS
I		O	01-28-22	01-25-30	N	N	N	N	N	ID CARD

ENDORS:
CRD TRNS:0031653873

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV	COND RESTR	STATUS
C	3	D	03-15-10	01-25-14	N	N	N	N	N	SUSPENDED

ENDORS:
RSTR: 0 NONE
CRD TRNS:0001503434

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV	COND RESTR	STATUS
C	3	O	10-26-09	01-25-14	N	N	N	N	N	EXPIRED

ENDORS:
RSTR: 0 NONE

OCCUR/ BEG DATE	CONV/ END DATE	NATURE OF RECORD OR DIVISION ACTION	POINTS
		SCHBUS: NOT ELIG FOR SCHOOL BUS DRIVER CERTIFICATION	
03-18-25	INDEF	SUSP: 30 DAY CIVIL REVOCATION(SUSPENSION)	
03-18-25	03-18-25	CONV: (028)30 DAY CIVIL	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2025CR 260065 CITATION ID: Y0268543	
03-28-24	03-28-25	SUSP: 1 OFFENSE OF DRIVING WHILE IMPAIRED	
08-27-22	03-28-24	CONV: *(625)DRIVING WHILE IMPAIRED	

$100-

**** CONTINUE ON TO PAGE 2 ****

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Signed Wayne Goodwin

Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

CUST ID 000031941125

DATE: 03-20-25

		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2022CR 280133 CITATION ID: MAGISORD
03-28-24	03-28-25	SUSP: 1ST MOVING VIOLATION WHILE LICENSE SUSPENDED
08-27-22	03-28-24	CONV: *(625)DRIVING WHILE IMPAIRED
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2022CR 280133 CITATION ID: MAGISORD
09-28-15	INDEF	SUSP: FAILURE TO PAY FINE
09-28-15	INDEF	SUSP: FAILURE TO PAY FINE
10-01-14	07-29-15	CONV: (635)FAIL TO PAY
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2014CR 704304 CITATION ID: 0974F559
09-28-15	INDEF	SUSP: FAILURE TO PAY FINE
12-11-14	07-29-15	CONV: (635)FAIL TO PAY
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2014CR 001476 CITATION ID: C3284682
06-30-15	PERM	SUSP: 3 OFFENSES OF DRIVING WHILE LICENSE SUSPENDED
10-01-14	06-30-15	CONV: (606)DRIVING WHILE LICENSE REVOKED
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2014CR 704304 CITATION ID: 0974F559
01-20-12	08-09-12	CONV: (606)DRIVING WHILE LICENSE REVOKED
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2012CR 700243 CITATION ID: 0164915E
04-29-13	10-15-13	CONV: (606)DRIVING WHILE LICENSE REVOKED
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2013CR 701622 CITATION ID: 07F56823
06-30-15	PERM	SUSP: 3 OFFENSES OF DRIVING WHILE LICENSE SUSPENDED
12-11-14	06-30-15	CONV: (606)DRIVING WHILE LICENSE REVOKED
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2014CR 001476 CITATION ID: C3284682
01-20-12	08-09-12	CONV: (606)DRIVING WHILE LICENSE REVOKED
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2012CR 700243 CITATION ID: 0164915E
04-29-13	10-15-13	CONV: (606)DRIVING WHILE LICENSE REVOKED
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2013CR 701622 CITATION ID: 07F56823
04-11-15	06-30-15	SUSP: FAILURE TO APPEAR

**** CONTINUE ON TO PAGE 3 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

CUST ID 000031941125
DATE: 03-20-25

11-26-14	02-09-15	CONV: (634)FAIL TO APPEAR
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2014CR 705116 CITATION ID: 09F72469
04-11-15	06-30-15	SUSP: FAILURE TO APPEAR
11-26-14	02-09-15	CONV: (634)FAIL TO APPEAR
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2014CR 705116 CITATION ID: 09F72469
10-15-13	10-15-15	SUSP: 2 OFFENSES OF DRIVING WHILE LICENSE SUSPENDED
04-29-13	10-15-13	CONV: (606)DRIVING WHILE LICENSE REVOKED
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2013CR 701622 CITATION ID: 07F56823
01-20-12	08-09-12	CONV: (606)DRIVING WHILE LICENSE REVOKED
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2012CR 700243 CITATION ID: 0164915E
08-09-12	08-09-13	SUSP: 1 OFFENSE OF DRIVING WHILE LICENSE SUSPENDED
01-20-12	08-09-12	CONV: (606)DRIVING WHILE LICENSE REVOKED
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2012CR 700243 CITATION ID: 0164915E
07-13-12	INDEF	SUSP: FAILURE TO PAY FINE
04-02-11	05-11-12	CONV: (635)FAIL TO PAY
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2011CR 701422 CITATION ID: 083389E5
07-03-12	07-03-13	SUSP: OUT-OF-STATE CONVICTION
04-04-12	07-03-12	CONV: (B20)RDLSI DRIVE WHILE LIC WITHDRAWN
		COURT: TOWNS CO. PROBATE COURT
		COURT: AOC #: 000001019 CITATION ID: 405121
03-09-12	01-25-20	ORG ISS: ID EN:
11-11-11	04-13-12	SUSP: FAILURE TO APPEAR
04-02-11	09-09-11	CONV: (634)FAIL TO APPEAR
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2011CR 701423 CITATION ID: 083389E6
11-11-11	04-13-12	SUSP: FAILURE TO APPEAR
04-02-11	09-09-11	CONV: (634)FAIL TO APPEAR
		COURT: HAYWOOD COUNTY COURT

**** CONTINUE ON TO PAGE 4 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

PAGE NO: 4
CUST ID 000031941125 DATE: 03-20-25

		COURT: AOC #: 2011CR 701423	CITATION ID: 083389E6
11-11-11	04-13-12	SUSP: FAILURE TO APPEAR	
04-02-11	09-09-11	CONV: (634)FAIL TO APPEAR	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2011CR 701422	CITATION ID: 083389E5
11-11-11	04-13-12	SUSP: FAILURE TO APPEAR	
04-02-11	09-09-11	CONV: (634)FAIL TO APPEAR	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2011CR 701422	CITATION ID: 083389E5
10-03-11	INDEF	SUSP: FAILURE TO PAY FINE	
08-28-10	07-29-11	CONV: (635)FAIL TO PAY	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2010CR 002102	CITATION ID: 05017746
10-03-11	INDEF	SUSP: FAILURE TO PAY FINE	
08-28-10	07-29-11	CONV: (635)FAIL TO PAY	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2010CR 002108	CITATION ID: 05017745
07-10-11	INDEF	SUSP: CONSUMING ALCOHOL/DRUGS WHILE LESS THAN 21	
08-28-10	06-28-11	CONV: (630)CONSUME ALCOHOL/DRUGS <21	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2010CR 002108	CITATION ID: 05017745
04-02-11	04-13-12	CONV: (313)SPEEDING (54 MPH IN A 45)	2
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2011CR 701422	CITATION ID: 083389E5
08-28-10	06-28-11	CONV: (307)NO LIABILITY INSURANCE	3
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2010CR 002102	CITATION ID: 05017746
08-28-10		ACDNT: HAYWOOD COUNTY, NC	PERS INJ
		ACDNT: CASE ID:102949213	
03-15-10	01-25-14	DUP ISS: CLS C LEV3 EN:	
		RSTR:0 NONE	
03-05-10	03-15-10	SUSP: DROPOUT PREVENTION SUSPENSION	

**** CONTINUE ON TO PAGE 5 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

CUST ID 000031941125

DATE: 03-20-25

10-26-09 01-25-14 ORG ISS: CLS C LEV3 EN:
RSTR:0 NONE

09-06-09 01-11-10 CONV: (202)IMPROPER EQUIPMENT - SPEEDOMETER
COURT: HAYWOOD COUNTY COURT
COURT: AOC #: 2009CR 002036 CITATION ID: C9316797

04-14-09 01-25-11 ORG ISS: CLS C LEV2 EN:
RSTR:17 GRAD LIC LEVEL 2 RESTRICTION

04-14-08 01-25-11 ORG ISS: CLS C LEV1 EN:
RSTR:16 10-14-2008

ACCIDENTS NOTED ON THIS DOCUMENT SHALL NOT BE
CONSIDERED DETERMINATIVE OF FAULT OR NEGLIGENCE
ON THE PART OF THE INDIVIDUAL

**** CONTINUE ON TO PAGE 6 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

Commissioner of Motor Vehicles

Best thing about this record he is only INDEFINITELY SUSPENDED

A DIVISION OF MOTOR VEHICLES
I/DRIVING RECORD

PAGE NO: 1
DATE: 12-30-24

.ATE: NC ZIP: 287164188 TOTAL POINTS: 10
DOB:11-30-95 HEIGHT: 6 FT. 01 IN. SEX: M EYES: BRO HAIR: BRO RACE: W
PRIMARY LICENSE NO: 000034
SECONDARY LICENSE NO: NON-RESIDENT MILITARY: N REAL ID: N
ORG. ISS.DT: 04-03-12 OS DL NO: OS STATE:

*** DRIVER LICENSE STATUS: CLS C SUSPENDED ***

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV	COND RESTR	STATUS
	I	D	01-18-23	11-30-30	N	N	N	N	N	ID CARD

ENDORS:
CRD TRNS:0034061980

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV	COND RESTR	STATUS
C		D	10-06-20	11-30-24	N	N	N	N	N	SUSPENDED

ENDORS:
RSTR: 0 NONE
CRD TRNS:0028372222

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV	COND RESTR	STATUS
C		O	12-01-16	11-30-24	N	N	N	N	N	EXPIRED

ENDORS:
RSTR: 0 NONE

OCCUR/ BEG DATE	CONV/ END DATE	NATURE OF RECORD OR DIVISION ACTION	POINTS
		SCHBUS: NOT ELIG FOR SCHOOL BUS DRIVER CERTIFICATION	
03-11-24	08-30-24	CONV: (663)DRV WHILE LIC REVOKED-NO ACTION	2
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2024CR 700797 CITATION ID: 010J1213	
12-20-22	07-06-23	SUSP: FAILURE TO APPEAR	
05-25-22	10-20-22	CONV: (634)FAIL TO APPEAR	
		COURT: HAYWOOD COUNTY COURT	

**** CONTINUE ON TO PAGE 2 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

DRIVER ID 000036 DATE: 12-30-24

	COURT: AOC #: 2022CR 701773	CITATION ID: 0J736292
12-20-22 07-06-23	SUSP: FAILURE TO APPEAR	
05-25-22 10-20-22	CONV: (634)FAIL TO APPEAR	
	COURT: HAYWOOD COUNTY COURT	
	COURT: AOC #: 2022CR 701773	CITATION ID: 0J736292
12-20-22 07-06-23	SUSP: FAILURE TO APPEAR	
05-25-22 10-20-22	CONV: (634)FAIL TO APPEAR	
	COURT: HAYWOOD COUNTY COURT	
	COURT: AOC #: 2022CR 701773	CITATION ID: 0J736292
12-20-22 07-06-23	SUSP: FAILURE TO APPEAR	
05-25-22 10-20-22	CONV: (634)FAIL TO APPEAR	
	COURT: HAYWOOD COUNTY COURT	
	COURT: AOC #: 2022CR 701773	CITATION ID: 0J736292
12-06-22 02-07-24	SUSP: FAILURE TO PAY FINE	
06-21-22 10-06-22	CONV: (635)FAIL TO PAY	
	COURT: MADISON COUNTY COURT	
	COURT: AOC #: 2022CR 000045	CITATION ID: C4161960
12-02-22 07-06-23	SUSP: FAILURE TO APPEAR	
03-08-22 09-30-22	CONV: (634)FAIL TO APPEAR	
	COURT: HAYWOOD COUNTY COURT	
	COURT: AOC #: 2022CR 700796	CITATION ID: 0J353995
12-02-22 07-06-23	SUSP: FAILURE TO APPEAR	
03-08-22 09-30-22	CONV: (634)FAIL TO APPEAR	
	COURT: HAYWOOD COUNTY COURT	
	COURT: AOC #: 2022CR 700796	CITATION ID: 0J353995
11-07-22 11-30-30	ORG ISS: ID EN:	
11-05-22 07-06-23	SUSP: FAILURE TO APPEAR	
06-14-22 09-02-22	CONV: (634)FAIL TO APPEAR	
	COURT: HAYWOOD COUNTY COURT	
	COURT: AOC #: 2022CR 702069	CITATION ID: 0J938173
11-05-22 07-06-23	SUSP: FAILURE TO APPEAR	
06-14-22 09-02-22	CONV: (634)FAIL TO APPEAR	
	COURT: HAYWOOD COUNTY COURT	

**** CONTINUE ON TO PAGE 3 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

DATE: 12-30-24

CUST ID 0000349

COURT: AOC #: 2022CR 702069 CITATION ID: 0J938173

11-05-22 07-06-23 SUSP: FAILURE TO APPEAR
06-14-22 09-02-22 CONV: (634)FAIL TO APPEAR
COURT: HAYWOOD COUNTY COURT
COURT: AOC #: 2022CR 702069 CITATION ID: 0J938173

11-05-22 07-06-23 SUSP: FAILURE TO APPEAR
06-14-22 09-02-22 CONV: (634)FAIL TO APPEAR
COURT: HAYWOOD COUNTY COURT
COURT: AOC #: 2022CR 702069 CITATION ID: 0J938173

08-30-22 02-07-24 SUSP: FAILURE TO PAY FINE
08-16-21 06-30-22 CONV: (635)FAIL TO PAY
COURT: MADISON COUNTY COURT
COURT: AOC #: 2021CR 702176 CITATION ID: 0303H031

06-21-22 08-02-22 CONV: (663)DRV WHILE LIC REVOKED-NO ACTION 2
COURT: MADISON COUNTY COURT
COURT: AOC #: 2022CR 000045 CITATION ID: C4161960

06-14-22 07-06-23 CONV: (663)DRV WHILE LIC REVOKED-NO ACTION 2
COURT: HAYWOOD COUNTY COURT
COURT: AOC #: 2022CR 702069 CITATION ID: 0J938173

05-25-22 07-06-23 CONV: (663)DRV WHILE LIC REVOKED-NO ACTION 2
COURT: HAYWOOD COUNTY COURT
COURT: AOC #: 2022CR 701773 CITATION ID: 0J736292

04-29-22 INDEF SUSP: FAILURE TO APPEAR
10-07-21 02-25-22 CONV: (634)FAIL TO APPEAR operating veh. no insurance
COURT: HAYWOOD COUNTY COURT
COURT: AOC #: 2021CR 703941 (1) CITATION ID: 0413H085 (2) →

04-29-22 INDEF SUSP: FAILURE TO APPEAR
06-19-21 02-25-22 CONV: (634)FAIL TO APPEAR no liability insurance
COURT: HAYWOOD COUNTY COURT
COURT: AOC #: 2021CR 702643 CITATION ID: 0J094102

04-29-22 INDEF SUSP: FAILURE TO APPEAR
10-07-21 02-25-22 CONV: (634)FAIL TO APPEAR
COURT: HAYWOOD COUNTY COURT
**** CONTINUE ON TO PAGE 4 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin
Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

CUST ID 00003496

DATE: 12-30-24

(2) canceled/revoked tag

COURT: AOC #: 2021CR 703941 CITATION ID: 0413H085

04-23-22	INDEF	SUSP: FAILURE TO APPEAR
11-14-21	02-21-22	CONV: (634)FAIL TO APPEAR
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2021CR 704386 (1) CITATION ID: 0394H599

canceled/revoked/tag

04-23-22	INDEF	SUSP: FAILURE TO APPEAR
11-14-21	02-21-22	CONV: (634)FAIL TO APPEAR
		COURT: HAYWOOD COUNTY COURT (2)
		COURT: AOC #: 2021CR 704386 CITATION ID: 0394H599

oper. no insurance

04-16-22	05-16-22	SUSP: FAILURE TO APPEAR
08-16-21	02-14-22	CONV: (634)FAIL TO APPEAR
		COURT: MADISON COUNTY COURT
		COURT: AOC #: 2021CR 702176 CITATION ID: 0303H031

04-16-22	05-16-22	SUSP: FAILURE TO APPEAR
08-16-21	02-14-22	CONV: (634)FAIL TO APPEAR
		COURT: MADISON COUNTY COURT
		COURT: AOC #: 2021CR 702176 CITATION ID: 0303H031

04-16-22	05-16-22	SUSP: FAILURE TO APPEAR
08-16-21	02-14-22	CONV: (634)FAIL TO APPEAR
		COURT: MADISON COUNTY COURT
		COURT: AOC #: 2021CR 702176 CITATION ID: 0303H031

03-08-22	07-06-23	CONV: (663)DRV WHILE LIC REVOKED-NO ACTION 2
		COURT: HAYWOOD COUNTY COURT
		COURT: AOC #: 2022CR 700796 CITATION ID: 0J353995

03-06-22	INDEF	SUSP: FAILURE TO DEPOSIT SECURITY
10-09-21		ACDNT: BUNCOMBE COUNTY, NC
		ACDNT: CASE ID:106775509

← did not exist on NC DPS public safety collission reports. May have been reported by local L.E.O.

10-31-21	11-10-22	CONV: (202)IMPROPER EQUIPMENT - SPEEDOM
		COURT: BUNCOMBE COUNTY COURT
		COURT: AOC #: 2021CR 710977 CITATIO

08-16-21	05-16-22	CONV: (202)IMPROPER EQUIPMENT - SPEEDOM
		COURT: MADISON COUNTY COURT
		COURT: AOC #: 2021CR 702176 CITATIC

**** CONTINUE ON TO PAGE 5 ****

I certify that the foregoing is a true copy of the driving re on the file in the Driver License Section of the N.C. Divisio

Signed Wayne Goodwin

Commissioner of Motor Vehicles

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

JAMES H. TROGDON, III
SECRETARY

Date: _____, 20___

Crash Report No.: _____

ONE YEAR AFFIDAVIT TO CLEAR DRIVING PRIVILEGE

This is to certify that I was the owner and/or operator of the motor vehicle involved in the crash indicated above; that more than one year has elapsed from the date of suspension and that no suit or judgment for damages arising from that crash is now pending against me.

The suspension due to this crash will be withdrawn if I properly execute the affidavit below. A false affidavit or falsely sworn or affirmed statement constitutes perjury and may be punished by imprisonment for up to 10 years or a fine or both.

The affidavit is not valid if it is not signed before a Notary Public and does not bear the seal of the Notary.

Owner/Driver's Printed Name: _____

Owner/Driver's Signature: _____

Mailing Address: _____

_____

Driver License No.:_____

Subscribed and sworn to before me,

This ____ day of _____, 20____.

_____
Notary Public Signature and SEAL

Mailing Address:
NC DIVISION OF MOTOR VEHICLES
SAFETY RESPONSIBILITY UNIT
3108 MAIL SERVICE CENTER
RALEIGH, NC 27699

Telephone: (919) 861-3099
Fax: (919) 861-3091
Customer Service: 919-715-7000

Website: www.ncdot.gov

Location:
1100 NEW BERN AVENUE
RALEIGH, NC 27697

N.C. Dept. of Public Safety

Collision Reports

This report is NOT a certified crash report. You may request a certified crash report from the NC DMV.

Crashes investigated by the North Carolina State Highway Patrol since May 16, 2013, are available in this system. Reports will normally be entered into the system within 5 to 7 business days.

Search by

Report Number

Name

Driver's License No.

Vehicle Plate Number

DMV-349 Terms of Use

Become a State Highway Patrol Trooper



WEBSITE

For more information on applying click the button below.

WEBSITE

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

DATE: 12-30-24

CUST ID 00003496

would have been

10-06-20	11-30-24	DUP ISS: CLS C EN: RSTR:0 NONE	
01-20-20	04-30-20	SUSP: FAILURE TO APPEAR	
09-13-19	11-20-19	CONV: (634)FAIL TO APPEAR COURT: HAYWOOD COUNTY COURT COURT: AOC #: 2019IF 000039 CITATION ID: C4619051	
09-13-19	04-30-20	CONV: (239)EXCEED SAFE SPEED COURT: HAYWOOD COUNTY COURT COURT: AOC #: 2019IF 000039 CITATION ID: C4619051	2
03-02-19	06-04-19	CONV: (313)SPEEDING (54 MPH IN A 45) COURT: BUNCOMBE COUNTY COURT COURT: AOC #: 2019IF 701871 CITATION ID: 0867G077	2
12-06-18		ACDNT: BUNCOMBE COUNTY, NC ACDNT: CASE ID:105700956	
12-03-16	07-03-17	CONV: (313)SPEEDING (69 MPH IN A 60) COURT: BUNCOMBE COUNTY COURT COURT: AOC #: 2016CR 713712 CITATION ID: 0G235642	3
12-01-16	11-30-24	ORG ISS: CLS C EN: RSTR:0 NONE	
05-04-15	11-30-16	DUP ISS: CLS C LEV3 EN: RSTR:0 NONE	
03-01-14	05-11-14	CONV: (313)SPEEDING (70 MPH IN A 55) COURT: HAYWOOD COUNTY COURT COURT: AOC #: 2014IF 700947 CITATION ID: 0039F184	3
02-14-14	10-03-14	CONV: (313)SPEEDING (54 MPH IN A 45) COURT: HAYWOOD COUNTY COURT COURT: AOC #: 2014CR 700771 CITATION ID: 096F3527	2
02-22-13	06-28-13	CONV: (313)SPEEDING (69 MPH IN A 60) COURT: HAYWOOD COUNTY COURT COURT: AOC #: 2013IF 700723 CITATION ID: 05F50209	3

**** CONTINUE ON TO PAGE 6 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

CUST ID 0000349(
DATE: 12-30-24

10-03-12 11-30-16 ORG ISS: CLS C LEV3 EN:
RSTR:0 NONE

04-03-12 11-30-13 ORG ISS: CLS C LEV2 EN:
RSTR:17 GRAD LIC LEVEL 2 RESTRICTION

04-01-11 11-30-13 ORG ISS: CLS C LEV1 EN:
RSTR:16 10-01-2011

ACCIDENTS NOTED ON THIS DOCUMENT SHALL NOT BE
CONSIDERED DETERMINATIVE OF FAULT OR NEGLIGENCE
ON THE PART OF THE INDIVIDUAL

**** CONTINUE ON TO PAGE 7 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

Commissioner of Motor Vehicles

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

J. ERIC BOYETTE
SECRETARY

I certify that the attached document is a true copy of the driver's data on file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed: Wayne Goodwin

COMMISSIONER N.C. DIVISION OF MOTOR VEHICLES

NORTH CAROLINA – WAKE COUNTY

I certify that I am an employee of the North Carolina Division of Motor Vehicles, and that the original of the attached document was deposited by me in the United States mail on the mail date of the attached order in an envelope, postage paid, addressed as appears thereon, based on the address provided or otherwise indicated within the Order of the Court, by which this disclosure is made pursuant to federal and North Carolina law.

Signed: _____
Angela E. Carmichael

EMPLOYEE N.C. DIVISION OF MOTOR VEHICLES

This certification is not valid unless it bears the seal of the State of North Carolina.

Mailing Address:
NC DIVISION OF MOTOR VEHICLES
DRIVER LICENSE RECORDS UNIT
3113 MAIL SERVICE CENTER
RALEIGH, NC 27697-3113

Website: ncdot.gov/dmv

Location:
DMV HEADQUARTERS BUILDING
1515 NORTH CHURCH STREET
ROCKY MOUNT, NC 27804

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

CUST ID 0000349

DATE: 12-30-24

WITHDRAWALS
NO WITHDRAWAL DATA TO REPORT

CONVICTIONS
NO CONVICTION DATA TO REPORT

ACCIDENTS
NO ACCIDENT DATA TO REPORT

* * END OF DR * *

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD PAGE NO: 1
REPORT TYPE: CERTIFIED REPORT DATE: 04-06-25

NAME: FREEMAN AMANDA GAYLE
ADDRESS: 740 SAUNOOKE RD
CITY: WAYNESVILLE STATE: NC ZIP: 287868010 TOTAL POINTS: 0
DOB:04-08-80 HEIGHT: 5 FT. 06 IN. SEX: F EYES: BLU HAIR: BRO RACE: W
PRIMARY LICENSE NO: 000020120446
SECONDARY LICENSE NO: NON-RESIDENT MILITARY: N REAL ID: N
ORG. ISS.DT: 11-27-96 OS DL NO: OS STATE:

*** DRIVER LICENSE STATUS: CLS C SUSPENDED - PICK UP LICENSE ***

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV	COND RESTR	STATUS
C		D	12-15-23	04-08-26	N	N	N	N	N	SUSPENDED

ENDORS:
RSTR: 0 NONE
CRD TRNS:0036741793

OCCUR/ BEG DATE	CONV/ END DATE	NATURE OF RECORD OR DIVISION ACTION	POINTS
		SCHBUS: NOT ELIG FOR SCHOOL BUS DRIVER CERTIFICATION	
04-02-25	INDEF	SUSP: 30 DAY CIVIL REVOCATION(SUSPENSION)	
04-02-25	04-02-25	CONV: (028)30 DAY CIVIL ★ $100	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2025CR 273612 CITATION ID: MAGISORD	
01-30-25	01-30-26	SUSP: REFUSED CHEMICAL TEST	
12-11-24	12-11-24	CONV: (786)REFUSED CHEMICAL TEST	
		COURT: JACKSON COUNTY COURT	
		COURT: AOC #: 2024CR476636 CITATION ID: Y0256903	
12-11-24	INDEF	SUSP: 30 DAY CIVIL REVOCATION(SUSPENSION)	
12-11-24	12-11-24	CONV: (028)30 DAY CIVIL ★ $100	
		COURT: JACKSON COUNTY COURT	
		COURT: AOC #: 2024CR 476636 CITATION ID: MAGISORD	
07-06-23	04-08-26	DUP ISS: CLS C EN:	
		RSTR:0 NONE	
07-10-19	04-08-26	REN ISS: CLS C EN:	

**** CONTINUE ON TO PAGE 2 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin
Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

PAGE NO: 2
DATE: 04-06-25

CUST ID 000020120446

RSTR:20 BAC .04 AND IGNITION INTERLOCK

07-10-19		RSTR: 20 BAC . 04 EXP DT: 07-08-22 IG INT EXP DT: 07-08-20 LICENSE RESTRICTION ISSUED
09-19-17	10-03-18	SUSP: FAILURE TO PAY FINE
03-20-16	07-20-17	CONV: (635)FAIL TO PAY COURT: JACKSON COUNTY COURT COURT: AOC #: 2016CR 701176 CITATION ID: 0201893F
06-28-17	06-28-19	SUSP: 2ND DWLR AFT IMP DRIVE NTC HEAR ELIG
02-17-17	06-28-17	CONV: (673)DWLR AFT IMP DRIVE NTC HEAR ELG COURT: HAYWOOD COUNTY COURT COURT: AOC #: 2017CR 700709 CITATION ID: 0G387937
03-20-16	06-05-17	CONV: (673)DWLR AFT IMP DRIVE NTC HEAR ELG COURT: JACKSON COUNTY COURT COURT: AOC #: 2016CR 701176 CITATION ID: 0201893F
06-05-17	06-05-18	SUSP: 1ST DWLR AFT IMP DRIVE NTC HEAR ELIG
03-20-16	06-05-17	CONV: (673)DWLR AFT IMP DRIVE NTC HEAR ELG COURT: JACKSON COUNTY COURT COURT: AOC #: 2016CR 701176 CITATION ID: 0201893F
09-09-16	06-05-17	SUSP: FAILURE TO APPEAR
03-20-16	07-07-16	CONV: (634)FAIL TO APPEAR COURT: JACKSON COUNTY COURT COURT: AOC #: 2016CR 701176 CITATION ID: 0201893F
09-09-16	06-05-17	SUSP: FAILURE TO APPEAR
03-20-16	07-07-16	CONV: (634)FAIL TO APPEAR COURT: JACKSON COUNTY COURT COURT: AOC #: 2016CR 701176 CITATION ID: 0201893F
08-09-16	10-26-16	SUSP: FAILURE TO PAY FINE
08-12-15	06-09-16	CONV: (635)FAIL TO PAY COURT: HAYWOOD COUNTY COURT COURT: AOC #: 2015CR 052962 CITATION ID: C3284806
03-14-16	02-06-18	SUSP: 1 OFFENSE OF DRIVING WHILE IMPAIRED
08-12-15	03-14-16	CONV: (625)DRIVING WHILE IMPAIRED COURT: HAYWOOD COUNTY COURT COURT: AOC #: 2015CR 052962 CITATION ID: C3284806

**** CONTINUE ON TO PAGE 3 ****

year suspension

1 yr. suspension

LEVEL 5 *

which means 17CR700709 & 16CR701176 originally would have had * beside them

→ would have been a 1 year suspension, but SOS not received until

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles. 2-2-2018

Signed Wayne Goodwin

Commissioner of Motor Vehicles

```
DL787M1                    N.C. DRIVER LICENSE SYSTEM                    04/19/2025
                           ADJUDICATION MAINTENANCE                      12:41:40

CUSTOMER NO: 000020120446    NAME: FREEMAN AMANDA GAYLE
CONV CODE:  625     VIOLT TYPE: 1    DOB: 04/08/1980
CONV DESC:  DRIVING WHILE IMPAIRED
CITATION:   C3284806          CONV DT:  03 / 14 / 2016   CONV STATUS:      1
VIOLT DATE: 08 / 12 / 2015    COURT:    000010000018     PJC:
VIOLT TIME: 11 : 34           TRIAL DT: 03 / 14 / 2016   NO CONTEST:       0
FINE:           100.00        LMTD PRIV: N   II LDP:    COURT DECISION:   GU
COURT COST:     560.00        LP BEG DT:    /    /       ORIG CHARGE:      625
SPEED:      000 SPD LMT: 00   LP END DT:    /    /       RECD DT: 03/14/2016
POINTS:     000               LP OLD END DT:   /    /        BATCH NO: 0314100
BAC:        00 >15 Y/N: Y     DATE RECD SADLS: 03 / 14 / 2016   RE-ADJ ONLY: N
COMM VEH:   N  HAZ MAT: N     DATE PROCESSED : 03 / 14 / 2016
ACCID TYPE:                   AOC FILE NO:  2015CR 052962       LVL PUN:      5
COUNTY:     HAYWO 430 OFFNS ST: NC                ADD COURT ORD SUSP(Y,N):  N
SAA&TE REQ: N  SAA&TE COMP DT: 02 / 02 / 2018     90 - DAY FAIL: N
RDLIS CNVCT STAT:     ISS DT:    /    /          90 - DAY COMP:    /    /
DL47 CODE:  Y  PKUP IND:      PKUP OLD NOTC:      COMPLIANCE   :    /    /
DL47 DT: 03 / 14 / 2016  INST DT:    /    /         DEINST DT :    /    /

F1=HELP                  F3=MENU      F4=ASSOCIATE F5=COURT
          F8=FORWARD                                          F12=PREV
```

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

PAGE NO: 3
CUST ID 000020120446
DATE: 04-06-25

09-02-15	04-08-23	ORG ISS: ID	EN:
08-13-15	09-23-15	SUSP: 30 DAY CIVIL REVOCATION(SUSPENSION)	
08-12-15	08-13-15	CONV: (028)30 DAY CIVIL	
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 2015CR 052962	CITATION ID: C3284806
01-15-13	04-08-18	DUP ISS: CLS C	EN:
			RSTR:0 NONE
05-05-10	04-08-18	REN ISS: CLS C	EN:
			RSTR:0 NONE
03-27-06	04-08-10	DUP ISS: CLS C	EN:
			RSTR:0 NONE
11-09-05	04-08-10	REN ISS: CLS C	EN:
			RSTR:0 NONE
12-01-04	04-08-05	DUP ISS: CLS C	EN:
			RSTR:0 NONE
03-01-03	05-02-03	CONV: (313)SPEEDING (64 MPH IN A 55)	3
		COURT: HAYWOOD COUNTY COURT	
		COURT: AOC #: 03CR 000761	CITATION ID: 01371589
02-24-03	04-08-05	DUP ISS: CLS C	EN:
			RSTR:0 NONE
01-25-01	04-08-05	DUP ISS: CLS C	EN:
			RSTR:0 NONE
06-06-00	04-08-05	REN ISS: CLS C	EN:
			RSTR:0 NONE
11-27-96	04-08-00	ORG ISS: CLS C	EN:
			RSTR:0 NONE

**** CONTINUE ON TO PAGE 4 ****

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

Commissioner of Motor Vehicles

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
RDLSI/DRIVING RECORD

CUST ID 000020120446

DATE: 04-06-25

WITHDRAWALS
NO WITHDRAWAL DATA TO REPORT

CONVICTIONS
NO CONVICTION DATA TO REPORT

ACCIDENTS
NO ACCIDENT DATA TO REPORT

* * END OF DR * *

I certify that the foregoing is a true copy of the driving record of the within named person on the file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Wayne Goodwin

Commissioner of Motor Vehicles

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

J. ERIC BOYETTE
SECRETARY

I certify that the attached document is a true copy of the driver's data on file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed: Wayne Goodwin

COMMISSIONER N.C. DIVISION OF MOTOR VEHICLES

NORTH CAROLINA – WAKE COUNTY

I certify that I am an employee of the North Carolina Division of Motor Vehicles, and that the original of the attached document was deposited by me in the United States mail on the mail date of the attached order in an envelope, postage paid, addressed as appears thereon, based on the address provided or otherwise indicated within the Order of the Court, by which this disclosure is made pursuant to federal and North Carolina law.

Signed: _____
Angela E. Carmichael

EMPLOYEE N.C. DIVISION OF MOTOR VEHICLES

This certification is not valid unless it bears the seal of the State of North Carolina.

Mailing Address:
NC DIVISION OF MOTOR VEHICLES
DRIVER LICENSE RECORDS UNIT
3113 MAIL SERVICE CENTER
RALEIGH, NC 27697-3113

Website: ncdot.gov/dmv

Location:
DMV HEADQUARTERS BUILDING
1515 NORTH CHURCH STREET
ROCKY MOUNT, NC 27804

LDLSSUS00150

03/15/2016

[redacted]
740 SAUNOOKE RD
WAYNESVILLE NC 28786-8010

OFFICIAL NOTICE

CUSTOMER NO. 000020120446

YOUR NORTH CAROLINA DRIVING PRIVILEGE HAS BEEN SCHEDULED FOR SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-17(2) & 20-19(c1) FOR 1 OFFENSE OF DRIVING WHILE IMPAIRED.

EFFECTIVE DATE: 12:01 A.M., 03/14/2016
SCHEDULED SUSPENSION END DATE: 03/14/2017

REQUIREMENTS:

PRIOR TO THE EFFECTIVE DATE OF THIS ORDER, YOU MUST MAIL ALL NORTH CAROLINA DRIVER LICENSES IN YOUR POSSESSION TO THE DIVISION OF MOTOR VEHICLES. FAILURE TO SURRENDER YOUR DRIVER LICENSE MAY RESULT IN AN ADDITIONAL $50.00 SERVICE FEE. IT IS UNLAWFUL TO DRIVE DURING THE SUSPENSION PERIOD.

HEARING PROVISIONS:

A HEARING IS NOT AUTHORIZED BY STATUTE.

REINSTATEMENT PROCEDURES:

A RESTORATION FEE OF $130.00 AND THE APPROPRIATE LICENSE FEES ARE REQUIRED AND MUST BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

PRIOR TO REINSTATEMENT, THE NCDMV MUST RECEIVE AN APPROVED FORM 508 FROM NC DWI SERVICES AS PROOF OF COMPLETION OF THE REQUIRED SUBSTANCE ABUSE ASSESSMENT & RECOMMENDED EDUCATION/TREATMENT. YOU MAY OBTAIN A LIST OF PROVIDERS BY CALLING (919)733-0566 OR AT WWW.NCDWISERVICES.COM.

AT THE TIME OF ISSUANCE OF YOUR DRIVER LICENSE, YOU MUST PRESENT PROPER IDENTIFICATION AND PROOF OF AGE. IF YOU OWN OR OPERATE A MOTOR VEHICLE, YOU MUST PRESENT PROOF OF LIABILITY INSURANCE COVERAGE.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DIVISION OF MOTOR VEHICLES. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, YOU MAY CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

Jeffrey R. Zimmerman, M.P.A.
Director of Processing Services

Director of Processing Services

LDLSSUS00506

03/15/2016

[redacted]
740 SAUNOOKE RD
WAYNESVILLE NC 28786-8010

CUSTOMER NO. 000020120446

EFFECTIVE 7-1-2000, MOTOR VEHICLE LAW REQUIRES AN ALCOHOL CONCENTRATION RESTRICTION AND AN IGNITION INTERLOCK RESTRICTION ON A PERSON'S DRIVER LICENSE FOLLOWING REINSTATEMENT FOR CERTAIN SUSPENSIONS. WHEN YOUR PRIVILEGE TO DRIVE IS REINSTATED, YOU WILL BE PLACED UNDER THE FOLLOWING ALCOHOL CONCENTRATION RESTRICTION AND IGNITION INTERLOCK RESTRICTION:

ALCOHOL CONCENTRATION RESTRICTION:
(1) YOU MUST SUBMIT TO A CHEMICAL ANALYSIS AT THE REQUEST OF A LAW ENFORCEMENT OFFICER.

(2) YOU MUST AGREE TO BE TRANSPORTED TO A PLACE WHERE A CHEMICAL ANALYSIS MAY BE ADMINISTERED.

IGNITION INTERLOCK RESTRICTION:
(1) FOR OFFENSES THAT OCCURRED ON OR AFTER OCTOBER 1, 2013, YOU MUST PROVIDE PROOF OF INSTALLATION OF THE IGNITION INTERLOCK DEVICE ON ALL VEHICLES OWNED AND REGISTERED BY YOU.

(2) YOU MUST OPERATE ONLY A VEHICLE THAT IS EQUIPPED WITH A FUNCTIONING IGNITION INTERLOCK SYSTEM AND PERSONALLY ACTIVATE THE SYSTEM BEFORE DRIVING THE MOTOR VEHICLE.

(3) YOU WILL ONLY BE ALLOWED TO OBTAIN A CLASS C LICENSE FOR THE DURATION OF THE IGNITION INTERLOCK RESTRICTION. NO ENDORSEMENTS WILL BE ALLOWED.

YOU MUST NOT DRIVE A MOTOR VEHICLE WITH AN ALCOHOL CONCENTRATION EQUAL TO OR GREATER THAN.

BAC 0.04 FOR 3 YEARS.

YOU MUST HAVE AN IGNITION INTERLOCK RESTRICTION FOR

1 YEAR.

ANY VIOLATION OF THE ALCOHOL CONCENTRATION RESTRICTION OR IGNITION INTERLOCK RESTRICTION WILL RESULT IN SUSPENSION OF YOUR PRIVILEGE TO DRIVE.

IF YOU SHOULD HAVE QUESTIONS CONCERNING THESE RESTRICTIONS, YOU MAY CONTACT THE DIVISION AT (919) 715-7000.

Jeffrey R. Zimmerman, M.P.A.

LDLSSUS00300

06/10/2016

[redacted]N
740 SAUNOOKE RD
WAYNESVILLE NC 28786-8010

OFFICIAL NOTICE
CUSTOMER NO. 000020120446

WE REGRET TO INFORM YOU THAT EFFECTIVE 12:01 A.M., 08/09/2016, YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO PAY FINE AS FOLLOWS:

VIOLATION DATE: 2015-08-12 CITATION NUMBER: C3284806
COURT: HAYWOOD COUNTY COURT PHONE: (828)454-6501

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL $50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF $65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

JEFFREY R. ZIMMERMAN, Ph.D.
DIRECTOR OF PROCESSING SERVICES

LDLSSUS00300

07/11/2016

[redacted]
740 SAUNOOKE RD
WAYNESVILLE NC 28786-8010

OFFICIAL NOTICE
CUSTOMER NO. 000020120446

WE REGRET TO INFORM YOU THAT EFFECTIVE 12:01 A.M., 09/09/2016, YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO APPEAR AS FOLLOWS:

VIOLATION DATE: 2016-03-20 CITATION NUMBER: 0201893F
COURT: JACKSON COUNTY COURT PHONE: (828)631-6400

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL $50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF $65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

JEFFREY R. ZIMMERMAN, Ph.D.
DIRECTOR OF PROCESSING SERVICES

LDLSSUS00300

07/11/2016

[redacted]
740 SAUNOOKE RD
WAYNESVILLE NC 28786-8010

OFFICIAL NOTICE
CUSTOMER NO. 000020120446

WE REGRET TO INFORM YOU THAT EFFECTIVE 12:01 A.M., 09/09/2016, YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO APPEAR AS FOLLOWS:

VIOLATION DATE: 2016-03-20 CITATION NUMBER: 0201893F
COURT: JACKSON COUNTY COURT PHONE: (828)631-6400

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL $50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF $65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

JEFFREY R. ZIMMERMAN, Ph.D.
DIRECTOR OF PROCESSING SERVICES

LDLSSUS00122

[redacted]

[redacted] FREEMAN
740 SAUNOOKE RD
WAYNESVILLE NC 28786-8010

OFFICIAL NOTICE

CUSTOMER NO. 000020120446

YOUR NORTH CAROLINA DRIVING PRIVILEGE HAS BEEN SCHEDULED FOR SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-28(a1) FOR 1ST DWLR AFT IMP DRIVE NTC HEAR ELIG.

EFFECTIVE DATE: 12:01 A.M., 06/05/2017
SCHEDULED TERMINATION DATE: 06/05/2018

REQUIREMENTS: PRIOR TO THE EFFECTIVE DATE OF THIS ORDER, PLEASE MAIL ALL NORTH CAROLINA DRIVER LICENSES IN YOUR POSSESSION TO THE DMV. UNFORTUNATELY, FAILURE TO TURN IN YOUR DRIVER LICENSE MAY RESULT IN AN ADDITIONAL $50.00 SERVICE FEE. IT IS UNLAWFUL TO DRIVE DURING THE SUSPENSION PERIOD.

HEARING PROVISIONS: YOU MAY BE ELIGIBLE FOR A HEARING TO BE CONSIDERED FOR REINSTATEMENT OF YOUR DRIVING PRIVILEGE ON OR AFTER 09/03/2017. UPON YOUR REQUEST FOR A HEARING AT THAT TIME, YOU WILL BE FURTHER ADVISED.

REINSTATEMENT PROCEDURES:

THE DIVISION OF MOTOR VEHICLES HAS TO RECEIVE NOTIFICATION FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES THAT YOU HAVE COMPLETED THE SUBSTANCE ABUSE ASSESSMENT AND TREATMENT OR EDUCATION.

A RESTORATION FEE OF $65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED. AT THE TIME OF ISSUANCE OF YOUR DRIVER LICENSE, PLEASE PRESENT PROPER IDENTIFICATION AND PROOF OF AGE. IF YOU OWN OR OPERATE A MOTOR VEHICLE, PLEASE PRESENT PROOF OF LIABILITY INSURANCE COVERAGE.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DIVISION OF MOTOR VEHICLES. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, YOU MAY CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

DIRECTOR OF PROCESSING SERVICES

LDLSSUS00501

2017-02-27

[redacted]
740 SAUNOOKE RD
WAYNESVILLE NC 28786-8010

OFFICIAL NOTICE
CUSTOMER NO. 000020120446

WE REGRET TO INFORM YOU THAT YOUR DRIVING PRIVILEGE IS SUSPENDED FOR AN ALCOHOL RELATED SUSPENSION. IN ACCORDANCCE WITH GS 20-17.6, THIS SUSPENSION IS SCHEDULED TO BE INDEFINITELY EXTENDED EFFECTIVE 12:01 A.M. 03/14/2017, BECAUSE THE DMV HAS NOT RECEIVED AN APPROVED FORM 508 FROM NC DWI SERVICES (NC DEPARTMENT OF HEALTH AND HUMAN SERVICES) AS PROOF OF COMPLETION OF THE REQUIRED SUBSTANCE ABUSE ASSESSMENT AND REQUIRED EDUCATION OR TREATMENT.

IF YOU HAVE NOT COMPLETED BOTH THE ASSESSMENT AND THE REQUIRED EDUCATION OR TREATMENT, PLEASE CONTACT NC DWI SERVICES AT (919) 733-0566 OR AT WWW.NCDWISERVICES.COM TO LOCATE AN AUTHORIZED PROVIDER IN YOUR AREA.

HEARING PROCEDURES:
A HEARING IS NOT AUTHORIZED BY STATUTE.

REINSTATEMENT PROCEDURES:
IF YOU OWN OR OPERATE A MOTOR VEHICLE PLEASE PRESENT PROOF OF LIABILITY INSURANCE COVERAGE.

PRIOR TO REINSTATEMENT, THE NCDMV HAS TO RECEIVE AN APPROVED FORM 508 FROM NC DWI SERVICES AS PROOF OF COMPLETION OF THE REQUIRED SUBSTANCE ABUSE ASSESSMENT & RECOMMENDED EDUCATION/TREATMENT. YOU MAY OBTAIN A LIST OF PROVIDERS BY CALLING (919)733-0566 OR AT WWW.NCDWISERVICES.COM.

IF FEES ARE OWED THEY HAVE TO BE PAID PRIOR TO YOUR DRIVING PRIVILEGE BEING REINSTATED, PROVIDED THERE ARE NO ADDITIONAL SUSPENSIONS IN EFFECT AT THAT TIME.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

DIRECTOR OF PROCESSING SERVICES

LDLSSUS00122

06/29/2017

[redacted]
740 SAUNOOKE RD
WAYNESVILLE NC 28786-8010

OFFICIAL NOTICE

CUSTOMER NO. 000020120446

YOUR NORTH CAROLINA DRIVING PRIVILEGE HAS BEEN SCHEDULED FOR SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-28(a1) FOR 2ND DWLR AFT IMP DRIVE NTC HEAR ELIG.

EFFECTIVE DATE: 12:01 A.M., 06/28/2017
SCHEDULED TERMINATION DATE: 06/28/2019

REQUIREMENTS: PRIOR TO THE EFFECTIVE DATE OF THIS ORDER, PLEASE MAIL ALL NORTH CAROLINA DRIVER LICENSES IN YOUR POSSESSION TO THE DMV. UNFORTUNATELY, FAILURE TO TURN IN YOUR DRIVER LICENSE MAY RESULT IN AN ADDITIONAL $50.00 SERVICE FEE. IT IS UNLAWFUL TO DRIVE DURING THE SUSPENSION PERIOD.

HEARING PROVISIONS: YOU MAY BE ELIGIBLE FOR A HEARING TO BE CONSIDERED FOR REINSTATEMENT OF YOUR DRIVING PRIVILEGE ON OR AFTER 06/28/2018. UPON YOUR REQUEST FOR A HEARING AT THAT TIME, YOU WILL BE FURTHER ADVISED.

REINSTATEMENT PROCEDURES:

THE DIVISION OF MOTOR VEHICLES HAS TO RECEIVE NOTIFICATION FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES THAT YOU HAVE COMPLETED THE SUBSTANCE ABUSE ASSESSMENT AND TREATMENT OR EDUCATION.

A RESTORATION FEE OF $65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED. AT THE TIME OF ISSUANCE OF YOUR DRIVER LICENSE, PLEASE PRESENT PROPER IDENTIFICATION AND PROOF OF AGE. IF YOU OWN OR OPERATE A MOTOR VEHICLE, PLEASE PRESENT PROOF OF LIABILITY INSURANCE COVERAGE.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DIVISION OF MOTOR VEHICLES. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, YOU MAY CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

DIRECTOR OF PROCESSING SERVICES

LDLSSUS00300

07/21/2017

[redacted] FREEMAN
740 SAUNOOKE RD
WAYNESVILLE NC 28786-8010

OFFICIAL NOTICE
CUSTOMER NO. 000020120446

WE REGRET TO INFORM YOU THAT EFFECTIVE 12:01 A.M., 09/19/2017, YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO PAY FINE AS FOLLOWS:

VIOLATION DATE: 2016-03-20 CITATION NUMBER: 0201893F
COURT: JACKSON COUNTY COURT PHONE: (828)631-6400

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL $50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF $65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

DIRECTOR OF PROCESSING SERVICES

LDLSSUS00300

08/23/2017

[redacted]
740 SAUNOOKE RD
WAYNESVILLE NC 28786-8010

OFFICIAL NOTICE
CUSTOMER NO. 000020120446

WE REGRET TO INFORM YOU THAT EFFECTIVE 12:01 A.M., 10/22/2017, YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO PAY FINE AS FOLLOWS:

VIOLATION DATE: 2017-02-17 CITATION NUMBER: 0G387937
COURT: HAYWOOD COUNTY COURT PHONE: (828)454-6501

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL $50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF $65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

DIRECTOR OF PROCESSING SERVICES

LDLSSUS00130

12/31/2024

[redacted]
740 SAUNOOKE RD
WAYNESVILLE NC 28786-8010

CUSTOMER NO. 000020120446

YOUR NORTH CAROLINA DRIVING PRIVILEGE HAS BEEN SCHEDULED FOR SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-16.2 FOR REFUSED CHEMICAL TEST.

EFFECTIVE DATE: 12:01 A.M., 01/30/2025
SCHEDULED SUSPENSION END DATE: 01/30/2026

REQUIREMENTS: PRIOR TO THE EFFECTIVE DATE OF THIS ORDER, PLEASE MAIL ALL OF YOUR NORTH CAROLINA DRIVER LICENSES TO THE DMV. FAILURE TO TURN IN YOUR DRIVER LICENSE MAY RESULT IN AN ADDITIONAL $50.00 SERVICE FEE. IT IS UNLAWFUL TO DRIVE DURING THE SUSPENSION PERIOD.

HEARING PROVISIONS: A PRELIMINARY HEARING IS ALLOWED, PROVIDED YOUR REQUEST IS IN WRITING, ACCOMPANIED BY THE REQUIRED HEARING FEE OF $450.00 AND POSTMARKED PRIOR TO THE EFFECTIVE DATE OF THIS ORDER.

IF YOU BELIEVE YOU ARE UNABLE TO AFFORD THE ADMINISTRATIVE HEARING, YOU MAY COMPLETE AND SUBMIT AN AFFIDAVIT FOR WAIVER TO BE CONSIDERED FOR A WAIVER OF THE HEARING FEE. THE WAIVER MUST BE SUBMITTED WITH YOUR REQUEST FOR A HEARING.

HEARING REQUEST FEES, PAYMENT OPTIONS AND FORMS CAN BE FOUND AT : HTTPS://WWW.NCDOT.GOV/DMV/OFFICES-SERVICES/ADMINISTRATIVE-HEARINGS. PLEASE SEE 19A NCAC 03K.0101 FOR FURTHER INFORMATION

IF YOUR PRIVILEGE IS NOT OTHERWISE SUSPENDED, YOU MAY RETAIN YOUR DRIVER LICENSE PENDING THE OUTCOME OF THE PRELIMINARY HEARING.

REINSTATEMENT PROCEDURES: A RESTORATION FEE OF $83.50 AND THE APPROPRIATE LICENSE FEES ARE REQUIRED.

YOU WILL ALSO NEED TO PRESENT PROPER IDENTIFICATION AND PROOF OF AGE. IF YOU OWN OR OPERATE A MOTOR VEHICLE, PLEASE PRESENT PROOF OF LIABILITY INSURANCE COVERAGE.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DIVISION OF MOTOR VEHICLES. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, YOU MAY CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

DIRECTOR OF CUSTOMER COMPLIANCE SERVICES

Limited Driving Privileges

I cannot stress enough the need to select the correct privilege.

Lawyers routinely do not use the correct privilege for their clients, and the drivers do not get the proper credit with DMV.

For example, client is convicted of Level IV DWI, first offense, and had a BAC of .21. Therefore Ignition Interlock Device (IID) is required. Lawyer tells client he has to have IID installed before he can petition for a LDP. Client has IID installed. Lawyer presents to the Court LDP AOC-CR-312, instead of AOC-CR-340.

312 allowed the Client to legally drive for a year, but he receives ZERO (0) credit for the IID because the wrong form was used. Client then becomes majorly pissed when he spent roughly $700 to $1,400 for a year of IID that he received no credit for and has to spend that same money again to be in compliance.

Additionally, hammer home to the client that the LDP is valid at-most for a year, and ONLY until the DWI suspension ends.

Scenario (1): Lawyer uses correct LDP on day of conviction of DWI. That privilege lasts one year (assuming 1 year DWI suspension). Client needs to be relicensed at DMV one year after the DWI.

Scenario (2): Lawyer uses correct LDP 3 months after DWI conviction for whatever reason; client just found money for a car / Client just was then able to afford LDP; etc. **That LDP is ONLY valid for 9 months - not 12.**

Please highlight this language on the privilege in the lower left hand corner:

NOTE TO APPLICANT: This privilege is no longer valid after the revocation period for the offense of which you were convicted has ended, or if your drivers license remains revoked solely because the Division of Motor Vehicles has not obtained a certificate of your completion of a substance abuse treatment program or an alcohol and drug education traffic school.

Remind client to be at the DMV on the morning of their end-date of court conviction to reapply for their license - and obviously to already have completed their Substance Abuse Assessment and Treatment which can **ONLY** be done by a provider on this list to receive credit: https://dmhdsohf.ncdhhs.gov/PROVIDERLIST/

I personally recommend A Fresh Start, which can be found in the Orange County block. I have used them for 15 years with no complaints and all 508 treatments can be done virtually from start to finish.

A Fresh Start is also on the small list of approved providers for DWI Restoration Hearings with NC DMV. Highly recommended. (919) 260-0629

Types of limited driving privileges - depending on the circumstance, some are criminal and some are civil (with higher filing fees)

AMONG THE MOST FREQUENTLY ASKED MOTOR VEHICLE LAW QUESTIONS IS WHETHER A PERSON CONVICTED OF IMPAIRED DRIVING FOR AN OFFENSE THAT OCCURRED WHEN THE PERSON WAS LESS THAN 21 YEARS OLD IS ELIGIBLE FOR A LIMITED DRIVING PRIVILEGE. THE ANSWER IS NO. THE REASON? NO STATUTE CONFERS AUTHORITY FOR THE GRANTING OF A LIMITED DRIVING PRIVILEGE FOR SUCH A PERSON. WITHOUT SUCH AUTHORITY, THE PRIVILEGE IS INVALID. G.S. 20-179.3(K).

HOWEVER, WHILE A PERSON WHOSE LICENSE IS REVOKED *SOLELY* FOR CONVICTION OF DRIVING BY A PERSON UNDER 21 AFTER CONSUMING ALCOHOL OR DRUGS IN VIOLATION OF G.S. 138.3 IS ELIGIBLE FOR A LIMITED DRIVING PRIVILEGE IF THE PERSON IS 18, 19, OR 20 YEARS OLD ON THE DATE OF THE OFFENSE.

"NO PRIVILEGE FOR YOU" BY SOG PROFESSOR SHAE DENNING
HTTPS://NCCRIMINALLAW.SOG.UNC.EDU/NO-PRIVILEGE-FOR-YOU/

AOC-CR-306

Limited Driving Privilege - Speeding, Reckless Driving, Aggressive Driving, Larceny Of Motor Fuel, Felony Speeding To Elude, Unsafe Movement, Failure To Move Over, Or Passing Stopped School Bus - In-State Convictions

AOC-CR-312
Limited Driving Privilege Impaired Driving Or Open Container Or Underage Alcohol Violation (N.C. Convictions Only)

AOC-CR-313A
Limited Driving Privilege Willful Refusal

AOC-CR-313B - very important one when there is both IID requirement, but was a

refusal. Pay attention to those scenarios
Interlock Limited Driving Privilege Willful Refusal

AOC-CR-317
Forfeiture Of Drivers License Failure To Complete Community Service; Forfeiture Of Licensing Privileges Felony Probation Revocation

AOC-CR-318
Limited Driving Privilege Felony Conviction

AOC-CR-340
Interlock Limited Driving Privilege Impaired Driving Or Open Container Or Underage Alcohol Violation (N.C. Convictions Only)

AOC-CR-341
Order To Surrender License Or Limited Driving Privilege

AOC-CR-345 - this is a great LDP if you have a client solely revoked because of unpaid court costs
Application And Order For Limited Driving Privilege - Failure To Comply Revocation

AOC-CR-347 - NEW LDP for certain Level 2 convictions

Interlock Limited Driving Privilege Impaired Driving With Impaired Driving Conviction In Preceding Seven Years (N.C. Convictions Only)

- The person has not been convicted of more than one other offense involving impaired driving within the previous 7 years;
- At the time of the offense, the person held a valid driver's license or a license that had been expired for less than a year;
- At the time of the offense, the person did not have an alcohol concentration of 0.15 or more;
- Punishment Level 3, 4, or 5 was imposed, or Punishment Level 2 was imposed based solely on the grossly aggravating factor of a prior conviction under G.S. 20-179(c)(1);
- Since the offense, the person has not been convicted of an offense involving impaired driving or had an unresolved charge for such an offense; and
- The person has filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a driver's license.

A limited driving privilege issued under this new category of eligibility must

require an IID.

AOC-CV-350

Petition For Limited Driving Privilege - Speeding, Reckless Driving, Aggressive Driving, Or DWI - Out-Of-State Or Federal Convictions

AOC-CV-351

Limited Driving Privilege - Speeding, Reckless Driving, Or Aggressive Driving - Out-Of-State Or Federal Convictions

AOC-CV-352A

Limited Driving Privilege Impaired Driving (Out-Of-State Or Federal Convictions)

AOC-CV-352B

Interlock Limited Driving Privilege Impaired Driving (Out-Of-State Or Federal Convictions)

Pre-Trial Privileges for DWIs

AOC-CVR-9
Petition For Limited Driving Privilege Pretrial Revocation (Implied-Consent Offense)

AOC-CVR-10A
Limited Driving Privilege Pretrial Revocation (Implied-Consent Offense)

AOC-CVR-10B
Interlock Limited Driving Privilege Pretrial Revocation (Implied-Consent Offense)

AOC-CVR-11A
Limited Driving Privilege Indefinite Pretrial Revocation (Implied Consent Offense)

AOC-CVR-11B
Interlock Limited Driving Privilege Indefinite Pretrial Revocation (Implied Consent Offense)

AOC-CVR-11A, 11B, 10A, and 10B apply to licenses that have been revoked pursuant to a civil license revocation (CVR) rather than a conviction. Civil license revocations are revocations that occur once a person is charged with

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[1] https://nccriminallaw.sog.unc.edu/2024-changes-to-laws-governing-limited-driving-privileges-and-requiring-ignition-interlock

an implied-consent offense, given the implied consent procedures, and they either refuse, blow a .08, blow a .04 (commercial vehicle), or have any alcohol content and they are under 21. These revocations last either 30 days, 45 days, or indefinitely if the person has another pending offense where their license was revoked pursuant to these procedures (notably - regardless of whether they got their license back already).

To work through your hypothetical, say a person is charged with DWI and receives a CVR on January 1, 2025. They serve the 30 day revocation, and get their license back after paying the restoration fee on January 31, 2025. On February 15, 2025, their license expires. On February 28, 2025, they pick up another DWI and qualify again for a CVR. This is CVR would be indefinite, rather than limited to 30 or 45 days, because it lasts as long as DWI 1 and DWI 2 take to get to final disposition. In this case, Finding 2 would be satisfied by having a license that was expired for less than a year, and Finding 3 would be satisfied because they were not currently licensed to drive at the DWI 2 offense date.

Explanation courtesy of Assistant Professor of Public Law and Government:
Belal Elrahal, NC School of Government

DWLR Privilege

AOC-CV-353 - DWLR LDPs with NO DWI convictions. This is one of the best tools in your license restoration toolbox. The term of a limited driving privilege issued under this section is the shorter of one year or the length of time remaining in the revocation period imposed under G.S. 20-28(a) or G.S. 20-28.1. When the term of the limited driving privilege expires, the Division **MUST** reinstate the person's license if the person meets all of the conditions listed in this subsection.

Compare§ 20-20.1. Limited driving privilege for certain revocations to § 20-28.1. Conviction of moving offense committed while driving during period of suspension or revocation of license.

Using the privilege mandates DMV "MUST reinstate" the license after a year with no convictions, vs. § 20-28.1, which says "MAY reinstate."

Petition For Limited Driving Privilege Driving While License Revoked Or Committing Moving Offense While Driving During Period Of Revocation

AOC-CV-354

Limited Driving **Privilege** Driving While License Revoked Or Committing Moving Offense While Driving During Period Of Revocation

DWLR Limited Privilege explained in

§ 20-20.1. Limited driving privilege for certain revocations.

(a) Definitions. - The following definitions apply in this section:

(1) Limited driving privilege. - A judgment issued by a court authorizing a person with a revoked drivers license to drive under specified terms and conditions.

(2) Nonstandard working hours. - Anytime other than 6:00 A.M. until 8:00 P.M. on Monday through Friday.

(3) Standard working hours. - Anytime from 6:00 A.M. until 8:00 P.M. on Monday through Friday.

(4) Underlying offense. - The offense for which a person's drivers license was revoked when the person was charged under G.S. 20-28(a), driving with a revoked license, or under G.S. 20-28.1, committing a motor vehicle moving offense while driving with a revoked license.

(b) Eligibility. - A person is eligible to apply for a limited driving privilege under this section if all of the following conditions apply:

(1) The person's license is currently revoked under G.S. 20-28(a) or G.S. 20-28.1.

(2) The person has complied with the revocation for the period required in subsection (c) of this section immediately preceding the date the person files a petition for a limited driving privilege under this section.

(3) The person's underlying offense is not an offense involving impaired driving and, if the person's license is revoked under G.S. 20-28.1 for committing a motor vehicle moving offense while driving with a revoked license, the moving offense is not an offense involving impaired driving.

(4) The revocation period for the underlying offense has expired.

(5) The revocation under G.S. 20-28(a) or G.S. 20-28.1 is the only revocation in effect.

(6) The person is not eligible to receive a limited driving privilege under any other law.

(7) The person has not held a limited driving privilege issued under this section at anytime during the three years prior to the date the person files the current petition.

(8) The person has no pending charges for any motor vehicle offense in this or in any other state and has no unpaid motor vehicle fines or penalties in this or in any other state.

(9) The person's drivers license issued by another state has not been revoked by that state.

(10) G.S. 20-9(e) or G.S. 20-9(f) does not prohibit the Division from issuing the person a license.

(c) Compliance Period. - The following table sets out the period during which a person must comply with a revocation under G.S. 20-28(a) or G.S. 20-28.1 to be eligible for a limited driving privilege under this section:

Revocation Period	Compliance Period
1 Year	90 Days
2 Years	1 Year

Permanent 2 Years

(d) Petition. - A person may apply for a limited driving privilege under this section by filing a petition. A petition filed under this section is separate from the action that resulted in the initial revocation and is a civil action. A petition must be filed in district court in the county of the person's residence as reflected by the Division's records or, if the Division's records are inaccurate, in the county of the person's actual residence. A person must attach to a petition a copy of the person's motor vehicle record. A petition must include a sworn statement that the person filing the petition is eligible for a limited driving privilege under this section.

A court, for good cause shown, may issue a limited driving privilege to an eligible person in accordance with this section. The costs required under G.S. 7A-305(a) and G.S. 20-20.2 apply to a petition filed under this section. The clerk of court for the court that issues a limited driving privilege under this section must send a copy of the limited driving privilege to the Division.

(e) Scope of Privilege. - A limited driving privilege restricts the person to essential driving related to one or more of the purposes listed in this subsection. Any driving that is not related to the purposes authorized in this subsection is unlawful even though done at times and upon routes that may be authorized by the privilege. Except as otherwise provided, all driving must be for a purpose and done within the restrictions specified in the privilege.

The permissible purposes for a limited driving privilege are:

(1) Travel to and from the person's place of employment and in the course of employment.

(2) Travel necessary for maintenance of the person's household.

(3) Travel to provide emergency medical care for the person or for an immediate family member of the person who resides in the same household with the person. Driving related to emergency medical care is authorized at anytime and without restriction as to routes.

(f) Employment Driving in Standard Working Hours. - The court may authorize driving for employment-related purposes during standard working hours without specifying times and routes for the driving. If the person is required to drive for essential employment-related purposes only during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or for authorized household maintenance. The limited driving privilege must state the name and address of the person's employer and may, in the discretion of the court, include other information and restrictions applicable to employment-related driving.

(g) Employment Driving in Nonstandard Working Hours. - If a person is required to drive during nonstandard working hours for an essential employment-related purpose and the person provides documentation of that fact to the court, the court may authorize the person to drive for that purpose during those hours. If the person is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the person is employed by another, the limited driving privilege must state the name and address of the person's employer and may, in the discretion of the court, include other information and restrictions applicable to employment-related driving. If the court determines that it is necessary for the person to drive during nonstandard working hours for an employment-related purpose, the court may authorize the person to drive subject to these limitations:

(1) If the person is required to drive to and from a specific place of employment at regular times, the limited driving privilege must specify the general times and routes by which the person may drive to and from work and must restrict driving to those times and routes.

(2) If the person is required to drive to and from work at a specific place but is unable to specify the times during which the driving will occur, the limited driving privilege must specify the general routes by which the person may drive to and from work and must restrict driving to those general routes.

(3) If the person is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries within which the person may drive and must restrict driving to those times and boundaries.

(4) If the person can specify neither the times nor places in which the person will be driving to and from work, the limited driving privilege must specify the geographic boundaries within which the person may drive and must restrict driving to those boundaries.

(h) Household Maintenance. - A limited driving privilege may allow driving for maintenance of the household only during standard working hours. The court, at its discretion, may impose additional restrictions on driving for the maintenance of the household.

(i) Restrictions. - A limited driving privilege that is not authorized by this section or that does not contain the restrictions required by law is invalid. A limited driving privilege issued under this section is subject to the following conditions:

(1) Financial responsibility. - A person applying for a limited driving privilege under this section must provide the court proof of financial responsibility acceptable under G.S. 20-16.1(g) and must maintain the financial responsibility during the period of the limited driving privilege.

(2) Alcohol restrictions. - A person who received a limited driving privilege under this section may not consume alcohol while driving or drive at anytime while the person has remaining in the person's body any alcohol or controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts.

(3) Others. - The court may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(j) Term and Reinstatement. - The term of a limited driving privilege issued under this section is the shorter of one year or the length of time remaining in the revocation period imposed under G.S. 20-28(a) or G.S. 20-28.1. **When the term of the limited driving privilege expires, the Division *must* reinstate the person's license if the person meets all of the conditions listed in this subsection.** The Division may impose restrictions or conditions on the new license in accordance with G.S. 20-7(e). The conditions are:

(1) Payment of the restoration fee as required under G.S. 20-7(i1).

(2) Providing proof of financial responsibility as required under G.S. 20-7(c1).

(3) Providing the proof required for reinstatement of a license under G.S. 20-28(c1).

(k) Modification. - A court may modify or revoke a person's limited driving privilege issued under this section upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke the privilege. The judge must indicate in the order of modification or revocation the reasons for the order or make specific findings indicating the reason for the order and enter those findings in the record of the case. When a court issues an order of modification or revocation, the clerk of court must send a copy of the order to the Division.

(l) Effect of Violation. - A violation of a limited driving privilege issued under this section constitutes the offense of driving while license revoked under G.S. 20-28. When a person is charged with operating a motor vehicle in violation of the limited driving privilege, the limited driving privilege is suspended pending the final disposition of the charge. (2007-293, s. 1; 2007-323, s. 30.11(d); 2007-345, s. 9.1(c); 2008-118, s. 2.9(b).)

DWI Specific

§ 20-179.3. Limited driving privilege.

(a) Definition of Limited Driving Privilege. - A limited driving privilege is a judgment issued in the discretion of a court for good cause shown authorizing a person with a revoked driver's license to drive for essential purposes related to any of the following:

(1) The person's employment.
(2) The maintenance of the person's household.
(3) The person's education.
(4) The person's court-ordered treatment or assessment.
(5) Community service ordered as a condition of the person's probation.
(6) Emergency medical care.
(7) Religious worship.

(b) Eligibility. -

(1) Except as otherwise provided in subdivision (3) of this subsection, a person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if all of the following requirements are met:
   a. At the time of the offense the person held either a valid driver's license or a license that had been expired for less than one year.
   b. At the time of the offense the person had not within the preceding seven years been convicted of an offense involving impaired driving.
   c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving.
   d. Subsequent to the offense the person has not been convicted of, or had an unresolved charge lodged against the person for, an offense involving impaired driving.
   e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

   A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if the person would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331.1 is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and either of the following requirements is met:
   a. The person is supporting existing dependents or must have a drivers license to be gainfully employed.
   b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege.

(3) A person convicted of the offense of impaired driving under G.S. 20-138.1 that has been convicted of not more than one offense involving impaired driving within the preceding seven years is eligible for a limited driving privilege if all of the following requirements are met:

a. At the time of the offense the person held either a valid driver's license or a license that had been expired for less than one year.

b. At the time of the offense the person did not have an alcohol concentration of 0.15 or more.

c. One of the following punishment levels was imposed for the offense of impaired driving:

1. Punishment Level Three, Four, or Five.

2. Punishment Level Two, but only if the Grossly Aggravating Factor determined to impose Punishment Level Two was the Grossly Aggravating Factor provided in G.S. 20-179(c)(1).

d. Subsequent to the offense the person has not been convicted of, or had an unresolved charge lodged against the person for, an offense involving impaired driving.

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if the person would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. - A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. A person whose license is revoked because of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation.

(c1) Repealed by Session Laws 2021-182, s. 1(a), effective December 1, 2021, and applicable to limited driving privileges issued on or after that date.

(d) Application for and Scheduling of Subsequent Hearing. - The application for a limited driving privilege made at any time after the day of sentencing must be filed with the clerk, and no hearing scheduled may be held until a reasonable time after the clerk files a copy of the application with the district attorney's office. The hearing must be scheduled before:

(1) The presiding judge at the applicant's trial if that judge is assigned to a court in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, in which the conviction for impaired driving was imposed.

(2) The senior regular resident superior court judge of the superior court

New Level 2 LDP requirements

district or set of districts as defined in G.S. 7A-41.1 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in superior court.

(3) The chief district court judge of the district court district as defined in G.S. 7A-133 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in district court.

If the applicant was convicted of an offense in another jurisdiction, the hearing must be scheduled before the chief district court judge of the district court district as defined in G.S. 7A-133 in which he resides. G.S. 20-16.2(e1) governs the judge before whom a hearing is scheduled if the revocation was under G.S. 20-16.2(d). The hearing may be scheduled in any county within the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be.

(e) Limited Basis for and Effect of Privilege. - A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under G.S. 20-17(a)(2) or as a result of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid.

(f) Overall Provisions on Use of Privilege. - Every limited driving privilege must restrict the applicant to essential driving related to the purposes listed in subsection (a), and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege. If the privilege is granted, driving related to emergency medical care is authorized at any time and without restriction as to routes, but all other driving must be for a purpose and done within the restrictions specified in the privilege.

(f1) Definition of "Standard Working Hours". - Under this section, "standard working hours" are 6:00 A.M. to 8:00 P.M. on Monday through Friday.

(g) Driving for Work-Related Purposes in Standard Working Hours. - In a limited driving privilege, the court may authorize driving for work-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the applicant is not required to drive for essential work-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (g2). The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(g1) Driving for Work-Related Purposes in Nonstandard Hours. - If the applicant is required to drive during nonstandard working hours for an essential work-related purpose, the applicant must present documentation of that fact before the judge may authorize the applicant to drive for this purpose during those hours. If the applicant is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the judge determines that it is necessary for the applicant to drive during nonstandard hours for a work-related purpose, the judge may authorize the applicant to drive subject to these limitations:

(1) If the applicant is required to drive to and from a specific place of work at regular times, the limited driving privilege must specify the general times and routes in which the applicant will be driving to and from work, and restrict driving to those times and routes.

(2) If the applicant is required to drive to and from work at a specific place, but is unable to specify the times at which that driving will occur, the

limited driving privilege must specify the general routes in which the applicant will be driving to and from work, and restrict the driving to those general routes.

(3) If the applicant is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in which the applicant will be driving, and restrict driving to those times and within those boundaries.

(4) If the applicant can specify neither the times nor places in which the applicant will be driving to and from work, or if the applicant is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic boundaries in which the applicant will drive and restrict driving to that within those boundaries.

The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving, in the discretion of the court.

(g2) A limited driving privilege may not allow driving for maintenance of the household except during standard working hours, and the limited driving privilege may contain any additional restrictions on that driving, in the discretion of the court. The limited driving privilege must authorize driving essential to the completion of any community work assignments, course of instruction at an Alcohol and Drug Education Traffic School, or substance abuse assessment or treatment, to which the applicant is ordered by the court as a condition of probation for the impaired driving conviction. If this driving will occur during nonstandard working hours, the limited driving privilege must specify the same limitations required by subsection (g1) for work-related driving during those hours, and it must include or have attached to it the name and address of the Alcohol and Drug Education Traffic School, the community service coordinator, or mental health treatment facility to which the applicant is assigned. Driving for educational purposes other than the course of instruction at an Alcohol and Drug Education Traffic School is subject to the same limitations applicable to work related driving under subsections (g) and (g1). Driving to and from the applicant's place of religious worship is subject to the same limitations applicable to work-related driving under subsections (g) and (g1) of this section.

(g3) Ignition Interlock Allowed. - A judge may include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against. All approved vendors shall report all attempts to start the vehicle with an alcohol concentration greater than 0.02 or any other violations of the interlock policies established by the Division for use of an ignition interlock system or a violation of G.S. 20-17.8A to the Commissioner in accordance with Division requirements.

(3) A requirement that the applicant personally activate the ignition interlock

system before driving the motor vehicle.

If the limited driving privilege order includes the restrictions set forth in this subsection, then the limitations set forth in subsections (a), (f), (g), (g1), and (g2) of this section do not apply when the person is operating the designated motor vehicle with a functioning ignition interlock system.

(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege.

(g5) Ignition Interlock Required. - If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.15 or more or is eligible for a limited driving privilege pursuant to subdivision (b)(3) of this section, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.02. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against. All approved vendors shall report all attempts to start the vehicle with an alcohol concentration greater than 0.02 or any other violations of the interlock policies established by the Division for use of an ignition interlock system or a violation of G.S. 20-17.8A to the Commissioner in accordance with Division requirements.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

If the limited driving privilege order includes the restrictions set forth in this subsection, then the limitations set forth in subsections (a), (f), (g), (g1), and (g2) of this section do not apply when the person is operating the designated motor vehicle with a functioning ignition interlock system. For purposes of this subsection, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove a person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval by the court. The removal of the ignition interlock system prior to the end of the revocation period or any extension shall void the limited driving privilege and the Division shall remove the limited driving privilege from the person's driving record. The interlock provider shall notify the holder of the limited driving privilege that removal voids the limited driving privilege in accordance with Division policy. The Division shall notify the person by first class mail at the address on file with the Division that the limited driving privilege is void and does not authorize driving due to removal of the ignition interlock system.

(h) Other Mandatory and Permissive Conditions or Restrictions. - In all limited driving privileges the judge shall also include a restriction that the applicant not consume alcohol while driving or drive at any time while the applicant has remaining in the applicant's body any alcohol or controlled substance previously consumed, unless the controlled substance was

lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(i) Modification or Revocation of Privilege. - A judge who issues a limited driving privilege is authorized to modify or revoke the limited driving privilege upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke a privilege in accordance with this subsection. The judge must indicate in the order of modification or revocation the reasons for the order, or the judge must make specific findings indicating the reason for the order and those findings must be entered in the record of the case.

(j) Effect of Violation of Restriction. - Except as otherwise provided in subsection (j2) of this section, a person holding a limited driving privilege who violates any of its restrictions commits the offense of driving while license is revoked for impaired driving under G.S. 20-28(a1) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the person holding a limited driving privilege has consumed alcohol while driving or has driven while the person has remaining in the person's body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person holding a limited driving privilege is charged with driving while license revoked by violating a restriction contained in the limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the person to surrender the limited driving privilege. The judicial official must also notify the person that the person is not entitled to drive until the case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the Department as to the manner of its use.

(j1) Effect of Violation of Community Service Requirement. - Division of Community Supervision and Reentry staff shall report significant violations of the terms of a probation judgment related to community service to the court that ordered the community service. The court shall then conduct a hearing to determine if there was a willful failure to comply. The hearing may be held in the district where the requirement was imposed, where the alleged violation occurred, or where the probationer resides. If the court determines that there was a willful failure to pay the prescribed fee or to complete the work as ordered within the applicable time limits, the court shall revoke any limited driving privilege issued in the impaired driving case until community service requirements have been met. In addition, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation.

NEW LANGUAGE

(j2) Effect of Ignition Interlock System Violation During Final 90-Day Period. - Notwithstanding subsection (j) of this section, a person holding a limited driving privilege, including the restriction set forth in subsection (g5) of this section who commits an ignition interlock system violation during the 90-day period immediately preceding the date on which the person's compliance with subsection (g5) of this section is to end, shall have the period of revocation and authorization to drive with the limited driving privilege in compliance with subsection (g5) of this section extended for an additional period of 90 days or until the person has been violation-free for such extended period. For purposes of this subsection, the term

"ignition interlock system violation" means any of the following:

(1) Any attempt to start the vehicle with an alcohol concentration greater than 0.02 or violation of any of the other restrictions set forth in subsection (g5) of this section.

(2) A violation of G.S. 20-17.8A.

(3) A violation of any of the policies established by the Division for use of an ignition interlock system on a designated motor vehicle.

The Division shall notify the holder of the limited driving privilege of any violation and the right to appeal in accordance with Division policy. The Division shall provide for a telephonic hearing if the holder appeals an extension. The extension shall continue pending appeal. The Division shall send notice of the extension to the person holding the limited driving privilege by first class mail to the address on file with the Division.

(k) Copy of Limited Driving Privilege to Division; Action Taken if Privilege Invalid. - The clerk of court or the child support enforcement agency must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section, G.S. 20-16.2(e1), 20-16.1, 50-13.12, or 110-142.2, or that does not contain the limitations required by law, is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the person holding the privilege that it considers the privilege void and that the Division records will not indicate that the person has a limited driving privilege.

(l) Any judge granting limited driving privileges under this section shall, prior to granting such privileges, be furnished proof and be satisfied that the person being granted such privileges is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form

approved by the Commissioner. Such granting of limited driving privileges shall be conditioned upon the maintenance of such financial responsibility during the period of the limited driving privilege. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(1983, c. 435, s. 31; 1983 (Reg. Sess., 1984), c. 1101, ss. 30-33; 1985, c. 706, s. 2; 1987, c. 869, s. 13; 1987 (Reg. Sess., 1988), c. 1037, s. 78; 1989, c. 436, s. 6; 1994, Ex. Sess., c. 20, s. 3; 1995, c. 506, ss. 1, 2; c. 538, s. 2(h); 1995 (Reg. Sess., 1996), c. 756, s. 31; 1997-379, s. 5.6; 1999-406, ss. 4-6; 2000-155, ss. 7, 11-13; 2001-487, s. 55; 2007-182, s. 2; 2007-493, ss. 24, 29, 30; 2008-187, s. 36(c); 2009-372, s. 15; 2011-145, s. 19.1(k); 2012-194, s. 45(c); 2015-185, s. 2(a); 2015-186, s. 5; 2015-264, s. 86; 2017-186, s. 2(oooo); 2021-180, s. 19C.9(v); 2021-182, s. 1(a), (b); 2022-47, s. 16(s); 2024-43, s. 2(a).)

§ 20-16.5. Immediate civil license revocation for certain persons charged with implied-consent offenses.

(n) Exception for Revoked Licenses. - Notwithstanding any other provision of this section, if the judicial official required to issue a revocation order under this section determines that the person whose license is subject to revocation under subsection (b):

(1) Has a currently revoked driver's license;

(2) Has no limited driving privilege; and

(3) Will not become eligible for restoration of his license or for a limited driving privilege during the period of revocation required by this section,

the judicial official need not issue a revocation order under this section. In this event the judicial official must file in the records of the civil proceeding a copy of any documentary evidence and set out in writing all other evidence on which he relies in making his determination.

(o) Designation of Proceedings. - Proceedings under this section are civil actions, and must be identified by the caption "In the Matter of _____" and filed as directed by the Administrative Office of the Courts.

(p) Limited Driving Privilege. - A person whose drivers license has been revoked for a specified period of 30 or 45 days under this section may apply for a limited driving privilege if:

(1) At the time of the alleged offense the person held either a valid drivers license or a license that had been expired for less than one year;

(2) Does not have an unresolved pending charge involving impaired driving except the charge for which the license is currently revoked under this section or additional convictions of an offense involving impaired driving since being charged for the violation for which the license is currently revoked under this section;

(3) The person's license has been revoked for at least 10 days if the revocation is for 30 days or 30 days if the revocation is for 45 days; and

(4) The person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.

A person whose license has been indefinitely revoked under this section may, after completion of 30 days under subsection (e) or the applicable period of time under subdivision (1), (2), or (3) of subsection (f), apply for a limited driving privilege. In the case of an indefinite revocation, a judge of the division in which the current offense is pending may issue the limited driving privilege only if the privilege is necessary to overcome undue hardship and the person meets the eligibility requirements of G.S. 20-179.3, except that the requirements in G.S. 20-179.3(b)(1)c. and G.S. 20-179.3(e) shall not apply. Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. Any district court judge authorized to hold court in the judicial district is authorized to issue such a limited driving privilege. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section. If the person's license is revoked for any other reason, the limited driving privilege is invalid. (1983, c. 435, s. 14; 1983 (Reg. Sess., 1984), c. 1101, ss. 11-17; 1985, c. 690, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1037, s. 80, c. 1112; 1989, c. 771, ss. 15, 16, 18; 1991, c. 689, s. 233.1(a); 1993, c. 285, ss. 5, 6; 1997-379, ss. 3.4-3.8; 1997-443, s. 11A.9; 1997-486, ss. 2-6; 1998-182, ss. 29, 30; 1999-406, s. 13; 2000-140, s. 103A; 2000-155, s. 15; 2001-487, ss. 6, 7; 2003-104, s. 1; 2007-323, s. 30.10(e); 2007-493, s. 17.)



(http://www.ncdhhs.gov/)

NC Division of **Mental Health, Developmental Disabilities and Substance Abuse Services** (http://www.ncdhhs.gov/mhddsas/)

Home

Number of Providers by Service

Number of Providers by County

	Service	Language	Number of Facilities
Select	ADETS	English	155
Select	ADETS	Spanish And English	41
Select	ASSESSMENT	English	295
Select	ASSESSMENT	Spanish And English	52
Select	DAY TREATMENT	English	14
Select	DAY TREATMENT	Spanish And English	3
Select	INPATIENT	English	1
Select	MAT	English	2
Select	OUT-OF-STATE REVIEWS	English	208
Select	OUT-OF-STATE REVIEWS	Spanish And English	37
Select	SACOT	English	25
Select	SACOT	Spanish And English	3
Select	SAIOP	English	62
Select	SAIOP	Spanish And English	8
Select	SHORT AND LONGER-TERM TREATMENT	English	281
Select	SHORT AND LONGER-TERM TREATMENT	Spanish And English	52
Select	SHORT TERM TREATMENT	English	2

NC DMV Hearings

(1) You need to know what is on the client's "problem sheet" also known formally as the NC Driver's License Requirement Check Form
    (a) It is free from DMV, and usually stamped in red "not to be used as a driving record"
        (i) It does NOT list if a 508 (DWI / DWLR assessment + treatment) is needed, and it does NOT list fees that are owed to NC DMV

To determine your hearing eligibility date with the NCDMV, you'll need to know why the client's license was suspended or revoked. The NCDMV will notify the client by mail about eligibility and the deadlines for requesting a hearing.

MAIL FROM NC DMV DOES NOT FORWARD; REMIND CLIENTS TO REGULARLY UPDATE THEIR MAILING ADDRESS WITH NC DMV

NC DMV also provides information on the associated fees. After the client applies and pays the fee, the NCDMV will assign the client a hearing date. [1, 2, 3]

Here's a more detailed breakdown:

1. Notification of Eligibility: [1, 3]

- The NCDMV will send the client a letter if the client is potentially eligible for a hearing.
- This letter will outline the reasons for his suspension or revocation, inform the client of his eligibility for a hearing, and provide details on the application process and fees. [1, 3]

2. Applying for a Hearing: [1, 3]

- The client must apply for a hearing and pay the associated fee.
- The application process and fee details are outlined in the notification letter from the NCDMV. [1, 3]

3. Hearing Date Assignment: [3]

- After the client submits his application and pays the fee, the NCDMV will schedule his hearing date. [3]
- They will notify the client of his hearing date within 30 business days of receiving his application. [1]

4. Important Considerations: [1]

- Cancellation: If the client needs to cancel his hearing, the client must do so at least 10 business days prior to the scheduled date to receive a partial refund. [1]

- A conviction of impaired driving under G.S. 20-138.1 (including convictions at Levels One and Two) results in a one-year revocation unless:

    1. the person has been convicted of another offense involving impaired driving that occurred within three years preceding the current offense (in that case the revocation

occurred within three years preceding the current offense (in that case the revocation is for four years, see G.S. 20-19(d));
2. the person has two or more previous impaired driving offenses, one of which occurred within the five years immediately preceding the date of the current offense (in that case the revocation is permanent, see G.S. 20-19(e)); or
3. the person is sentenced at Aggravated Level One (in that case the revocation is permanent, see G.S. 20-19(e)).

- Hearing for Restoration: the client may be eligible for a hearing to restore his driving privileges after a period of revocation, depending on the circumstances. [2, 5]
- Fees: DMV hearing fees vary depending on the type of hearing and can range from $40 to $1,200. For example, the fee for early restoration after a DWI conviction is $425.

Name of Fee	Fee Amount	Description
Alcohol concentration restriction violation	$450	N/A
Commercial driver license disqualification	$200	N/A
Compliance with probation or restoration agreement	$220 (billed after hearing)	N/A
Driver improvement clinic eligibility	$40	N/A
Ignition interlock device restriction violation	$450 (billed after hearing)	N/A
License restoration (DWI)	$425	N/A
License restoration (moving violations while driving with revoked license)	$200	N/A

License suspensions or revocations not otherwise listed	$100	Included those found in G.S. 20-13 and G.S 20-16
Pre-interview before license restoration (driving with revoked license or moving violations)	$100	N/A
Pre-interview before license restoration (situations involving alcohol-related convictions, suspensions or revocations)	$225	N/A
Refusal to submit to chemical analysis	$450	N/A
Violation of Safety & Responsibility law	$200	N/A

[1] https://www.ncdot.gov/dmv/offices-services/administrative-hearings/Pages/default.aspx
[2] https://mcgeelawnc.com/practice-areas/dui-dwi/nc-dmv-restoration-hearings/
[3] https://www.ncdot.gov/dmv/license-id/license-suspension/Pages/driver-improvement-clinics.aspx
[4] https://www.ncdot.gov/dmv/license-id/license-suspension/Pages/suspended-revoked-license.aspx
[5] https://jasonwilsonlaw.com/dui-traffic-crime/dmv-hearings/

NORTH CAROLINA
DIVISION OF MOTOR VEHICLES

AFFIDAVIT REQUEST TO WAIVE AN ADMINISTRATIVE HEARING FEE

If you believe you are unable to afford an administrative hearing, complete this form to have the Division of Motor Vehicles ("Division") determine whether you are eligible for a waiver of the hearing fee.

THIS AFFIDAVIT IS VALID AS OF JANUARY 11, 2023.

For a hearing request to be valid you must: (1) complete a Hearing Request form; (2) complete this Affidavit, including signing and affirming before a notary; (3) attach ALL required income verification documents shown in Section 4 and (4) send these documents as instructed in Section 6.

SECTION 1 - APPLICANT INFORMATION

Last Name		First		Middle	
Mailing Address					
City		State		ZIP	
Phone		E-mail Address			
SSN:				DOB	

SECTION 2 – HOUSEHOLD SIZE AND INCOME INFORMATION

2.1 Total number of persons in your household?

▶ _____

Note: Household size includes you, your spouse, and your children if the children will receive more than half their support from you. It includes other people only if they live with you now, they receive more than half their support from you now, and they will continue to receive this support from you for the year that you affirm your household size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

2.2 What is your total household income from the prior tax year? | | | | , | | | | . | 0 | 0 |

What is your total household monthly income, currently? | | | | , | | | | . | 0 | 0 |

Note: Household income includes but is not limited to: income from employment or self-employment (salaries, wages, commissions, bonuses, dividends, severance pay, etc.); ownership or operation of a business, partnership, or corporation; rental of property; retirement or pensions; interest, trusts, or annuities; capital gains; social security benefits; workers compensation benefits; unemployment insurance benefits; disability pay and insurance benefits; gifts or prizes; and alimony.

SECTION 3 – FEDERAL INCOME TAX RETURN STATUS

Remember that household income includes but is not limited to: income from employment or self-employment (salaries, wages, commissions, bonuses, dividends, severance pay, etc.); ownership or operation of a business, partnership, or corporation; rental of property; retirement or pensions; interest, trusts, or annuities; capital gains; social security benefits; workers compensation benefits; unemployment insurance benefits; disability pay and insurance benefits; gifts or prizes; and alimony.

3.1 If you have filed a federal income tax return for either of the past two tax years, attach documents as described in Section 4.1 or 4.2.

3.2 If you have not filed a federal income tax return for either of the past two years, and you have you earned or received any household income, attach documents as described in Section 4.2.

3.3 If you have no household income in the past calendar year, proceed to Section 4.3.

SECTION 4 – INCOME VERIFICATION DOCUMENTS

Please review the methods of proving income below. Once you collect the documents, check the box to indicate that you have collected all the documents requested and that you have included them in your submission to the Division.

4.1 Provide your most recent federal income tax return (first two pages). You must also include the federal income tax return (first two pages) of your spouse if you filed "married but filing separately."

▶ ☐ I have included the first two pages of my most recent federal tax return, and I have included my spouse's first two pages of their federal tax return because I filed married but filing separately.

4.2 If you have not filed a federal income tax return for either of the past two tax years, you must provide documentation of all household income you and your spouse (if applicable) receive.

You must provide at least one piece of documentation for each source of household income. Acceptable forms of income include:

- pay stubs (for the past month)
- letter from your employer containing your income by month or year
- W-2
- 1099
- interest or bank statements
- documents from the Division of Employment Security

If you claimed that anyone is in your household (Section 2.1 and Section 2.2 above), for each person claimed you must provide the person's full name, birth date, and describe the person's relationship to you.

▶ ☐ I have included at least one piece of documentation for each source of household income, and for each person in my household I have included: (1) how the person is related to me; (2) their full name; and (3) birth date.

4.3 If you have no household income, you must still provide documentation. You may either provide a sworn or affirmed statement from the person who has provided support and maintenance to you over the last calendar year, or you may provide supporting documentation that you are supporting yourself primarily through government assistance.

▶ ☐ I have included a sworn or affirmed statement from the person providing for my support.

▶ ☐ I have included supporting documentation that I am primarily supporting myself through government assistance.

▶ ☐ Description of Document being sent (please explain)_____

_____.

SECTION 5 – AUTHORIZATION AND CERTIFICATION

Under penalty of perjury, I declare that the information provided on this form and in any accompanying documentation is true, complete, and correct to the best of my knowledge, and that I am financially unable to pay for an administrative hearing. I understand that a false or dishonest answer made under oath or affirmation concerning my financial status could lead to prosecution for perjury, which is a felony. I further understand that I may be subject to civil penalties including revocation of my driver's license.

I further authorize the release of financial information to the Division to allow it to verify eligibility of a waiver of administrative hearing fees. This release includes employers and any governmental agencies, including the Internal Revenue Service (IRS), the North Carolina Department of Revenue, and any other entities that could aid the Division in determining eligibility.

Printed Name _____

Signature _____ Date _____

State of _____

County of _____

Affirmed to and subscribed before me this _____ day of _____, 20 ____.

_____ Signature of Notary Public

(Official Seal) _____, Notary Public
(Printed or typed name)

My commission expires: _____

This form **may not** be notarized by an employee of the DMV.

SECTION 6 - WHERE TO SEND THIS FORM AND OTHER DOCUMENTS

You may mail or fax deliver this form and any accompanying documentation to the Division as follows:

Mailing Address:
Administrative Support Unit
3118 Mail Service Center
Raleigh, NC 27697-3118

Fax:
(919) 715-0132

SECTION 7 - THE NEXT STEPS

After the Division receives your Hearing Request, completed Affidavit of Indigence and required income or benefit verification documents, it will be reviewed to determine if you are eligible for a waiver of the administrative hearing fee. Your eligibility is based upon the number of persons in your household, your household income, and the most recent released Federal Poverty Level Guidelines. After the Division reviews your application and required income verification documents, it will do one of the following:

1. Determine that you are eligible for a waiver of the administrative hearing fee, schedule a hearing, and mail the notice of hearing to the address identified on this Affidavit.

2. Determine that you need to provide the Division additional documentation to assess your eligibility for a waiver of the administrative hearing fee. The Division will notify you what additional information is required, and you will have 10 calendar days to comply with the Division's request for additional documentation. If you fail to provide the documentation, your request for an administrative hearing will be withdrawn.

3. Determine that you are not eligible for a waiver of the administrative hearing fee. The Division will then notify you that you have 10 calendar days to pay the full amount of the hearing fee to proceed with your request for an administrative hearing. If you fail to provide the required fee, your request for an administrative hearing will be withdrawn.

4. Determine that you did not complete this form or did not otherwise provide the requested information. Therefore, request for an administrative hearing will be immediately withdrawn.

NCDOT
North Carolina Department of Transportation

Minimum Uniform Crash Criteria for North Carolina

DMV 349 CRASH REPORT DATA ELEMENT DICTIONARY

Published September 24, 2015

By: North Carolina Department of Transportation,
Division of Motor Vehicles

Contents

Motor Vehicle Crash – A motor vehicle crash involves a motor vehicle in transport resulting in an un-stabilized situation, which includes at least one harmful event. An un-stabilized situation is a set of events not under human control, which originates when control is lost and terminates when control is regained or when all persons and property are at rest. 7
I. CRASH LEVEL 7
C1. Crash Case Identifier 7
C2. Local Report Number 7
C3. Crash Date 8
C4. Crash Time 8
C5. Crash County 9
C6. Crash City/Place 10
C7. Locality 10
C8. Relation to Roadway 10
C9. Crash Roadway Location 11
C10. Predominant Development Type 12
C11. First Harmful Event (at Crash Level) 12
C12. Most Harmful Event (at Crash Level) 13
C13. Crash Narrative 14
C14. Crash Diagram 15
C15. Additional Property Damage – Type 16
C16. Additional Property Damage - Owner Name, Address, Phone 16
C17. Estimated Damage to Additional Property 16
C18. Weather Condition 16
C19. Ambient Light 17
C20. Road Surface Condition 17
C21. Contributing Circumstances, Roadway 18
C22. Road Feature 19
C23. Road Surface (Type) 20
C24. Traffic Control Operating 20
C25. Horizontal and Vertical Alignment (Road Character) 20
C26. Road Classification 21
C27. Number of Lanes 21
C28. Road Configuration 21
C29. Access Control 22
C30. RR Crossing ID 22
C31. School Bus-Related 23
C32. Work Zone-Related 23
C33. Source of Information 24
C34. Officer Name 24
C35. Officer Number 25
C36. Patrol Area 25
C37. Date and Time Reported to Law Enforcement Agency 25
C38. Manner of Crash/Collision Impact 25
II. VEHICLE LEVEL 28
V1. Vehicle Unit Number Unique to the Crash 28
V2. Vehicle Registration State and Year 28
V3. Vehicle License Plate Number 29
V4. Vehicle Identification Number (VIN) 29
V5. Vehicle Make 30
V6. Commercial Vehicle 30
V7. Carrier Name 31
V8. Carrier Street Address 31
V9. Carrier Identification Number 31
V10. Vehicle Style (Type) 32
V11. Cargo Body Type 33
V12. Hazardous Materials Involvement (Cargo Only) 33

V13. Weight Rating of Power Unit 35
V14. Trailer Type 35
V15. Overwidth Trailer Permit Number 36
V16. Length of Trailer 1 36
V17. Width of Trailer 1 36
V18. Length of Trailer 2 36
V19. Width of Trailer 2 36
V20. Number of Axles - Trailer 1 37
V21. Number of Axles - Trailer 2 37
V22. Vehicle Defects 37
V23. Vehicle Authorized Speed Limit 37
V24. Estimate of Original Vehicle Speed 38
V25. Estimated Speed at Impact 38
V26. Tire Impressions Before Impact 38
V27. Distance Traveled After Impact 39
V28. Direction of Travel Before Crash 39
V29. Traffic Control Device Type 40
V30. Vehicle Maneuver/Action 40
V31. Point of Impact 41
V32. Sequence of Events for this Vehicle 41
V33. Most Harmful Event for this Vehicle 43
V34. Distance & Direction from Road to Object Struck 45
V35. Post-Crash Fire 45
V36. Underride/Override 46
V37. Damaged Area of Vehicle/Extent of Deformity 46
V38. Estimated Amount of Vehicle Damage 47
V39. Vehicle Drivable 47
V40. Vehicle Towed To/By 48
V41. Insurance Company Name 48
V42. Policy Number 48
III. Person Level 49
Person Level 1: All Persons Involved 49
P1. Person Type 49
P2. Name 49
P3. Address 50
P4. Home/Work Phone Numbers 50
P5. Date of Birth/Approximate Age 51
P6. Gender 51
P7. Ethnicity 51
P8. Injury Status 52
P9. Occupant's/ Non-motorist Vehicle Unit Number Unique to Crash 52
Person Level 2: All Occupants 53
P10. Seating Position 53
P11. Occupant/Non-Motorist Protection System Use 53
P12. Air Bag Deployed 54
P13. Ejection 54
P14. Trapped 55
Person Level 3: All Drivers 56
P15. Driver License State/Province 56
P16. Driver License Number 56
P17. Commercial Driver License (CDL) 56
P18. Contributing Circumstances, Driver. 57
P19. Traffic Violations 58
Person Level 4: All Drivers and Non-Motorists 59
P20. Alcohol/Drug Suspected 59
P21. Test for Alcohol/Other Drugs 59
P22. Test Results 59
P23. Driver Condition 60

P24. Vision Obstruction 61
Person Level 5: Non-motorists 62
P25. Non-motorist Number 62
P26. Non-motorist Action Prior to Crash 62
P29. Non-Motorist Contributing Circumstances 63
P30. Non-Motorist Location at Time of Crash 64
P31. Non-Motorist Safety Equipment 64
P32. Unit Number of Motor Vehicle Striking Non-Motorist 65
P33. EMS Responding to the Crash 65
P34. Injured Taken by EMS to 65
IV. CRASH DERIVED DATA ELEMENTS 67
CD1. Crash Severity 67
CD2. Number of Motor Vehicles 67
CD3. Number of Occupants in Vehicle 68
CD4. Number of Non-motorists 68
CD5. Total Non-Fatal Injuries 68
CD6. Total Fatal Injuries 69
CD7 Alcohol/Drug Involvement 69
CD8. Day of Week 70
V. VEHICLE DERIVED DATA ELEMENTS 71
VD1. Vehicle Model Year 71
VD2. Vehicle Model 71
VD3. Vehicle Body Type 71
V04. Total Trailers Attached to Truck 74
VI. PERSON LINKED DATA ELEMENTS 75
Driver Linked Data Elements 75
PL1. Driver License Class 75
PL2. Driver License Status, CDL 75
PL3. Commercial Motor Vehicle Endorsements 76
PL4. Driver License Status, Non-CDL 76
PL5. Driver License Restrictions 77
VII. Injured Person Linked Data Elements 79
PL6. Injury Area 79
PL7. Injury Description 79
VIII. Roadway Linked Data Elements 81
RL1. Bridge/Structure Identification 81
RL2. Grade 81
RL3. Part of National Highway System 81
RL4. Annual Average Daily Traffic 82
RL5. Shoulder Type/Width 82
RL6. Lane Width 82
RL7. Median Type/Width 82
RL8. Roadway Lighting 83
RL9. Pavement Markings, Longitudinal 83
RL10. Bikeway 84
RL11. Delineator Presence 84
RL12. Clearzone Distance 85
RL13. Sideslope 85
RL14. Roadway Functional Class 85
RL15. Access Control 85
RL16. Railway Crossing ID 86
RL17. Traffic Control Type at Intersection 86
RL18. Mainline Number of Lanes at Intersection 87
RL19. Side-Road Number of Lanes at Intersection 87
RL20. Roadway Curvature 88
APPENDIX A: State and Province Codes 89
Canada (CN) 90
Mexico (MX) 90

Other Jurisdictions (OT) 90
APPENDIX B: Dates and Times 91
APPENDIX C: Names 92
APPENDIX D: Addresses 94
APPENDIX E: Code Reference Cover Sheet 95
APPENDIX F: DMV-349 (Front) 98
DMV-349 (Back) 99
APPENDIX G: Completing the DMV 349 & Supplemental Reports 100
APPENDIX H: Crashes Involving Commercial Motor Vehicles 102
APPENDIX I: Important Definitions 104
Important Definitions (cont.) 105

Minimum Uniform Crash Criteria for North Carolina

Motor Vehicle Crash – A motor vehicle crash involves a motor vehicle in transport resulting in an un-stabilized situation, which includes at least one harmful event. An un-stabilized situation is a set of events not under human control, which originates when control is lost and terminates when control is regained or when all persons and property are at rest.

In North Carolina, the DMV-349 crash report is required for any motor vehicle crash in which any person is killed or injured or in which the total property damage resulting from the crash is $1,000.00 or greater, or which there is property damage of any amount to a vehicle seized.

(*) items should be explained in crash narrative.

I. CRASH LEVEL

The crash level data elements describe the overall characteristics of the crash.

C1. Crash Case Identifier

Definition: The unique number within a given year that identifies a given crash within a state.

Source: Refer to crash ID Number on DMV-349 Form.

Attribute: 9-digit sequential number

Rationale: This number, assigned by the DMV Traffic Records Section, facilitates the linkage of crash file sub-components, such as location and unit information with control information, as well as linkage of the traffic records sub-files back to the crash data file.

C2. Local Report Number

Definition: Optional number assigned by originating police department.

Attributes: According to Crash Reporting Surveyed, thirty percent of respondents indicate that they use 8 characters when assigning case numbers to files. Twenty-one percent and 17% of departments use 7 and 6 characters, respectively. Few respondents assign more than 10 characters to a case number.

Rationale: Used by local law enforcement to index crash reports.

C3. Crash Date

Definition: The date (month, day and year) at which the crash occurred. The time (hour and minute) at which crash occurred.
Source: Refer to crash date on DMV-349 Form.

Attribute: Date

MMDDCCYY

Subfield 1:Month
01 January
02 February
03 March
04 April
05 May
06 June
07 July
08 August
09 September
10 October
11 November
12 December

Subfield 2: Day
DD Day of Month

Subfield 3:Year
CCYY Year

Rationale: Rationale: Important for management/administration, evaluation, and linkage. Changed 2-position code for year to 4-position in preparation for the year 2000.

C4. Crash Time

Definition: The time (hour and minute) at which a crash occurred.

Source: Refer to crash time on DMV-349 Form.

Attribute: Time

Subfield 1: Hour
HH 0-23, representing the time on a 24 hour clock

Subfield 2: Minute
nn Minutes

Rationale: Important for management/administration, evaluation, and linkage.

C5. Crash County

Definition: The code identifying the county in which a crash occurred.

Source: Refer to county block on DMV-349 Form.

Attribute: The full Name of the county is recorded on the DMV-349. The first five positions of the County name are entered into an automated file and converted to a 2-digit code.

00	Alamance	33	Forsyth	66	Onslow
01	Alexander	34	Franklin	67	Orange
02	Alleghany	35	Gaston	68	Pamlico
03	Anson	36	Gates	69	Pasquotank
04	Ashe	37	Graham	70	Pender
05	Avery	38	Granville	71	Perquimans
06	Beaufort	39	Greene	72	Person
07	Bertie	40	Guilford	73	Pitt
08	Bladen	41	Halifax	74	Polk
09	Brunswick	42	Harnett	75	Randolph
10	Buncombe	43	Haywood	76	Richmond
11	Burke	44	Henderson	77	Robertson
12	Cabarrus	45	Hertford	78	Rockingham
13	Caldwell	46	Hoke	79	Rowan
14	Camden	47	Hyde	80	Rutherford
15	Carteret	48	Iredell	81	Sampson
16	Caswell	49	Jackson	82	Scotland
17	Catawba	50	Johnston	83	Stanly
18	Chatham	51	Jones	84	Stokes
19	Cherokee	52	Lee	85	Surry
20	Chowan	53	Lenoir	86	Swain
21	Clay	54	Lincoln	87	Transylvania
22	Cleveland	55	Macon	88	Tyrell
23	Columbus	56	Madison	89	Union
24	Craven	57	Martin	90	Vance
25	Cumberland	58	McDowell	91	Wake
26	Currituck	59	Mecklenburg	92	Warren
27	Dare	60	Mitchell	93	Washington
28	Davidson	61	Montgomery	94	Watauga
29	Davie	62	Moore	95	Wayne
30	Duplin	63	Nash	96	Wilkes
31	Durham	64	New Hanover	97	Wilson

32	Edgecombe	65	Northhampton	98	Yadkin
				99	Yancey

Rationale: Important for analyses of county area programs such as “Safe Communities.” Critical for data linkage of the crash file to other state data files (such as EMS, hospital, roadway, etc.). Important for intrastate comparisons.

C6. Crash City/Place

Definition: The code identifying the city/place in which a crash occurred.

Source: Refer to county block on DMV-349 Form.

Attribute: The full Name of the Municipality is recorded on the DMV-349. Up to twenty-two positions of the Name are entered into an automated file. If a municipality is not on the list, the coding changes to a Rural report and only the County code is used.

Rationale: Important for analyses of local area programs such as "Safe Communities." Critical for data linkage of the crash file to other state data files (such as EMS, hospital, roadway, etc.).

C7. Locality

Definition: The general type and level of development in the vicinity of the crash. For example, if the estimated total development is less than 30% or about 1/3 of road frontage on both sides over a substantial distance from the scene of the crash, then enter a "1" for rural development.

Source: Refer to block # 1 left side of DMV-349 Form.

Attributes:
1 Rural (30% developed)
2 Mixed (30% to 70% developed)
3 Urban (>70% developed)

Rationale: Important for analyses of programs by area development (rural vs. urban).

C8. Relation to Roadway

Definition: The location of the First Harmful Event as it relates to its position within or outside the trafficway. This data element also relates to other data elements; including Location, Sequence of Events, Non-Motorist Location, and the

Reference to Roadway subfield for the data element Direction of Travel.

Source: Refer to block 33 on the DMV-349 Form.

Attributes:
1 On Roadway (surface)
Off Roadway
2 Shoulder
3 Median
4 Roadside
5 Outside-Trafficway
6 Unknown

Rationale: Important to provide further information concerning the location of the First harmful Event and to identify highway geometric deficiencies.

C9. Crash Roadway Location

Definition: Exact location on the roadway indicating where the crash occurred. The following is contained on the DMV-349.

Source: Refer to location block on DMV-349 Form.

In or near a Municipality
____ Miles N,S,E,W outside Municipality
On ___ Highway No., Street Name, etc.
At ____ RR Crossing No.
___ Miles, Feet N,S,E,W from Highway No., Street Name, etc.
___ Miles, Feet N,S,E,W toward Highway No., Street Name, etc.

Attributes:
County (2 digits)
Municipality (22 Position code)
On Road (20 position code) containing:
- Highway Class (2 position code)
- Highway Number
- Alternate Direction (1 position)
- Private Property/Non-Traffic Code
- Street Name
- Public Vehicular Area Code

Interchange Ramp (check block)
From Road (20-position code) containing:
- County
- State
- Street Name
- Highway Class, Number, Alternate, etc.

Toward Road (20-position code) containing:
- County
- State
- Street name
- Highway Class, Number, Alternate, etc.

Direction (2 position code) - N,S,E,W, NE, NW, etc.
Distance in Miles (M) or Feet (F) - (3 digit code) followed by M or F
Railroad Crossing Number (7 position code)
Latitude, Longitude & Altitude (X, Y, Z)

Rationale: Important for preventive programs, engineering evaluations, and linkage purposes. As Geographic Information System (GIS), and Global Positioning System (GPS) technologies become more available, they will be used to supplement and enhance the current location methods to identify potentially hazardous locations.

C10. Predominant Development Type

Definition: The predominant type of development in the area in which the crash occurred. Examples are: *Commercial (mainly retail stores), Institutional (schools, hospitals, government buildings, etc.).*

Source: Refer to location block on DMV-349 Form.

Attributes:
1 Farms, woods, pastures
2 Residential
3 Commercial
4 Institutional
5 Industrial

Rationale: Important for analyses of programs by area development (residential vs. commercial, etc.).

C11. First Harmful Event (at Crash Level)

Definition: The injury of damage producing event, which characterizes the crash type and identifies the nature of the first harmful event. This data element focuses on the First Harmful event <u>at the Crash Level</u>, rather than at the Vehicle Level.

Source: Refer to ANSI D16.1 Classification Manual for definitions of specific attributes and block 10 on DMV-349 Form.

Attributes: 00 Unknown

Non-Collision

01 Ran Off Road Right
02 Ran Off Road Left
03 Ran Off Road Straight
04 Jackknife
05 Overturn/rollover
13 Other Non-Collision*

Collision of Motor Vehicle With

14 Pedestrian
15 Pedalcyclist
16 RR Train, Engine
17 Animal
18 Movable Object
19 Fixed Object*

Collision of Two or More Motor Vehicles

20 Parked Motor Vehicle
21 Rear End, Slow or Stop
22 Rear End, Turn
23 Left Turn, Same Roadway
24 Left Turn, Different Roadways
25 Right Turn, Same Roadway
26 Right Turn, Different Roadways
27 Head On
28 Sideswipe, Same Direction
29 Sideswipe, Opposite Direction
30 Angle
31 Backing up
32 Other Collision with Vehicle*

Rationale: Needed for uniformity in reported motor vehicle crash statistics, understanding crash causation, and identifying possible crash avoidance countermeasures. For analytic purposes it may be desirable to collect and use information about subsequent events, some of which may be harmful. See **Sequence of Events** (V32).

C12. Most Harmful Event (at Crash Level)

Definition: Event that produced the greatest property damage or most severe injury in the crash. Refer to ANSI D16.1 for definitions of specific attributes.

Source: Refer to ANSI D16.1 Classification Manual for definitions of specific attributes and block 11 on DMV-349 Form.

Attributes: 00 Unknown

Non-Collision

01 Ran Off Road Right
02 Ran Off Road Left
03 Ran Off Road Straight
04 Jackknife
05 Overturn/rollover
13 Other Non-Collision*

Collision of Motor Vehicle With

14 Pedestrian
15 Pedalcyclist
16 RR Train, Engine
17 Animal
18 Movable Object
19 Fixed Object*

Collision of Two or More Motor Vehicles

20 Parked Motor Vehicle
21 Rear End, Slow or Stop
22 Rear End, Turn
23 Left Turn, Same Roadway
24 Left Turn, Different Roadways
25 Right Turn, Same Roadway
27 Right Turn, Different Roadways
27 Head On
28 Sideswipe, Same Direction
29 Sideswipe, Opposite Direction
30 Angle
31 Backing up
32 Other Collision with Vehicle*

Rationale: Important for use in conjunction with Sequence of Events (V20) to generate complete information about the crash.

C13. Crash Narrative

Definition: Provide a word description of events occurring prior to, during, and after the crash which are not elsewhere on the form. Note all pertinent and unusual aspects of the crash. Statements made in this narrative should be in the opinion of the investigating officer.

Source: Refer to block 85 on the DMV-349 Form.

Attributes: Refer to list of abbreviation codes used to enter this information.

Rationale: The crash narrative or description provides valuable information to traffic researchers, enabling them to design and promote Highway Safety Programs.

C14. Crash Diagram

Definition: A drawing by the investigating officer of the crash site, including roads, features, involved vehicles, marks and other pertinent information of the crash. Any roadway or roadside feature that might possibly have been a contributing factor in the crash should be shown. For example, if a vehicle is struck while exiting a driveway, the name of any business located there or the name of the resident at the private driveway is listed.

Source: Refer to block 84 on the DMV-349 Form.

Attributes: The crash diagram should include:

1. Roads and intersecting roads, widths of roads, shoulders and median strips,
2. Direction of travel for each traffic lane,
3. All roadside features pertinent to the crash (parked cars, trees, buildings, traffic signs and signals, etc.),
4. Path of travel for involved vehicles and pedestrians prior to, at and after the crash,
5. Tire marks and debris, if important in the crash or otherwise needed,
6. Measurements pertinent to the location of the point of impact (tape measurements for distances up to and including 500 feet; odometer measurements for distances over 500 feet) are acceptable.

Rationale: The crash diagram enables the investigating officer to illustrate the special relationships that existed between the vehicles and environment at the time of the crash.

C15. Additional Property Damage – Type

Definition: Any property other than motor vehicles that was damaged in the crash (check block for state property damaged).

Source: Refer to block 86 on the DMV-349 Form.
Attributes: Specific property that was damaged. Examples include signs, buildings, mailboxes, fences, etc.

Rationale: For statistical purposes, and possible action by property owner to recover damages.

C16. Additional Property Damage - Owner Name, Address, Phone

Definition: Name, address, and telephone number of owner of property damaged in the crash, other than motor vehicles.

Source: Refer to block 86 on the DMV-349 Form.

Attributes: Name, address, and telephone number(s).

Rationale: For contacting property owners, who may seek reimbursement as they make repairs.

C17. Estimated Damage to Additional Property

Definition: Estimate of the cost to restore the damaged property to its condition just prior to the crash.

Source: Refer to block 86 on the DMV-349 Form.

Attributes: 9999999. Not stated
nnnnnnn. Actual dollar estimate
9999998.Damage exceeds 9999998

Rationale: Used in calculating the costs of motor vehicle traffic crashes for estimating the cost benefit of highway safety programs and improvements. Used in possible recovery of cost to repair damaged property, such as "State Property". Also used in classifying property damage only (PDO) crashes.

C18. Weather Condition

Definition: The general atmospheric conditions that existed at the time of a crash.

Source: Refer to blocks 4-6 on DMV-349 Form.

Attributes: **Subfield 1** - **First Weather Condition**

1 Clear
2 Cloudy
3 Rain
4 Snow
5 Fog, smog, smoke
6 Sleet, hail (freezing rain or drizzle)
7 Severe crosswinds
8 Blowing sand, dirt, snow
9 Other*

Subfield 2 - **Second Weather Condition**

See Codes in Subfield 1

Subfield 3 - **Weather condition(s) contributed to the crash**

1 Yes
2 No
3 Unknown

Rationale: Important for management/administration and evaluation. Critical for preventive programs and engineering evaluations.

C19. Ambient Light

Definition: The type of light that exists at the time of a motor vehicle crash.

Source: Refer to block 7 on DMV-349 Form.

Attributes:
1 Daylight
2 Dusk
3 Dawn
4 Dark - lighted roadway
5 Dark - roadway not lighted
6 Dark - unknown roadway lighting
7 Other*
8 Unknown

Rationale: Important for management/administration and evaluation. Critical for preventive programs and engineering evaluations.

C20. Road Surface Condition

Definition: The roadway surface condition at the time and place of a crash.

Source: Refer to block 3 on DMV-349 Form.

Attributes:
01 Dry
02 Wet
03 Water (standing, moving)
04 Ice
05 Snow
06 Slush
07 Sand, Mud, Dirt, Gravel
08 Fuel Oil
09 Other*
10 Unknown

Rationale: Important to identify and correct high wet-surface crash locations and provide information for setting coefficient of pavement friction standards. Critical for preventive programs and engineering evaluations.

C21. Contributing Circumstances, Roadway

Definition: Apparent condition of the road, which contributed to the crash.

Source: Refer to blocks 12 – 13 on DMV-349 Form.

Attributes: **Subfield 1** - **First Contributing Circumstance**

00 None (no unusual conditions)
01 Road Surface Condition
02 Debris
03 Rut, Holes, Bumps
04 Work Zone (construction/maintenance/utility)
05 Worn, Travel-Polished Surface
06 Obstruction in Roadway
07 Traffic Control Device Inoperative, Not Visible or Missing
08 Shoulders Low, Soft, or High
09 No Shoulders
10 Non-Highway Work
11 Other*
12 Unknown

Subfield 2 - **Second Contributing Circumstance**

See Codes in **Subfield 1**

Rationale: Important to determine highway maintenance and possible engineering needs.

C22. Road Feature

Definition: A road feature is either an intersection or the connection between a driveway access and a roadway other than a driveway access.

Source: Refer to block 69 on DMV-349 Form.

Attributes:
00 No special feature
01 Bridge
02 Bridge approach
03 Underpass
04 Driveway, public
05 Driveway, private
06 Alley intersection

Intersection of roadways
07 Four-way intersection
08 T -intersection
09 Y -intersection
10 Traffic circle/roundabout
11 Five-point, or more
12 Related to intersection
13 Non-intersection median crossing
14 End or beginning of divided highway

Interchange
15 Off-ramp entry
16 Off-ramp proper
17 Off-ramp terminal on crossroad
18 Merge lane between on and off ramp
19 On-ramp entry
20 On-ramp proper
21 On ramp terminal on crossroad
22 Railroad crossing
23 Tunnel
24 Shared-use paths or trails
25 Other*

Rationale: Important for site-specific safety studies to identify actual or potential safety problem locations. Bridge approach – describes the area within 500 feet of the bridge, which leads up to the bridge. Related to Intersection refers to the influence area, which is caused by the operation of the intersection. The distance to which the influence area extends from the intersection depends on the intersection design, and traffic control as well as the operating characteristics.

C23. Road Surface (Type)

Definition: Actual surface type of the roadway in the area in which the crash occurred. Examples are Grooved Concrete (areas where the concrete surface has been sawed, scratched or molded to form grooves intended to improve traction or to make tire noise), Soil (dirt surfaces not identifiable as sand, gravel, or any paved type).

Source: Refer to block 72 on DMV-349 Form.

Attributes:
1 Concrete
2 Grooved concrete
3 Smooth asphalt
4 Coarse asphalt
5 Gravel
6 Sand
7 Soil
8 Other*

C24. Traffic Control Operating

Definition: Determination of whether traffic control device was operating properly at the time of the crash.

Attributes:
1 Yes
2 No
3 Unknown

C25. Horizontal and Vertical Alignment (Road Character)

Definition: The change in horizontal and vertical direction of a roadway, determined at the point of curvature.

Attributes:
1 Straight, level
2 Straight, hillcrest
3 Straight, grade
4 Straight; bottom (sag)
5 Curve, level
6 Curve, hillcrest
7 Curve, grade
8 Curve, bottom (sag)
9 Other*

Rationale: Curve data is used in searching for and diagnosing high crash locations. Important for determining relationship between horizontal/vertical alignment related crashes to guide future highway design, speed limits, and driver skill training (e.g., motorcycle curve-entering speed).

C26. Road Classification

Definition: The character of service or function of streets or highways. The classification of rural and urban is determined by state and local officials in cooperation with each other and approved by the Federal Highway Administration, U.S. Department of Transportation. Refer to ANSI 016.1 for definitions of specific attributes.

Source: Refer to block 71 on DMV-349 Form.

Attributes:
1 Interstate
2 US Route
3 NC Route·
4 State Secondary Route
5 Local Street
6 Public Vehicular Area
7 Private Road, Property or Driveway
8 Other*

Rationale: Important for comparing crash rates/safety experience of highways of similar design characteristics so as to identify those highways or highway sections that have abnormal rates/experience for future improvements as well as generalized study of the highways in a region or state.

C27. Number of Lanes

Definition: Total number of thru lanes of the "road on" at the point of the crash (if two-way, total for both directions). Do not count turning lanes unless they are continuous between intersections.

Source: Refer to block 75 on DMV-349 Form.

Attributes: Total number of lanes. Enter "0" for parking lots.

Rationale: Used in studying broad categories as well as identifying the environment of a particular crash.

C28. Road Configuration

Definition: A code indicating whether or not a trafficway is divided and whether it serves one-way or two-way traffic. A divided trafficway is one on which roadways for travel in opposite directions are physically separated by more than an easily traversable centerline. Refer to ANSI D16.1 for definitions of specific attributes.

Source: Refer to block 73 on DMV-349 Form.

Attributes: 1 One-way, not divided
2 Two-way, not divided
3 Two-way, divided, unprotected median
4 Two-way, divided, positive median barrier
5 Unknown

Rationale: Used in classifying crashes as well as identifying the environment of a particular crash. Note that data must be in a road inventory file or collected by the reporting officer. It is not readily derived from the other road data such as classification or route. Important to guide future trafficway design and traffic control.

C29. Access Control

Definition: The degree that access to abutting land is fully, partially, or not controlled by a public authority. Full access control provides access only at interchanges (interstate, etc.). Partial access control provides no private access. No access control permits private access (driveway, etc.)

Source: Refer to block 74 on DMV-349 Form.

Attributes: 1 No Access Control - permits private access (driveway, etc.)

2 Full Access Control - provides access only at interchanges (interstate, etc.)

3 Partial Access Control - provides no private access

Rationale: Access control is highly correlated with crash rates. Road inventory files or police reported data on access control is used in identifying High hazard locations. Important to guide future highway design and traffic control.

C30. RR Crossing ID

Definition: A unique number assigned to a railroad crossing by a state highway agency in cooperation with the Federal Railroad Administration for identification purposes (US DOT/AAR number).

Source: Refer to **C9 Crash Roadway Location** and the location block on DMV-349 Form.

Attributes: State specific number assigned by a state in cooperation with the American Association of Railroads.

Rationale: The data is used in high crash locations as well as high risk corridors. The RR Crossing ID is important for determining the need for additional controls and evaluating the efficiency of various types of controls.

C31. School Bus-Related

Definition: Indicates if a school bus is related to the crash. The "school bus", with or without a pupil on board, must be directly involved as a contact vehicle or indirectly involved as a non-contact vehicle. A "school bus" is a yellow vehicle, with the name "school bus" on the front and rear and lettering on both sides identifying the school, school district served, or company operating the bus.

Source: Refer to block 67 - 68 on DMV-349 Form.

Attributes:
1 Yes, school bus directly involved (contact vehicle)
2 Yes, school bus indirectly involved (non-contact vehicle)
3 No
4 Unknown

Rationale: Important in determining where and how school children are at the greatest risk of injury when being transported by school bus and the extent to which school bus operations affect overall traffic safety.

C32. Work Zone-Related

Definition: A crash, which occurs in or near a construction, maintenance or utility work zone.

Source: Refer to block 78-81 on DMV-349 Form.

Attributes: **Subfield 1: Did crash occur in or near—**
1 Construction work area
2 Maintenance work area
3 Utility work area
4 Intermittent/moving work – e.g., patching pothole
5 No

Subfield 2: Work activity at the time of the crash
1 On-going
2 No apparent activity

Subfield 3: Work area marked with warning signs, cones, etc.

1 Yes
2 No

Subfield 4: Location of crash

1 Before work area (after first warning sign and before lane shift/closure)
2 In work area approach taper (where lane closed or shifted)
3 Adjacent to actual work area

Rationale: Important for assessing the impact of various types of on-highway work activity on traffic safety and evaluating Traffic Control Plans used at work zones and to make adjustments to the traffic control plans to enhance safety to workers and traveling public.

C33. Source of Information

Definition: Identity of the source providing the information on the crash report.

Source: Refer to officer name, officer number and department on DMV-349 Form.

Attributes: Police Reporting Agency (Department) identifier (The following values would be derived from the Agency identifier)

1 Municipal Police
2 Sheriff
3 Rural or County Police
4 Highway Patrol
5 Other Traffic Investigating Agency

Rationale: This data element is important for quality control and identification purposes. The Police Reporting Agency identifier is to track the reporting of Safetynet crashes for quality control and training purposes.

C34. Officer Name

Definition: Name of officer preparing the crash report.

Source: Refer to officer name, officer number and department on DMV-349 Form.

Attributes: Actual name.
Rationale: Important in following up, when completing a report or with specific questions regarding a particular crash investigation.

C35. Officer Number

Definition: Number of officer preparing the crash report.

Source: Refer to officer name, officer number and department on DMV-349 Form.

Attributes: Law enforcement badge number assigned to officer.

Rationale: Linked to previous data element. Provides specific code for each officer.

C36. Patrol Area

Definition: Area of Enforcement.

Source: Refer to DMV-349 Form.

Attributes: Assigned at the local level.

Rationale: Reserved for local law enforcement use.

C37. Date and Time Reported to Law Enforcement Agency

Definition: The date (year, month, and day) and time (00:00-23:59) at which the law enforcement agency was notified about the crash.

Source: Refer to date and time block on DMV-349 Form.

Attributes:

- YYYYMMDDHHMM
- See Appendix B for coding instructions. Midnight is defined as 00:00 to represent the beginning of a new day.
- Unknown

Rationale: Useful as a surrogate for time of the crash.

C38. Manner of Crash/Collision Impact

Definition: The events in sequence for this vehicle.

Source: Refer to ANSI D16.1 for definitions of specific attributes and refer to blocks 52 - 56 and block 48 on DMV-349 Form.

Attributes:

Subfield 1 – First Event

00 Unknown

Non-Collision

01 Ran off road right
02 Ran off road left
03 Ran off road straight ahead
04 Jackknife
05 Overturn/rollover
06 Crossed centerline/median
07 Downhill runaway
08 Cargo/equipment loss or shift
09 Fire/explosion
10 Immersion
11 Equipment fair (blown tire, brake failure, etc.)
12 Separation of units
13 Other non-collision*

Collision of Motor Vehicle With

14 Pedestrian
15 Pedalcyclist
16 Railway vehicle (e.g., train, engine)
17 Animal
18 Movable object

Collision of Two or More Motor Vehicles

20 Parked motor vehicle
21 Rear end, slow or stop
22 Rear end, turn
23 Left turn, same roadway
24 Left turn, different roadways
25 Right turn, same roadway
26 Right turn, different roadways
27 Head on
28 Sideswipe, same direction
29 Sideswipe, opposite direction
30 Angle
31 Backing up
32 Other collision with vehicle*

Collision with fixed object

33 Tree
34 Utility Pole (with or without light)
35 Luminaire Pole (non-breakaway)

36 Luminaire Pole (breakaway)
37 Official Highway Sign (non-breakaway)
38 Official Highway Sign (breakaway)
39 Overhead Sign Support
40 Commercial Sign
41 Guardrail End on Shoulder
42 Guardrail Face on Shoulder
43 Guardrail End in Median
44 Guardrail Face in Median
45 Shoulder Barrier End (non-guardrail)
46 Shoulder Barrier Face (non-guardrail)
47 Median Barrier End (non-guardrail)
48 Median Barrier Face (non-guardrail)
49 Bridge Rail End
50 Bridge Rail Face
51 Overhead Part of Underpass
52 Pier on Shoulder of Underpass
53 Pier in Median of Underpass
54 Abutment (supporting wall) of Underpass
55 Traffic island Curb or Median
56 Catch Basin or Culvert on Shoulder
57 Catch Basin or Culvert in Median
58 Ditch
59 Embankment
60 Mailbox
61 Fence or Fence Post
62 Construction Barrier
63 Crash Cushion
64 Other Fixed Object*

Subfield 2 - **Second Event**
See Codes in Subfield 1

Subfield 3 - **Third Event**
See Codes in Subfield 1

Subfield 4 - **Fourth Event**
See Codes in Subfield 1

Rationale: Important for evaluation of occupant injuries and structural defects. This data element can be used in conjunction with Motor Vehicle Maneuver /Action (V18) to describe the crash.

II. VEHICLE LEVEL

The motor vehicle data elements describe the characteristics, events, and consequences of the motor vehicle involved in the crash.

Vehicle Data Elements Collected on the DMV-349

V1. Vehicle Unit Number Unique to the Crash

Definition: Motor vehicle unit type and number assigned to uniquely identify each motor vehicle involved in the crash. This number is not assigned to pedestrians or bicyclists. (See **Non-Motorist Number (P21.)**

Source: Refer to Unit block on DMV-349 Form.

Attributes: **Subfield 1:**

- Type
  - Motor Vehicle in Transport
  - Parked Motor Vehicle
  - Working Vehicle/Equipment

Subfield 2:

- Number
- Sequential number (alphanumeric and numeric characters)

Rationale: Uniquely identifies each motor vehicle unit involved in the crash. Permits occupants to be assigned to the appropriate motor vehicle.

V2. Vehicle Registration State and Year

Definition: The state, commonwealth, territory, Indian nation, U.S. Government, foreign country, etc., issuing the registration plate and the year of registration as indicated on the registration plate displayed on the vehicle.

Source: Refer to owner block on DMV-349 Form.

Attributes: Alphanumeric identifier assigned by the State, foreign country, US. government, Indian Nation, etc., and CCYY for the year.

Subfield 1 - State

State – 2 position abbreviation of state issuing license plate.
If State is unknown, use **"OS"**
If no plate is available, leave blank

Subfield 2 - Year

Year - 4-digit year license plate issued. Must be current, prior or next year, otherwise contains zeroes

Rationale: This element is critical in providing linkage between the crash and vehicle registration files to access the vehicle identification number.

V3. Vehicle License Plate Number

Definition: The alphanumeric identifier or other characters, exactly as displayed, on the registration plate or tag affixed to the vehicle. For combination trucks, vehicle plate number is obtained from the power unit or tractor.

Source: Refer to owner block on DMV-349 Form.

Attributes: Alphanumeric identifier assigned by the State, foreign country, U.S. government, or Indian Nation. Up to 8 positions (characters). This data element does not include Temporary Plates or Permits. Refer to ANSI D16.1 for definitions of specific attributes.

Rationale: This element is critical in providing linkage between the crash and vehicle registration files to assess the vehicle identification number.

V4. Vehicle Identification Number (VIN)

Definition: A unique combination of alphanumeric characters assigned to a specific vehicle and formulated by the manufacturer. When the technology is available, this number can also be obtained by using a bar code reader while the vehicle is at the scene.

Source: Refer to owner block on DMV-349 Form.

Attributes: A manufacturer assigned number permanently affixed to the vehicle. When an officer makes a match of the Registration Master File, using a program such as VIN assist, and verifies the number in the field using a check digit, the VIN can be obtained by the officer. The following fields are contained in the (17) character VIN for vehicles from 1981 to the present:

Character	Description
1st	Country of Origin
2nd	Manufacturer
3rd	Vehicle Type
4th_8th	The following five categories are covered by the 4th through 8th characters of the VIN (not necessarily in this order)
-	Line, e.g., Buick "Road master"
-	Series
-	Body Type
-	Engine Type
-	Restraint System
9th	Check Digit
10th	Model Year
11th	Assembly Plant
12th_17th	Production Sequence Number

Rationale: Important for evaluation of specific vehicle design characteristics and occupant protection systems.

V5. Vehicle Make

Definition: The distinctive (coded) name applied to a group of vehicles by a manufacturer.

Source: Refer to owner block on DMV-349 Form.

Attributes: Assigned by vehicle manufacturer

Rationale: Important for use in identifying vehicle make, for evaluation, research and crash comparison purposes.

V6. Commercial Vehicle

Definition: Indication as to whether a commercial vehicle was involved in the crash. A commercial motor vehicle (CMV) is defined as a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

a. Has a gross combination weight rating of 10,001 or more pounds inclusive of a towed unit, or
b. Is designed to transport 16 or more passengers including the driver, or
c. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded

under the Hazardous Materials Regulations. (49 CFR Part 172, Subpart F)

Attributes: Check block provided in the Unit 1, Unit 2 area, etc. of the crash report.

V7. Carrier Name

Definition: The name of an individual, partnership or corporation responsible for the transportation of persons or property.

Attributes: **Subfield 1:** Carrier Name
See Appendix C

Subfield 2: Carrier Name Source
Truck, shipping papers, driver or trip manifest (bus) or logbook
Other*

Rationale: The Federal Highway Administration's Office of Motor Carriers has the authority to fine and sanction truck and bus companies that are judged to be unsafe. A key to identifying such carriers is to collect crash data by the name of the company. Carrier crash data allows the OMC to focus enforcement efforts on truck and bus companies that have the largest number of crashes.

V8. Carrier Street Address

Definition: The street address of the carrier.

Attributes: See Appendix D

Rationale: Since the Office of Motor Carriers has the authority to visit carriers to conduct review of compliance with FMCSRs, the street address of the carrier is important. The street address is also a way of cross-checking the correct identity of the carrier.

V9. Carrier Identification Number

Definition: A unique number, found on the power unit, and assigned by the U.S. Department of Transportation, Interstate Commerce Commission, or by the state to a motor carrier.

Attributes: **Subfield 1:** Identification Number

Subfield 2: Issuing Authority

U.S. Department of Transportation Number (US DOT)
Interstate Commerce Commission Number (ICC MC)
International Fuel Tax Agreement Number (IFTA)
Fuel Tax Account# is comprised of:

- State Exemption Number (Intrastate Passenger Carrier, and Carrier of Household Goods)
- FEI (Federal Employee Identification) Number
- Fleet Number

Mexico
Canada

Subfield 3: Source of Number

Shipping papers (truck) or trip manifest (bus) or logbook
Other*

Rationale: Important for management/administration, evaluation, and linkage.

V10. Vehicle Style (Type)

Definition: Indicates the general configuration of vehicle. Refer to ANSI D16.1 for definitions of specific attributes.

Source: Refer to block 41 on DMV-349 Form.

Attributes:
01 Passenger Car
02 Pickup
03 Light Truck (mini-van, panel)
04 Sport Utility
05 Van
06 Commercial Bus
07 School Bus
08 Activity Bus
09 Other Bus*
10 Single unit truck (2 axle, 6-tire)
11 Single-unit truck (3-or-more axles)
12 Truck/Trailer
13 Truck Tractor (bobtail)
14 Tractor/Semi-trailer
15 Tractor/Doubles
16 Unknown heavy truck
17 Taxicab
18 Farm Equipment
19 Farm Tractor
20 Motorcycle
21 Moped
22 Motor/Scooter or Motor Bike

23 Pedalcycle
24 Pedestrian
25 Motor home/Recreational Vehicle
26 Other*
27 All-Terrain Vehicle (ATV)
28 Firetruck
29 EMS Vehicle, Ambulance, Rescue Squad
30 Military
31 Police
32 Unknown
33 Autocycle

Rationale: This data element provides information about the general configuration of the vehicle which is important to evaluate the types of vehicles that have the most crashes and the effectiveness of various safety counter-measures. It should be collected for all crashes, not just those involving trucks.

V11. Cargo Body Type

Definition: Coded for commercial motor vehicles (CMV), see V6.

Attributes:
01 Bus (seats for 16 or more people, including driver)
02 Bus (seats for less than 16 people, including driver)
03 Van/enclosed box
04 Grain/Chips/Gravel truck
05 Pole truck
06 Cargo tank
07 Flatbed
08 Dump
09 Concrete mixer
10 Auto transporter
11 Garbage/refuse
12 Log truck
13 Other*
14 Intermodal Cargo Container

Rationale: This data element provides more information about the vehicle, including all major cargo body types. The information it provides can be important in helping OMC make decisions on regulatory strategies for different types of vehicles.

V12. Hazardous Materials Involvement (Cargo Only)

Definition: Indication that a motor vehicle had a hazardous materials placard as required by federal regulations.

Source: Refer to back of the DMV-349 Form.

Attributes: **Subfield 1:** Was this vehicle carrying hazardous materials?

1 Yes
2 No

Subfield 2: Did this vehicle have a hazardous materials placard?

1 Yes
2 No

Subfield 3: If yes, record from the hazardous materials placard,

- 4-digit placard number or name taken from the middle of the diamond or from the rectangular box; and
- 1-digit placard number from bottom of diamond.

Subfield 4: Hazardous Materials, Cargo Released from the Cargo Compartment

1 Yes - Hazardous materials released
2 No - Hazardous materials not released

Rationale: Getting good data on crashes involving trucks carrying hazardous materials (HM) is important to the OMC as a result, OMC imposes tighter regulations on carriers that operate vehicles that transport HM, pulls over sample HM carrying vehicles for roadside inspections, and conducts compliance reviews on a higher percent of HM carriers. This data element asks the reporting officer to observe:

(1) Whether or not the vehicle is carrying hazardous materials,
(2) Whether or not the vehicle has a hazardous material placard,
(3) Record what is on the placard, and
(4) Indicate if the hazardous materials spilled out of the cargo compartment. By recording this information, the FHWA will obtain good information about the types of hazardous materials involved in a crash and the crash scenes which were potential hazards because HM material escaped its packaging.

V13. Weight Rating of Power Unit

Definition: A gross vehicle weight rating (GVWR) is a value specified by the manufacturer for a single-unit truck, truck tractor or trailer, or the sum of such values for the units, which make up a truck combination.

Source: Refer to block 20 on DMV-349 Form.

Attributes: Weight Rating of Power Unit of the Truck

- <10,000 pounds
- 10,001-26,000
- >26,000

Rationale: Two break points used for FHWA regulation of motor carriers and their vehicles. This variable cannot be derived since some trucks are from out-of-state.

V14. Trailer Type

Definition: Actual description of the type of trailer. A semi-trailer is one where a significant portion of its weight is supported by the towing vehicle.

Source: Refer to block 82 on DMV-349 Form.

Attributes:

00 No trailer

Non-semi-trailers
01 Boat
02 Camper
03 Utility
04 Horse
05 House trailer (mobile home)
06 Towed vehicle
07 Other non-semi*

Semi-trailers
08 Tanker
09 Enclosed van
10 Flatbed or platform
11 Other semi-trailer*
12 Double trailer

Rationale: Semi-trailers should have the length, width, and number of axles. Dual trailers should have the length, width and number of axles for each separate trailer. The maximum length and width for semi-trailers are:

- Length: Single unit 48 feet, Dual trailer 28 feet (each trailer)
- Width: Designated routes 102 inches, Otherwise 96 inches

V15. Overwidth Trailer Permit Number

Definition: Actual permit number allowing a 12', 14', or 16' mobile home to be transported on a roadway.

Attributes: Actual permit number

Rationale: Provide the identification of crashes involving overwidth mobile homes, identify the specifics involved in these crashes and allow tracking of the individual permit numbers.

V16. Length of Trailer 1

Definition: Actual length of trailer number 1 (in feet).

Attributes: nn Length in feet of trailer
99 If double trailer and length is not stated

V17. Width of Trailer 1

Definition: Actual width of trailer number 1 (in inches).

Attributes: nnn Width in inches of trailer
999 Not stated

V18. Length of Trailer 2

Definition: Actual length of trailer number 2 (in feet).

Attributes: nnn Length in feet of trailer
999 If double trailer and length is not stated

V19. Width of Trailer 2

Definition: Actual width of trailer number 2 (in inches).

Attributes: nnn Width in inches of trailer
999 Not stated

V20. Number of Axles - Trailer 1

Definition: Number of axles for trailer number 1. If the trailer is a semi-trailer, only the axles under the first trailer are recorded.

Attributes: n Number of axles
9 Not stated

V21. Number of Axles - Trailer 2

Definition: The number of axles for trailer number 2.

Attributes: n Number of axles
9 Not stated

V22. Vehicle Defects

Definition: Mechanical defects of the vehicle involved in the crash.

Source: Refer to block 59 on DMV-349 Form.

Attributes: **Subfield 1** - First Defect
0 None detected
1 Brakes
2 Headlights
3 Rear lights
4 Steering
5 Tires
6 Other defects*
7 Unknown

Subfield 2: - Second Defect
See Codes in Subfield 1

Rationale: Provides defect information for a vehicle involved in a crash and possible related factors, which may have contributed to the crash.

V23. Vehicle Authorized Speed Limit

Definition: Authorized speed limit for the vehicle at the time of the crash. The Authorized Value may be indicated by the posted speed limit, blinking sign at construction zones, restricted speed for permitted vehicles, etc.

Source: Refer to block 60 on DMV-349 Form.

Attributes: Authorized Value

Rationale: Important for evaluation purposes in spite of the fact that the speed of the vehicle at the time of the crash may differ significantly from the authorized speed limit.

V24. Estimate of Original Vehicle Speed

Definition: Estimated speed in miles per hour for each vehicle involved - may exceed 100 mph. Estimates reflect the speed of each vehicle at the moment the driver initially perceived an existing hazard.

Source: Refer to block 61 on DMV-349 Form.

Attributes: 999 Not stated
nnn Estimate of original vehicle speed

Rationale: For help in determining the circumstances of the crash.

V25. Estimated Speed at Impact

Definition: Estimated speed in miles per hour for each vehicle involved in the crash. Estimates reflect the speed of each vehicle at the moment of impact.

Attributes: 999 Not stated
nnn Estimate of vehicle speed at impact
98 Speed is at least 98 miles per hour

Rationale: For help in determining the circumstances of the crash.

V26. Tire Impressions Before Impact

Definition: Length (in feet) of the tire impressions (skid marks, tire print, yaw) for each vehicle involved in the crash, prior to impact.

Source: Refer to block 63 on DMV-349 Form.

Attributes: 9999.99 Not stated
nnnn.nn Length in feet of tire impressions

Rationale: For help in determining the circumstances of the crash.

V27. Distance Traveled After Impact

Definition: Distance (in feet) each vehicle or pedestrian traveled after impact as a result of the force of the crash.

Source: Refer to block 64 on DMV-349 Form.

Attributes: 9999.99 Not stated
nnnn.nn Distance in feet traveled after impact

Rationale: For help in determining the circumstances of the crash.

V28. Direction of Travel Before Crash

Definition: The direction or a vehicle's normal, general travel on the roadway before the crash. Notice that this is not a compass direction but a direction consistent with the designated direction of the road. For example, for a state designated north-south highway, the direction must be either northbound or southbound even though a vehicle may have been traveling due east as a result of a short segment of the highway having an east-west orientation.

Source: Refer to block 84 on DMV-349 Form.

Attributes: **Subfield 1:** Direction
01 North
02 North East
03 North West
04 South
05 South East
06 South West
07 East
08 West
09 Not on Roadway
10 Unknown

Subfield 2: Reference to Roadway
1 Vehicle on "On Road"
2 Vehicle on "From/Reference Road"
3 Vehicle on neither of the above

Rationale: Important to indicate direction the vehicle was traveling before the crash for evaluation purposes.

V29. Traffic Control Device Type

Definition: The type of traffic control, if any, at crash location.

Source: Refer to block 76 on DMV-349 Form.

Attributes:
00 No Control Present
01 Stop Sign
02 Yield Sign
03 Stop and Go Signal
04 Flashing signal with Stop Sign
05 Flashing Signal without Stop Sign
06 RR Gate and Flasher
07 RR Flasher
08 RR Crossbucks Only
09 Human Control
10 Warning Sign
11 School Zone Signs
12 Flashing Stop and Go Signal
13 Double Yellow Line, No Passing Zone
14 Other*

Rationale: This element needs to be collected at the scene because the presence of specific devices is better verified at the time of the crash. Important for ascertaining the relationship between the use of various traffic control devices (TCDs) and crashes and identifying the need for upgraded TCDs at specific crash locations.

V30. Vehicle Maneuver/Action

Definition: What the vehicle was doing prior to the crash.

Source: Refer to block 49 on DMV-349 Form.

Attributes:
01 Stopped in Travel Lane
02 Parked Out of Travel Lanes
03 Parked in Travel Lanes
04 Going Straight Ahead
05 Changing Lanes or Merging
06 Passing
07 Making Right Turn
08 Making Left Turn
09 Making U Turn
10 Backing
11 Slowing or Stopping
12 Starting in Roadway
13 Parking

14 Leaving Parked Position
15 Avoiding Object in Road
16 Other*

Rationale: Important for evaluation purposes, particularly when combined with Direction of Travel.

V31. Point of Impact

Definition: The portion of the vehicle that impacted first in a crash.

Source: Refer to block 48 on DMV-349 Form.

Attributes: Up to four 2 position codes describing the Location of Initial Contact
0 Pedestrians
0 Non-Contact Vehicle
1-26 Vehicle (Passenger Cars/Small Trucks)
1-40 Vehicle (Tractor-Trailers)
27-30 Motorcycles, Bicycles, Mopeds, and All Terrain Vehicles (ATV)

Rationale: Important for use in evaluating injury severity in relation to vehicle impact and crash severity.

V32. Sequence of Events for this Vehicle

Definition: The events in sequence for this vehicle. Refer to ANSI D16.1 for definitions of specific attributes.

Source: Refer to block 52-56 on DMV-349 Form.

Attributes: **Subfield 1** - First Event

00 Unknown

Non-Collision

01 Ran off road right
02 Ran off road left
03 Ran off road straight ahead
04 Jackknife
05 Overturn/rollover
06 Crossed centerline/median
07 Downhill runaway
08 Cargo/equipment loss or shift
09 Fire/explosion
10 Immersion
11 Equipment failure (blown tire, brake failure, etc.)

12 Separation of units
15 Other non-collision*

Collision of Motor Vehicle With
14 Pedestrian
15 Pedalcyclist
16 Railway vehicle (e.g., train, engine)
17 Animal
18 Movable object

Collision of Two or More Motor Vehicles
20 Parked motor vehicle
21 Rear end, slow or stop
22 Rear end, turn
23 Left turn, same roadway
24 Left turn, different roadways
25 Right turn, same roadway
26 Right turn, different roadways
27 Head on
28 Sideswipe, same direction
29 Sideswipe, opposite direction
30 Angle
31 Backing up
32 Other collision with vehicle*

Collision with fixed object
33 Tree
34 Utility Pole (with or without light)
35 Luminaire Pole (non-breakaway)
36 Luminaire Pole (breakaway)
37 Official Highway Sign (non-breakaway)
38 Official Highway Sign (breakaway)
39 Overhead Sign Support
40 Commercial Sign
41 Guardrail End-on Shoulder
42 Guardrail Face on Shoulder
43 Guardrail End in Median
44 Guardrail Face in Median
45 Shoulder Barrier End (non-guardrail)
46 Shoulder Barrier Face (non-guardrail)
47 Median Barrier End (non-guardrail)
48 Median Barrier Face (non-guardrail)
49 Bridge Rail End
50 Bridge Rail Face
51 Overhead Part of Underpass
52 Pier on Shoulder of Underpass
53 Pier in Median of Underpass
54 Abutment (supporting wall) of Underpass

55 Traffic island Curb or Median
56 Catch Basin or Culvert on Shoulder
57 Catch Basin or Culvert in Median
58 Ditch
59 Embankment
60 Mailbox
61 Fence or Fence Post
62 Construction Barrier
63 Crash Cushion
64 Other Fixed Object*

Subfield 2 - Second Event
See Codes in Subfield 1

Subfield 3 - Third Event
See Codes in Subfield 1

Subfield 4 - Fourth Event
See Codes in Subfield 1

Rationale: Important for use in conjunction with most harmful event to generate complete information about a vehicle involved in the crash.

V33. Most Harmful Event for this Vehicle

Definition: The most harmful event in terms of property damage and injury caused by this vehicle. Refer to ANSI D16.1 for definitions of specific attributes.

Source: Refer to block 52 - 56 on DMV-349 Form.

Attributes: 00 Unknown

Non-Collision
01 Ran off road right
02 Ran off road left
03 Ran off road straight ahead
04 Jackknife
05 Overturn/rollover
06 Crossed centerline/median
07 Downhill runaway
08 Cargo/equipment loss or shift
09 Fire/explosion
10 Immersion
11 Equipment failure (blown tire, brake failure, etc.)
12 Separation of units
13 Other non-collision*

Collision of Motor Vehicle With
14 Pedestrian
15 Pedalcyclist
16 Railway vehicle (e.g., train, engine)
17 Animal
18 Movable object

Collision of Two or More Motor Vehicles
20 Parked motor vehicle
21 Rear end, slow or stop
22 Rear end, turn
23 Left turn, same roadway
24 Left turn, different roadways
25 Right turn, same roadway
26 Right turn, different roadways
27 Head on
28 Sideswipe, same direction
29 Sideswipe, opposite direction
31 Angle
31 Backing up
32 Other collision with vehicle

Collision with fixed object
33 Tree
34 Utility Pole (with or without light)
35 Luminaire Pole (non-breakaway)
36 Luminaire Pole (breakaway)
37 Official Highway Sign (non-breakaway)
38 Official Highway Sign (breakaway)
39 Overhead Sign Support
40 Commercial Sign
41 Guardrail End on Shoulder
42 Guardrail Face on Shoulder
43 Guardrail End in Median
44 Guardrail Face in Median
45 Shoulder Barrier End (non- guardrail)
46 Shoulder Barrier Face (non-guardrail)
47 Median Barrier End (non-guardrail)
48 Median Barrier Face (non-guardrail)
49 Bridge Rail End
50 Bridge Rail Face
51 Overhead Part of Underpass
52 Pier on Shoulder of Underpass
53 Pier in Median of Underpass
54 Abutment (supporting wall) of Underpass
55 Traffic island Curb or Median
56 Catch Basin or Culvert on Shoulder
57 Catch Basin or Culvert in Median

58 Ditch
59 Embankment
60 Mailbox
61 Fence or Fence Post
62 Construction Barrier
63 Crash Cushion
64 Other Fixed Object*

Rationale: Important for use in conjunction with the sequence of events to generate complete information about the crash.

V34. Distance & Direction from Road to Object Struck

Definition: For crashes in which an object was struck, a code describing the distance and direction from the edge of the roadway to the object in question. The edge of the roadway is where the roadway meets the shoulder.

Source: Refer to block 57 on DMV-349 Form.

Attributes: 0 None or not applicable
1 In road
2 Right of road, 0-10 ft.
3 Right of road, 11-30 ft.
4 Right of road, over 30 ft.
5 Left of road, 0-10 ft.
6 Left of road, 11-30 ft.
7 Left of road, over 30 ft.
8 Straight-ahead,0-10 ft.
9 Straight-ahead, 11-30 ft.
10 Straight ahead, over 30 ft.

Rationale: For help in determining the circumstances of the crash.

V35. Post-Crash Fire

Definition: Indication as to whether there was fire after the crash involving this vehicle.

Source: Refer to block 66 on DMV-349 Form.

Attributes: 0 Not stated
1 Yes
2 No

Rationale: Provides another measure of the circumstances as well as the severity of the crash.

V36. Underride/Override

Definition: An underride refers to a vehicle sliding under another vehicle during a crash. An override refers to a vehicle riding up over another vehicle. Both can occur with a parked vehicle.

Source: Refer to block 58 on DMV-349 Form.

Attributes: 1 Underride
2 Override
3 Neither Underride or Override
4 Unknown

Rationale: This information is needed to identify the magnitude of crashes in which an underride or override occurs to support NHTSA rulemaking activities.

V37. Damaged Area of Vehicle/Extent of Deformity

Definition: Based on the Traffic Accident Damage (TAD) Ratings, a 4-position field is used to record the location and severity of damage on the vehicle from the crash. Each part of the damaged vehicle is described in the first 3 positions and the severity of the damage is denoted in the last position. Three 4~position fields may be recorded per vehicle.

Source: Refer to block 43 on DMV-349 Form.

Attributes: **Subfield 1** - Damaged Areas

FC Front Center
FD Front Distributed
FL Front Left Corner
FR Front Right Corner
BC Hear Center
BD Rear Distributed
BL Rear Left Corner
BR Rear Right Corner
LP Left Side (door)
RP Right Side (door)
LFQ Left Side Front Quarter
RFQ Right Side Front Quarter
LBO Left Side Rear Quarter
RBQ Right Side Rear Quarter
LD Left Side Distributed
RD Right Side Distributed

L&T Left Side & Top (rollover)
R& T Right Side & Top (rollover)
TOP Top
UND Underneath

Subfield 2 - Extent of Deformity

The Severity of Damage is based on a Scale of "0" being no damage and "7" being the most severe damage.

Rationale: Important for evaluation in particular in conjunction with speed and vehicle crash severity.

V38. Estimated Amount of Vehicle Damage

Definition: Dollar estimate of the cost to restore the vehicle to its condition just prior to the crash or the value of the vehicle before the crash, whichever is less. A vehicle that is (being towed by another is part of the towing vehicle and its damage should be included.

Source: Refer to block 44 on DMV-349 Form.

Attributes: 9999999. Not stated

nnnnnnn. Actual dollar estimate (for a "totaled" vehicle, a dollar estimate of the retail value of the vehicle prior to the crash)

9999998. Damage exceeds 9999998

Rationale: Used in classifying property damage only (PDO) crashes, and in calculating the costs of motor vehicle traffic crashes for purposes of estimating the cost benefit of highway safety programs and improvements.

V39. Vehicle Drivable

Definition: Vehicle is disabled by damage severe enough to prevent driving it. Determination as to whether or not vehicle is in a drivable condition to permit it to be driven from the scene of the crash.

Source: Refer to block 42 on DMV-349 Form.

Attributes: 1 Yes
2 No

3 Unknown

Rationale: Determining whether the vehicle sustained disabling damage from a crash so the it could not be safely driven from the scene is key to consistent collection of crash data.

V40. Vehicle Towed To/By

Definition: Description of where the vehicle was moved following the crash.

Source: Refer to front of DMV-349 Form.

Attributes: Actual name of garage, lot or other Location

Rationale: Important for management of crash consequences for later reference by persons involved in the crash as well as further need for investigation.

V41. Insurance Company Name

Definition: Name of the insurance company for the vehicle involved in the crash.

Source: Refer to owners block on DMV-349 Form.

Attributes: Actual name of company.

Rationale: Tracking of financial responsibility.

V42. Policy Number

Definition: Insurance policy number for the vehicle involved in the crash.

Source: Refer to owners block on DMV-349 Form.

Attributes: Actual policy number.

III. Person Level

The person data elements describe the characteristics, actions, and consequences to the person involved on the crash.

Person Level 1: All Persons Involved

P1. Person Type

Definition: Type of person involved in a crash. Refer to ANSI D16.1 Classification Manual for definitions of specific attributes.

Source: Refer to block 22 on DMV-349 Form.

Attributes:
1 Driver
2 Passenger

Non-motorist
3 Pedestrian
4 Pedacyclist (bicycle, tricycle, Unicycle, pedalcycle)
5 Roller skater, roller blader
6 Other*
7 Unknown

Rationale: Need to know person type for classification purposes to evaluate specific countermeasure designed for specific people.

P2. Name

Definition: The full name of the person.

Source: Refer to Unit block on DMV-349 Form.

Attributes:
1 Complete First, Middle and Last Name, or
2 'Hit and Run' if Hit and Run and no Driver's Name is shown, or
3 The Owner's Name if parked vehicle and no Driver. May be Individual Name or Company Name.

Rationale: This data element should be collected to corroborate the driver license number and to facilitate linkage when names are available in the health and insurance files. When possible, obtain this information from the driver license (via a bar code or "smart" license or via on-line linkage if the technology exists at the state level).

P3. Address

Definition: Current address of person, including street address or rural road number. **Post office box numbers** are not acceptable for the street address. The street address is recorded if (1) No North Carolina driver's license is shown, or (2) Address is Different than shown on North Carolina driver's license. Check box provided to indicate whether this is the same address as indicated on the driver's license. A mailing address is generated if the record exists on the Driver's License Master File. The address is filled in by the system if the address is the same as shown on the North Carolina's driver's license.

Source: Refer to Unit block on DMV-349 Form.

Attributes: **Subfield 1 - Street Address**
26 position -street address
15 position - limit for out of state addresses

Subfield 2 - City of Residence
Current city of residence of person. A five position "city code" is provided on all North Carolina addresses when the city is validated by the system.
22 position - city of residence
12 position - limit for out-of-state cities

Subfield 3 - State of Residence
Current state of residence of person.
2 position abbreviation
DC coded for "other country"

Subfield 4 - Residence Zip Code
Current zip code of residence of person. The zip code is optional for out-of-state addresses.

nnnnn Zip code

Rationale: Need for any follow-up contact of the persons(s) involved in the crash.

P4. Home/Work Phone Numbers

Definition: Telephone number(s) of the person, including area code.

Source: Refer to Unit block on DMV-349 Form.

Attributes: Telephone numbers recorded in hard copy form only.

Rationale: For follow-up contacts to persons involved in a crash, for additional information.

P5. Date of Birth/Approximate Age

Definition: The month, day, and year of birth of person involved in a crash. If not available, record the approximate age.

Source: Refer to Unit block on DMV-349 Form.

Attributes: Date of Birth MMDDCCYY
Approximate Age

Rationale: Uses of accurate reporting of age include assessing effectiveness of occupant protection systems for specific age groups, and identifying the need for safety programs directed toward them. This element is also critical in providing linkage between the crash, EMS, and hospital records.

P6. Gender

Definition: The sex of person involved in a crash.

Source: Refer to block 26 on DMV-349 Form.

Attributes: M Male
F Female

Rationale: Necessary to evaluate the effect of gender on occupant protection systems and vehicle design characteristics.

P7. Ethnicity

Definition: The ethnic affiliation of person involved in a crash.

Source: Refer to block 25 on DMV-349 Form.

Attributes: W White
B Black
N Native American
H Hispanic
A Asian
O Other*
U Unknown

P8. Injury Status

Definition: The most severe injury to a person involved in a crash. Refer to ANSI D16.1Classification Manual for definitions of specific attributes.

Source: Refer to block 32 on DMV-349 Form.
Attributes: 1 Killed (Comparable with Fatal Injury)
2 A Type Injury (incapacitating Injury)
3 B Type Injury (Evident Injury)
4 C Type Injury (Possible Injury)
5 No Injury
6 Unknown

Rationale: Necessary for injury outcome analysis and evaluation. This element is also critical in providing linkage between the crash, EMS, and hospital records.

P9. Occupant's/ Non-motorist Vehicle Unit Number Unique to Crash

Definition: The number assigned to the vehicle in which the person was an occupant, or to identify the vehicle that struck the non-motorist in the crash.

Source: Refer to block 21 on DMV-349 Form.

Attributes: Number to indicate in which vehicle the occupant was located, or to indicate vehicle that struck the non-motorist.

Rationale: Important to link occupants back to vehicles in which they were involved. Necessary to evaluate the effect vehicle type and specific make/model have on occupant protection effectiveness and injury status. For the non-motorist, important for tracking when multiple vehicles are involved in the crash.

Person Level 2: All Occupants

P10. Seating Position

Definition: The location for this occupant in, on, or outside of the motor vehicle prior to the impact of a crash.

Source: Refer to block 23 on DMV-349 Form.

(Occupant Seating Position)

Attributes:
01 Front seat - Left side (motorcycle driver)
02 Front seat - Middle
03 Front seat - Right side
04 Second seat - Left side (motorcycle passenger)
05 Second seat - Middle
06 Second seat - Right side
07 Third row - Left side (motorcycle passenger)
08 Third row - Middle
09 Third row - Right side
10 Sleeper section of cab (truck)
11 Passenger in other enclosed passenger or cargo area, e.g. non-trailing unit, bus, etc. (refer to separate attachment - records up to 20 rows/60 seats)
12 Passenger in unenclosed, passenger or cargo area (non-trailing unit, i.e., pickup, etc.)
13 Trailing unit
14 Riding on vehicle exterior (non-trailing unit)
15 Unknown

Rationale: Without known seating position for each person in the vehicle, it is not possible to fully evaluate the effect of occupant protection programs.

P11. Occupant/Non-Motorist Protection System Use

Definition: The safety protection in use by occupant or non-motorist at the time of the crash.

Source: Refer to block 27 on DMV-349 Form.

Attributes:
0 None used
1 Lap belt only used
2 Shoulder and lap belt used
3 Shoulder belt only
4 Child restraint
5 Helmet (motorcyclist or non-motorist)
Codes 6-8 Non-Motorist only
6 Protective pads

7 Reflective clothing
8 Lighting
9 Other*
10 Unable to determine

Rationale: Proper classification of the use of available safety devices/protection systems would be used to evaluate the effectiveness of such equipment.

P12. Air Bag Deployed

Definition: Deployment status of an air bag, relative to each specific occupant.

Source: Refer to blocks 28 and 29 on DMV-349 Form.

Attributes: **Subfield 1** - **Deployment**
0 No Air Bag(s)
1 Not Deployed
2 Deployed – front
3 Deployed – side
4 Deployed – both front/side
5 Deployment unknown

Subfield 2 – Switch Status
1 No ON-OFF switch
2 Switch in ON position
3 Switch in OFF position
4 Unknown if ON-OFF switch present
5 Unknown position in vehicle

Rationale: Necessary to evaluate the effectiveness of air bags and other occupant protection equipment, especially at a time when air bags are rapidly increasing in the vehicle population and when consumers are allowed to have the air bag disconnected under certain conditions.

P13. Ejection

Definition: The location of each occupant's body as being completely or partially thrown from the vehicle as a result of a crash.

Source: Refer to blocks 30 and 31 on DMV-349 Form.

Attributes: 1 Not ejected
2 Totally ejected
3 Partially ejected
4 Unknown

Rationale: Occupant protection systems prevent or mitigate ejections to different extent. Crash injury outcome may depend on information from this element.

P14. Trapped

Definition: Persons who are restrained in the vehicle by damaged vehicle components.

Source: Refer to blocks 30 and 31 on DMV-349 Form.

Attributes: 1 Yes
2 No
3 Unknown

Rationale: This element would be used to evaluate vehicle integrity and the impact of the need for means to extricate vehicle occupants and the medical outcome for victims who are entrapped.

Person Level 3: All Drivers

P15. Driver License State/Province

Definition: A code identifying the state or province issuing a driver license to an individual. Includes the states of the United States (including the District of Columbia and outlying areas), Indian Nation, U.S. Government, Canadian provinces, and Mexican states (including the Distrito Federal), as well as other jurisdictions.

Source: Refer to driver block on DMV-349 Form.

Attributes: Not Licensed
State code (See Appendix A)
Indian Nation
U.S. Government
Canadian Province
Mexican State
International License (other than Mexico, Canada)
Unknown

Rationale: Necessary to evaluate the effectiveness of various licensing laws. This element is also critical in providing linkage from the crash file to driver license file.

P16. Driver License Number

Definition: A unique number assigned by the authorizing agent issuing a driver license to an individual. Indication as to whether driver license is a CDL license or not.

Source: Refer to driver block and online access to State Automated Driver License System.

Attributes: Specific code assigned by the respective State, foreign country, U.S. government, Indian Nation, etc. ANSI D16.1 Standard allows 25 positions for OLN.

Rationale: This element is critical in providing linkage between the crash and driver license files at the state level. The DLN provides a single unique index or key useful within a jurisdiction to locate a driver.

P17. Commercial Driver License (CDL)

Definition: Indication as to whether driver license is a CDL license or not.

Source: Refer to Unit block on DMV-349 Form.

Attributes: Check block under space for driver license number.

P18. Contributing Circumstances, Driver.

Definition: The actions of the driver, which may have contributed to the crash.

Source: Refer to blocks 14 – 19 on DMV-349 Form.

Attributes: **Subfield 1** First Contributing Circumstance

0 No contributing circumstances indicated
1 Disregarded yield sign
2 Disregarded stop sign
3 Disregarded other traffic signs
4 Disregarded traffic signals
5 Disregarded road markings
6 Exceeded authorized speed limit
7 Exceeded safe speed for conditions
8 Failure to reduce speed
9 Improper turn
10 Right turn on red
11 Crossed centerline/going wrong way
12 Improper lane change
13 Use of improper lane
14 Overcorrected/oversteered
15 Passed stopped school bus
16 Passed on hill
17 Passed on curve
18 Other improper passing
19 Failed to yield right of way
20 Inattention
21 Improper backing
22 Improper parking
23 Driver distracted
24 Improper or no signal
25 Followed too closely
26 Operated vehicle in erratic, reckless, careless, negligent or aggressive manner
27 Swerved or avoided due to wind, slippery surface, vehicle, object, non-motorist in roadway, etc.
28 Visibility obstructed
29 Operated defective equipment
30 Alcohol use
31 Drug Use
32 Other*
33 Unable to determine

34 Unknown
35 Driver distracted by electronic communication device (cell phone, texting, etc.)
36 Driver distracted by other electronic device (navigation device, DVD player, etc.)
37 Driver distracted by other inside the vehicle
38 Driver distracted by external distraction (outside vehicle)

Subfield 2 - Second Contributing Circumstance
See Codes in Subfield 1

Subfield3 - Third Contributing Circumstance
See Codes in Subfield 1

Rationale: Important for evaluating the effect that dangerous driver behavior has on the crash.

P19. Traffic Violations

Definition: Person charged with a traffic violation.

Subfield 1 - Name of Person

Subfield 2 - Charge(s)

Source: Refer to “Traffic Violations” block on DMV-349 Form.

Rationale: For use at the local level. Citation numbers are optional, also for local use only.

Vehicle Seizure (DWI)

Check box for crashes involving alcohol or other drugs in sufficient amount to constitute a DWI and the vehicle is "seized."

Source: Refer to block 40 on DMV-349 Form.

Person Level 4: All Drivers and Non-Motorists

P20. Alcohol/Drug Suspected

Definition: Investigating police officer's assessment of whether alcohol or other drugs were used by the vehicle driver or non-motorist.

Source: Refer to block 37 on DMV-349 Form.

Attributes:
0 No
1 Yes - alcohol, impairment suspected
2 Yes - alcohol, no impairment detected
3 Yes - other drugs, impairment suspected
4 Yes - other drugs, no impairment detected
5 Yes - alcohol and other drugs, impairment suspected
6 Yes - alcohol and other drugs, no impairment detected
7 Unknown

Rationale: Alcohol and other drug related crashes remain a serious traffic safety problem. Identifying crashes in which alcohol or other drugs may have been involved will help evaluate the effectiveness of programs to decrease the incidence of drunk driving or to identify problem areas and so enforcement programs can be targeted to these areas.

P21. Test for Alcohol/Other Drugs

Definition: Whether or not a test was given, including the type, or whether a test was refused.

Source: Refer to block 38 on DMV-349 Form.

Attributes:
Test Status
0 No test
1 Alcohol test
2 Test for drugs other than alcohol
3 Test for alcohol and other drugs
4 Test refused
5 Unknown

P22. Test Results

Definition: Indication of the degree of presence of alcohol or other drugs through testing.

Source: Refer to block 39 on DMV-349 Form.

Attributes: 0 No test

1 No alcohol or other drugs
2 Alcohol (percent BAC)
3 Other drugs reported
4 Contaminated sample/unusable
5 Pending
6 Unknown

Rationale: Alcohol remains the most prevalent drug involved in motor vehicle crashes. Capturing the test result whenever a driver or non-motorist is tested will provide a more accurate assessment of the extent of involvement. Drugs other than alcohol are increasingly involved in traffic crashes. Identifying drug related crashes will help develop and evaluate programs directed at reducing their involvement. Whenever evidence of other drug use is available, it should be captured.

P23. Driver Condition

Definition: The condition of the driver and/or non-motorist at the time of the crash.

Source: Refer to block 35 on DMV-349 Form.

Attributes:
01 Apparently normal
02 Illness
03 Fatigue
04 Fell asleep, fainted, loss of consciousness
05 Impairment due to medications/drugs/alcohol
06 Medical condition
07 Other physical impairment
08 Restriction not complied with
09 Emotional (e.g., depression, angry, disturbed)
10 Other*
11 Unknown

Rationale: Important for evaluating the effect that driver fatigue, medications, alcohol, drugs, or other conditions have on the crash. Information about the condition of the non-motorist is needed to develop engineering, educational, and enforcement countermeasures to reduce crashes involving non-motorists.

P24. Vision Obstruction

Definition: Description of what prevented the driver or non-motorist from seeing whether or not such movement(s) could be made in a safe manner.

Source: Refer to block 34 and 85 on DMV-349 Form.

Attributes:
00 None
01 Vehicle window(s) obscured
02 Trees, crops, brush, etc.
03 Building(s)
04 Embankment
05 Sign(s)
06 Hillcrest
07 Parked vehicle(s)
08 Vehicle(s) in traffic/moving
09 Blinded, headlights
10 Blinded, sunlight
11 Blinded, other lights
12 Other*
13 Unknown

Rationale: For help in determining the circumstances of the crash.

Person Level 5: Non-motorists

P25. Non-motorist Number

Definition: The unique number assigned to the non-motorist involved in a crash.

Source: Refer to block 22 on DMV-349 Form.

Attributes: Sequential number uniquely identifying the non-motorist involved in a crash.

Rationale: Important for management/administration and evaluation. Needed to determine the number and type of non-motorists involved in crash. Needed to track non-motorists preceding crash action and sustained injury.

P26. Non-motorist Action Prior to Crash

Definition: The actions of the non-motorist prior to the crash.

Source: Refer to block 50 on DMV-349 Form.

Attributes:

01 Entering of crossing specified location
02 Walking, riding, running/jogging **with** traffic
03 Walking, riding, running/jogging **against** traffic
04 Working
05 Pushing vehicle
06 Approaching or leaving vehicle
07 Playing
08 Standing
09 Other*

Rationale: Needed to develop engineering, educational, and enforcement countermeasures to reduce non-motorist crashes and to evaluate effect of existing countermeasures.

P27. Non-Motorists Actions at Time of Crash

Definition: Actions that the non-motorist was undertaking at the time of the crash.

Source: Refer to blocks 50 and 85 on DMV-349 Form.

Attributes:

01 Entering of crossing specified location
02 Walking, riding, running/jogging **with** traffic

03 Walking, riding, running/jogging **against** traffic
04 Working
05 Pushing vehicle
06 Approaching or leaving vehicle
07 Playing
08 Standing
09 Other*

Rationale: Important for evaluating the effect that dangerous or risky non-motorist behavior has on motor vehicle crashes.

P28. Non-Motorist Condition at Time of Crash

Definition: Any relevant condition of the non-motorist that is directly related to the crash

Source: Refer to blocks 35 and 85 on DMV-349 Form.

Attributes:

1 Apparently normal
2 Illness
3 Fatigue
4 Fell asleep, fainted, loss of consciousness
5 Impairment due to medications/drugs/alcohol
6 Medical condition
7 Other physical impairment
8 Restriction not complied with
9 Other*
10 Unknown

Rationale: Important for evaluating the effect that non-motorist fatigue, medications/alcohol/drugs, or other conditions have on the crash.

P29. Non-Motorist Contributing Circumstances

Definition: The actions of the non-motorist that may have contributed to the crash.

Source: Refer to blocks 8 - 9 on DMV-349 Form.

Attributes:

00 None
01 Coming from behind parked vehicle
02 Darting
03 Lying and/or illegally in roadway
04 Failure to yield right of way
05 Not visible (dark clothing, etc.)
06 Inattentive (talking, eating, etc.)

07 Failure to obey traffic signs, signals
08 Wrong side of road
09 Other*
10 Unknown

Rationale: Important for evaluating the effect that dangerous risky non-motorist behavior has on motor vehicle crashes.

P30. Non-Motorist Location at Time of Crash

Definition: The non-motorist's location with respect to the roadway prior to impact.

Source: Refer to block 51 on DMV-349 Form.

Attributes:

01	Marked crosswalk at intersection
02	At intersection but no crosswalk
03	Non-intersection crosswalk
04	Driveway access crosswalk
05	In roadway
06	Not in roadway
07	Median (but not on shoulder)
08	Island
09	Shoulder
10	Sidewalk
11	Within 10 feet of roadway (not on shoulder, median, sidewalk, or Island)
12	Beyond 10 feet of roadway (within trafficway)
13	Outside trafficway
14	Shared-use path or trails

Rationale: Non-motorist location information is used in developing engineering, educational, and enforcement countermeasures for both motorists and non-motorists to reduce non-motorist crashes. Needed to determine "fault" of crash. Needed to evaluate effect of existing, if any, countermeasures that have been applied.

P31. Non-Motorist Safety Equipment

Definition: The safety protection in use by occupant or the non-motorist at the time of the crash.

Source: Refer to block 27 on DMV-349 Form.

Attributes:

0	None used

1 Lap belt only
2 Shoulder and lap belt
3 Shoulder belt only
4 Child restraint
5 Helmet (motorcyclist or non-motorist)

Codes 6-8 Non-Motorist only

6 Protective pads
7 Reflective clothing
8 Lighting
9 Other*
10 Unable to determine

Rationale: Proper classification of the use of available safety devices/protection systems would be used to evaluate the effectiveness of such equipment.

P32. Unit Number of Motor Vehicle Striking Non-Motorist

Definition: Number assigned to identify the motor vehicle that struck the non-motorist in the crash.

Source: Refer to blocks 84 and location block on DMV-349 Form.

Attribute: Unit number of motor vehicle that was the first motor vehicle to strike the non-motorist.

Rationale: Used for tracking. Important when multiple motor vehicles are involved in the crash.

P33. EMS Responding to the Crash

Definition: Actual name of emergency medical service (EMS) that responded to the crash.

Source: Refer to blocks 46 and 47 on DMV-349 Form.

Attributes: Actual name of EMS. When recorded on the DMV-349, the EMS name should be preceded by the unique letter designation (from column 1) in the Person Level section of the form, for the injured person being transported.

Rationale: For help in tracking the injury control/emergency response treatment provided for person(s) injured in the crash.

P34. Injured Taken by EMS to

Definition: Destination of injured person(s) if they were taken to a hospital, clinic, doctor's office, or other place of emergency medical aid.

Source: Refer to blocks 46 and 47 on DMV-349 Form.

Attributes: Name of treatment facility and city or town. When recorded on the DMV-349, the destination should be preceded by the unique letter designation (from column 1) in the Person Level section of the form, for the injured person being transported.

Rationale: Important for follow-up and to be able to trace victim from the scene to the particular place of emergency medical aid.

IV. CRASH DERIVED DATA ELEMENTS

Derived data elements[3] are not collected by the police using the DMV-349. Instead they are obtained by recoding information contained in existing data elements that have already been collected and computerized. The data element source is listed for each of the derived data elements.

CD1. Crash Severity

Definition: The severity of a crash based on the most severe injury to any person involved in the crash.

Source: Derived from Injury Status (P8) for each person involved in the crash.

Attributes:
1 Property Damage Only (no injury)
2 Non-fatal Injury
3 Fatal Injury
4 Unknown

Rationale: Provides the user a classification of the severity of the crash without having to search through the person level records. This simplifies the use of the crash data file for producing reports by crash severity.

CD2. Number of Motor Vehicles

Definition: The total number of motor vehicles (e.g., automobiles, single-unit trucks, truck combinations, and other motor vehicle types that are in motion or on a roadway) involved in a crash.

Source: Derived by counting the number of vehicles involved in a crash as indicated in Vehicle Unit Number Unique to Crash (V1).

Attributes: Total Number of Vehicles

Rationale: Provides the user a count of the number of vehicles involved in the crash without having to count the number of vehicle records. This simplifies the use of the crash data file for producing reports in which the number of involved vehicles is needed.

[3]Source – Guideline of Minimum Uniform Crash Criteria (MUCC) sponsored by the National Highway Traffic Safety Administration. Federal Highway Administration and the National Association of Governor's Highway Safety Representatives.

CD3. Number of Occupants in Vehicle

Definition: The total number of occupants in this vehicle involved in the crash including persons in or on the vehicle at the time of the crash.

Source: Derived by counting the number of drivers and passengers involved in the crash in block 22 on DMV-349 Form as indicated in **Person Type (P1).**

Attributes: - Total number of occupants including the driver.
- Unknown

Rationale: Important for use in evaluating total involved in crash and injury/severity.

CD4. Number of Non-motorists

Definition: The total number of non-motorists (pedestrian, pedalcyclists, etc.) involved in a crash.

Source: Derived by counting the number of non-motorists involved in the crash in block 22 on DMV-349 Form as indicated in **Person Type (P1)**.

Attributes: Number of Non-Motorists

Rationale: Provides the user with a count of the number of non-motorists involved in the crash without having to count the number of non-motorist records. This simplifies the use of the crash data file for producing reports in which the number of non-motorists is needed or in identifying crashes involving non-motorists.

CD5. Total Non-Fatal Injuries

Definition: The total number of persons injured, excluding fatalities within 30 days, in the crash.

Source: Derived by counting the number of persons injured in the crash from Injury Status in (P8). Refer to block 32 on DMV-349 Form.

Attributes: Total Number of Injured Persons.

Rationale: Provides the user with a count of the number of persons injured in the crash without having to search through the person level records. This Simplifies the use of the crash

data file for producing reports in which the number of injured persons is needed.

CD6. Total Fatal Injuries

Definition: The total number of fatalities (motorists and non-motorists) which resulted from injuries sustained as the result of a specific road vehicle crash. In reporting fatality statistics, a 30-day counting rule is generally used for highway safety statistics. These rules provide that only those deaths, which occur within 30 days of a crash will be counted for statistical purposes.

Source: Derived by counting the number of persons fatally injured in the crash from Injury Status (P8). Refer to block 32 on DMV-349 Form.

Attributes: Total Number of Persons Killed within12 months after the crash.

Rationale: Provides the user with a count of the number of persons fatally injured in the crash without having to search through the person level records. This simplifies the use of the crash data file for producing reports in which the number of fatalities is needed or in identifying crashes involving a fatality.

CD7 Alcohol/Drug Involvement

Definition: Investigating police officer's assessment of whether alcohol or drug use was suspected or demonstrated to be present by test for any vehicle driver or non-motorist in the crash.

Source: Derived from the Driver and Non-motorist, Alcohol, Drug Data Elements (P20-P22). Refer to blocks 37-39 on DMV-349 Form.

Attributes:
0 Neither alcohol nor other drugs
1 Yes alcohol, impairment suspected
2 Yes alcohol, no impairment detected
3 Yes other drugs, impairment suspected
4 Yes other drugs, no impairment detected
5 Yes alcohol and other drugs, impairment suspected
6 Yes alcohol and other drugs, no impairment detected
7 Unknown

Rationale: Provides the user with the ability to easily identify alcohol/drug related crashes without having to search through the person level records. This simplifies the use of

the crash data file for producing reports in which the number of alcohol/drug involved crashes is needed or in identifying crashes involving alcohol or drugs.

CD8. Day of Week

Definition: The day of the week on which a crash occurred.

Source: Derived from the Crash Date (C3).

Attributes:
1 Monday
2 Tuesday
3 Wednesday
4 Thursday
5 Friday
6 Saturday
7 Sunday

Rationale: Crash occurrences are often a function of day of week. This element provides this Classification for the user without having to translate the date.

V. VEHICLE DERIVED DATA ELEMENTS

VD1. Vehicle Model Year

Definition: The year, which is assigned to a vehicle by the manufacturer.

Source: Derived from the 10th position of the Vehicle identification number (V4) for 1981 to the present. Prior to 1981, the position for the model year varied by manufacturer. This information can also be obtained separately from the Vehicle Registration File.

Attributes: Assigned by vehicle manufacturer.

Rationale: Important for use in identifying vehicle model year for evaluation, research and crash comparison purposes.

VD2. Vehicle Model

Definition: The manufacturer assigned code denoting a family of vehicles (within a make) which has a degree of similarity in construction, such as body, chassis, etc.

Source: Derived (usually) from positions 4, 5, 6, and 7 of Vehicle Identification Number (V4) for 1981 to the present. Prior to 1981, the position for the model varied by manufacturer. This information can also be obtained separately from the Vehicle Registration File.

Attributes: Assigned by vehicle manufacturer.

Rationale: Important for use in identifying vehicle model, for evaluation, research and crash comparison purposes.

VD3. Vehicle Body Type

Definition: Code used in the Vehicle Identification Number to indicate the general configuration or shape or a vehicle distinguished by characteristics such as number of doors, seats, windows, roof line, hardtop or convertible.

Source: Derived from the Vehicle Identification Number (V4).

Attributes: **Passenger Vehicles**

AM	Ambulance
CB	Cab & Chassis (Luv)
CP	Coupe

CV	Convertible
HB	Hatchback*
HR	Hearse
HT	Hardtop*
LB	Liftback
LM	Limousine
NB	Notchback
PK	Pickup**
PN	Panel**
RO	Roadster
SB	Sport Hatchback
SC	Sport Coupe
SO	Sedan*
SV	Sport Van
SW	Station Wagon
UT	Utility**
WW	Wide Wheel Wagon
2D	Sedan, 2-door
2F	Formal Hardtop, 2-door
2H	(81-03) Hatchback, 2-door
2L	Liftback, 3-door
2P	Pillard Hardtop, 2-door
2T	Hardtop, 2-door
2W	Wagon, 2-door
3D	Runabout, 3-door
4D	Sedan, 4-door
4H	(81-03) Hatchback, 4-door
4L	Liftback, 5-door
4P	Pillard Hardtop, 4-door
4T	Hardtop, 4-door
4W	Wagon, 4-door
5D	Sedan, 5-door

Trucks

AC	Auto Carrier
AR	Armored Truck
BU	Bus
CS	Chassis and cab
CC	Conventional Cab
CG	Cargo Van
CH	Crew Chassis
CL	Club Chassis
CM	Concrete or Transit Mixer
CR	Crane
CS	Super Cab/Chassis Pickup
CU	Custom Pickup
CV	Convertible (Jeep Commando, Suzuki. Samurai, Dodge Dakota)

CW	Crew Pickup
CY	Cargo Cutaway
DP	Dump
OS	Tractor Truck (diesel)
EC	Extended Cargo Van
ES	Extended Sport Van
EV	Extended Van
EW	Extended Window Van
FB	Flat-bed or platform
FC	Forward Control
FE	Farm Equipment
FT	Fire Truck
FTR	Farm Tractor
GG	Garbage or Refuse
GL	Gliders
GN	Grain
HO	Hopper
IC	Incomplete Chassis
IE	Incomplete Extended Van
LG	Logger
LL	Suburban and Carry All
MH	Motorized Home
MP	Multi-purpose
MV	Maxi Van
MY	Motorized Cutaway
PC	Club Cab Pickup
PO	Parcel Delivery
PK	Pickup
PM	Pickup with Camper mounted on bed
PN	Panel
PS	Super Cab Pickup
RD	Roadster (Jeep, Jeep Commando)

Motorcycles

AT	All Terrain
EN	Enduro
MK	Mini-bike
MN	Mini Moto Cross
MP	Moped
MR	Mini Road/Trail
MS	Motor Scooter
MX	Moto Cross
MY	Mini Cycle
RC	Racer
RS	Road/Street
RT	Road/Trail
T	Dirt
TL	Trail/Dirt

TR Trail

* Use when more detail is unknown.
**To code trucks commonly registered as passengers.

Rationale: Important for use in identifying the specific type of vehicle involved in a crash for evaluation and comparison purposes.

V04. Total Trailers Attached to Truck

Definition: Total number of trailers attached to a large truck.

Attributes: Derived by counting the number of trailers attached to a truck as indicated by Trailer Type and/or trailer length/Width (V14-V19) data elements.

Rationale: This information is important to evaluate safety issues relative to truck, doubles, triples, etc.

VI. PERSON LINKED DATA ELEMENTS

Driver Linked Data Elements

PL1. Driver License Class

Definition: The type of commercial or noncommercial vehicle that a licensed driver has been examined on and approve to operate.

Attributes: **Class A vehicles** - any combination of vehicles with a GVWR of 26,001 or more pounds, provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds (holders of a Class A license may with the appropriate endorsement operate all class B & C vehicles).
Class B vehicles - any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds (holders of a Class B license may, with the appropriate endorsement, operate all class C vehicles).
Class C vehicles - any single vehicle less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR.
Class M vehicles - motorcycles, mopeds, motor-driven cycles. Never held a license or state can no longer provide this information.

Rationale: Used to identify those drivers who were not complying with the limitations of their operator's license.

PL2. Driver License Status, CDL

Definition: The current status of an individual's federally-approved commercial driver license (CDL).

Attributes: E Eligible
L Licensed
N Not Eligible
R Reported Deceased

Rationale: Used to identify those truck and bus drivers--operating vehicles in interstate commerce and vehicles carrying hazardous materials in intrastate commerce--who were not complying with the limitations of their operator’s license and who were involved in crashes.
Federal law mandates the commercial driver's license. The OMC has jurisdiction over this federal program, and the identification of drivers not having valid CDLs and those

having crashes is vital data for the OMC's drivers license program.

PL3. Commercial Motor Vehicle Endorsements

Definition: Issued to drivers after successfully completing a specialized test that qualifies them to operate a specific type of commercial motor vehicle.

Source: Obtained by linking **Driver License Number and Class (P16)** for in-state drivers to the driver license number in the driver history data system. Law Enforcement Officers' have mainframe access to endorsement information.

Attributes:

- T-Double/Triple Trailer
  (Applies to Class A)
- P-Passenger Vehicle
  (Applies to transportation of 16 or more passengers including the driver)
- N-Tank Vehicle
  (Required on any A, B, C classified license for vehicles transporting, as its primary cargo, any liquid or gaseous material within a tank attached to the vehicle)
- H-Required To Be Placarded For Hazardous Materials
  (Required on all Class A, B, C licenses for any vehicle transporting hazardous materials requiring placarding as defined by USDOT regulations)
- X-Combined Tank/HAZ-MAT
  (Qualifies a driver for both the Tank endorsement and the Hazardous Material endorsement)
- Other
  (Used to represent state-specific endorsements that are not generally covered by the endorsements above)

Rationale: Important to evaluate issues related to licensing policies for drivers of commercial motor vehicles.

PL4. Driver License Status, Non-CDL

Definition: The current status of an individual's driver license other than a federally approved commercial driver license (CDL).

Attributes: E Eligible
L Licensed
N Not Eligible
R Reported Deceased

Rationale: Used to identify drivers who were not complying with the limitations of their operator's license and who were involved in crashes.

PL5. Driver License Restrictions

Definition: Restrictions assigned to an individual's driver license by the license examiner. This data element is generated by the system; however, officers will continue to record restriction information from the driver's license onto the DMV-349.

Source: Refer to block 36 on DMV-349 Form.

Attributes: Actual restriction(s) as shown on the driver license.

Driver Restrictions 1

L	NO AIR BRAKES
S	SCHOOL BUS
0	NONE
1	CORRECTIVE LENSES
2	45 MPH/NO INTERSTATE
3	DAYLIGHT DRIVING ONLY
4	NC INTRASTATE ONLY-CDL
5	WRECKER ONLY
6	MOBILE HOME TRANSPORT ONLY
7	OUTSIDE MIRRORS
8	NO TRACTOR TRAILER
9	OTHER AS SHOWN
10	ACCOMPANIED BY CLASS DRIVER
11	FLEET VEHICLES ONLY
12	DRIVE 6AM-8PM
13	AUTO TRANSMISSION
14	PASSENGER CLASS B & C ONLY
15	PASSENGER CLASS C ONLY
16	GRAD LIC LEVEL 1 RESTRICTION
17	GRAD LIC LEVEL 2 RESTRICTION
18	NO PASSENGER
19	BLOOD/ALCOHOL CONC. .04
20	BAC .04/IGNITION INTERLOCK
21	BLOOD/ALCOHOL CONC. .00
22	BAC .00/IGNITION INTERLOCK
23	IGNITION INTERLOCK ONLY

Subfield 2
See attributes in Driver Restrictions 1

Subfield 3
See attributes in Driver Restrictions 1

Rationale: Used to identify drivers with limitations on their operator's license who were involved in a crash.

VII. Injured Person Linked Data Elements

PL6. Injury Area

Definition: The primary or most obvious area of the person's body injured during the crash.

Source: Obtained by linking current identifiers for the person, such as **Date of Birth (P5), Sex (P6), Transported to Medical Facility By (P33),** and crash location information including **Crash City/Place (C6), Crash Location (C7), Date and Time Crash Reported to Law Enforcement Agency (C3-C4),** etc., to pre-hospital EMS, emergency department, and/or hospital discharge data files. Refer to block 85 on DMV-349 Form.

Attributes: Types of areas are indicated by a matrix or narrative in the EMS records or as an injury or billing code (ICD-9-CM, etc.) in the emergency department, hospital or insurance records. The following list represents the major areas of the body subject to injury.

1 Head/Brain
2 Face
3 Neck
4 Spine
5 Back
6 Chest
7 Upper extremities
8 Abdomen
9 Lower extremities
10 Other*
11 Injured, area unknown

Rationale: This type of information will help to distinguish between multiple injured in the same crash.

PL7. Injury Description

Definition: Type of injury inflicted to primary Injury Area (PL6).

Attributes:

1 Visible bleeding
2 Visible broken bone
3 Visible burn
4 Complaint of pain

5 Apparently unconscious
6 Other visible or expressed injury
7 Injury type not otherwise specified and not visible
8 Unknown

Rationale: This type of information will help to distinguish between multiple injured in the same crash.

VIII. Roadway Linked Data Elements

Linking the crash to the roadway inventory and hardware data files when these data files exist in the state generates linked roadway data elements. The data elements used for linkage include **Crash Roadway Location (C9)** or mile marker, node, etc., depending upon the type of roadway inventory system implemented by the state. North Carolina will continue its efforts to record selected roadway data elements on the DMV-349, with the understanding that when data becomes available for all of the Roadway data elements for all roadways in the state, it will be obtainable by linkage and will no longer be a responsibility for the officer to collect in the field.

RL1. Bridge/Structure Identification

Definition: A unique code assigned to a bridge, underpass, overpass, or tunnel.

Attributes: Number as described in the Recording and Coding guide for the Structure Inventory and Appraisal of the Nation's Bridges, December 1988, Federal Highway Administration item 8. HPMS/90, item 77.

Rationale: Identifying the bridge can link to the specific geometric data describing the bridge for problem identification analysis. Important for determining the relationship between structure characteristics and crashes.

RL2. Grade

Definition: The inclination of a roadway, expressed in the rate of rise or fall in feet/meters per 100 feet/meters of horizontal distance.

Attributes:

Subfield 1: Direction of slope
Up or down

Subfield 2: Percent of slope
Nearest percent of slope

Rationale: Grade is used in diagnosing possible causes and countermeasures for a high crash site.

RL3. Part of National Highway System

Definition: Designation as part of the national highway system.

Attributes:
1 Yes
2 No
3 Unknown

Rationale: Important to monitor highway safety on national highway system.

RL4. Annual Average Daily Traffic

Definition: The average number of vehicles passing a point on a trafficway in a day, for all days of the year, during a specified calendar year.

Attributes: **Subfield 1:** Calendar year

Subfield 2: Vehicles per day (AADT)

Rationale: Important to normalize crash data to account for the exposure.

RL5. Shoulder Type/Width

Definition: Width of lane or shoulder where crash occurred.

Attributes: **Subfield 1:** Shoulder Type

Subfield 2: Width

Rationale: Important to monitor the association of shoulder type/width and the frequency of crashes.

RL6. Lane Width

Definition: Width of lane where crash occurred.

Attributes: Number of Feet

Rationale: Important to monitor the association of shoulder/lane width and the frequency of crashes.

RL7. Median Type/Width

Definition: A median is an area of a trafficway between parallel roads separating travel in opposite directions.

Attributes: **Subfield 1:** Median Type

Subfield 2: Width
Less than four feet
Four feet or greater
Unknown

Rationale: Important to monitor the unmet need for medians to protect motorists from oncoming traffic.

RL8. Roadway Lighting

Definition: The type of illumination at a point on the roadway.

Attributes: No lighting
Spot Illumination
Continuous lighting

Rationale: Lighting is recognized as having a benefit to safe highway operations. The presence of lighting is an important element in the analysis of a spot location, a section of highway, or a network analysis. Important for determining the effects of highway illumination on nighttime crashes to guide future installations.

RL9. Pavement Markings, Longitudinal

Definition: The longitudinal markings (paint, plastic, or other) used on the roadway surface to guide or control the path followed by drivers.

Attributes: **Subfield 1** - Function and Color
Centerline, skip-dash, yellow
Centerline, solid, yellow
Centerline, solid double, yellow
No passing barrier, right or left, yellow
Lane line, skip-dash, white
Lane line, solid, white
Edge line, left, yellow
Edge line, right, white
Left turn lane lines, combination of solid and skip-dash, yellow
Turn arrow symbols, right, through, left, or combination of two
Unknown

Subfield 2 - Material
Paint
Thermoplastic
Raised Markers
Permanent inlay
Tape
Other
Unknown

Rationale: Knowledge of the existence of pavement markings is necessary to the analysis of crash data. Important for determining the affects of various types of longitudinal markings on various types of crashes to guide future applications.

RL10. Bikeway

Definition: Any road, path or way which in some manner is specifically designated as being open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are to be shared with other transportation modes (Refer to ANSI D16.1 for definitions of specific attributes).

Attributes: No Bikeway
Bicycle Route (signed)
Bicycle Lane (striped) - right only
Bicycle Lane (striped) - both sides
Bicycle Lane (striped) - left only
Separate Bicycle Path/Trail
Unknown

Rationale: Needed to determine usage of bicycle facilities. Needed to determine location of bicycle crashes in relation to bicycle facility. Information is used to design facilities to more safely accommodate both bicycles and motor vehicles. Important for ascertaining the relative safety performance of various types/classes of bike paths to guide future design/operation decisions.

RL11. Delineator Presence

Definition: The presence or absence of a series of reflecting devices mounted at regular intervals along the side of the road to indicate the alignment of the roadway.

Attributes: None
Delineators, right
Delineators, left
Delineators, both sides
Unknown

Rationale: Important for determining the effectiveness of delineation on nighttime and run off-the-road crashes and guide future installations.

RL12. Clearzone Distance

Definition: The total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area. The desired width is dependent on the traffic volumes and speeds, and roadside geometry. A clear run-out area is the area at the toe of a non-recoverable slope available for safe use by an errant vehicle.

RL13. Sideslope

Definition: The part of the highway that tapers the traveled way with the existing terrain. The relative steepness of the terrain is expressed as a ratio or percentage. Slopes may be categorized as positive (backslope) or negative (foreslope) and as parallel or cross slopes in relation to the direction of traffic, A side slope typically seen on the interstates is a negative parallel slope that has a drainage facility in the median.

RL14. Roadway Functional Class

Definition: The character of service or function of streets or highways. The classification of rural and urban is determined by the state and local officials in cooperation with each other and approved by the Federal Highway Administration, U.S. Department of Transportation.

Source: Obtained by linking **Crash Location (C9)** to the Roadway Inventory data. Refer to block 71 on DMV-349 Form.

Attributes:
1 Interstate
2 US Route
3 NC Route
4 State Secondary Route
5 Local Street
6 Public Vehicular Area
7 Private Road, Driveway

RL15. Access Control

Definition: The degree that access to abutting land is fully, partially or not controlled by a public authority. Full access control provides no private access. No access control permits private access (driveway, etc).

Source: Obtained by linking **Crash Location (C9)** to the Roadway Inventory data. Refer to block 74 on DMV-349 Form.

Attributes:

- Full Access Control
- Partial Access Control
- No Access Control

Rationale: Highly correlated with crash rates and, therefore, useful in identifying high hazard locations. Important to guide future highway design and traffic control.

RL16. Railway Crossing ID

Definitions: A unique US DOT/AAR number assigned for identification purposes to a railroad crossing by a state highway agency in cooperation with the Federal Railroad Administration.

Source: Obtained by linking **Crash Location (C9)** to state or Federal Railway Administration data. Refer to location block on DMV-349 Form.

Attributes: State specific number assigned by a state in cooperation with the American Association of Railroads.

Rationale: The data are used in high crash locations as well as high-risk corridors. Important for determining the need for additional controls and evaluating the efficacy of various types of controls.

RL17. Traffic Control Type at Intersection

Definition: The type of traffic control, if any, at crash location.

Source: Refer to block 76 on DMV-349 Form.

Attributes:

00	No Control Present
01	Stop Sign
02	Yield Sign
03	Stop and Go Signal
04	Flashing Signal with Stop Sign
05	Flashing Signal without Stop Sign
06	RR Gate and Flasher
07	RR Flasher
08	RR Crossbucks Only
09	Human Control
10	Warning Sign
11	School Zone Signs

12 Flashing Stop and Go Signal
13 Double Yellow Line, No Passing Zone
14 Other*

Rationale: This element needs to be collected at the scene because the presence of specific devices is better verified at the time of the crash. Important for ascertaining the relationship between the use of various TCDs and crashes and identifying the need for upgraded TCDs at specific crash locations.

RL18. Mainline Number of Lanes at Intersection

Definition: Number of "thru" lanes on the mainline approaches of an intersection, including all lanes with "thru" movement ("thru" and left-turn, or "thru and right-turn) but not exclusive turn lanes.

Source: Obtained by linking **Crash Location (C5)** to the Roadway Inventory data. Refer to blocks 84 and 75 on DMV-349 Form.

Attributes:

- One Lane
- Two Lanes
- Three Lanes
- Four to Six Lanes
- Seven or More Lanes
- Unknown

Rationale: Important to describe the intersection.

RL19. Side-Road Number of Lanes at Intersection

Definition: Number of "thru" lanes on the side-road approaches at intersection including all lanes with "thru" movement ("thru" and left-turn, or "thru" and right-turn) but not exclusive turn lanes.

Source: Obtained by linking **Crash Location (C5)** to the Roadway Inventory data. Refer to blocks 75 and 84 on DMV-349 Form.

Attributes:

- One Lane
- Two Lanes
- Three Lanes
- Four to Six Lanes
- Seven or More Lanes

- Unknown

Rationale: Important to describe the intersection.

RL20. Roadway Curvature

Definition: The measurement of the curvature in the roadway expressed in terms of its radius, length, and super elevation.

Source: Obtained by linking **Crash Location (C5)** to the Roadway Inventory data. See **Roadway Alignment and Grade (V16).** Refer to block 70 on DMV-349 Form.

Attributes:

1 Straight, level
2 Straight, hillcrest
3 Straight, grade
4 Straight, bottom (sag)
5 Curve, level
6 Curve, hillcrest
7 Curve, grade
8 Curve, bottom (sag)
9 Other*

Rationale: Curve data is used in searching for and diagnosing high crash locations. Important for determining relationship between horizontal alignment-related crashes to guide future highway design, speed limits, and driver skill training (motorcycle curve entering speed, etc).

APPENDIX A: State and Province Codes

United States (US)

AL	01	Alabama	MT	30	Montana
AK	02	Alaska	NE	31	Nebraska
AZ	04	Arizona	NV	32	Nevada
AR	05	Arkansas	NH	33	New Hampshire
CA	06	California	NJ	34	New Jersey
CO	08	Colorado	NM	35	New Mexico
CT	09	Connecticut	NY	36	New York
DE	10	Delaware	NC	37	North Carolina
DC	11	District of Columbia	ND	38	North Dakota
FL	12	Florida	OH	39	Ohio
GA	13	Georgia	OK	40	Oklahoma
HI	15	Hawaii	OR	41	Oregon
ID	16	Idaho	PA	42	Pennsylvania
IL	17	Illinois	RI	44	Rhode Island
IN	18	Indiana	SC	45	South Carolina
IA	19	Iowa	SD	46	South Dakota
KS	20	Kansas	TN	47	Tennessee
KY	21	Kentucky	TX	48	Texas
LA	22	Louisiana	UT	49	Utah
ME	23	Maine	VT	50	Vermont
MD	24	Maryland	VA	51	Virginia
MA	25	Massachusetts	WA	53	Washington
MI	26	Michigan	WV	54	West Virginia
MN	27	Minnesota	WI	55	Wisconsin
MS	28	Mississippi	WY	56	Wyoming
MO	29	Missouri	DS	57	US Dept. of State

AS	60	American Somoa
PZ	61	Panama Canal Zone
FM	64	Federated States of Micronesia
GU	66	Guam
MP	69	Northern Mariana Islands
PW	70	Palau
PR	72	Puerto Rico
UM	74	U.S. Minor Outlying Islands
MH	75	Marshall Islands
VI	78	Virgin Islands of the U.S.
WK	79	Wake Island

Canada (CN)

AB	01	Alberta	NS	07	Nova Scotia
BC	02	British Columbia	ON	08	Ontario
MB	03	Manitoba	PE	09	Prince Edward Island
NB	04	New Brunswick	PQ	10	Quebec
NF	05	Newfoundland	SN	11	Saskatchewan
NT	06	Northwest Territory	YT	12	Yukon Territory

Mexico (MX)

AG	01	Aguascalientes	MR	17	Morelos
BA	02	Baja California Norte	NA	18	Nayarit
BJ	03	Baja California Sur	NL	19	Nuevo Leon
CM	04	Campeche	OA	20	Oaxaca
CI	05	Chiapas	PB	21	Puebla
CH	06	Chicuahua	QU	22	Queretero de Arteaga
CU	07	Coahuila de Zaragoza	QR	23	Quintana Roo
CL	08	Colima	SL	24	San Luis Potosi
DF	09	Distrito Federal	SI	25	Sinaloa
DO	10	Durango	SO	26	Sonora
GT	11	Guanajuato	TB	27	Tobasco
GR	12	Guerrero	TA	28	Tamaulipas
HL	13	Hidalgo	TL	29	Tlaxcala
JL	14	Jalisco	VC	30	Veracruz-Llava
MX	15	Mexico	YU	31	Yucatan
MC	16	Michoacan de Ocampo	ZA	32	Zacatecas

Other Jurisdictions (OT)

OT	99	Jurisdictions other than states or provinces of the United States, Canada, and Mexico

Note: Code with country and state or province. Where there is no chance of ambiguity, state or province codes may be used without the country code (Note that state and province codes are unique within each country but may be duplicated in other countries).

APPENDIX B: Dates and Times

Numbers are always right justified. Use leading zeroes when necessary.

Date

Subfield 1: Month

01	January	09	September
02	February	10	October
03	March	11	November
04	April	12	December
05	May	77	Permanent
06	June	88	Indefinite
07	July	99	Unknown

Subfield 2: Day

nn	Day of Month
77	Permanent
88	Indefinite
98	Unknown

Subfield 3: Year

ccyy	Calendar Year
7777	Permanent
8888	Indefinite
9999	Unknown

Example: The fifth of March, nineteen ninety-two is coded 03051992

Time

Subfield 1: Hour

nn	0-23, representing the time on a 24-hour clock
99	Unknown

Subfield 2: Minute

nn	Minute
99	Unknown

Example: 11:55 p.m. would be coded 2355. Midnight is coded 0000 and is the beginning of a new day, not the end of the preceding day.

APPENDIX C: Names

The length and type of a name field is 35/ANS

NAMES OF PERSONS

There are four subfields within the name and each ends in a spacer ("@") except for the final field. SUFFIX. Spacers must be used to differentiate the name subfields. From left to right, the code is composed of LAST NAME, @,FIRST NAME, @ MIDDLE NAMES SEPARATED BY SPACES, @, SUFFIX. A spacer must follow every subfield except for SUFFIX, even when the subfields contain no data.

Irregular Names

If a person has only one name, that name must be coded in the Last Name subfield. An asterisk (***) in the First Name subfield indicates the person has no first name. If the person's first name is unknown put no data into the First Name subfield except for the spacer.

This Middle Name subfield will accommodate multiple middle names. Multiple middle names should be separated by blank spaces.

The only special character allowed in the Last Name subfield is a hyphen ("-"), which may occur only once and must be embedded between two alphabetic characters (as in the last name "Stuart-Washington").

Prefixes and titles are not allowed in any subfield of the name, and only the defined suffix codes may be used.

Long Names

If a coded name exceeds 35 characters, it may be truncated by the following rules:

1 If the coded name exceeds 35 characters, including spacers @, the suffix subfield will not be coded.

2 If, after (1), the name code still exceeds 35 characters, the middle name is truncated. Truncation begins at the end of the last occurring middle name. If necessary, the middle name subfield may be reduced to the first initial of the first occurring middle name. *The first initial of the first occurring middle name shall always be coded.*

3 If, after (1) and (2), the name code still exceeds 35 characters, the first name is truncated. Truncation begins at the last character of the first name. If necessary, the first name subfield may be reduced to the first initial of the first name. *The first initial of the first name shall always be coded.*

4 If, after (1), and (2), and (3), the name code still exceeds 35 characters, the last name is truncated. Truncation proceeds with the last character of the last name and continues until the name code is 35 characters in length, including spacers and first and middle initials.

CODE	Description
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	LAST NAME, @ FIRST NAME, @MIDDLE NAMES SEPARATED BY SPACES, @, SUFFIX

Suffixes (if present)

JR	Junior
SR	Senior
1ST (or I)	First
2nd (or II)	Second
3RD (or III)	Third
4TH (or IV)	Fourth
5TH (or V)	Fifth

Example: DOE@JOHN@X is the proper code for "John X Doe." "John Winston Smith Doe, Jr. is coded DOE@JOHN@WINSTON SMITH@JR. "Kimberly Allen Beauregard Churchill-Rockwell, IV" is coded CHURCHILL-OCKWELL@KIMBERLY@ALLEN@ (the suffix is eliminated, and the second middle name is truncated).

Other Names

Names not belonging to persons, such as those of businesses, organizations, or state governments, are coded without the use of sub-fields, but use the following two rules:

1 When possible, use standard abbreviations, such as CO for "company", INC for 'Incorporated', or US for "United States."

2 If, after abbreviating the name still exceeds 35 characters, truncate the end of the name as necessary.

Example: The code for "John Smith Trade and Transportation Company" is JOHN SMITH TRADE & TRANSPORTATION C. DOE ELECTRONICS, INC. is the code for "Doe Electronics, Incorporated." "Wilson & Co." remains WILSON & CO. Source: Based on Driver History Record Data Dictionary, May 22, 1990, pages B5-B6.

APPENDIX D: Addresses

Address fields are variable length composite fields with a maximum length of 71 or 108. Following are descriptions of how to set up the fields for both. Each subfield contains one type of data followed by either a delimiter, @, to indicate the end of the subfield or an ending delimiter, ",", to show the end of the address code. The spacers must be used to differentiate the name positions. The name and maximum length and type of each subfield is shown in the table below. The maximum length for each subfield includes one space for the delimiter.

SUBFIELD		MAXIMUM LENGTH/TYPE 71	108
Subfield 1	Street Address A (and delimiter)	21/ANS	36/ANS
Subfield 2	Street Address B (and delimiter)	21/ANS	36/ANS
Subfield 3	City or Town (and delimiter)	16/ANS	21/ANS
Subfield 4	Alphabetic State Code(and delimiter)	3/ANS	3/ANS
Subfield 5	Zip Code (and delimiter)	10/ANS	12/ANS

The code is composed in the basic format:

Street Address A@Street Address B@City or Town@State@Zip Code;

If data for any of the five subfields is omitted, that subfield's delimiter must still be coded.

Use standard abbreviations for street and place names if necessary. Abbreviations for use in addresses are listed in *National Five—Digit Zip Code & Post Office Directory* U.S. Postal Service, 1991, pages 2-3 through 2-11.

Use the two-character alphabetic codes for the state subfield. Alphabetic abbreviations of state names are available in Appendix A.

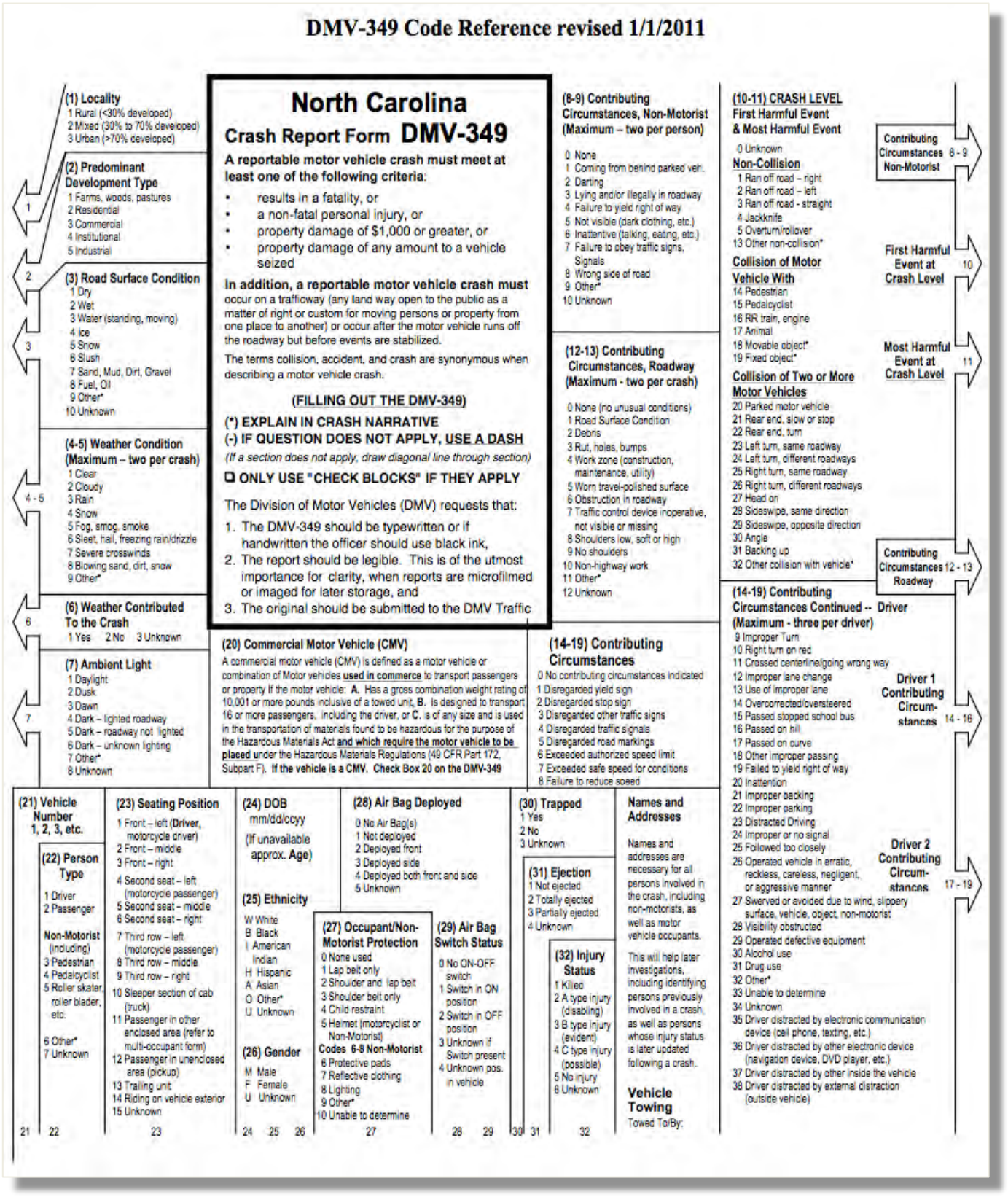
Example: For 29293 Abbot Farms Court, Suite #40, Trenton, New Jersey, 08610 the code is:
29293 ABBOT FARMS CT @SUITE 40@TRENTON@NJ@08610

For 1234 South Elm Avenue, Springfield, Illinois 62703, the code is:
1234 E ELM AVENUE@SPRINGFIELD@IL@62703;

Note the two delimiters following Street Address A in the second example, which indicate that there is no Street Address B.

Source: Based on Driver History Record Data Dictionary, October 1994.

APPENDIX E: Code Reference Cover Sheet



DMV-349 Code Reference revised 1/1/2011

North Carolina
Crash Report Form DMV-349

A reportable motor vehicle crash must meet at least one of the following criteria:

- results in a fatality, or
- a non-fatal personal injury, or
- property damage of $1,000 or greater, or
- property damage of any amount to a vehicle seized

In addition, a reportable motor vehicle crash must occur on a trafficway (any land way open to the public as a matter of right or custom for moving persons or property from one place to another) or occur after the motor vehicle runs off the roadway but before events are stabilized.

The terms collision, accident, and crash are synonymous when describing a motor vehicle crash.

(FILLING OUT THE DMV-349)

(*) EXPLAIN IN CRASH NARRATIVE
(-) IF QUESTION DOES NOT APPLY, USE A DASH
(If a section does not apply, draw diagonal line through section)
❑ ONLY USE "CHECK BLOCKS" IF THEY APPLY

The Division of Motor Vehicles (DMV) requests that:

1. The DMV-349 should be typewritten or if handwritten the officer should use black ink,
2. The report should be legible. This is of the utmost importance for clarity, when reports are microfilmed or imaged for later storage, and
3. The original should be submitted to the DMV Traffic

(1) Locality
1 Rural (<30% developed)
2 Mixed (30% to 70% developed)
3 Urban (>70% developed)

(2) Predominant Development Type
1 Farms, woods, pastures
2 Residential
3 Commercial
4 Institutional
5 Industrial

(3) Road Surface Condition
1 Dry
2 Wet
3 Water (standing, moving)
4 Ice
5 Snow
6 Slush
7 Sand, Mud, Dirt, Gravel
8 Fuel, Oil
9 Other*
10 Unknown

(4-5) Weather Condition (Maximum – two per crash)
1 Clear
2 Cloudy
3 Rain
4 Snow
5 Fog, smog, smoke
6 Sleet, hail, freezing rain/drizzle
7 Severe crosswinds
8 Blowing sand, dirt, snow
9 Other*

(6) Weather Contributed To the Crash
1 Yes 2 No 3 Unknown

(7) Ambient Light
1 Daylight
2 Dusk
3 Dawn
4 Dark – lighted roadway
5 Dark – roadway not lighted
6 Dark – unknown lighting
7 Other*
8 Unknown

(8-9) Contributing Circumstances, Non-Motorist (Maximum – two per person)
0 None
1 Coming from behind parked veh.
2 Darting
3 Lying and/or illegally in roadway
4 Failure to yield right of way
5 Not visible (dark clothing, etc.)
6 Inattentive (talking, eating, etc.)
7 Failure to obey traffic signs, Signals
8 Wrong side of road
9 Other*
10 Unknown

(10-11) CRASH LEVEL First Harmful Event & Most Harmful Event
0 Unknown
Non-Collision
1 Ran off road – right
2 Ran off road – left
3 Ran off road - straight
4 Jackknife
5 Overturn/rollover
13 Other non-collision*
Collision of Motor Vehicle With
14 Pedestrian
15 Pedalcyclist
16 RR train, engine
17 Animal
18 Movable object*
19 Fixed object*
Collision of Two or More Motor Vehicles
20 Parked motor vehicle
21 Rear end, slow or stop
22 Rear end, turn
23 Left turn, same roadway
24 Left turn, different roadways
25 Right turn, same roadway
26 Right turn, different roadways
27 Head on
28 Sideswipe, same direction
29 Sideswipe, opposite direction
30 Angle
31 Backing up
32 Other collision with vehicle*

Contributing Circumstances Non-Motorist 8 - 9
First Harmful Event at Crash Level 10
Most Harmful Event at Crash Level 11
Contributing Circumstances Roadway 12 - 13

(12-13) Contributing Circumstances, Roadway (Maximum - two per crash)
0 None (no unusual conditions)
1 Road Surface Condition
2 Debris
3 Rut, holes, bumps
4 Work zone (construction, maintenance, utility)
5 Worn travel-polished surface
6 Obstruction in roadway
7 Traffic control device inoperative, not visible or missing
8 Shoulders low, soft or high
9 No shoulders
10 Non-highway work
11 Other*
12 Unknown

(14-19) Contributing Circumstances
0 No contributing circumstances indicated
1 Disregarded yield sign
2 Disregarded stop sign
3 Disregarded other traffic signs
4 Disregarded traffic signals
5 Disregarded road markings
6 Exceeded authorized speed limit
7 Exceeded safe speed for conditions
8 Failure to reduce speed

(14-19) Contributing Circumstances Continued -- Driver (Maximum - three per driver)
9 Improper Turn
10 Right turn on red
11 Crossed centerline/going wrong way
12 Improper lane change
13 Use of improper lane
14 Overcorrected/oversteered
15 Passed stopped school bus
16 Passed on hill
17 Passed on curve
18 Other improper passing
19 Failed to yield right of way
20 Inattention
21 Improper backing
22 Improper parking
23 Distracted Driving
24 Improper or no signal
25 Followed too closely
26 Operated vehicle in erratic, reckless, careless, negligent, or aggressive manner
27 Swerved or avoided due to wind, slippery surface, vehicle, object, non-motorist
28 Visibility obstructed
29 Operated defective equipment
30 Alcohol use
31 Drug use
32 Other*
33 Unable to determine
34 Unknown
35 Driver distracted by electronic communication device (cell phone, texting, etc.)
36 Driver distracted by other electronic device (navigation device, DVD player, etc.)
37 Driver distracted by other inside the vehicle
38 Driver distracted by external distraction (outside vehicle)

Driver 1 Contributing Circumstances 14 - 16
Driver 2 Contributing Circumstances 17 - 19

(20) Commercial Motor Vehicle (CMV)
A commercial motor vehicle (CMV) is defined as a motor vehicle or combination of Motor vehicles **used in commerce** to transport passengers or property if the motor vehicle: **A.** Has a gross combination weight rating of 10,001 or more pounds inclusive of a towed unit, **B.** Is designed to transport 16 or more passengers, including the driver, or **C.** Is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Act **and which require the motor vehicle to be placed** under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F). **If the vehicle is a CMV, Check Box 20 on the DMV-349**

(21) Vehicle Number 1, 2, 3, etc. — 21

(22) Person Type — 22
1 Driver
2 Passenger
Non-Motorist (including)
3 Pedestrian
4 Pedalcyclist
5 Roller skater, roller blader, etc.
6 Other*
7 Unknown

(23) Seating Position — 23
1 Front – left (**Driver**, motorcycle driver)
2 Front – middle
3 Front – right
4 Second seat – left (motorcycle passenger)
5 Second seat – middle
6 Second seat – right
7 Third row – left (motorcycle passenger)
8 Third row – middle
9 Third row – right
10 Sleeper section of cab (truck)
11 Passenger in other enclosed area (refer to multi-occupant form)
12 Passenger in unenclosed area (pickup)
13 Trailing unit
14 Riding on vehicle exterior
15 Unknown

(24) DOB mm/dd/ccyy (If unavailable approx. **Age**) — 24 25 26

(25) Ethnicity
W White
B Black
I American Indian
H Hispanic
A Asian
O Other*
U Unknown

(26) Gender
M Male
F Female
U Unknown

(27) Occupant/Non-Motorist Protection — 27
0 None used
1 Lap belt only
2 Shoulder and lap belt
3 Shoulder belt only
4 Child restraint
5 Helmet (motorcyclist or Non-Motorist)
Codes 6-8 Non-Motorist
6 Protective pads
7 Reflective clothing
8 Lighting
9 Other*
10 Unable to determine

(28) Air Bag Deployed
0 No Air Bag(s)
1 Not deployed
2 Deployed front
3 Deployed side
4 Deployed both front and side
5 Unknown

(29) Air Bag Switch Status — 28 29
0 No ON-OFF switch
1 Switch in ON position
2 Switch in OFF position
3 Unknown if Switch present
4 Unknown pos. in vehicle

(30) Trapped — 30
1 Yes
2 No
3 Unknown

(31) Ejection — 31
1 Not ejected
2 Totally ejected
3 Partially ejected
4 Unknown

(32) Injury Status — 32
1 Killed
2 A type injury (disabling)
3 B type injury (evident)
4 C type injury (possible)
5 No injury
6 Unknown

Names and Addresses

Names and addresses are necessary for all persons involved in the crash, including non-motorists, as well as motor vehicle occupants.

This will help later investigations, including identifying persons previously involved in a crash, as well as persons whose injury status is later updated following a crash.

Vehicle Towing
Towed To/By:

(33) Relation to Roadway Surface

The location of the first harmful event (at the crash level) as it relates to its position within or outside the trafficway

1 **On Roadway** (Surface)

Off Roadway

2 Shoulder
3 Median
4 Roadside
5 Outside Trafficway
6 Unknown

(34) Vision Obstruction

0 None
1 Vehicle window(s) obscured
2 Trees, crops, brush, etc.
3 Building(s)
4 Embankment
5 Sign(s)
6 Hillcrest
7 Parked vehicle(s)
8 Vehicle(s) in traffic/moving
9 Blinded, headlights
10 Blinded, sunlight
11 Blinded, other lights
12 Other*
13 Unknown

(35) Physical Condition

1 Apparently normal
2 Illness
3 Fatigue
4 Fell asleep, fainted, loss of consciousness
5 Impairment due to medications, drugs, alcohol
6 Medical condition
7 Other physical impairment
8 Restriction not complied with
9 Other*
10 Unknown

(36) Driver License Restrictions

Restrictions assigned to an individual's driver license by the license examiner.

Indicate restrictions shown on the Driver's License. For out-of-state drivers, write out the restriction.

(37) Alcohol/Drugs Suspected

0 No
1 Yes – alcohol, impairment suspected
2 Yes – alcohol, no impairment detected
3 Yes – other drugs, impairment suspected
4 Yes – other drugs, no impairment detected
5 Yes – alcohol and other drugs, impairment suspected
6 Yes – alcohol and other drugs, no impairment detected
7 Unknown

(38) Alcohol/Drugs Test Status

0 No test
1 Alcohol test
2 Test for other drugs
3 Alcohol & other drugs test
4 Test refused
5 Unknown

(39) Alcohol/Drugs Test Results

0 No test
1 No alcohol or other drugs
2 Alcohol (percent BAC)
3 Other drugs reported
4 Contaminated sample/unusable
5 Pending
6 Unknown

(40) Vehicle Seizure (DWI)

Check this box if the crash involves alcohol or other drugs in sufficient amount to constitute a DWI, and the vehicle is "seized."

(41) Vehicle Style (Type)

1 Passenger car
2 Pickup
3 Light truck (mini-van, panel)
4 Sport utility
5 Van
6 Commercial bus
7 School bus
8 Activity bus
9 Other bus
10 Single unit truck (2-axle, 6-tire)
11 Single unit truck (3 or more axles)
12 Truck/trailer
13 Truck/tractor (i.e., bobtail)
14 Tractor/semi-trailer
15 Tractor/doubles
16 Unknown heavy truck
17 Taxicab
18 Farm equipment
19 Farm tractor
20 Motorcycle
21 Moped
22 Motor scooter or motor bike
23 Pedalcycle
24 Pedestrian
25 Motor home/recreational vehicle
26 Other*
27 All terrain vehicle (ATV)
28 Firetruck
29 EMS Vehicle, Ambulance, Rescue Squad
30 Military
31 Police
32 Unknown

(42) Vehicle Drivable

Vehicle is disabled by damage severe enough to prevent driving it. For comparison purposes, this data element could be used as a minimum reporting threshold for "property damage only" crashes.

(43) TAD

Damaged Areas

FC Front concentrated
FD Front distributed
FL Front left corner
FR Front right corner
BC Rear concentrated
BD Rear distributed
BL Rear left corner
BR Rear right corner
LP Left side (door)
RP Right side (door)
LFQ Left side front quarter
RFQ Right side front quarter
LBQ Left side rear quarter
RBQ Right side rear quarter
LD Left side distributed
RD Right side distributed
L&T Left side & top (rollover)
R&T Right side & top (rollover)
TOP Top
UND Underneath

Extent of Deformity

The Severity of Damage is based on a scale of "0" being no damage and "7" being the most severe damage

(44) Estimated Damage

Dollar estimate of the cost to restore the vehicle to its condition just prior to the crash, or the estimated value of the vehicle before the crash, whichever is less. For a "totaled" vehicle, enter a dollar estimate of the retail value of the vehicle prior to the crash. Do not enter the word "totaled".

A vehicle being towed by another is part of the towing vehicle and its damage should be included in the "Parts Damaged" and "Amount of Damage" categories.

(45) Cargo Body Type

1 Bus (seats for 16 or more, including driver)
2 Bus (seats for less than 16, including driver)
3 Van/enclosed box
4 Grain/chips/gravel truck
5 Pole truck
6 Cargo tank
7 Flatbed
8 Dump
9 Concrete mixer
10 Auto transporter
11 Garbage/refuse
12 Log truck
13 Other*
14 Intermodal Cargo Container

(46) Name of EMS

Record the name of the EMS (or EMS unit number if available) that responded to the crash. A letter designation, unique to each injured person is provided in the first column of the Occupant and Non-Motorist Section. This unique identifier must precede the name of the EMS for each injured person being transported.

Example: A - Cumberland County Ambulance

(47) Injured Taken by EMS to

Record the destination of the injured person preceded by the unique letter designation (from the first column) for the person involved, if they were taken to a hospital, clinic, doctor's office, or other place of emergency medical aid. Include both name of treatment facility and city or town.

Example: A - N.C. Memorial, Chapel Hill; B - Duke Hospital, Durham, etc.

KEY DEFINITIONS

CRASH/MOTOR VEHICLE/UNIT

A **motor vehicle crash** is any event that results in death, injury or property damage attributable directly to a motor vehicle or its load in transport, but not involving aircraft or watercraft. It must occur on a trafficway or after the motor vehicle runs off the roadway but before events are stabilized.

A **motor vehicle** is any mechanically or electrically powered device, not operated on rails, upon which any person or property may be transported or drawn upon a highway.

A **unit** is any motor vehicle, pedestrian, pedalcyclist, moped or other road vehicle, excluding railway vehicles, which can be shown on the report as "other" RR train.

DRIVERLESS MOTOR VEHICLE

A driverless motor vehicle, though previously parked, or a motor vehicle out of control while being towed or pushed, is considered to be a motor vehicle in transport. Also, an abandoned motor vehicle, upon a roadway, is considered to be a motor vehicle in transport. This principle does not apply to such devices as farm or industrial machinery, highway graders, construction machinery, or similar devices which are not in use at the time of the crash for transport.

HIT & RUN

A hit & run vehicle is one which was involved in the crash as the "striking vehicle" or as the "vehicle struck" but which left the scene. The appropriate box must be checked, e.g., vehicle 1, vehicle 2, etc. and any information that is known, included in the Driver and/or Vehicle areas.

NON-CONTACT VEHICLE OR NON-MOTORIST

Non-contact phantom motor vehicles or non-motorists are units that caused the crash but left the scene. They should not be counted in the number of units, but should be referred to in the narrative.

Non-contact motor vehicles or non-motorists are units that caused the crash and remained at the scene. They should be counted as units with identifying information, and referred to in the narrative. A school bus could be an example of a non-contact vehicle that is related to a crash (refer to data element # 68).

SCHOOL BUS

A motor vehicle used for the transportation of any school pupil at or below the 12th-grade level to or from a public or private school or school-related activity.

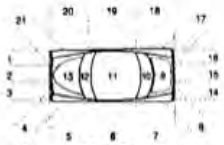
A school bus must be externally identifiable by the color yellow, the words "school bus", flashing red lights located on the front and rear, and identifying lettering on both sides indicating the school or school district served, or the company operating the bus.

MOTOR VEHICLE STATUS

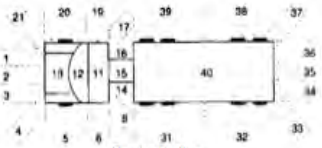
The use of the device at the time of the crash is the primary criterion for establishing motor vehicle status. For example:

1. A registered motor vehicle is being drawn by a team of horses on a city street; it is considered other road vehicle.
2. A registered motor vehicle is being used to draw a plow engaged in breaking ground on a farm; it is considered farm machinery while engaged in plowing.
3. A registered truck is engaged in spreading concrete at a road construction site; it is construction machinery.
4. A motorized highway grader, under its own power, is moving from one work place to another on a public way; it is considered a motor vehicle in transport.
5. A registered truck, with a blade attached, is engaged in plowing snow from a trafficway; it is considered road maintenance machinery.
6. A riding, motorized lawn mower, under its own power, is being driven from one home to another on a city street; it is considered a motor vehicle in transport.
7. A military tank is being moved, under its own power, from the firing range to the motor pool on a land way of a military post; it is considered a motor vehicle in transport.

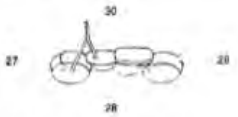
48 Points of Initial Contact 0 Pedestrian & Non-Contact Vehicle UNDERNEATH: 22 Front, 23 Center, 24 Rear, 25 Rollover, 26 Unknown



Passenger Cars/Small Trucks



Tractor-Trailers



Motorcycle, Bicycle, Moped or ATV

(49) Vehicle Maneuver/Action
1 Stopped in travel lane
2 Parked out of travel lanes
3 Parked in travel lanes
4 Going straight ahead
5 Changing lanes or merging
6 Passing
7 Making right turn
8 Making left turn
9 Making U turn
10 Backing
11 Slowing or stopping
12 Starting in roadway
13 Parking
14 Leaving parked position
15 Avoiding object in road
16 Other*

(50) Non-motorist Action
1 Entering or crossing specified location
2 Walking, riding, running/jogging with traffic
3 Walking, riding, running/jogging against traffic
4 Working
5 Pushing vehicle
6 Approaching or leaving vehicle
7 Playing
8 Standing
9 Other*

(51) Non-motorist Location Prior to Crash
1 Marked crosswalk at intersection
2 At intersection but no crosswalk
3 Non-intersection crosswalk
4 Driveway access crosswalk
5 In roadway
6 Not in roadway
7 Median (but not on shoulder)
8 Island
9 Shoulder
10 Sidewalk
11 Within 10 feet of roadway (not on shoulder, median, sidewalk, island)
12 Beyond 10 feet of roadway (within trafficway)
13 Outside trafficway
14 Shared-use path or trails

(52-56) VEHICLE LEVEL

Crash Sequence of Harmful Events (First, Second, Third, Fourth), fields 52-55, and Most Harmful Event, field 56 for each Unit (Vehicle)

If a vehicle has only one event, then only one code is required. Vehicles can have up to 4 harmful events. The Most Harmful Event may or may not be one of the 4 events.

0 Unknown

Non-Collision
1 Ran off road right
2 Ran off road left
3 Ran off road straight ahead
4 Jackknife
5 Overturn/rollover
6 Crossed centerline/median
7 Downhill runaway
8 Cargo/equipment loss or shift
9 Fire/explosion
10 Immersion
11 Equipment failure (tires, brakes, etc.)
12 Separation of units
13 Other non collision*

Collision of Motor Vehicle With
14 Pedestrian
15 Pedalcyclist
16 RR train, engine
17 Animal
18 Movable object*

Collision of Two or More Motor Vehicles
20 Parked motor vehicle
21 Rear end, slow or stop
22 Rear end, turn
23 Left turn, same roadway
24 Left turn, different roadways
25 Right turn, same roadway
26 Right turn, different roadways
27 Head on
28 Sideswipe, same direction
29 Sideswipe, opposite direction
30 Angle
31 Backing up
32 Other collision with vehicle*

Collision with Fixed Object
33 Tree
34 Utility pole (with or without light)
35 Luminaire pole (non-breakaway)
36 Luminaire pole (breakaway)
37 Official highway sign (non-breakaway)
38 Official highway sign (breakaway)
39 Overhead sign support
40 Commercial sign
41 Guardrail end on shoulder
42 Guardrail face on shoulder
43 Guardrail end in median
44 Guardrail face in median
45 Shoulder barrier end (non-guardrail)
46 Shoulder barrier face (non-guardrail)
47 Median barrier end (non-guardrail)
48 Median barrier face (non-guardrail)
49 Bridge rail end
50 Bridge rail face
51 Overhead part of underpass
52 Pier on shoulder of underpass
53 Pier in median of underpass
54 Abutment (supporting wall) of underpass
55 Traffic island curb or median
56 Catch basin or culvert on shoulder
57 Catch basin or culvert in median
58 Ditch
59 Embankment
60 Mailbox
61 Fence or fence post
62 Construction barrier
63 Crash cushion
64 Other fixed object*

(57) Distance & Direction from Road to Object Struck
0 None
1 In road
2 Right of road, 0-10 ft.
3 Right of road, 11-30 ft.
4 Right of road, over 30 ft.
5 Left of road, 0-10 ft.
6 Left of road, 11-30 ft.
7 Left of road, over 30 ft.
8 Straight ahead, 0-10 ft.
9 Straight ahead, 11-30 ft.
10 Straight ahead, over 30 ft.

(58) Vehicle Underride/Override
An underride refers to a vehicle sliding under another vehicle during a crash. An override refers to a vehicle riding up over another vehicle. Both can occur with a parked vehicle.
1 Underride

(59) Vehicle Defects
Maximum of two per Vehicle
0 None detected
1 Brakes
2 Headlights
3 Rear lights
4 Steering
5 Tires
6 Other defects*
7 Unknown

(60) Authorized Speed Limit
Authorized speed limit for the vehicle at the time of the crash. The authorization may be indicated by the posted speed limit, blinking sign at construction zones, restricted speed for permitted vehicles

(61) Estimate of Original Speed
Estimated speed in miles per hour for each vehicle involved in the collision. Estimates reflect the speed of each vehicle at the moment the driver initially perceived an existing hazard.

(62) Estimate of Speed at Impact
Estimated speed in miles per hour for each vehicle involved in the collision. Estimates reflect the speed of each vehicle at the moment of impact.

(63) Tire Impressions Before Impact
Length (in feet) of the tire impressions (skid marks, tire print yaw) for each vehicle involved in the collision, prior to impact.

(64) Distance Traveled After Impact
Distance (in feet) each vehicle or pedestrian traveled after impact as a result of the force of the collision.

(65) Emergency Vehicle Use
Indicates vehicles which are on an emergency response, i.e., traveling with physical emergency signals in use; lights, siren sounding, etc.
1 Firetruck
2 EMS Vehicle, Ambulance, Rescue Squad, etc.
3 Military
4 Police
5 Other

(66) Post Crash Fire
If "Yes" check block

(67) School Bus - Contact Vehicle
If "Yes" check block. This data element is used to determine "school bus related." The school bus, with or without a pupil on board, is directly involved as a contact vehicle.

(68) School Bus - Noncontact Vehicle
If "Yes" check block. This data element is used to determine "school bus related." The school bus, with or without a pupil on board, is indirectly involved as a noncontact vehicle.

(69) Road Feature
0 No special feature
1 Bridge
2 Bridge approach
3 Underpass
4 Driveway, public
5 Driveway, private
6 Alley intersection

Intersection of roadways (7-12)
7 Four-way intersection
8 T-intersection
9 Y-intersection
10 Traffic circle/roundabout
11 Five-point, or more
12 Related to intersection

13 Non-intersection median crossing
14 End or beginning-divided highway

Interchange (15-21)
15 Off-ramp entry
16 Off-ramp proper
17 Off-ramp terminal on crossroad
18 Merge lane between on and off ramp
19 On-ramp entry
20 On-ramp proper
21 On-ramp terminal on crossroad

22 Railroad crossing
23 Tunnel
24 Shared-use paths or trails
25 Other*

(70) Road Character - Horizontal and Vertical Alignment
1 Straight, level
2 Straight, hillcrest
3 Straight, grade
4 Straight, bottom (sag)
5 Curve, level
6 Curve, hillcrest
7 Curve, grade
8 Curve, bottom (sag)
9 Other*

(71) Road Classification
1 Interstate
2 US Route
3 NC Route
4 State Secondary Route
5 Local Street
6 Public Vehicular Area
7 Private Road, Driveway
8 Other*

(72) Road Surface Type
1 Concrete
2 Grooved concrete
3 Smooth asphalt
4 Coarse asphalt
5 Gravel
6 Sand
7 Soil
8 Other*

(73) Road Configuration
(Trafficway Description)
1 One-way, not divided
2 Two-way, not divided
3 Two-way, divided, unprotected median
4 Two-way, divided, positive median barrier
5 Unknown

(74) Access Control
1 No access control
2 Full access control
3 Partial access control

(75) Number of Lanes
Total number of lanes in both directions in the trafficway. If parking lot,

(76) Traffic Control Device
0 No control present
1 Stop sign
2 Yield sign
3 Stop and go signal
4 Flashing signal with stop sign
5 Flashing signal without stop sign
6 RR gate and flasher
7 RR flasher
8 RR crossbucks only
9 Human control
10 Warning sign
11 School zone signs
12 Flashing stop and go signal
13 Double yellow line, no passing zone
14 Other*

(77) Traffic Control Operating
1 Yes
2 No
3 Unknown

(78 - 81) Work Zone Related

(78) Did crash occur in or near
1 Construction work area
2 Maintenance work area
3 Utility work area
4 Intermittent/moving work- e.g., patching pothole
5 No

(79) Work activity at time of crash
1 On going
2 No apparent activity

(82) Trailer Type
0 No trailer
Non-semi trailers
1 Boat
2 Camper
3 Utility
4 Horse
5 House trailer (mobile home)
6 Towed vehicle
7 Other non-semi
Semi trailers
8 Tanker
9 Enclosed van
10 Flatbed or platform
11 Other semi trailer
12 Double trailer

(83) Overwidth Trailer/Mobile Home
Enter the number of the vehicle pulling overwidth trailer, including overwidth mobile home, followed by the permit number.

(84) Crash Diagram
The diagram should include:
1 Roads and intersecting roads; if a vehicle is struck exiting a driveway, give the name of the business or resident
2 Direction of travel for each lane
3 All pertinent roadside features
4 Paths of travel for vehicles, pedestrians, bicyclists, etc.
5 Tire marks and debris
6 Measurements pertinent to the location of the point of impact. Use a tape for distances up to 500 feet. Use an odometer for greater distances

For crashes within an Interchange:
1 Add a small line sketch of the interchange and show an "x" where the crash occurred
2 Sketch should be less than 25% of the total diagram area, and
3 Conform to the north arrow
4 Identify number, name of the road(s), ramps, and service roads shown

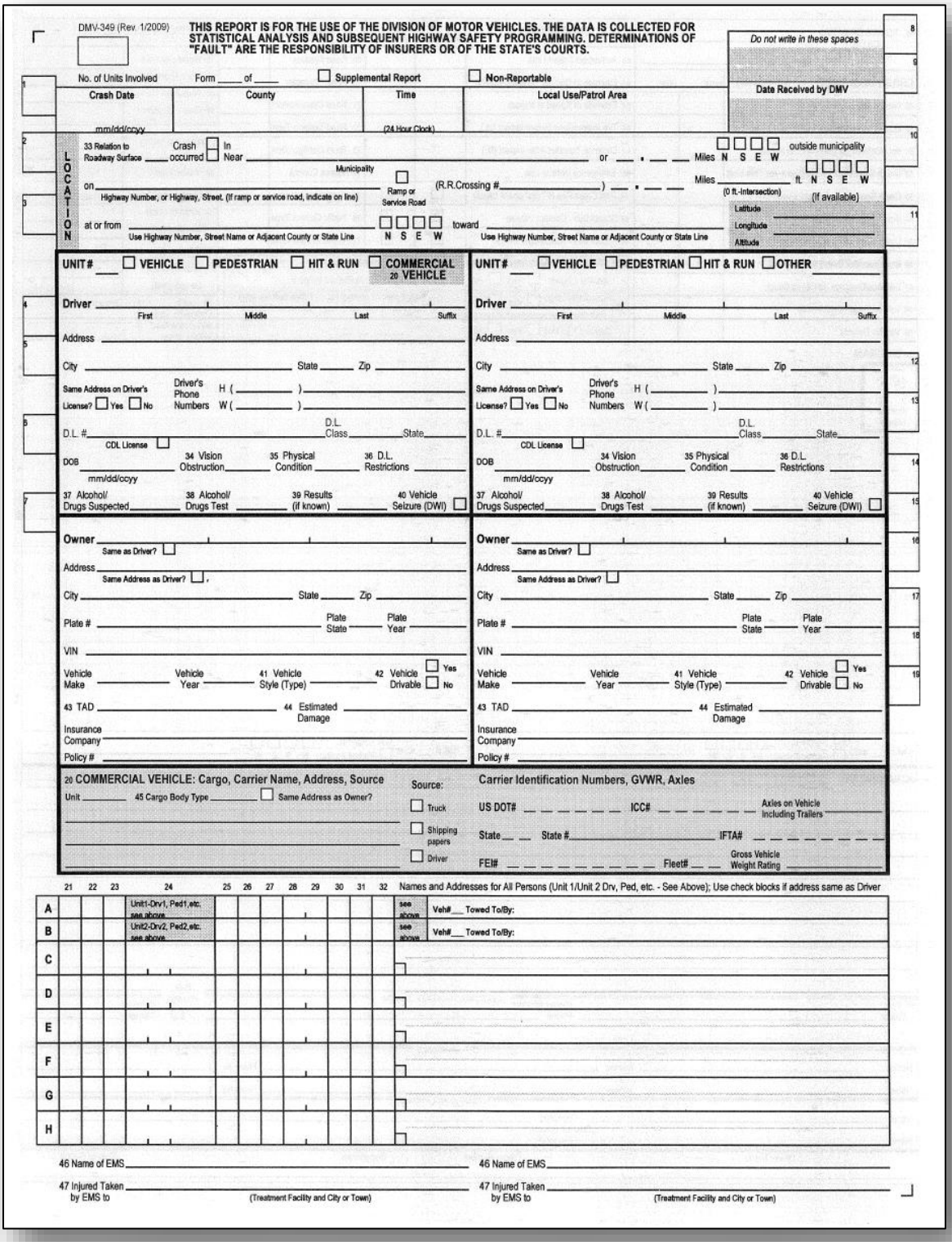
(85) Crash Narrative
Provide a word description of events occurring prior to, during, and after the crash which are not elsewhere on the form. Note all pertinent and unusual aspects of the crash. Statements made in this narrative should be in the opinion of the investigating officer.

(86) Additional Property Damage
Enter any property other than motor vehicles that was damaged, identify property and its owner and enter an estimate of the dollar damage. Damage to signs, buildings, mailboxes, fences, etc., should be entered here.

(80) Work area marked with warning signs, cones
1 Yes
2 No

(81) Location of crash
1 Before work area
2 In work area approach taper
3 Adjacent to actual work area

APPENDIX F: DMV-349 (Front)



DMV-349 (Rev. 1/2009)

THIS REPORT IS FOR THE USE OF THE DIVISION OF MOTOR VEHICLES. THE DATA IS COLLECTED FOR STATISTICAL ANALYSIS AND SUBSEQUENT HIGHWAY SAFETY PROGRAMMING. DETERMINATIONS OF "FAULT" ARE THE RESPONSIBILITY OF INSURERS OR OF THE STATE'S COURTS.

Do not write in these spaces

Date Received by DMV

No. of Units Involved | Form ___ of ___ | Supplemental Report | Non-Reportable

Crash Date (mm/dd/ccyy) | County | Time (24 Hour Clock) | Local Use/Patrol Area

LOCATION

33 Relation to Roadway Surface | Crash occurred | In | Near | Municipality | or ___ . ___ Miles N S E W outside municipality

on | Highway Number, or Highway, Street. (If ramp or service road, indicate on line) | Ramp or Service Road | (R.R.Crossing #) ___ . ___ Miles (0 ft.-intersection) ft. N S E W (If available)

at or from | Use Highway Number, Street Name or Adjacent County or State Line | N S E W | toward | Use Highway Number, Street Name or Adjacent County or State Line

Latitude | Longitude | Altitude

UNIT# ___ VEHICLE PEDESTRIAN HIT & RUN COMMERCIAL 20 VEHICLE

UNIT# ___ VEHICLE PEDESTRIAN HIT & RUN OTHER

Driver (First Middle Last Suffix)

Address

City State Zip

Same Address on Driver's License? Yes No | Driver's Phone Numbers H ( ) W ( )

D.L. # | CDL License | D.L. Class | State

DOB (mm/dd/ccyy) | 34 Vision Obstruction | 35 Physical Condition | 36 D.L. Restrictions

37 Alcohol/Drugs Suspected | 38 Alcohol/Drugs Test | 39 Results (if known) | 40 Vehicle Seizure (DWI)

Owner | Same as Driver?

Address | Same Address as Driver?

City State Zip

Plate # | Plate State | Plate Year

VIN

Vehicle Make | Vehicle Year | 41 Vehicle Style (Type) | 42 Vehicle Drivable Yes No

43 TAD | 44 Estimated Damage

Insurance Company

Policy #

20 COMMERCIAL VEHICLE: Cargo, Carrier Name, Address, Source

Unit | 45 Cargo Body Type | Same Address as Owner?

Source: Truck, Shipping papers, Driver

Carrier Identification Numbers, GVWR, Axles

US DOT# | ICC# | Axles on Vehicle Including Trailers

State | State # | IFTA#

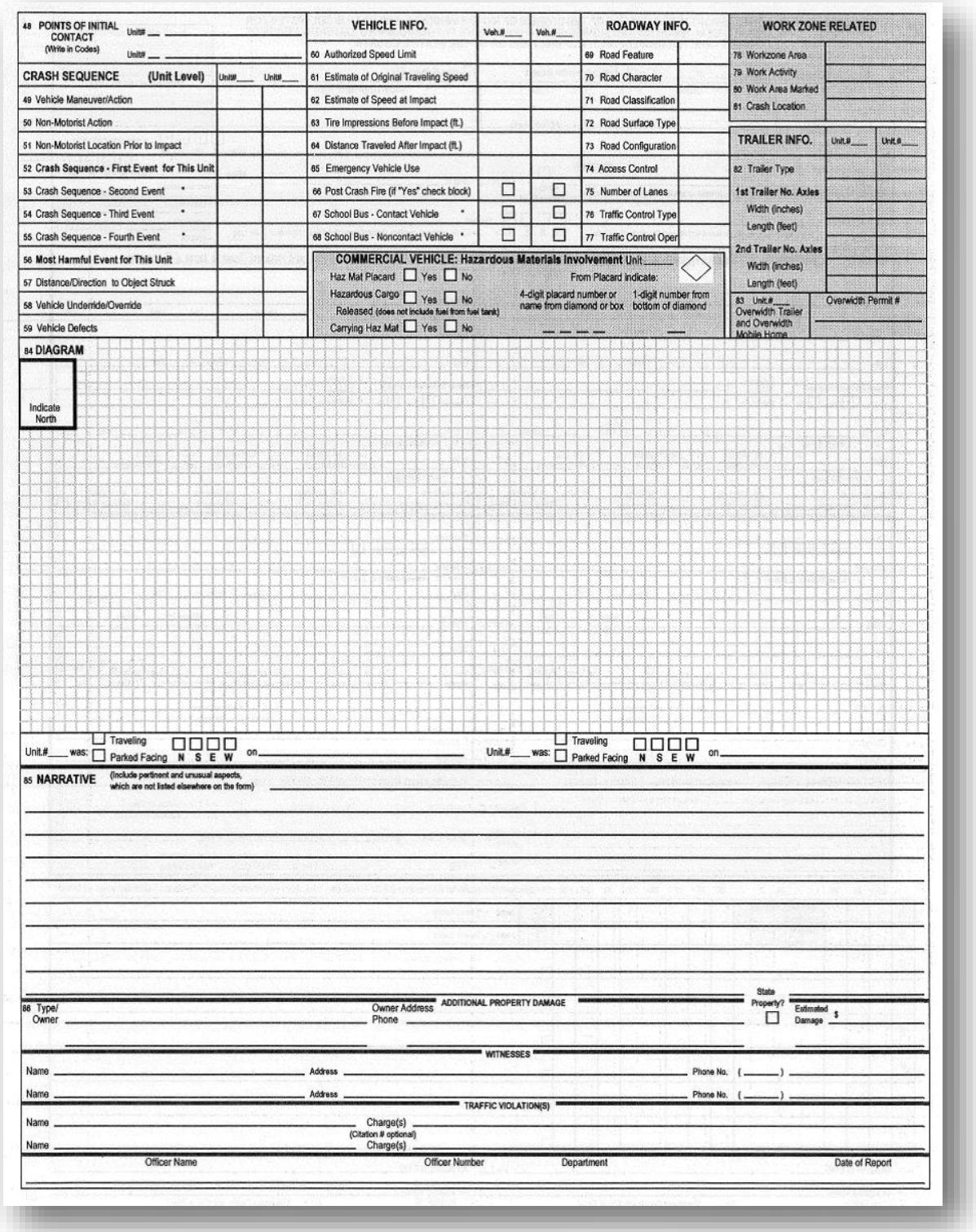
FEI# | Fleet# | Gross Vehicle Weight Rating

	21	22	23	24	25	26	27	28	29	30	31	32	Names and Addresses for All Persons (Unit 1/Unit 2 Drv, Ped, etc. - See Above); Use check blocks if address same as Driver
A				Unit1-Drv1, Ped1,etc. see above									see above Veh#___ Towed To/By:
B				Unit2-Drv2, Ped2,etc. see above									see above Veh#___ Towed To/By:
C													
D													
E													
F													
G													
H													

46 Name of EMS | 46 Name of EMS

47 Injured Taken by EMS to (Treatment Facility and City or Town) | 47 Injured Taken by EMS to (Treatment Facility and City or Town)

DMV-349 (Back)



48 POINTS OF INITIAL CONTACT (Write in Codes) Unit# ___ Unit# ___

CRASH SEQUENCE (Unit Level) | Unit#___ | Unit#___

49 Vehicle Maneuver/Action		
50 Non-Motorist Action		
51 Non-Motorist Location Prior to Impact		
52 **Crash Sequence - First Event for This Unit**		
53 Crash Sequence - Second Event *		
54 Crash Sequence - Third Event *		
55 Crash Sequence - Fourth Event *		
56 **Most Harmful Event for This Unit**		
57 Distance/Direction to Object Struck		
58 Vehicle Underride/Override		
59 Vehicle Defects		

VEHICLE INFO. | Veh.#___ | Veh.#___

60 Authorized Speed Limit		
61 Estimate of Original Traveling Speed		
62 Estimate of Speed at Impact		
63 Tire Impressions Before Impact (ft.)		
64 Distance Traveled After Impact (ft.)		
65 Emergency Vehicle Use		
66 Post Crash Fire (if "Yes" check block)	☐	☐
67 School Bus - Contact Vehicle *	☐	☐
68 School Bus - Noncontact Vehicle *	☐	☐

COMMERCIAL VEHICLE: Hazardous Materials Involvement Unit:____

Haz Mat Placard ☐ Yes ☐ No — From Placard Indicate: 4-digit placard number or name from diamond or box; 1-digit number from bottom of diamond

Hazardous Cargo ☐ Yes ☐ No

Released (does not include fuel from fuel tank)

Carrying Haz Mat ☐ Yes ☐ No

ROADWAY INFO.

69 Road Feature	
70 Road Character	
71 Road Classification	
72 Road Surface Type	
73 Road Configuration	
74 Access Control	
75 Number of Lanes	
76 Traffic Control Type	
77 Traffic Control Oper	

WORK ZONE RELATED

78 Workzone Area	
79 Work Activity	
80 Work Area Marked	
81 Crash Location	

TRAILER INFO. | Unit.#___ | Unit.#___

82 Trailer Type		
1st Trailer No. Axles		
Width (inches)		
Length (feet)		
2nd Trailer No. Axles		
Width (inches)		
Length (feet)		

83 Unit.#___ Overwidth Trailer and Overwidth Mobile Home — Overwidth Permit #

84 DIAGRAM

Indicate North

Unit.#___ was: ☐ Traveling ☐ Parked Facing ☐N ☐S ☐E ☐W on ___ Unit.#___ was: ☐ Traveling ☐ Parked Facing ☐N ☐S ☐E ☐W on ___

85 NARRATIVE (Include pertinent and unusual aspects, which are not listed elsewhere on the form)

86 Type/ Owner ___ Owner Address ___ Phone ___ ADDITIONAL PROPERTY DAMAGE ___ State Property? ☐ Estimated Damage $ ___

WITNESSES

Name ___ Address ___ Phone No. (___) ___

Name ___ Address ___ Phone No. (___) ___

TRAFFIC VIOLATION(S)

Name ___ Charge(s) ___

Name ___ (Citation # optional) Charge(s) ___

Officer Name | Officer Number | Department | Date of Report

APPENDIX G: Completing the DMV 349 & Supplemental Reports

Completing the Crash Report Form DMV-349

A reportable motor vehicle crash must meet at least one of the following criteria:

- results in a fatality, or
- a non-fatal personal injury, or
- property damage of $1,000 or greater, or
- property damage of any amount to a vehicle seized

In addition, a reportable motor vehicle crash must occur on a trafficway (any land way open to the public as a matter of right or custom for moving persons or property from one place to another) or occur after the motor vehicle runs off the roadway but before events are stabilized.

The terms collision, accident, and crash are synonymous when describing a motor vehicle crash.

(FILLING OUT THE DMV-349)

(*) EXPLAIN IN CRASH NARRATIVE
(-) IF QUESTION DOES NOT APPLY, USE A DASH
(If a section does not apply, draw diagonal line through section)
 ONLY USE "CHECK BLOCKS" IF THEY APPLY

The Division of Motor Vehicles (DMV) requests that:

1. The DMV-349 should be typewritten or if handwritten the officer should use black ink,
2. The report should be legible. This is of the utmost importance for clarity, when reports are microfilmed or imaged for later storage, and
3. The original should be submitted to the DMV Traffic Records Section.

COMPLETING A SUPPLEMENTAL

When completing a supplemental report note that:

- It is not necessary to rewrite most of the information as listed on be original DMV-349 (report). Supplemental reports must be reported on a separate DMV-349 from the original report. The location must be completed in addition to the date, and time of the crash.

- List only the names of drivers (or owner, if no driver) as shown on the original report.

- List the additional information or correction to be made.

- If the original report included a hit and run driver and the driver has been apprehended the supplement must include all information for that respective driver and vehicle on the front and back of the report.

Supplemental traffic crash reports must be submitted when:

1. The original report was incomplete because of lack of information or an incomplete investigation.

2. A correction on the original report is necessary because of inaccurate information.

3. A person dies of injuries sustained in a traffic crash within one year of the crash.

APPENDIX H: Crashes Involving Commercial Motor Vehicles

CRASHES INVOLVING COMMERCIAL MOTOR VEHICLES (CMV)

The reporting of motor vehicle crashes involving CMV's has been incorporated into the DMV-349. All of the data requirements to meet the Office of Motor Carrier, Federal Highway Administration requirements for SAFETYNET, and the seven motor carrier specific data elements recommended by the National Governor's Association have been addressed.

The DMV-349 is designed to record information for a single CMV involved in a crash. Questions concerning hazardous materials involvement may be found on the reverse side of the DMV-349 in rare instances where two or more CMV's are involved in the same crash, a second DMV-349 must be submitted with the appropriate information for subsequent CMVs.

COMMERCIAL MOTOR VEHICLES CARRIER IDENTIFICATION NAME, NUMBERS, AND ADDRESS

This Information is provided as a quick reference to aid law enforcement in correctly identifying the carrier identification numbers for purposes of reporting crashes or inspections. When a commercial motor vehicle crash report and/or inspection report is filled out, the correct motor carrier will receive credit (good and bad) for the crash and/or inspection.

The Federal Highway Administration and States use the crash and/or inspection reports in determining safety fitness ratings of motor carriers and targeting unsafe motor carriers for in depth investigations. To avoid improperly identifying the name and address of a motor carrier the officer should rely on more than a single document or item when identifying the motor carrier. The officer should review as many of the following items as possible to determine the name and address of the motor carrier.

Side of the Vehicle - the correct name, address and US DOT#/ICC# of the motor carrier may or may not be marked on the side of the vehicle. If the marking on the side of the vehicle matches the name on the other items, the correct motor carrier is probably identified. The US DOT# is required if the vehicle is an interstate private carrier. The ICC MC# is required if the vehicle is an interstate for hire carrier. The State Exemption Numbers, also contained on the side of the vehicle, are required for intrastate passenger carriers and/or carriers of household goods.

Driver interview - The officer should ask questions, such as;

1. Is the vehicle leased or rented?
2. Who is the motor carrier that is responsible for this load?
3. Who is directing and controlling the movement of this vehicle?
4. Where is the motor carrier's principal place of business?

Lease Agreement - This document is excellent for identifying the name of the lessee.

Driver's Log - When logs are required; they will contain the name of the motor carrier and the city and state where the motor carrier's principal place of business is located,

Shipping Papers (Bill of Lading) - generally this document will provide the officer with the name of the motor carrier who is responsible for the load. The shipping papers are the written transportation contract between the shipper and the carrier. They identify the freight, who is to receive it, and the place of delivery and give the terms of the agreement.

Vehicle Registration -These documents are good for identifying the owner and/or registrant who may or may not be the responsible motor carrier. Even when the registration identifies the responsible motor carrier, it may or may not show the address of the motor carrier's principal place of business because carriers with terminals in multiple states generally register their vehicles in the state of domicile. Therefore, the address may be a terminal address.

The vehicle registration or "Cab Card" also contains the IFTA# (International Fuel Tax Agreement Number) and the Fuel Tax Account #, which is comprised of the State, FEI# (Federal Employee Identification Number and Fleet Number.)

APPENDIX I: Important Definitions

CRASH/MOTOR VEHICLE/UNIT

A motor vehicle crash is any event that results in death, injury or property damage attributable directly to a motor vehicle or its load in transport, but not involving aircraft or watercraft. It must occur on a trafficway or after the motor vehicle runs off the roadway but before events are stabilized.

A motor vehicle is any mechanically or electrically powered device, not operated on rails, upon which any person or property may be transported or drawn upon a highway.

A unit is any motor vehicle, pedestrian, pedalcyclist, moped or other road vehicle, excluding railway vehicles, which can be shown on the report as "other" RR train.

DRIVERLESS MOTOR VEHICLE

A driverless motor vehicle, though previously parked, or a motor vehicle out of control while being towed or pushed, is considered to be a motor vehicle in transport. Also, an abandoned motor vehicle, upon a roadway, is considered to be a motor vehicle in transport. This principle does not apply to such devices as farm or industrial machinery, highway graders, construction machinery, or similar devices which are not in use at the time of the crash for transport.

HIT & RUN

A hit & run vehicle is one which was involved in the crash as the “striking vehicle” or as the “vehicle struck” but which left the scene. The appropriate box must be checked, e.g., vehicle 1, vehicle 2, etc. and any information that is known, included in the Driver and/or Vehicle areas.

NON-CONTACT VEHICLE OR NON-MOTORIST

Non-contact phantom motor vehicles or non-motorists are units that caused the crash but left the scene. They should not be counted in the number of units, but should be referred to in the narrative.

Non-contact motor vehicles or non-motorists are units that caused the crash and remained at the scene. They should be counted as units with identifying information, and referred to in the narrative. A school bus could be an example of a non-contact vehicle that is related to a crash (refer to data element # 68).

Important Definitions (cont.)

SCHOOL BUS

A motor vehicle used for the transportation of any school pupil at or below the 12th-grade level to or from a public or private school or school-related activity.

A school bus must be externally identifiable by the color yellow, the words “school bus”, flashing red lights located on the front and rear, and identifying lettering on both sides indicating the school or school district served, or the company operating the bus.

MOTOR VEHICLE STATUS

The use of the device at the time of the crash is the primary criterion for establishing motor vehicle status. For example:

1. A registered motor vehicle is being drawn by a team of horses on a city street; it is considered other road vehicle.
2. A registered motor vehicle is being used to draw a plow engaged in breaking ground on a farm; it is considered farm machinery while engaged in plowing.
3. A registered truck is engaged in spreading concrete at a road construction site; it is construction machinery.
4. A motorized highway grader, under its own power, is moving from one work place to another on a public way; it is considered a motor vehicle in transport.
5. A registered truck, with a blade attached, is engaged in plowing snow from a trafficway; it is considered road maintenance machinery.
6. A riding, motorized lawn mower, under its own power, is being driven from one home to another on a city street; it is considered a motor vehicle in transport.
7. A military tank is being moved, under its own power, from the firing range to the motor pool, on a land way of a military post; it is considered a motor vehicle in transport.

Fatal injury - Any injury that results in death within 12 months after the crash occurred.

A Type Injury (disabling) - An injury obviously serious enough to prevent the injured person from performing his or her normal activities for at least one day beyond the day of the crash. Massive loss of blood, broken bone, unconsciousness of more than momentary duration are examples.

B Type Injury (evident) - an obvious injury, other than a fatality or A Type injury, which is evident at the scene. Bruises, swelling, limping, soreness, are examples. This injury would not necessarily prevent the person from carrying on his or her normal activities.

C Type Injury (possible) - No visible injury, but person complains of pain, or has been momentarily unconscious.

Derived Data Elements - These are data elements which are not necessarily collected at the scene by the police. Instead, they can be obtained by counting or recoding information that has already been collected on the DMV-349. Examples include:

1. Day of week
2. Number of motorists
3. Number of non-motorist
4. Vehicle body type
5. Crash severity
6. Total persons injured
7. Total persons killed

NORTH CAROLINA
STATE HIGHWAY PATROL
POLICY MANUAL TABLE OF CONTENTS

* Policy directive applies to ALL EMPLOYEES (Sworn and Civilian)

Directive A	**Organizational Standards**
A.01	Mission, Vision, and Values *
A.02	Effect and Use of Manual – Liability *
A.03	Code of Professional Ethics *
A.04	Performance Standards
A.05	Oath of Office
A.06	Policy Definitions *
Directive B	**Critical Issues**
B.01	Use of Force
B.02	Extraordinary Patrol Vehicle Operations
B.03	Forced Vehicle Stops
B.04	Treatment of Persons In and Out of Custody
B.05	Responding to Persons with Mental Illness
B.06	Blood borne Pathogens*
Directive C	**Organizational Structure / Role**
C.01	Administration, Organization and Troop / District Boundaries*
C.02	Officers of the Day
C.03	Allocation of Personnel
C.04	Highway Patrol Jurisdiction on Federal Property: National Parks, Forests, Roadways, and Reservations

Directive D	Administrative Procedures
D.01	Written Directives and Forms*
D.02	Special Orders*
D.03	Records Accountability: Personnel, Reproduction, and Registered Symbols*
Directive E	**Human Resources**
E.01	Employee Benefits*
E.02	Drug and Alcohol Screening
E.02C	Civilian Employee / Applicant Drug and Alcohol Screening
E.03	Salaries*
E.04	Authorized Time Off*
E.05	Expenditures*
E.06	Death of a Member
E.07	Funerals
E.08	Grievance Procedure*
E.09	Assignments, Transfers, Retirements, Resignations, and Residence Requirements*
E.10	Secondary Employment*
E.11	Chaplaincy Program*
E.12	Awards and Recognition*
E.13	State Highway Patrol Applicant Regulations*
E.14	Academic Assistance Program*
E.15	Member Health and Welfare
E.16	Member's Assistance Team (MAT) *

Directive F	**Promotional and Performance Procedures**
F.01	Performance Appraisal Procedures
F.02	Promotion Procedures*
Directive G	**Professional Standards**
G.01	Quality*
G.02	Inspections
Directive H	**Conduct**
H.01	Rules of Personal Conduct and Job Performance
H.02	Investigation of Complaints and Charges Against Highway Patrol Employees*
H.03	Gifts, Favors, and Donations*
H.04	Highway Patrol Disciplinary System
H.05	Military Courtesy
H.06	Political Activities*
H.07	Personal Use of Social Networking Websites*
Directive I	**Enforcement Procedures**
I.01	Citation and Arrest Enforcement Regulations
I.02	Leaving Assigned Duty Station While On Duty
I.03	Speed Enforcement
I.04	Interrogations and Field Interviews
I.05	Arrest of Foreign Nationals
I.06	Juvenile Offender Procedures

Directive J	Operational Procedures
J.01	Evidence / Property Collection, Analysis, and Disposal
J.02	Chemical Analysis for Alcohol
J.03	Court*
J.04	Wrecker Service Vehicle Towing / Notification / Inventory*
J.05	Use of Patrol Video Recording Devices and Still Photography Cameras
J.06	Crime Prevention and Community Involvement*
J.07	Executive Protection
J.08	Victim / Witness Assistance
J.09	Media Relations
J.10	Assignment, Use, and Disposition of North Carolina Uniform Citations and eCitations; CVSA Decals; CMV Replacement Seals; CMV Out-of-Service Decals; Members/ New Entrant Auditors
J.11	Service and Completion of Process Orders and NCAWARE System
Directive K	**Traffic Operations**
K.01	Selective Traffic Enforcement
K.02	Patrol Methodology and Traffic Supervision
K.03	Traffic Direction at Public Gathering for Private Purposes
K.04	Checking Stations
K.05	Railroad Crossing Traffic Hazards
K.06	Patrol Relays and Escorts

Directive L	**Collision Investigation**
L.01	Motor Vehicle Collision Investigation
L.02	Patrol Vehicle Collisions / Incidents
L.03	Collision Reconstruction Unit
Directive M	**Unusual Occurrences**
M.01	Unusual Occurrences
M.02	Hazard Communications
Directive N	**Special Operations**
N.01	Aircraft Operations
N.02	Use of Canine Teams
N.03	Criminal Interdiction
N.04	Four-Wheel Drive Vehicles*
N.05	Motor Unit
N.06	SHP Mobile Command / Communications Vehicles Members Telecommunicators
N.07	SHP Professional Range Instructor Simulator (PRISim) Judgment and Shooting Skills Trainer
N.08	Bicycle Rodeo Vehicle
N.09	Drone Vehicle
N.10	State Highway Patrol Caisson Unit
N.12	Mobile Weigh Station; Member/ WSO
Directive O	**Uniforms and Equipment**
O.01	Wearing Patrol Uniforms
O.02	Personal Appearance
O.03	Uniforms and Equipment Issued / Records*

O.04 Patrol Vehicle Assignment and Maintenance; Use of Patrol Vehicles*

O.05 Telephone Use and Mandates, Use of CB Radios, Amateur Radios, Wireless Telephones, Scanners, and Two-Way Radios by State Highway Patrol Members

O.06 Civilian Assignment / Use of Vehicles

Directive P Technical Support

P.01 Use of Highway Patrol Computer Systems, Internet, and E-Mail*

P.02 Communication*

Mission, Vision, and Values

Directive A.01

Applicable to: Employees

Revised 01/30/2020
Effective 12/6/2010

I. MISSION STATEMENT

The mission of the North Carolina State Highway Patrol is to promote excellence in traffic enforcement through a commitment to the safe and efficient flow of traffic, crime reduction and response to natural hazards and manmade threats. This will be accomplished through government and community partnerships and based upon our core values of loyalty, integrity, and professionalism.

II. VISION STATEMENT

The North Carolina State Highway Patrol will excel as a national leader in public service through innovative traffic enforcement, strategic preparedness, and community engagement.

III. ETHICAL AND ORGANIZATIONAL VALUES

Integrity

A sincere commitment to justice and diversity while maintaining the ethics of the Patrol through honor, respect, and moral courage.

Loyalty

Faithfully serve the public consistent with the policies of the North Carolina State Highway Patrol

Professionalism

Demonstrate a clear sense of commitment, personal direction, and best practices to provide excellent service. Empower employees to be creative, decisive, and accountable.



Effect and Use of Manual – Liability

Applicable to: Employees

Directive A.02
Revised 06/23/2017
Effective 12/6/2010

I. CIVIL AND CRIMINAL LIABILITY

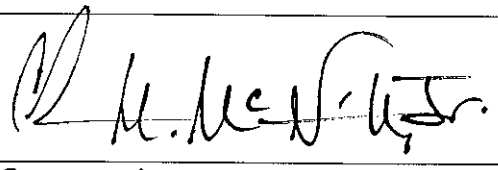
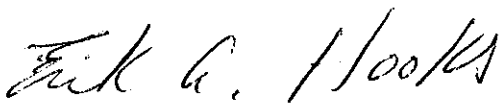
The North Carolina State Highway Patrol Policy and Procedures Manual, and all policies, rules, regulations, directives, and procedures of the Patrol and the Department of Public Safety are for internal use only, and do not enlarge any member's civil or criminal liability in any way, nor do they enlarge any supervisor's or civilian administrator's civil or criminal liability in any way with respect to training or other supervisory or administrative responsibilities of every kind and nature. These should not be construed as the creation of a higher standard of safety or care in any legal or evidentiary sense, with respect to third party claims.

II. VIOLATIONS OF MANUAL

Any violation of this manual and/or of any of the policies, rules, regulations, directives, and procedures of the department, if proven, can be used solely as the basis for disciplinary action against a member by this department, and then only in a non-judicial administrative proceeding.

III. NO CONTRACT RIGHTS

This manual and all policies, rules, regulations, directives, and procedures of the Patrol and the Department of Public Safety shall not be construed to grant or guarantee to a member or an applicant any right or privilege or to establish a contract or mandatory procedure. Compliance with the State Personnel Act or other applicable law or procedure shall be deemed to be in compliance with this manual, policies, rules, regulations, directives, and procedures of the Patrol and the Department of Public Safety.

		I concur:
		
Commander, State Highway Patrol		Secretary, Department of Public Safety

In America, where the supremacy of public opinion is assured, it is essential that the system upon which public safety depends is developed to a high degree of efficiency and that it is administered in a manner to assure the continued approbation and respect of the public. Voluntary compliance with the law is enhanced when the public holds the law enforcement agency and its members in high esteem.

Rules cannot be drawn that will prescribe in specific detail the manner in which all the duties of law enforcement officers shall be performed. The problems of police service are many and they are subject to the influence of the constant development of public administration. This Code of Ethics describes the basic objectives sought and provides general rules for the performance of the manifold duties of law enforcement officers.

I. BASIC OBJECTIVES

- To encourage fair and impartial enforcement of the laws and the protection of individual rights.
- To elevate the standing of the profession in the public mind, and to strengthen public confidence in law enforcement.
- To encourage law enforcement officers to fully appreciate the responsibilities of their office.
- To develop and maintain complete support and cooperation of the public for law enforcement.
- To ensure the effectiveness of the service by encouraging complete cooperation of its members for their mutual benefit.
- To strive for full coordination of effort in all official relationships with other governmental bodies.
- To consider police work an honorable profession and to recognize in it an opportunity to render a worthwhile service to society.

II. CODE OF CONDUCT (SWORN MEMBERS)

All members of the North Carolina State Highway Patrol (NCSHP) must be fully aware of the ethical responsibilities of their positions and must strive constantly to live up to the highest standards of professional law enforcement.

Integrity

- As a Trooper, I will not engage in acts of corruption or bribery, nor condone such acts by other law enforcement officers. I will avoid any conduct that might compromise my integrity and thus undercut the public confidence in the North Carolina State Highway Patrol. I will refuse to accept any gifts, presents, subscriptions, favors, gratuities, or promises that could be interpreted as seeking to cause me to refrain from performing official responsibilities honestly and within the law.

Primary Responsibilities

- As a Trooper, I will always act as an official representative of government who is required and trusted to work within the law. The Trooper's powers and duties are conferred by statute. The fundamental responsibilities of a Trooper include regularly patrolling the highways of the State and enforcing all laws and regulations regarding travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State.

Performance of the Duties

- As a Trooper, I will perform all duties impartially without favor or affection or ill will and without regard to status, sex, race, religion, political belief, or aspiration. All citizens will be treated equally with courtesy, consideration, and dignity. I will never allow personal feelings, animosities, or friendships to influence my official conduct or duties. Laws will be enforced appropriately and courteously, and in carrying out my responsibilities, I will strive to obtain maximum cooperation from the public. I will conduct myself in appearance and actions in such a manner as to inspire confidence and respect for the position of the public trust I hold.

Discretion

- As a Trooper, I will use responsibly the discretion vested in my position and exercise it within the law. The principle of reasonableness will guide my decisions, and I will consider all surrounding circumstances in determining whether any legal action shall be taken.

Confidentiality

- Whatever I see, hear, or learn that is of a confidential nature will be kept confidential unless the performance of my duties or legal responsibilities requires otherwise.

Use of Force

- As a Trooper, I will never employ unnecessary force and will use only such force in the discharge of duty as is reasonable in all circumstances. While the use of force is occasionally unavoidable, I will refrain from unnecessary

infliction of pain or suffering and will never engage in cruel, degrading, or inhumane treatment of any person.

- **Duty To Intervene**

  Officers have a sworn duty and obligation to protect members of the public. Consistent with this obligation, officers should take a preventive approach, whenever possible, if observing behavior that suggests that another officer is about to engage in unlawful or inappropriate behavior, as described more fully below.

  Officers have an ethical and legal duty to intervene when necessary to prevent or stop another officer from using a level of force that the officer knows, or should reasonably be expected to know, is excessive or unwarranted under the existing circumstances. Officers shall also intervene in any case where the officer observes another officer treating a member of the public in any manner that is inconsistent with law or policy (i.e. conducting an unlawful detention or making an unlawful arrest). This duty also extends when the North Carolina State Highway Patrol is called to assist, or is assisting, any other law enforcement agency.

  Failure to intervene, as required by this policy, may result in disciplinary action up to and including dismissal.

- **Duty To Report**

  North Carolina State Highway Patrol officers shall immediately notify a supervisor after conducting any type of intervention, when safe to do so.

  All employees also have a duty to immediately report any unlawful or otherwise inappropriate conduct when observed or when learned about. Notification shall be made to a supervisor, documented, and submitted through the Chain of Command and or established internal affairs process.

  All types of interventions whether physical or verbal shall be documented and submitted through the Chain of Command and or established internal affairs process.

  Failure to report, as required by this policy, may result in disciplinary action up to and including dismissal.

Cooperation with Other Police Officers and Agencies

- As a Trooper, I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. A Trooper or agency may be one among many organizations that may provide law enforcement services to a jurisdiction. It is imperative that I cooperate fully and completely with respect and consideration at all times.

Personal-Professional Capabilities

- As a Trooper, I will be responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. Through study and experience, I will acquire the high level of knowledge and competence that is essential for the efficient and effective performance of my duties.

Private Life

- As a Trooper, my behavior will not discredit the North Carolina State Highway Patrol, my community, or the State of North Carolina. My character and conduct while off duty will always be exemplary, thus maintaining a position of respect in the community in which I live and serve. My personal behavior will be beyond reproach.

III. CODE OF CONDUCT (CIVILIAN EMPLOYEES)

I understand that, as an employee of the North Carolina State Highway Patrol, I have an ethical and moral responsibility to serve the public interest, to maintain the public trust, and to live up to the high standards and expectations of the public and my employing agency. I accept these responsibilities and expectations and, to that end, I promise and affirm that I will:

- Fully support the Mission and Vision Statement of the Highway Patrol;

- Be exemplary in obeying the law and comply with all applicable policies and procedures of the Highway Patrol;

- Maintain a professional image at all times and conduct my personal and professional life in a manner that fosters the respect, trust, and confidence of the public;

- Conduct my private life in such a manner as to be an example for others and in a manner that does not bring discredit to me or to the Highway Patrol as my employing agency;

- Never compromise my duties and responsibilities to the public or to the Highway Patrol for personal gain;

- Avoid any and all appearances of impropriety;

- Accept responsibility for my own standard of professional performance and take every reasonable opportunity to enhance and improve my level of knowledge and competence.

A member of the North Carolina State Highway Patrol will support, protect, defend and obey the Constitutions and Laws of the United States and the State of North Carolina, and the Regulations of the North Carolina State Highway Patrol; will keep informed of the criminal, traffic and other police problems in an assigned area, and will take whatever lawful action is necessary to prevent and reduce crime, traffic collisions and other disorder, using all of the imagination, initiative and ingenuity necessary, attempting to gain voluntary compliance with the law whenever possible; will, to this end, give the State of North Carolina an honest day's work for a day's pay recognizing and accepting the fact that the Patrol will not tolerate laziness and that a member will often be required to work long hours to accomplish this mission; will remain willing to accept additional Departmental duties and responsibilities; will accept the responsibilities of leadership in police circles which is traditionally expected of a North Carolina Highway Patrol Trooper; will never look the other way, either in case of law violation or in case of a citizen in need of aid or assistance; will walk the extra mile to gain cooperation with other public officials; will recognize a Trooper's responsibility in civic affairs and will, within the limits of the member's position, support responsible and worthwhile community projects; will not criticize superior officers or the Patrol for the mere sake of criticism, but will never hesitate to offer respectful criticism, coupled with a suggestion of how the task may be better performed; will maintain a positive attitude toward the job, taking pride in the profession, and when the member is no longer able to honestly abide by these standards, will, for the good of the Patrol, resign.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the Constitutional powers and authorities which are, or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; that I will be alert and vigilant to enforce the criminal laws of this state; that I will not be influenced in any manner on account of personal bias or prejudice; and that I will faithfully and impartially execute the duties of my office as **TROOPER** of the State Highway Patrol according to the best of my skills, abilities, and judgment, so help me God.

Policy Definitions

Directive A.06

Applicable to: Employees

Revised Pending
Effective 12/6/2010

The following definitions shall apply to the words and phrases found in this Manual. All employees shall be governed by these definitions whenever they appear in any State Highway Patrol rule, regulation, order, policy, directive, or in the Patrol Manual.

Abused Juvenile [N.C.G.S. § 7B-101(1)]. Generally, any juvenile less than 18 years of age who is found to be a minor victim of human trafficking or whose parent, guardian, custodian, or caretaker:

- Inflicts or allows to be inflicted serious physical or emotional injury or creates or allows substantial risk thereof
- Uses or allows grossly inappropriate punishment
- Commits, permits, or encourages commission of a crime upon the juvenile such as rape or other sexual offenses
- Encourages, directs, or approves of delinquent acts by the juvenile involving moral turpitude.

Access. To instruct, communicate with, cause input/output, or otherwise make use of any resource of a computer, computer systems, or a computer network.

Accused. A person who has been arrested and charged with committing a crime covered by the Crime Victims' Rights Act (Chapter 15A, Article 46).

Active Case File. Those juvenile cases that have been removed off the pending citation list but have not been disposed of in the Juvenile Court System.

Active Resistor. A person who is uncooperative and fails to comply with directions from a member, and instead attempts to avoid physical control and/or arrest by creating distance between themselves and the member or the member's reach. This type of resistance includes but is not limited to evasive movement of the arm, flailing arms, and full flight by running in attempt to avoid apprehension.

Adjudicate (N.C.G.S. § 7B-2412). To settle in the exercise of judicial authority, to determine the facts in a petition are true. An adjudication that a juvenile is delinquent or commitment of a juvenile to the Office of Juvenile Justice for placement in a training school shall neither be considered conviction of any criminal offenses nor cause the juvenile to forfeit any citizenship rights. (Adjudication and disposition will be synonymous for the purposes of this policy.)

Administrative Duty. A member has been removed from law enforcement duties and re-assigned to Administrative Duties, which may or may not be the result of a disciplinary investigation. The member may not wear a uniform or drive or ride as a

passenger in an assigned Patrol vehicle to and from the work place. A member assigned Administrative Duties may be required to surrender his/her issued Patrol vehicle, firearms, uniform badges, and identification credentials.

Advance. All security activities, plans, and arrangements made prior to and in conjunction with the visit of a protectee to a given area.

After Action Review. A structured meeting by supervision conducted for review or de-brief (debriefing) a member regarding an incident. The supervisor will analyze what occurred with the member and may consult with subject matter experts (eg., Certified Defensive Tactics Instructor / Firearms Instructor / Drivers Training Instructors), as well as higher supervision in order to provide a comprehensive review.

Aircraft. Patrol aircraft capable of maintaining direct radio communication with authorized Patrol vehicles.

Americans with Disabilities Act (ADA). Applies to persons who have a physical or mental impairment that substantially limits one or more of their major life activities, including:

- The ability to communicate, hold a job or care for themselves;
- Persons who have a record of such impairment; or
- Persons who are regarded as having such impairment.

The term "substantially limits" is not a clinical term; it is a practical term to distinguish between persons who have a mild physical or mental impairment and those whose impairment substantially limits one or more major life activities.

Arm-Bar Technique. Also referred to the straight arm bar technique consists of a series of moves, (encompassing an extension of the suspects elbow, wrist and shoulder control), designed to control and bring a suspect down to the ground with the least amount of force, and injury to the arresting officer and the suspect.

Arresting Law Enforcement Agency. The law enforcement agency that makes the arrest of an accused.

Asset Seizure. Any property (e.g. vehicle, money, equipment, etc.) that the Patrol is going to seek civil action for the forfeiture of that property.

Authorization. Having the consent or permission of the owner or the person licensed or authorized by the owner to grant consent to access a computer, computer systems, or a computer network in a manner not exceeding the purpose or intent for which the consent or permission was granted.

Authorized Patrol Vehicle. Marked or unmarked Patrol vehicle (including motorcycles and police certified four-wheel drive vehicles) intended to be used for traffic law enforcement. This will exclude service vehicles, support vehicles, utility vehicles, and multipurpose vehicles (vans, trucks, and non-police certified four-wheel drive vehicles).

Balance Displacement. Any technique used to take a suspect to the ground by the disruption of balance. Can occur as a result of "Hard" displacement techniques such as a strike, kick or throw. May also occur as a push from behind when a suspect is attempting to flee from apprehension.

BAT Bus. A mobile vehicle designed to support field DWI check point operations. This vehicle can be used as an alternate command post for disaster operations. Regular Class C operators license are required for driving. Operators must obtain certification from the Director of Support Services.

Blind Search. A method of search in which the member blindly inserts his/her hand into a place that cannot be seen (e.g. clothing pockets, beneath car seats, beneath furniture, etc.).

Blog. A self-published diary or commentary on a particular topic that may allow visitors to post responses, reactions, or comments. The term is short for "Web log."

Blood. Human blood, human blood components, and products from human blood.

Bloodborne Pathogens. Pathogenic micro-organisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, Hepatitis B (HBV), Hepatitis C (HCV), and Human Immunodeficiency virus (HIV).

BlueTeam. A web based application used to enter Personnel Complaints, Use of Force, Post Chase, Firearm Discharge, and Patrol Car Incident/Collision Reports.

Caisson Unit. A Unit within the Patrol that consists of uniformed members that have received training in the use of the four wheeled, horse drawn military carriage that is utilized during a formal funeral.

Canine. A working dog, which has been procured and trained to execute a number of specific law enforcement related tasks that use the Canine's speed, agility, and sense of smell.

Canine Handler. A member trained in the care, handling, and training of a dog for law enforcement use.

Canine Team. A member and assigned dog.

Canine Training Coordinator. A member designated as the supervisor of all canine related training.

Captain. A Commissioned Officer in the Patrol who ranks below a Major and above a Lieutenant.

Car Carrier or "Rollback". A vehicle transport designed to tow or carry vehicles damage-free. The truck chassis shall have a minimum gross vehicle weight rating (GVWR) of 14,500 pounds. Two (2) lift cylinders, minimum two and one-half inch (2½)

inch bore; individual power winch pulling capacity of not less than 8,000 pounds; a sufficient length of wire rope (cable) on winch drum with a working load limit (WLL) that meets or exceeds the pulling capacity of the power winch utilized; and four (4) tie-down hook safety chains. The carrier bed shall be a minimum of sixteen (16) feet in length and a minimum of 84 inches in width inside side rails. A cab protector, constructed of aluminum or steel, must extend a minimum of 10 inches above the height of the bed. Additional safety equipment as specified on the HP-304B (Rotation Wrecker Inspection Form). A "rollback" **is not** considered a small or large wrecker.

CEW (Conducted Energy Weapon). A CEW is a device approved by the North Carolina Attorney General that is capable of firing probes/electrodes that transmit an electrical charge or current intended to temporarily disable a person. Additional guidance may be found in the North Carolina Highway Patrol CEW's Standard Operating Procedures guide.

Chain-of-Command. Official route of communication from a member or employee through immediate supervisors to the highest supervisor, including the Patrol Commander.

Channels. Official route of communication from the member through immediate supervisor to the highest commissioned officer, possibly including the Patrol Commander.

Chaplain. Any civilian clergy who is licensed and ordained to conduct religious services, who is appointed by the Chaplaincy Program Coordinator.

Chaplaincy Program Coordinator. A civilian clergy who is licensed and ordained to conduct religious services, who is appointed by the Patrol Commander to oversee the Highway Patrol Chaplaincy Program.

Charging Officer. The member who charges a suspect with an implied consent offense or who assists with the processing or in obtaining blood from a person charged with an implied consent offense.

Chase. An active attempt by one or more member(s) operating authorized Patrol vehicle(s) to apprehend a suspect or violator of the law operating a motor vehicle, while that person is attempting to avoid capture by using high-speed driving or other tactics.

Chemical. Any element, compound, or mixture of elements and/or compounds.

Civil Disturbances. Any annoying, disturbing, or alarming act or condition exceeding the bounds of social toleration normal for the time and place in question which occurs in a public place or occurs in, affects persons in, or is likely to affect persons in a place to which the public or a substantial group has access. The places covered by this definition shall include, but are not limited to, highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

Civilian Employee. A person who is employed by the North Carolina State Highway Patrol and is not a sworn law enforcement officer. Civilian employees shall be governed

by the promotion procedures established by the Department of Public Safety (DPS).

Colonel. The Commissioned Officer in the Patrol who ranks above all other members and who serves as the Patrol Commander.

Commander's Office. Command level of the Highway Patrol consisting of the Patrol Commander and Deputy Patrol Commander and charged with the authority and responsibility of overseeing all organizational operations.

Commanding Officer. A Commissioned Officer in charge of the Highway Patrol or any organizational subdivision of the Patrol, or any Commissioned Officer in charge of any special detail.

Commercial Vehicle Safety Alliance (CVSA). A non-profit organization of federal, state, and provincial government agencies and representatives from private industry in the United States, Canada and Mexico dedicated to improving commercial vehicle safety. The Alliance serves as the major focal point for bringing together state/provincial officials with truck/bus industry interest and federal governments in a unique discussion and problem-solving interchange.

Commissioned Officer. A uniformed member who holds the rank of Lieutenant, Captain, Major, Lieutenant Colonel, or Colonel.

Compliance Techniques. Tactics, techniques and or applications of force which may include but are not limited to O.C. Spray or other approved Chemical Agents.

Compulsory Leave Without Pay. Action taken in temporarily removing a member from duty as a result of his/her violation of Patrol policy, rules, regulations, or directives, not to exceed fourteen days.

Computer Systems. At least one central processing unit (CPU) together with a set of related peripheral devices. This definition encompasses any Highway Patrol owned desktop and portable or laptop devices including mobile data computers (MDC).

Computerized Rotation Wrecker List. The names of those wrecker services that have been approved by the District First Sergeant to be included on the Patrol Rotation List and entered in the Computer Assisted Dispatch (CAD) System. There shall be separate rotation wrecker lists for large and small wreckers for each Rotation Wrecker Zone.

Concurrent Jurisdiction. The laws of the State of North Carolina apply to and may be enforced by members on federal property. Federal law also applies.

Construction Zone. A section on a public highway right-of-way within which the DOT, public utilities, or private contractors are performing some construction or maintenance which may affect highway users and necessitates advisory sign or motor vehicle control.

Container. Any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or similar storage unit.

Contaminated. The presence or the reasonably anticipated presence of blood or other potentially infectious materials on an item or surface.

Contaminated Laundry. Laundry which has been soiled with blood or other potentially infectious materials or may contain sharps.

Contaminated Sharps. Any contaminated object that can penetrate the skin including, but not limited to, needles, scalpels, broken glass, broken capillary tubes, and exposed ends of dental wires.

Core Principle. Fundamental beliefs within an individual or an organization which provide guidance toward behavior and help to establish an understanding of the difference between right and wrong.

Cooperative. Responsiveness to and compliance with a member's request.

Crime. A felony or serious misdemeanor as determined in the sole discretion of the District Attorney, except those included in the Crime Victims' Rights Act (Chapter 15A, Article 46) or any act committed by a juvenile that, if committed by a competent adult, would constitute a felony or serious misdemeanor.

Custodial Agency. The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by the Crime Victims' Rights Act (Chapter 15A, Article 46) including, but not limited to, local jails or detention facilities, regional jails or detention facilities, or the Department of Correction.

Debriefing. A formal process of confidential review of an incident attended only by those directly involved with the incident and by the MAT peer unit.

Debris. Includes any parts of a vehicle or material that may be strewn upon the surface of the roadway or highway right-of-way as a result of the collision and which may reasonably be cleared or removed. This definition shall also include any mud, soil, antifreeze, transmission, brake, or other liquids/fluids that have been deposited onto the surface of the roadway as a result of a vehicle collision. Debris does not include cargo from property hauling vehicles or hazardous materials that are required to be handled by local hazardous material teams.

Declared State of Emergency. A state of emergency found and proclaimed by the Governor under the authority of N.C.G.S. § 14-288.15, by any mayor or other municipal official(s) under the authority of N.C.G.S. § 14-288.12, by any chairman of the board of commissioners of any county or other county official or officials under the authority of N.C.G.S. § 14-288.13, by any chairman of the board of county commissioners acting under the authority of N.C.G.S. § 14-288.14, by any chief executive official or acting chief executive official of any county or municipality acting under the authority of any other applicable statute or provision of the common law to preserve the public peace in a state of emergency, or by an executive official or military commanding officer of the United States or the State of North Carolina who becomes primarily responsible under applicable law for the preservation of the public peace within any part of North Carolina.

Decontamination. The use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

De-escalation (De-escalation Techniques). Actions taken by a member to stabilize a situation and reduce the immediacy of a potential threat to attempt voluntary compliance in order to avoid an escalation and subsequent use of force.

Defusing. A brief intervention by MAT personnel within a few hours after a critical incident.

Delinquent Juveniles [N.C.G.S. § 7B-1501(7)]. Any juvenile who, while less than 16 years or age but at least 6 years of age, commits crimes or infractions under state law or under an ordinance of local government, including violation of the motor vehicle law. Any juvenile who, while less than 18 years of age but at least 16 years of age, commits a crime or an infraction under state law or under an ordinance of local government, excluding all violations of the motor vehicle laws.

- District Court jurisdiction continues even if juvenile is emancipated. (N.C.G.S. § 7B-1601)
- For disposition purposes for A-E felony, jurisdiction may continue to age 19 or 21. (N.C.G.S. § 7B-1602)
- Jurisdiction is in adult court if juvenile has been convicted in adult court at time of offense. (N.C.G.S. § 7B-1604)

Department. The Department of Public Safety.

Detail. Members of the Patrol grouped together for the accomplishment of a specified official mission.

Diesel Compliance Officer. A member trained in the collection of dyed fuel samples according to federal and state standards.

Directive. A numbered written order issued by the Patrol Commander which prescribes a policy governing the operation of the Highway Patrol or which outlines procedures to be followed in performing a function or duty.

Disaster. Any situation, whether natural or manmade, where widespread damage and health or safety hazards exist which are beyond the capabilities of local government recovery.

Dismissal. An act which terminates the service of a member without the member's consent.

Display of Firearm or other weapon. Display or pointing of a firearm (pistol, rifle, shotgun, etc.) or any other weapon for the purpose of controlling a suspect. The removal of the pistol or carrying of a firearm while conducting a building search, executing a search or arrest warrant or other similar situation where no subject is located or controlled by the use of the firearm does not constitute a display of a firearm.

Disposition (N.C.G.S. § 7B-2500). The sentencing or other final settlement of a case. The purpose of dispositions in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction, including the protection of the public.

District. A subordinate unit within a troop which encompasses one or more counties and is supervised by a District First Sergeant.

District First Sergeant. The ranking noncommissioned officer assigned to a Highway Patrol district.

District Supervisor. A District First Sergeant or Sergeant.

Division Director. The Patrol Commander is the Division Director for the Highway Patrol.

Donation. Gift, favor, or special accommodation offered to or solicited by a member for use by the Patrol or by a group of members of the Patrol for official Patrol business or social functions.

Drone Vehicle. An unmanned Patrol Vehicle used in active Highway Work Zones and High Crash Corridors to create a psychological effect on the motoring public to deter drivers from committing violations of the motor vehicle laws that result in traffic collisions.

Drug Abuse. The use of any illegal controlled substance or the use of prescribed drug(s) in excess of prescribed dosages.

Drug Test. The analysis of urine produced and submitted by a member, collected and tested in accordance with departmental procedures for the purpose of detecting prohibited drug use.

Duty Station. The city, town, or community, whether incorporated or not, to which a position is officially assigned.

Electronic Mail (E-Mail). The electronic transfer of information typically in the form of computer generated messages, memoranda, and attached documents or digital pictures between users via a computer network. Electronic mail services, as defined in this policy, not only consist of the use of state provided e-mail systems, but also includes any act of sending and receiving electronic mail.

Emancipation (N.C.G.S. § 7B Article 35). Emancipation shall refer to those persons who have reached their 16th birthday and not reached their 18th birthday, are married,

members of the armed services, and have a permanent residence separate and apart from that of their parents. Emancipation may be decreed by the court.

Emergency. Any situation other than civil disturbances, whether natural or manmade, where a serious health and/or safety hazard exists to the general public; all local resources have been exhausted and the hazard is continuing.

Emergency Highway Traffic Regulation Plan (EHTR). During times of EOC/SERT activation, this plan will be a system for traffic management devised to regulate the use of highways and to expedite and facilitate vehicle movements during an emergency or disaster event. This plan includes provisions for civilian evacuations as well as for military movements, and indicates responsibilities of each participating state and federal department managing the roadways during an emergency. The plan also indicates how this directive will be implemented.

Emergency Management Assistance Compact (EMAC). Provides for mutual assistance between the party states in managing any emergency or disaster that is duly declared by the governor of the affected state or states, whether arising from natural disaster, technological hazard, manmade disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack. This Compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this Compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

Emergency Response. The act of one or more member(s) operating authorized Patrol vehicle(s) for the purpose of responding to a situation requiring immediate law enforcement attention due to a clear and present danger to the public or another member.

Employee. Any enforcement member or civilian employed by the Patrol.

ePolicy System. The electronic system that houses policy, forms and instructions, standard operating procedures, organizational charts, filing guides, , and any other electronic documentation pertaining to written directives, along with web-based training and certifications.

Evidence. Any item, material, or substance found in connection with an investigation that helps determine the circumstances of a law violation.

Exclusive Jurisdiction. Only federal law applies to federal property and members of the Highway Patrol may only assist federal officers.

Exonerated. When it is determined that the alleged conduct did in fact occur, but it is excused or justified by the circumstances.

Exposure Incident. A specific eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of a member's duties.

Extraordinary Patrol Vehicle Operation. A chase, traffic enforcement response, or emergency response.

Favor or Special Accommodation. An intangible or difficult-to-value item or service bestowed on a member or his/her immediate family. Favors include, but are not limited to: a special accommodation; the use of a facility, object, service, or piece of real property for less than its fair rental/use value; or an opportunity which would not be available but for the member's status as a Patrol member (for example, a discounted automobile repair bill), or a job offered to a member or member of his/her immediate family because of the member's employment with the Patrol.

Field Activities. Primary duty assignments and/or tasks that place or could reasonably be expected to place a member in situations where he/she would be required to act in enforcement rather than administrative or support capacities.

Firearm Discharge Report. A report used to document intentional or negligent discharges of a firearm.

First Sergeant. A noncommissioned officer in the Patrol who ranks above a Sergeant and below a Lieutenant.

Force Mitigation Tactics. Techniques used to achieve the goal of “De-escalation” in order to defuse emotions and bring calm to a given situation in order to prevent the use of force. This may include the member’s ability to communicate effectively, recognize verbal and non-verbal cues of a potential assaultive individual and the emotional component of that behavior.

Forced Vehicle Stop – Rolling Roadblock. A moving barricade composed of one or more vehicles used to stop a suspect in a fleeing vehicle.

Forced Vehicle Stop – Stationary Roadblock. The actual physical blocking by barriers of some or all lanes of travel which is used when searching for and apprehending a suspect.

Found Property. Any item that has been found (e.g. property of an individual, firm, agency, or concern) that is not evidence or contraband.

Gender Term Usage. Whenever used herein the term of masculine gender will include a civilian employee or member of either gender, unless the context clearly requires otherwise.

Gift or Gratuity. Something that is bestowed voluntarily and without compensation, for example, money, tangible or intangible personal property, a loan, any service rendered, entertainment, or anything else of value, or an expressed or implied promise to provide any of these.

Grievance. A work-related problem which gives rise to a legitimate complaint.

Hand Washing Facilities. A facility providing an adequate supply of running potable water, soap and single-use towels or hot air drying machines.

Hazard Warning. Any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which conveys the hazards of the chemical(s) in the container(s).

Hazardous Material. Any material or substance in any form or quantity which poses an unreasonable risk to safety, health, and property.

Hazardous Material / Substance List. A list of hazardous chemicals used, produced, or stored in the work place.

HBV. Hepatitis B virus

HCV. Hepatitis C virus

Health Hazard. Any chemical for which there is a statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes.

HIV. Human Immunodeficiency Virus

Holding Techniques. Force application through pressure point control tactics, joint manipulation techniques or control holds for the purpose of appropriate and proportionate control in order to provide securement, detention or arrest.

IA Pro. A database administrated by the Internal Affairs Unit which stores various administrative reports pertaining to employees of the Highway Patrol.

Illegal Order. An order issued by a superior officer which is not consistent with applicable laws, or which is inherently immoral or unethical.

Immediate Supervisor or Supervisor for Grievance Procedure Purposes. The supervisor assigned supervisory control and responsibility of the organizational work unit (at the district level, this is the First Sergeant).

Immediate Use. The hazardous chemical will be under the control of, and used only by the person(s) who transfers it from a labeled container and only with the work shift in which it was transferred.

Impact Weapons. Any authorized intermediate weapon issued by the agency and which the member has received appropriate training in the use of and are authorized to

use in the lawful performance of duty, to strike an assailant/offender to elicit pain or injury through blunt force but NOT intended to provide a lethal response. Specifically defined as the ASP baton and flashlight but may also include other objects not previously designated based upon life or death circumstances. A member faced with a lethal force encounter could potentially utilize an object such as a brick to defend himself or another as long as the members actions remain consistent with the United States Constitution and laws of North Carolina.

Impaired Driving Checks. A checking station that complies with all of the requirements of N.C.G.S. § 20-16.3A.

Incident Command System (ICS). A combination of facilities, equipment, personnel, procedure, and communications operating within a common organizational structure with responsibility for management of assigned resources to effectively direct and control the response to an incident. Intended to expand as situation requires larger resource, without requiring new, reorganized command structure.

Intake Services (N.C.G.S. § 7B-1700). The purpose of intake services shall be to determine from available evidence whether there are reasonable grounds to believe the alleged facts are true, to determine:

- Whether such facts constitute a delinquent or undisciplined offense
- Whether court action is necessary
- Whether to obtain assistance from community resources when referral to court is not necessary

Internet. Public worldwide communications network that provides for the distribution and sharing of unrestricted public information.

Intranet. Internal communications network not connected to outside users or computer systems. The Highway Patrol's Intranet is designed for the sole purpose of supporting the exchange of information between and access to the Patrol's various computer applications and databases.

Investigating Law Enforcement Agency. The law enforcement agency with primary responsibility for investigating the crime committed against the victim.

Investigatory Placement. Action taken in removing a member from duty with pay in order to investigate an alleged serious violation of Patrol policies, rules, regulations or directives. Such suspension shall not exceed 30 days except in limited circumstances and unless the State Personnel Director extends the suspension beyond the 30-day limit.

I.R.I.S. (Infra-Red Inspection System) Van. A vehicle equipped and designed to screen Commercial Motor Vehicle (CMV) braking systems and other critical components through infra-red imagery.

Juvenile [N.C.G.S. § 7B-101 (14)]. A person who has not yet reached his/her 18th birthday and is not married, emancipated, or a member of the U.S. Armed Forces.

Juvenile Record. For the purposes of this policy, a juvenile record must be maintained for those individuals who have not reached their 18th birthday at the time the citation was written. The record will be the citation and any notes or evidence that is attached to the case.

Label. Any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

Large Wrecker. A truck chassis having a minimum gross vehicle weight (GVWR) of 26,001 pounds and a boom assembly having a minimum lifting capacity of 40,000 pounds as rated by the manufacturer; tandem axles or cab to axle length of no less than 102 inches; a length of wire rope (cable) with a working load limit (WLL) that meets or exceeds the pulling capacity of the power winch utilized on each drum; airbrake so constructed as to lock wheels automatically upon failure; and additional safety equipment as specified by these rules.

Law Enforcement Agency. An arresting law enforcement agency, a custodial agency, or an investigating law enforcement agency.

Length of Service. The length of time that an employee has been engaged in the actual performance of Patrol duty as an employee.

Lethal Force. The application of any instrument or technique which is likely to produce death or serious physical injury under the circumstances of its use. Such instruments include, but are not limited to, firearms, blackjacks, flashlights, riot batons, nightsticks, knives, or automobiles.

Level-One Emergency. Any unusual occurrence which is likely to be within the capabilities of local government and results in only minimal need for state assistance (in-troop response only). Section Directors/Troop Commanders will handle the emergency/disaster with local personnel, and the State EOC would not be activated.

Level-Two Emergency. Unusual occurrences which are likely to require the assistance of several state agencies. A level two emergency exhausts or threatens to exhaust the capabilities of the affected troop. Section Directors/Troop Commanders may need to request additional personnel from outside the troop. Field Operations will assign additional personnel and equipment as needed for assistance. The State EOC would be activated and staffed with emergency personnel and only the essential state agencies.

Level-Three Emergency. Any unusual occurrence which requires large-scale State and possibly Federal assistance in recovery. The State EOC would be fully activated with 24-hour staffing from all emergency support functions. Field Operations will determine the level of logistical response required.

Licensed Health Care Professional. A person whose legally permitted scope of

practice allows him/her to independently perform the activities required by Hepatitis B vaccination and post-exposure evaluation and follow-up.

Lieutenant. A Commissioned Officer in the Patrol who ranks below a Captain and above a First Sergeant.

Lieutenant Colonel. A Commissioned officer in the Patrol who ranks below the Colonel and above a Major.

Limited Duty. Assigned duties that fall within the member's scope of employment but do not require the same physical condition of normal duty assignments.

Major. A Commissioned Officer in the Patrol who ranks below the Lieutenant Colonel and above a Captain, and serves as the Commanding Officer of a Patrol Section.

Major Violations. All violations of the regulations not determined to be minor in nature and which require removal for a definitive time.

Manual Rotation Wrecker List. A list of names of those wreckers that have been approved by the District First Sergeant to be included on the Patrol Rotation Wrecker List and entered into a manual list that is to be used only when the CAD System is down. There shall be separate manual lists for large and small wreckers for each Rotation Wrecker Zone. These lists shall be maintained by the troop Communications Center.

Marked Vehicle. An authorized Patrol vehicle equipped with Patrol colors and identification decals, emergency lights, and siren.

Master Trooper. A Trooper who has completed six years of satisfactory service and who has been recommended and accepted for promotion to this rank.

MAT Zone Coordinator. A Patrol member who is appointed by the Medical Director to assist with coordination of MAT training and operational activities.

Material Safety Data Sheet (MSDS). Written or printed material concerning a hazardous chemical that is prepared to give detailed information about the chemical.

Medical Director. A licensed physician appointed by the Secretary of the Department of Public Safety, responsible for maintaining the health and welfare system for Patrol employees. This system shall include supervising the Medical Office and the Member's Assistance Team and conducting, interpreting, and evaluating medical testing and screening.

Member. A uniformed sworn employee of the North Carolina State Highway Patrol who is charged with law enforcement duties.

Member's Assistance Team (MAT). SHP employees and volunteers who have been trained in a certification program approved by the SHP Medical Director and who are currently listed on the team's roster.

Mental Illness. Any of various conditions characterized by impairment of an individual's normal cognitive, emotional, or behavioral functioning, and caused by social, psychological, biochemical, genetic, or other factors, such as infection or head trauma.

Military Leave. The period of time during which a member is granted leave from the Patrol when called to perform active military service.

Minor Violations. Violations of these regulations which do not require removal for a definitive time, may be readily corrected, and do not involve a criminal act or pose a threat to the safety and well being of the public.

Mobile Command and Communications Unit (MCCU). A mobile communications platform equipped to serve as a temporary field location where disasters and events may be controlled or mitigated. Drivers of this unit are required to possess a Class B CDL. Operators shall complete all required training as specified by the Director of Support Services.

Mobile Medical Unit. A mobile trailer designed to provide medical care, employee wellness programs and emergency medical care to field personnel during routine operations and in the event of a disaster. This unit may also serve as an additional field command post. Drivers of this unit are required to possess a Class A CDL. Operators are required to complete all required training as specified by the Director of Support Services.

Motor Carrier Safety Assistance Program (MCSAP). A Federal grant program that provides States with financial assistance to hire staff and implement strategies to enforce FMCSRs and HMRs. MCSAP funds are used to conduct roadside inspections and review motor carriers' compliance with FMCSRs and HMRs. MCSAP funds promote detection and correction of commercial motor vehicle safety defects, commercial vehicle driver deficiencies, and unsafe motor carrier practices before they become contributing factors to crashes and hazardous materials incidents.

Negative Test Result. When there is either no detection of an illegal controlled substance or the Medical Director's investigation reveals no drug abuse.

Neglected Juvenile [N.C.G.S. § 7B-101 (15)]. Any juvenile less than 18 years of age who is found to be a minor victim of human trafficking; who does not receive proper care, supervision or discipline from a parent, guardian, custodian or caretaker; who has been abandoned; or who is not provided necessary medical care.

New Hire. Any person who is hired into a position after completing a PD-107 and having met all requirements for the position. The term “New Hire” shall also apply to any current employee who submits a PD-107 for a new position within the agency, and as a condition of being considered for the new position, complies with all requirements for the position.

News Media Representative. Those individuals who are directly employed by radio, television, or newspapers. Freelance workers in the media field are to be regarded as

members of the general public unless they possess valid credentials identifying themselves as media representatives.

Next of Kin. The victim's spouse, children, parents, guardian, stepparents, siblings, or grandparents. The term does not include the accused unless the charges are dismissed or the person is found not guilty.

Noncommissioned Officer. A uniformed member who holds the rank of Sergeant or First Sergeant.

Non-Active Case File. Those juvenile files that have been disposed of in the Juvenile Court System and are kept for purposes of the required 2-year retention.

Non-Divertible Offenses (N.C.G.S. § 7B-1701):

- Murder
- First-or second degree rape
- First-or second degree sexual offense
- Arson
- Chapter 90 felony drug offense
- First-degree burglary
- Crime against nature
- A felony involving infliction of serious injury or committed with a deadly weapon.

Non-Sworn Basic School. Designed for applicants meeting all pre-employment qualifications but not meeting sworn status qualifications.

Non-Testimonial Identification (N.C.G.S. § 7B 2103). Court ordered procedure that requires the presence of a juvenile for the purpose of establishing questioned identity and/or participation in a criminal act by means of examination of fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens, saliva samples, hair samples, or other reasonable physical examination, handwriting exemplars, voice samples, photographs, and lineups or other similar identification procedures. Non-testimonial identification may be issued by any judge of the district court or of the superior court upon request of the prosecutor.

North Carolina Department of Revenue Investigator (NCDOR). An investigator trained in collections of dyed fuel samples and responsible for investigating, inspecting, auditing and assessing the penalty to the violator.

Not Sustained. When it is determined that there are insufficient facts found to prove or disprove the allegation.

Occupational Exposure. Reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of a member's duties.

Officer. Any sworn law enforcement official.

Officer Presence. The visual appearance and presence of a member in uniform on scene to perform the duties of his/her office.

Off Duty. Time during which a member is authorized to be free of the responsibility of performing routine Patrol duties.

Office of Special Investigations (OSI). The Section within DPS that is charged with the primary responsibility for conducting and/or overseeing internal investigations related to allegations of conduct by an employee, that may constitute unsatisfactory job performance, unacceptable personal conduct, or grossly inefficient job performance that could result in suspension, demotion, or dismissal.

Official Work. The performance of law enforcement duties as a member of the Highway Patrol, or as a sworn officer with another North Carolina law enforcement agency prior to being employed by the Highway Patrol. This term does not include having to testify in court proceeding on any matter related to or resulting from a member's performance of secondary employment.

Order. An instruction or directive, either written or oral, issued by superior officers to subordinates in the course of Patrol duty.

Other Potentially Infectious Materials. The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids. Any unfixed tissue or organ (other than intact skin) from a human (living or dead). HIV-containing cell or tissue cultures, organ cultures, and HIV, HBV, or HCV containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV, HBV, or HCV.

Page. The specific portion of a social media website where content is displayed and managed by an individual or individuals with administrator rights.

Parenteral. Piercing mucous membranes or the skin barrier through such events as needle sticks, human bites, cuts, and abrasions.

Passive Resistance. A person who is not cooperative, in that the person fails to comply (in a non-movement fashion) with verbal order or other direction provided by a member.

Patrol. The State Highway Patrol as an organization, including all employees both enforcement and civilian.

Patrol Commander. The commanding officer of the Highway Patrol, who holds the rank of Colonel.

Patrol Deputy Commander. The Commissioned Officer second in command of the Patrol who holds the rank of Lieutenant Colonel.

Patrol Order. An inclusive term which applies to the Patrol Manual, directive, rule, regulation, general order, special order, administrative notice, or written procedure.

Performance Management/Pay Dispute. A complaint concerning the amount of performance increase, a failure to receive any performance increase, or a complaint regarding an overall performance appraisal rating.

Permanent Storage Facility. A secure room or storage area located within each district where all seized property retrieved from temporary storage facilities is stored until adjudication or disposition. Note: Items too large to store in a temporary storage facility or a permanent storage facility (e.g. vehicles, large vehicle parts, bicycles, etc. are to be stored at the appropriate troop garage in a fenced or secured area as to prevent theft, damage, or contamination while in custody).

PERMS (Patrol Event and Resource Management System). A web-based application within the Highway Patrol's Intranet which is used to enter, and record data as accumulated from special events, critical incident(s) or designated occurrence.

Personal Protective Equipment. Specialized clothing or equipment worn by an employee for protection against infectious materials. General work clothes (i.e. uniforms, pants, shirts, or blouses) not intended to function as protection against a hazard is not considered to be personal protective equipment.

Personnel Complaint. An allegation from any source pertaining to a specific act or omission by an employee which if true would constitute a violation of policy or law

Personnel Early Warning System. A proactive process to address behavior problems, misconduct, and/or deficiencies as early as possible to identify potential problem employees in order to maintain a high level of conduct and performance.

Physical Contact. Occurs when a member applies touch or securement of an individual to effect physical control / arrest. Is best described through "soft hands" approach within the application of Force Options and is less likely to cause harm or injury.

Physical Force. The application of force to include "Hard empty hands," strikes, kicks, knee spears, punches and any other use of personal weapons such as fists, feet or head. This level of force usually provides a more susceptible propensity for injury to either member or suspect/assailant.

Physical Hazard. Any material that is flammable, combustible, explosive, reactive, or under pressure.

P.I.T. (Precision Immobilization Technique). The Precision Immobilization Technique (P.I.T) is a maneuver that, when performed properly, involves a controlled contact between a patrol vehicle and a suspect vehicle during a pursuit. The patrol vehicle, by matching speeds with the suspect vehicle and initiating contact with the lateral rear side, can displace the suspect vehicle's path of travel, causing it to spin out in a specific location as pre-determined by the member and thereby ending the pursuit. The P.I.T maneuver is not to be confused with a ramming technique or a controlled collision because if it is performed properly, there is expected to be minimal or no property damage as a result of the maneuver. The P.I.T is not a collision, it is an intentional act used to end a pursuit.

Policy. A written, standing order used to guide or affect the performance or conduct of employees. This term includes policies, procedures, rules, regulations, forms, reports, directives, memorandums, and Standard Operating Procedures (SOPs).

Positive Test Result. When the initial screening test, confirmation test, and Medical Director's investigation of the test results all indicate that the member has engaged in prohibited drug use.

Post. Content and individual shares on a social media site or the act of publishing content on a site.

Post Critical Incident Seminar. A training and counseling seminar for individuals who have been involved in a critical incident.

Primary Unit. The authorized Patrol vehicle in a position directly behind a suspect/violator vehicle actively involved in a chase.

Procedure. The officially established method for dealing with a given situation or performing a specific activity.

Process Owner. The person identified by the Policy Manager as having the expertise and knowledge needed to review a particular directive and make recommendations for possible revisions.

Professional Psychological Counseling. Consultation with the Patrol psychologist, a licensed professional psychologist approved by the Patrol Commander, who will provide diagnostic and therapeutic management of symptoms and functional aspects of stress following a critical incident.

Profile. Information that a user provides about himself or herself on a social networking site.

Program Administrator. Responsible for the management of the promotional process and performance management systems.

Project Director. Responsible for design, implementation and scoring of promotion components as the principal investigator in partnership with North Carolina State University (NCSU) to conduct the promotion process.

Promotional List. The list maintained in numerical order of all candidates who participated and successfully completed all phases of the promotional process and who are eligible for promotion to fill vacancies occurring 1 July through 30 June.

Property Supervisor. A district supervisor who maintains and controls all seized property.

Proportionate Force. Actions, including de-escalation and force, which correspond appropriately with the circumstances confronting the officer.

Protectee. The Governor or any other person deemed to require protection.

Psychological Fitness-for-Duty Determination. Mandated evaluation by a designated psychologist who will provide the medical and command staff with an official recommendation as to the fitness of the member to serve in his/her job capacity.

Psychologist. A practitioner licensed by the State of North Carolina to provide clinical psychological evaluation and treatment services.

Public Affairs Office (PAO). The NC Department of Public Safety's (DPS) office works to ensure the people of North Carolina are informed and knowledgeable about programs, events, and conditions affecting their safety and well being by: (a) continuing to provide timely and accurate information to news media in response to queries and to further the departments priority issues; (b) continuing to provide graphic, writing/editing services, and publication review to the department, its divisions and offices in response to their requests; and (c) to inform the general public of emergency action steps to be taken during natural or man-caused disasters. The DPS PAO handles media relations for the Secretary's Office and all Divisions of the Department.

Public Disturbance. Any annoying, disturbing, or alarming act or condition exceeding the bounds of social toleration normal for the time and place in question which occurs in a public place or occurs in, affects persons in, or is likely to affect persons in a place to which the public or a substantial group has access. The places covered by this definition shall include, but are not limited to, highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

Public Information Officer (PIO). The Division's Public Information Officer, in consultation and cooperation with the Department of Public Safety Public Affairs Office serves as the central source of information released by the Highway Patrol, responds to requests for information by the news media and the community and serves as the State Highway Patrol's spokesperson during a crisis or sensitive situation.

Public Records. Public records include anything sent or received in the course of conducting the public's business regardless of form or format: letters, reports, notes, databases, computer tapes, photographs, audio and video tapes, e-mail, Internet

listings, Telecommunicator tapes, etc. Unless there is a statute excluding a government document such as medical records, or personnel records, it is probably a public record and the information it contains must be made available to anyone who asks in accordance with N.C.G.S. § 132-1.)

Published List. The list maintained and published in numerical order of the top 50 Troopers, top 30 Sergeants, and top 20 First Sergeants who participated and successfully completed all phases of the promotional process and who are eligible to fill vacancies occurring 1 July through 30 June.

Quantum of Proof (N.C.G.S. § 7B-2409):

- The allegations of a petition alleging the juvenile is delinquent shall be proved beyond a reasonable doubt.

- The allegations in a petition alleging undisciplined behavior shall be proven by clear and convincing evidence.

Rank. A specific level of authority within the organizational structure of the Patrol.

Random Selection. Computer generated process of selecting individuals to be tested for drug use from a pool of all Patrol members.

Reasonable Belief. A belief based on facts, circumstances, and information trustworthy enough to make a person of ordinary intelligence and caution believe something is the case.)

Reasonable Suspicion. That quantity of proof or evidence that is more than a hunch, but less than probable cause. Reasonable suspicion must be based on specific, objective facts and any rationally derived inferences from those facts about the conduct or performance of an individual that would lead a reasonable person to suspect that the individual is or has been engaged in prohibited drug use while on or off duty.

Recommendation. An investigator's or supervisor's suggested course of action which is forwarded to the appropriate supervisor via chain-of-command with a completed report of investigation.

Removal. Being taken off the Patrol Rotation Wrecker List for a determinate or indeterminate period of time.

Residence. A house, apartment, or other dwelling where a member actually resides and keeps his/her personal belongings during non-working hours. In order to qualify as a residence, the member must have access to bath facilities, a bed to sleep in, and a telephone.

Resignation. Voluntary termination of service by a member of the Patrol.

Retirement. Termination of active service of an employee with the number of years of creditable service required by statute to be eligible for retirement benefits, or termination

of service due to incapacitating disability.

Riot. A public disturbance involving an assemblage of three or more persons displaying disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, resulting in injury or damage to persons or property or creating a clear and present danger.

Rotation Wrecker List. A list of wrecker services that have met the rules of the Patrol and whose vehicles are properly registered with the Division of Motor Vehicles.

Rotation Wrecker Zone. A geographic area which may encompass all or part of a district of a troop.

Safekeeping Property. Items taken into custody temporarily for protection and security of owner(s) who are unable to care for them (e.g. guns, money, jewelry, wallets, purses, etc.).

Secondary Employment. Any employment outside of the State Highway Patrol (to include self-employment) where an employee earns any compensation, whether in the form of salary or other monetary benefits. Secondary employment also includes the rendering of services that benefit a business owned or operated by a family member whether or not compensation is received. Secondary employment does not include occasional services performed for non-profit, charitable organizations.

Secondary Unit. The authorized Patrol vehicle in a position directly behind the Primary Unit actively involved in a chase.

Secretary. The Secretary of the Department of Public Safety or his/her designee.

Section. Any of the functional subdivisions of the Patrol commanded by a Commissioned Officer –Field Operations (Troop Operations, Special Operations/Motor Carrier Enforcement Administration), Professional Standards, Support Services, and Training Academy.

Section Director. A Highway Patrol Commissioned Officer holding the rank of Major, who is the officer in charge of a Highway Patrol Section.

Seized Property. In-custody and evidentiary property includes evidence, found property, asset seizure, and safekeeping property seized by a member during the performance of the member's duties.

Senior Trooper. A Trooper who has completed three years of satisfactory service and who has been recommended and accepted for promotion to this rank.

Sergeant. A noncommissioned officer in the Patrol who ranks below a First Sergeant and above a Trooper.

Serious Bodily Injury. Bodily injury that creates a substantial risk of death or is likely to cause permanent disfigurement, coma, protracted, or permanent condition. It is an

injury that causes extreme pain, prolonged, or permanent loss or impairment of the function of any bodily member or organ that results in prolonged hospitalization.

Serious Physical Injury. Includes bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.**)**

Small Wrecker. A truck chassis having a minimum gross vehicle weight rating (GVWR) of 10,000 pounds and a maximum GVWR of 26,000 pounds; a boom assembly having a minimum lifting power of 8,000 pounds as rated by the manufacturer; an 8,000 pound rated winch with a length of wire rope (cable) with a working load limit (WLL) that meets or exceeds the pulling capacity of the power winch utilized; a belt-type tow plate or tow sling assembly; a wheel-lift with a retracted lifting capacity of no less than 3,500 pounds; dual rear wheels; and additional safety equipment as specified by the rules.

Social Media. A category of Internet-based resources that integrate user-generated content and user participation. This includes, but is not limited to, social networking sites (Facebook, MySpace), microblogging sites (Twitter, Nixle), photo and video sharing sites (Flickr, YouTube), wikis (Wikipedia), blogs, and news sites (Digg, Reddit).

Social Networks. Online platforms where users can create profiles, share information, and socialize with others using a range of technologies.

Software. Publicly or privately designed tools, programs, and/or applications designed to run on computers for the accomplishment of specific functions.

Special Operations Checking Station. A preplanned, systematic stopping of vehicles to survey occupants for the presence of fleeing offenders implicated in the commission of a felony. Offenses related to such checking stations would include, but are not limited to, fatal assaults, assaults involving serious bodily injury, and robberies. This type checking station may also be utilized to conduct a brief, information-seeking checkpoint to solicit information from motorists relating to serious incidents or fatal collisions.

Special Order. A written order issued by the Patrol Commander relating to personnel matters.

Special Operations. Any particular form of work surpassing what is common or unusual requiring a specific function or any of the conditions listed in previous sections of this policy.

Special Purpose Vehicles. Any marked or unmarked Highway Patrol four-wheel drive vehicle intended to be used in support of special operations.

Speech. Expression or communication of thoughts or opinions in spoken words, in writing, by expressive conduct, symbolism, photographs, videotape, or related forms of communication.

Source Individual. Any individual, living or dead, whose blood or other potentially infectious materials may be a source of occupational exposure to the employee.

Standard Checking Station. A preplanned, systematic stopping of vehicles to check motorists for compliance with motor vehicle laws including driving while impaired.

State Emergency Operations Center (EOC). The EOC is the facility in which the SERT is assembled for the purpose of coordination of State, Volunteer (including non-profit agencies), and Federal resources during emergency/disaster events impacting North Carolina. The Division of Emergency Management, Department of Public Safety is responsible for the operations of the State EOC.

State Emergency Response Team (SERT). SERT provides for a systematic, coordinated, and effective response to and recovery from emergency/disaster events impacting North Carolina and its citizens. During emergency/disaster events which requires the activation of the SERT, the Director of the Division of Emergency Management or his/her designee will assume the role of the SERT Leader. The SERT is comprised of four basic sections: Infrastructure Support, Emergency Services, Human Services, and Logistics.

State of Emergency. The condition that exists whenever, during times of public crisis, disaster, rioting, catastrophe, or similar public emergency, public safety authorities are unable to maintain public order or afford adequate protection for lives or property, or whenever the occurrence of any such condition is imminent.

Sterilize. The use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

Storage Facility. A sufficiently lighted, off street storage facility secured by a minimum six-foot high chain link fence, or a fence or barrier of equal or greater strength, or other barrier sufficient to deter trespassing or vandalism, and where all entrances and exits are secure from public access. Storage facilities located on the property of another business must be separated by a minimum six-foot chain link fence, or a fence or barrier of equal or greater strength, or other barrier sufficient to deter trespassing or vandalism; have separate entrances and exits; and be utilized solely for the business. The lot shall be of sufficient size to accommodate all vehicles towed by the wrecker service for the Patrol. Storage facilities shared by two or more wrecker services may not be used to satisfy the facility requirement in Section XIV (Wrecker Service Regulations) of this directive.

Substance Abuse. Excessive, dangerous, or irresponsible use of alcohol or any legal mind-altering substance. This will include abusive dependence upon drugs legally prescribed by a licensed physician. Use of any illegal substance or unlawful acquisition or use of any prescription drug is a violation of the law and will not be subject to the confidentiality clause.

Supervisor's Manager for Grievance Procedure Purposes. The supervisor assigned supervisory control and responsibility at the next organizational level above the district, unit, or section from which the grievance was filed (at the troop level, this is the Troop

Commander).

Supervisor. A person who manages the work done by others and assigned supervisory control.

Sustained. When it is determined that the facts support the allegation of the complaint.

Sworn Basic School (Fast Track). Designed for applicants who meet all pre-employment qualifications and are sworn law enforcement officers that currently hold a General Law Enforcement Certification issued by the North Carolina Criminal Justice Education And Training Standards Commission (NCCJETSC).

Technical Services Unit (TSU). The unit of the Highway Patrol charged with the responsibility of managing and supporting Highway Patrol computer systems.

Temporary Storage Facility. A metal storage cabinet for receiving seized property. Accessible to members 24 hours, it allows for the immediate storage of seized property. Temporary storage facility shall be synonymous with drop box.

Terminate. The process of stopping chase operations to include de-activating blue lights, siren, other emergency lighting, and resuming normal patrol functions.

Threatening Assailant. A person who is using or threatening the use of force against another person, with or without a weapon, in an aggressive manner that may cause physical injury. Examples may include: (1) a person who puts a member in reasonable fear of a battery by advancing on the member in a threatening manner or closing the distance between the assailant and the member, thereby reducing the member's reaction time, and (2) a person who fails to disarm, thereby increasing the likelihood the person's actions are likely to cause physical injury.

Tire Deflation Devices (TDD). Devices specifically designed to puncture the tires of a fleeing vehicle causing the tires to deflate in a controlled manner and render the vehicle incapable of further operation.

Traffic Enforcement Response. An active attempt by one or more member(s) operating authorized Patrol vehicle(s) to overtake and stop a suspect or violator of the law operating a motor vehicle, while that person is making no willful attempt to avoid being stopped. This applies to the time between the observation of an offense until the point and time that the authorized Patrol vehicle has moved into a position behind the suspect/violator vehicle. If the suspect/violator vehicle yields to the lights and/or siren, the encounter ends as a traffic enforcement response. If the suspect/violator vehicle fails to yield to the lights and siren, the encounter escalates to a chase.

Traffic Safety Information Officer (TSI). Sergeants or Troopers at each troop headquarters who are specifically assigned to work in areas of media relations and public information. TSIs work closely with the Patrol's Public Information Officer and the Department of Public Safety Public Affairs Office in various public information campaigns.

Troop. A subordinate unit within a zone that encompasses several districts and is

commanded by a Captain.

Troop/Unit Commander. A Captain is responsible for the supervision and control of a Highway Patrol Troop/Unit.

Troop Chaplain Coordinator. A civilian clergy who is licensed and ordained to conduct religious services, who is appointed by the Chaplaincy Program Coordinator to oversee the Chaplaincy Program and supervise volunteer chaplains in a designated Troop, and when assigned, serve as Chaplaincy Program Coordinator.

Trooper. A uniformed member who does not hold commissioned or noncommissioned officer rank.

Undisciplined Juveniles (N.C.G.S. § 7B-1501). A juvenile who, while less than 16 but at least 6:

- Is unlawfully absent from school
- Is regularly disobedient to and beyond the disciplinary control of a parent, guardian, or custodian
- Is regularly found in places where it is unlawful for a juvenile to be
- Has run away from home for a period or more than 24 hours

A juvenile who is 16 or 17 and who:

- Is regularly disobedient to and beyond the disciplinary control of a parent, guardian, or custodian
- Is regularly found in places where it is unlawful for a juvenile to be
- Has run away from home for a period of more than 24 hours

District Court jurisdiction terminates if juvenile is emancipated or reaches age 18. (N.C.G.S. § 7B-1600)

Unfounded. When it is determined that no factual basis exists for the complaint.

Unified Command. A team which allows all agencies (with geographical or functional responsibility for the incident) to co-manage an incident through a common set of objectives and strategies. Agencies' accountability, responsibilities, and authorities remain intact.

Unit Commander. The Commissioned Officer in charge of his/her assigned unit.

Unit. A Highway Patrol Troop or an equivalent organizational subdivision of a section.

United States Department of Internal Revenue Service (IRS), Federal Compliance

Officer (FCO). An investigator trained in collections of dyed fuel samples and responsible for investigating, inspecting, auditing, and assessing the penalty to the violator.

Universal Precautions. An approach to infection control. According to the concept of Universal Precautions, all human blood and certain human body fluids are treated as if known to be infected with HIV, HBV, HCV, and their bloodborne pathogens.

Unmarked Vehicle. An authorized Patrol vehicle with no Patrol colors and identification decals that is a law enforcement vehicle. It shall be equipped with concealed emergency lights and siren.

Unusual Occurrences. Situations generally of an emergency nature, which result from disasters, either natural or manmade, and/or public disturbances.

Use of Firearm or other weapon. Discharging, using as a stun gun or using as an impact weapon, a firearm or other weapon (i.e. CEW, OC Spray, ASP, flashlight, etc.), or striking a person with any part of the member's body (e.g. fist, elbow, knee, or neck restraint) in order to control a subject, or the use of any other force (i.e. soft hands) that results in visible injury or a complaint of injury. Use of firearm or other weapon does not include the display or pointing of a firearm or other weapon for the purpose of controlling a suspect or the removal of the weapon while conducting a building search, executing a search or arrest warrant or other situation where no subject is located or controlled by the use of the weapon.

Vacancy. A position vacancy occurs on the effective date whereby an employee separates, transfers, retires, resigns, is promoted, dismissed, or demoted. At the discretion of the Patrol Commander, some position vacancies may be eliminated due to reductions in force, reallocation, or reorganization.

Vehicle Extraction Technique. Any of the approved, trained techniques based on current lesson plan which a member utilizes with applied force to remove a suspect driver / passenger from a vehicle. This action would place a suspect on the ground in a prone position for subsequent handcuffing and control to occur.

Verbal Control Techniques. Any verbal communication provided by a member to ask, direct or provide instruction in order to effect control of a given situation.

Victim. A person against whom there is a probable cause to believe one of the following crimes was committed:

- A Class A, B1, B2, C, D, or E felony

A Class F felony if it is a violation of one of the following:

- N.C.G.S. § 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-202.1; 14-288.9; or 20-138.5

A Class G felony if it is a violation of one of the following:

- N.C.G.S. § 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4

A Class H felony if it is a violation of one of the following:

- N.C.G.S. § 14-32.3(a); 14-32.3(c); or 14-33.2

A Class I felony if it is a violation of one of the following:

- N.C.G.S. § 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A

- An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

- Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as defined in N.C.G.S. § 50B-1(b): N.C.G.S. § 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; or 14-277.3.

VIPER Tactical Towers. Trailer mounted portable communications equipment designed to augment or replace critical communications infrastructure. Drivers of this equipment are required to possess a Class A CDL. Operators are required to complete all required training as specified by the Director of Support Services.

Web 2.0. The second generation of the World Wide Web focused on shareable, user-generated content, rather than static web pages. Some use this term interchangeably with social media.

Wiki. Web page(s) that can be edited collaboratively.

Witness. Any person who has been or is expected to be summoned to testify for the prosecution in a criminal action concerning a felony, or who by reason of having relevant information is subject to being called or is likely to be called as a witness for the prosecution in such an action, whether or not an action or proceeding has commenced.

Work Practice Controls. Controls that reduce the likelihood of exposure by altering the manner in which a task is performed (e.g. prohibiting re-capping of needles by a two-handed technique).

Wrecker Service. A person or corporation engaged in the business of, or offering the services of, and owning a wrecker service or towing service whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle manufactured and designed for the primary purpose of removing and towing disabled motor vehicles.

Wrecker Service Applicant. A person or corporation owning a wrecker service and applying for inclusion on the Patrol Rotation Wrecker List.

I. POLICY

This policy establishes guidelines related to the use of force, reporting, and review. This directive applies to all uses of force, whether Members are on-duty or off-duty.

The Highway Patrol recognizes and respects the value and special integrity of each human life. Vesting Patrol members with the lawful authority to use force to protect the public welfare requires a careful balancing of all human interests. Therefore, it is the policy of the Patrol that members shall use only force which is reasonably necessary to effectively bring an incident under control while protecting the lives of the member and others. Members shall use physical force in arrest and custody situations only in strict conformance with the United States Constitution, the Constitution and laws of North Carolina, and this policy.

This directive recognizes constitutional principles but aspires to go beyond them. The Fourth Amendment requires a member's use of force be "objectively reasonable." *Graham v. Connor*, 490 U.S. 386 (1989). Under this standard, a member may only use force that a reasonable member would when facing similar circumstances. The objectively reasonable standard acknowledges the difficult decisions members are forced to make under rapidly evolving and often unpredictable circumstances, but it does not provide specific guidance on what to do in any given situation.

The use of the Vascular Neck Restraint Techniques and any other technique which restricts the blood flow or oxygen to the brain are **NOT** authorized.

Sound judgment and the appropriate exercise of discretion will always be the foundation of a law enforcement member's decision making within the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this directive is intended to ensure that all actions taken by members are reasonably necessary to accomplish lawful objectives while protecting the lives of others and themselves. In order to avoid an escalation and subsequent use of force, Members shall apply de-escalation techniques when possible to stabilize a situation, reduce the immediacy of a potential threats, and obtain voluntary compliance. De-escalation techniques are used whenever feasible, force is used only when necessary, and the amount of force used is proportionate to the situation a member encounters.

In situations where members are justified in using force, the utmost restraint should be exercised. Use of Force should never be considered routine. In exercising this authority, members must respect the sanctity of all human life, act in all possible ways to preserve human life, act to avoid unnecessary uses of force, and minimize the force that is used, all the while protecting themselves and the public.

This policy affirms the North Carolina State Highway Patrol's guiding principles which provide direction when members face a use of force situation during the performance of lawful duty.

The North Carolina Highway Patrol's core use of force principles are as follows:

CORE PRINCIPLE #1: Members may use force only to accomplish specific law enforcement objectives.

CORE PRINCIPLE #2: Whenever feasible, members should attempt to stabilize a situation and reduce the immediacy of a potential threat to attempt voluntary compliance in order to avoid an escalation and subsequent use of force (de-escalate) Members should strive to de-escalate confrontations with the goal of resolving encounters without force. Members may only use force that is reasonable, necessary, and as a last resort.

CORE PRINCIPLE #3: Members must use only the amount of force which is proportionate to the circumstances.

CORE PRINCIPLE #4: Deadly force is only authorized as a last resort and only in strict accordance with this directive.

CORE PRINCIPLE #5: Members must appropriately assess situations and constantly evaluate the suspect(s) condition to adequately and promptly provide or request medical assistance based on circumstances explained within this directive.

CORE PRINCIPLE #6: All members have a duty to stop, intervene, and subsequently, report in any case where a member is a witness to what the member knows or should reasonably be expected to know is an excessive use of force that would violate any applicable law and/or this directive.

II. USE OF FORCE

CORE PRINCIPLE #1: Members may use force only to accomplish specific law enforcement objectives and in strict accordance with the below established directives, and consistent with state and federal law:

- To effect lawful law enforcement objectives, such as to affect a lawful seizure (an arrest or detention) or to carry out a lawful search;
- To overcome resistance directed at the member or others;
- To prevent physical harm to the member or to another person, including intervening in a suicide or other attempt to self-inflict injury;
- To protect the member, or a third party, from unlawful force or;
- To prevent property damage or loss.

Members may not use or threaten to use force for the following reasons:

- To resolve a situation more quickly, unless the extended delay would risk the safety of the person involved, members, or others, or would significantly interfere with other legitimate law enforcement objectives;

- To punish a person or to retaliate against them for past conduct or to impose punishment;

- To prevent a person from resisting or fleeing in the future;

- To force compliance with a member's request, unless the request is necessary to serve member or public safety, or criminal apprehension; or

- Based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

CORE PRINCIPLE #2: Whenever feasible, members should attempt to de-escalate confrontations with the goal of resolving encounters without force. Members are encouraged to use techniques to achieve the goal of "De-escalation" in order to defuse emotions and bring calm to a given situation in order to prevent the use of force. These techniques are considered "Force Mitigation Tactics."

Members may use only force which is reasonable and necessary.

Members will use de-escalation and force-mitigation techniques and tactics whenever safe and feasible to do so. "Force mitigation tactics is synonymous with de-escalation."

Members will provide clear instructions and warnings whenever feasible before using force. Whenever safe and feasible, members should not use force immediately when encountering noncompliance with lawful verbal directions. Instead, whenever safe and feasible, before using force, members should:

- Provide clear instructions and warnings;

- Seek to communicate in non-verbal ways when a verbal warning would be inadequate (such as when the person does not speak English, or is unable to hear or understand warnings);

- Indicate the consequences of refusing to comply with a mandatory order, including that force will be used unless the person complies; and

- Provide an opportunity to comply if feasible based upon the safety of the suspect and the public as well as safety of the member.

Members must consider an individual's mental, physical, or other incapacities.

Members must, when feasible, consider whether a person's failure to comply with directions or command is due to a medical condition, mental impairment, physical limitation, developmental disability, language barrier, drug interaction, behavioral crisis, or other factors beyond the individual's control. In these situations, members should consider whether specific techniques or resources would help resolve the situation without force.

Members should not exercise force unless it is reasonably necessary.

Members should exhaust all other reasonable means before resorting to the use of force.

CORE PRINCIPLE #3: Members must use only the amount of force which is proportionate to the circumstances.

Members must evaluate all the circumstances facing them in the field to determine whether force is appropriate and what amount is proportionate.

Members encounter a wide range of situations in the field, but the sanctity of human life should be at the heart of every decision. When force cannot be avoided through de-escalation or other techniques, members must use no more force than is proportionate to the circumstances. In general, the greater the threat and the more likely the threat will result in injury or death, the greater the level of force may be immediately necessary to overcome it. Consistent with training, some of the factors members should consider when determining how much force to use include:

- The seriousness of the law enforcement objective;
- The risk of harm presented by the person;
- The risk of harm to the member or to innocent citizens presented by using force;
- Whether further de-escalation techniques are feasible, including the time available to a member to make a decision, and whether additional time could be gained through tactical means;
- If there is a practical, less harmful alternative available to the member;
- Mental or physical disability, medical condition, and other physical and mental characteristics;
- Whether there are other exigent/emergency circumstances.

As a situation changes, members must assess and reassess the circumstances and continue to respond proportionately, throughout the incident.

Over the course of an encounter, the circumstances and threats a member faces may change. Consistent with training and this directive, while using force, members must continually assess the effectiveness, proportionality, and necessity of their actions. The ability to articulate one's actions is critical with regard to documenting what factually occurred.

Force Options

- Officer Presence
- Verbal Control Techniques
- Physical Contact (Soft empty hands)
- Holding Techniques (Pressure Point Control / Joint Manipulation)
- Compliance Techniques (to include O.C. Spray / Chemical Agents)
- Physical Force (Hard empty hands)
- Impact Weapons (ASP Baton, Flashlight)
- Conducted Energy Weapon
- Lethal Force

The force options available to a member are listed from the least life-threatening to the most life-threatening. Members are not required to exhaust one type of force before moving to a greater force. The above systematic listing of force options is only used to clarify and illustrate the variety of applications. The decision to use force is NOT a specific path for members to follow in every situation.

Sound judgment and the appropriate exercise of discretion will always be the foundation for decision making in the broad range of possible use of force situations a member may encounter.

The level of resistance a member encounters is a key factor in determining the proportionate amount of force.

- o It is not possible to determine ahead of time what the proportionate level of force is for every possible situation members may face. Nevertheless, one of the key factors in determining which level of force is necessary and proportionate in a given situation is the level of resistance a member encounters. In general, the less resistance the member faces, the less force the member should use.

- o The types of resistance members may encounter range from a cooperative person to an active assailant. Members are reminded any encounter may evolve rapidly and will often change based on the suspects mindset and potential abilities. Consistent with training, the following general rules may apply when members are exercising judgment in determining what level of force is necessary and proportionate:

a. Cooperative Person: When dealing with a cooperative person, members may rely on officer presence and/or verbal control techniques to facilitate and complete arrest. *(Refer to directive A.06, Policy Definitions)*

b. Passive Resistor: When dealing with a passive resistor, members may rely on officer presence, verbal control techniques, holding techniques, compliance techniques, and/or control instruments, but greater force, such as physical force, impact weapons (batons), Conducted Energy Weapons (CEWs), and O. C. (Oleoresin Capsicum) may not be appropriate or proportionate to achieve the lawful objective. *(Refer to directive A.06, Policy Definitions)*

c. Active Resistor: When dealing with an active resistor, members are confronted with a suspect who demonstrates "aggressive," "hostile," and potentially "violent" behavior. Resistance such as this can potentially harm the member as well as others in the surrounding area. Members may employ officer presence, verbal control techniques, holding techniques, compliance techniques, and or control instruments as well as hard hand control (strikes), impact weapons (batons), Conducted Energy Weapons (CEWs) up to and including lethal force depending on situation. *(Refer to directive A.06, Policy Definitions)*

d. Threatening Assailant: In general, when dealing with a threatening assailant, members have all use of force options, other than deadly force, available to them, including impact weapons (such as batons or less lethal ammunition) and CEWs. Although a range of force options are generally available, particular options can be used only if proportional to the threat faced. *(Refer to Directive A.06, Policy Definitions)*

e. Active Assailant: In general, when dealing with an active assailant, members have all force options available, though deadly force should only be used as a last resort and in strict accordance with the guidance below. (*see Core Principle #4*)

III. USE OF LESS THAN LETHAL FORCE

General Guidelines

Where **lethal** force is not authorized, a member should assess the situation in order to determine which less than lethal technique or weapon will best de-escalate the incident to bring it under control in a safe manner. In exercising this authority, members must respect the sanctity of all human life, act in all possible ways to preserve human life, act to avoid unnecessary uses of force, and minimize the force that is used, all the while protecting themselves and the public.
A member is authorized to use department-approved less than lethal force techniques and issued equipment for resolution of incidents as follows:

- To protect the member or another from physical harm

- To restrain or subdue a resistant individual

- To bring an unlawful situation safely and effectively under control

- To effect an arrest or prevent escape from custody of a person whom the member reasonably believes has committed a criminal offense unless the member knows the arrest is not authorized

The amount of force, which may be used in attaining a lawful compliance, will be determined by assessing and reassessing the surrounding circumstances and may include the below but are not limited to:

- The nature of the offense

- The behavior of the subject against whom force is to be used

- Reaction time/distance from subject

- Multiple subjects and or members/other law enforcement officers present

- Actions by third parties who may be present

- Size and gender of the member and subject

- The feasibility or availability of alternative actions

- Members are not permitted to use a less than lethal defensive weapon unless qualified in its proficient use by training procedures. All proficiency training must be monitored by a certified firearms, defensive tactics or Conducted Energy Weapon (CEW) instructor. All members authorized to carry weapons are required to receive in-service training at least annually on the agency's use of force policies and demonstrate proficiency with all approved lethal and less than lethal weapons.

- The following less than lethal defensive weapons are authorized for on and off duty use: expandable baton, flashlight, O.C. Spray, and other weapons which may be issued by the Highway Patrol. Under **no** circumstances is a patrol member authorized to carry a Conducted Energy Weapon (CEW) while off duty.

Impact Weapons

- The expandable baton and flashlight are the standard impact weapons issued to members of the Highway Patrol.

Chemical Agents

- Only Highway Patrol issued chemical agents may be carried and used by members of the Highway Patrol.

- Prior to the issuance of Oleoresin Capsicum Spray (O.C. Spray), all members shall receive training in its use, which will include instruction and actual application to afford the member an understanding of the effects. Any use or display of O.C. Spray other than in a training situation or spraying of animals for self-protection shall be reported as required by this directive.

OLEORESIN CAPSICUM SPRAY

- Use of O.C. Spray is a form of less than lethal force. When practical, O.C. Spray should be used in place of striking the subject with a fist, elbow, knee, or weapon in order to avoid injury to the subject and the member.

- No member shall knowingly use O.C. Spray on any person who is being subjected to the effects of a Conducted Energy Weapon (CEW)

Decontamination

- After spraying a subject, the member **must monitor** the subject's physical condition for up to forty-five (45) minutes or until the subject is turned over to jail personnel

- After handcuffing and searching the subject, the member should instruct the subject to stay still, not to rub his/her eyes, breathe normally, and relax as much as possible

- When circumstances permit, a member should wait a period of fifteen (15) minutes before transporting the subject to allow natural evaporation to reduce the effects of the O.C. Spray in the Patrol vehicle

- A member **must** decontaminate the subject at the scene of the arrest when the member or subject's safety is not jeopardized by such decontamination

Decontamination includes:

- Moving the subject into an uncontaminated area as soon as possible

- Facing the subject into the wind

- Spraying the subject's face and eyes utilizing the issued spray bottle and water

- Patting the subject's face dry with paper towels

- A subject should be asked if he/she suffers from any medical problems

- While transporting the subject, the member shall provide ventilation to the subject by opening the window and/or directing the air-conditioning vent toward the subject's face

- Upon arrival at the detention facility or chemical analysis site, the member shall allow the subject to flush his/her face and eyes with cool water. A non-oil based soap or detergent should be used and will help remove the resin from the skin.

- Do not use **any** commercial eyewash during the decontamination process

- Personnel at the jail **must** be informed that a prisoner has been sprayed with O.C. Spray

Medical Attention for subjects exposed to O. C.

Unless a detention facility requires a subject, who has been sprayed with O.C. Spray to be checked by medical personnel, a prisoner who has been sprayed will not usually require medical attention

A prisoner who meets any of the following criteria **must** be taken for immediate medical attention:

- o Gagging or breathing difficulties persist beyond 2-4 minutes

- o Loses consciousness, sweats profusely without reason, appears very sick

- o Suffers from the effects of O.C. Spray more than forty-five (45) minutes after use

- o Displays signs of or declares an allergy to capsicum (pepper)

A prisoner who is known to meet the following criteria must be closely monitored for at least forty-five (45) minutes or until turned over to jail personnel. Closely monitored means the prisoner should not be left alone for any significant periods of time, and the physical and mental condition of the prisoner should be observed:

- o Old or frail persons, diabetics, asthmatics

- o Have known history of heart or lung problems, seizure disorders

- o Are substantially impaired by drugs or alcohol

- o Have run or fought with member or violently resisted arrest

- o Are breathing very rapidly, sweating heavily, or exhibiting pale skin

- o Engaging in deranged or irrational conduct or speech

- o Are very obese

- o Complain of dizziness or being lightheaded

Carrying and Deployment of Oleoresin Capsicum Spray

Members who are issued a CEW may remove the O.C. Spray from their duty belt, but he/she must have it readily available within his/her Patrol vehicle for use. The removal of the O.C. Spray from a member's duty belt in no way relieves him/her of the responsibility of maintenance, care, and inspection of the O.C. Spray.

Use of Chemical Agents other than O. C. Spray

Authorization to deploy chemical munitions or other chemical agents in riot situations or for other applications involving large numbers of people must be obtained from the affected Section Director/Troop/Unit Commander or his/her designee. Any use of chemical munitions or chemical agents except in a training situation must be reported by the appropriate Troop Commander or his/her designee by utilizing Form ICS214 (Activity Log-Chronological Listing of Activities) and shall refer to the North Carolina State Highway Patrol **Unusual Occurrence Manual**, **Section VIII** and **Section XXIII** as it pertains to the "After Action Reporting" consistent with IAP (Incident Action Plan) and the ICS (Incident Command System).

Conducted Energy Weapon (CEW)

- A Conducted Energy Weapon (CEW) is a less-lethal device that uses electrical current, with the goal of achieving neuromuscular incapacitation, by the disruption of voluntary control of the muscles.

- Use of a CEW by a member shall be in compliance and consistent with the most current training guidelines, all current publications and/or revisions from Axon Enterprises, Inc., and any laws or relevant court decisions pertaining to CEW use.

- All members shall receive required training prior to the issuance of a CEW. Training shall include a demonstration and application of the device to afford the member an understanding of the physical effects on a suspect.

- Any use or display of a CEW other than in a training situation shall be reported as required by this directive and in compliance with standard operating procedures.

- Use of the CEW is authorized only when a reasonably objective member would conclude that the circumstances present a risk of immediate danger that could be mitigated by the use of force. Members shall articulate why the subject's action(s) and/or behavior indicated a threat to the safety of themselves or third persons.

- Members preparing to fire the CEW shall announce "Taser, Taser, Taser" when feasible, to warn the violator, to prevent sympathetic reflex shooting, and to alert other officers on scene.

- All issuance, initial user training, In-Service training, and maintenance and/or repair of CEWs will be at the direction of the Director of Training or his/her designee

- Any CEW involved in a Use of Force shall be downloaded and the downloaded file shall be attached to the affected member's BlueTeam Use of Force Report when forwarded from the District First Sergeant to the Unit/Troop Supervisor.

- All guidelines for the CEW program related to the operation of the North Carolina State Highway Patrol Conducted Energy Weapon (CEW) Program are contained within the Standard Operating Procedure (SOP) entitled "Conducted Energy Weapon (CEW) Program"

Members Authorized to Carry CEW

Members holding the rank of Trooper and Sergeant shall be issued a CEW by the State Taser Coordinator or designee. Those members shall carry the CEW in accordance to the most current version of NCSHP Policy Directive B.01 and the CEW SOP.

Members holding the rank of First Sergeant and above shall have the option to carry the CEW they are certified on as long as they continue to attend annual In-Service training. The availability of issuance on CEWs and equipment for members of higher rank can be evaluated by the State Taser Coordinator at any time based on needs of the Patrol.

Carrying CEW

Members who are issued a CEW shall have it properly affixed in a cross draw manner (opposite of duty handgun) to the duty belt of the Class A or Class B uniform while conducting patrol duties. The Director of Training or the Taser Coordinator or designee shall grant exception to the CEW carry based on the section and special operations. The removal of the CEW from a member's duty belt in no way relieves him/her of the responsibility of maintenance, care, and inspection of the CEW.

Return of CEW

All CEWs must be returned to the Training Academy to the Training Coordinator or designee in the Taser Section within 30 calendar days of the member's separation, resignation, retirement, or if any damage has occurred to the CEW. If a NCSHP Taser Instructor has identified a CEW as not working or failing the safety protocol during In-Service training, the CEW will be replaced as soon as feasible in coordination with the State Taser Coordinator. No Taser CEW will be returned through the State Courier System. The return of all CEW's shall be in person in coordination with the State Taser Coordinator or designee to the Training Academy. If a member is on medical, military, sick, administrative or any extended leave the CEW can remain at the Troop or District level in a secure location until the member returns and is approved fit for duty.

Use of the CEW is NOT authorized in the following circumstances:

- When the suspect is in control of a vehicle that is in gear or in motion;
- When a suspect is passive-resistant and/or engaging in passive, non-violent resistance;
- When a suspect is running away from the member in attempt to escape and the suspect poses no immediate risk of injury to the member or a third party;
- When the member knows or perceives the suspect to suffer from a mental illness, cognitive impairment or developmental disability, such as Down Syndrome or Autism Spectrum Disorder, unless necessary to prevent injury to the member or a third party;
- The CEW is not to be used in any mode to achieve pain compliance.

Issuance of Authorized Weapons

Prior to the issuance of any lethal or less than lethal weapon the Highway Patrol Armorer or Defensive Tactics Coordinator shall review, inspect, and approve all weapons intended for use by members in the performance of their duties. Any weapon found to be unsafe shall be removed from service until such time it is repaired by a qualified technician. A record of each approved weapon issued by the Patrol shall be maintained by the Highway Patrol Armorer.

Use of Weapons

Weapons shall be used or displayed in accordance with the member's training and Patrol policy. Careless or imprudent use of weapons is prohibited. The term deadly is synonymous with lethal and the term non-lethal and non-deadly are synonymous with less than lethal.

Remedial Training

A member who fails to demonstrate required proficiency with either a lethal or non-lethal weapon shall receive remedial training with said weapon by a certified weapons instructor prior to resuming official duties

IV. USE OF LETHAL FORCE

CORE PRINCIPLE #4: Lethal force is only authorized as a last resort and only in strict accordance with this directive.

General Guidelines

- Members shall use **lethal** force only in conformance with the U.S. Constitution and the Constitution and laws of North Carolina.

- In exercising this authority, members must respect the sanctity of all human life, act in all possible ways to preserve human life, act to avoid unnecessary uses of force, and minimize the force that is used, all the while protecting themselves and the public.

- **Imminent** shall be synonymous with the term immediate

General Statute § 15A-401(d)(2) states, in pertinent part:

A law-enforcement member is justified in using deadly physical force upon another person only when it is or appears to be reasonably necessary thereby:

  - To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force

  - To effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay

  - Nothing in this subdivision constitutes justification for willful, malicious, or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

Warning Required

Prior to using lethal force, members must give a verbal warning if feasible.
Lethal force includes, but is not limited to, use of a firearm.

Threatening lethal force does not necessarily constitute use of lethal force.

A threat to cause death or serious bodily harm, such as by displaying a firearm, does not constitute lethal force, so long as the member's purpose is limited to creating an apprehension that deadly force will be used if necessary.

Strict considerations must be met before a member may use deadly force.

As discussed above, when feasible, members should try to de-escalate situations, issue verbal warnings, or use non-lethal force with the goal of resolving encounters without using lethal force. There are, however, occasions when lethal force is necessary to protect members or the public. A member may use deadly force only when the member reasonably believes such action is immediately necessary to protect himself/herself or another person from imminent danger of death or serious bodily harm.

Members shall not use deadly force if the member reasonably believes an alternative will avert, eliminate an imminent danger of death or serious bodily harm and achieve the law enforcement purpose at no increased risk to the member or another person.

Members shall not use deadly force when a reasonable officer would conclude that a person presents an imminent threat of death or serious physical injury only to themselves.

Special considerations must be taken into account before a member may display a firearm.

Unholstering or pointing a firearm are tactics that should be used with great caution. The presence of a member's firearm, under the right circumstances, can discourage resistance and ensure officer safety in potentially dangerous situations without the need to resort to actual force. At the same time, however, unnecessarily or prematurely drawing a firearm can limit a members' options in controlling a situation, could create great anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Accordingly, members should only display their firearms in appropriate tactical situations and using the following principles as guidance:

- **Pointing a firearm.** Consistent with training, members may point a firearm at a person only when circumstances create a reasonable belief it may be immediately necessary for the member to use deadly force. When the member no longer reasonably believes deadly force may be immediately necessary, the member shall, as soon as practicable, secure or holster the firearm.

- **Unholstering a firearm.** Consistent with training, members may unholster or otherwise display a firearm only when circumstances create a reasonable belief: (1) the member is permitted to point a firearm at a person in order to achieve a lawful objective, *or* (2) unholstering or displaying the firearm may itself help establish or maintain control in a potentially dangerous situation.

V. WEAPONS AND AMMUNITION PROCEDURES

Authorized Weapons – On and Off Duty

- **On Duty**

  - Service pistols and magazines shall be loaded to capacity with Patrol issued ammunition. Rifle magazines shall be loaded with twenty-five (25) rounds. A rifle will be carried on duty with a magazine inserted into the rifle/carbine, bolt forward on an empty chamber with the mechanical safety engaged. Shotguns will be loaded to magazine capacity with the bolt forward on an empty chamber with the shotgun's mechanical safety engaged.

- Members while on/off duty and operating an official Highway Patrol Vehicle while not wearing an approved Highway Patrol Uniform, shall have on their person his/her issued service pistol and official Highway Patrol identification credentials. While wearing civilian clothing, the member shall not make a public display of a firearm or remove it from its holster except for lawful purposes. The only exception to this policy is when a member is attending a law enforcement specific meeting; the member may secure his/her service pistol in the trunk of his/her Patrol Vehicle while actively involved in the meeting.

- When carried, shotguns and rifles/carbines shall be kept secured in the rearmost portion of an issued SUV type Patrol vehicle or locked in the trunk of a standard Patrol Vehicle to prevent or lessen the likelihood of theft, except when removed in the line of duty.

- If shotguns and rifles/carbines are secured in the Blac-Rac weapon mounting system, the member may leave the weapon secured in the vehicle. If the member will be away from the vehicle for an extended period of time such as vacation the weapon shall be locked in the trunk of a standard Patrol Vehicle or secured in temporary storage at the assigned member's district office to prevent or lessen the likelihood of theft.
- The key for the Blac-Rac proprietary integral key lock shall be carried by the member attached to the whistle chain while wearing a Class A uniform. Class B uniform wearers shall keep the key in the front right pocket of the Class B uniform shirt.

- Members shall NOT attempt to secure any handgun loaded or unloaded into Blac-Rac weapon mounting system.

- Members will periodically inspect ammunition for serviceability in any firearm used for duty use. Any ammunition suspected to be faulty will be immediately replaced.

- Members may purchase spare magazine(s), meeting Highway Patrol specifications, for the Patrol-issued pistol.

- The use of lead or cast bullets in North Carolina State Highway Patrol owned firearms is prohibited from use unless the firearm is a shotgun. A member shall fire only jacketed ammunition in an issued North Carolina State Highway Patrol owned handgun and rifle/carbine.

- **Off-Duty Firearms**

  - In strict conformance with federal and state law and this directive, members are authorized to possess and carry a concealed firearm (either their issued service firearm or an authorized personal firearm) while off duty. Use of off-duty weapons shall be reported immediately to a Patrol supervisor. The same reporting procedures will apply as an on-duty incident.

- A member who elects to carry his/her Patrol-issued or personally owned firearm(s) while off duty will be required to have in his/her possession the official badge and identification holder identifying him/her as a sworn member of the State Highway Patrol.

- The size of the Patrol-issued pistol may prevent proper concealment; therefore, discretion must be used in carrying this weapon off-duty.

- Members who practice with issued weapons shall comply with all policies regulating the use of firearms.

- A member shall not consume or have remaining in his/her body any alcohol previously consumed or be under the influence of alcoholic beverages while handling a firearm or while possessing any firearm away from his/her own premises.

- Members shall not make a public display of a firearm or remove it from its holster while off duty except for lawful purposes.

- A member who is on investigatory leave with pay, on disciplinary suspension, or is required to surrender his/her Patrol-issued firearms for any reason, or is otherwise prohibited from exercising powers of arrest, is not authorized to carry a concealed, personally owned firearm while off duty during the period the member is on investigatory leave with pay, or on disciplinary suspension.

Firearms Procedures

- A member shall never fire warning shots.

- A member shall not display any firearm except for authorized use in accordance with this directive, for inspection by a superior member, or for other authorized purposes.

- A member shall not permit any person, other than another member, to use Patrol firearms.

- The killing of an animal is justified:

  - For self-defense

  - To prevent harm to the member or another person

  - When the animal is so badly injured as to require that it not continue to suffer. In the case of livestock, a reasonable effort must be made to contact and notify the owner. If the owner cannot be contacted within a reasonable period, the member may take the necessary action. Incidents involving game and non-game animals under the jurisdiction of the Wildlife

Resources Commission will be reported to that agency by using Deer Retention

- Authorization (EF-004). Incidents involving domestic animals and livestock will be reported to the nearest animal control agency. Neither a Report of Investigation (HP-721) nor a Use of Force Report needs to be completed when an animal is shot; however, a memorandum outlining the member's action shall be sent to the member's immediate supervisor within twenty-four (24) hours of the incident and ammunition shall be replaced as soon as possible.

Shooting at Moving Vehicles

- Discharging a firearm at a moving vehicle involves a possible risk of death or serious injury. There may be a risk of harm to occupants of the suspect vehicle who may not be involved, or involved to a lesser extent, with the actions of the suspect creating the threat.

- Members shall not fire at unarmed violators in a moving vehicle unless the member reasonably believes the oncoming vehicle presents an imminent threat of death or serious physical harm to the member or third person, and no other means are available at that time to avoid or eliminate the danger

- No member shall intentionally position him/herself into the path of a vehicle which is attempting to flee. Whenever possible, the affected members shall make a reasonable effort to get out of harm's way if a vehicle is moving toward him/her.

Shooting from a Moving Vehicle

- Shooting from a moving vehicle is prohibited, except where members reasonably believe there is an imminent threat of serious bodily injury or death for themselves or for a third party without such action. Before shooting from a moving vehicle, the member must reasonably believe the only means of protecting themselves and/or a third party is the use of deadly force and no alternative, less dangerous means exists to abate the threat.

Investigation and Reporting of Firearms Incidents

- A member shall immediately report to his/her supervisor every display or use of a firearm in the performance of his/her duty, either intentional or unintentional not related to training. Any time a member removes his/her pistol from its holster during an enforcement contact, such action shall be deemed either *display of firearm* or *use of firearm*. A use of firearm, as defined by SHP Directive A.06, shall be documented in BlueTeam on a Firearm Discharge Report. (See sections IX and X of this directive for further directions)

- A *display of firearm,* as defined by SHP Directive A.06, shall be documented in BlueTeam on an abbreviated Use of Force Report. (See sections XI and XII of this directive for further directions)

- A use of firearm, as defined by SHP Directive A.06, combined with use of another force option will require the *use of firearm* to be documented in BlueTeam on a Firearm Discharge Report. The use of another form of force will be documented in BlueTeam on a Use of Force Report

- A member involved in a shooting incident, which results in death, or serious personal injury to anyone shall immediately be relieved from normal duty and assigned to administrative duties by his/her Section Director/Troop/Unit Commander. The Internal Affairs Unit will be responsible for completion of the Firearm Discharge Report in BlueTeam and completion of the HP-721. The HP-721 shall be attached to the Firearm Discharge Report, generated in BlueTeam. The affected Section Director/Troop/Unit Commander shall follow the provisions set forth in Section V (Administrative Leave and Review) of this Directive. The member shall also be ordered to submit to a drug test pursuant to the provisions of Directive E.02, Section V (Types of Mandatory Drugs and Alcohol Tests). The Section Director/Troop/Unit Commander or his/her designee shall immediately begin to collect pertinent information necessary for a preliminary investigation and shall contact the Unit Commander of Internal Affairs for consultation. The Unit Commander of Internal Affairs, or their designee shall ensure the appropriate notification with the State Bureau of Investigations (NCSBI), as well as the District Attorney's office for the respective location

- After debriefing of the member in accordance with Patrol policy, if it reasonably appears the shooting was justified, the member may be re-assigned to normal duty by the Commander's Office

Maintenance and Care of Firearms

- All members shall keep their Patrol-issued and back-up or off-duty firearms in excellent condition
- Members shall not in any manner alter or tamper with the internal working mechanisms of their Patrol-issued firearms

- Members shall regularly clean and inspect all issued firearms according to instructions in the appropriate training manual

- Any defects or malfunctions of any issued firearm shall be reported to the member's supervisor immediately. Defective weapons shall not be carried.

- Members shall regularly clean and inspect all approved back-up or off-duty firearms

- Any defects or malfunctions of back-up or off-duty firearms shall be reported to the Patrol/Troop Firearms Instructor immediately. Members shall not carry

such firearms until the defect or malfunction is corrected at the member's expense and inspected by the Patrol/Troop Firearms Instructor to insure it has been repaired. If any critical component of the firearm is repaired or replaced (sights, barrel, etc.) the Patrol / Troop Firearms Instructor must re-qualify the member with the firearm and document same on a Firearms Qualification Record (F-9A) to be forwarded to the Patrol Armament Member and placed in the member's personal firearms file.

VI. MEDICAL ASSISTANCE

CORE PRINCIPLE #5: Members must promptly provide or request medical aid. Members have a duty to provide prompt medical care.

Members shall always treat people with dignity and respect. Whenever a person is injured, complains of an injury, or requests medical attention, as soon as it is safe and practical, members shall request medical aid (such as by contacting emergency medical services) and provide appropriate medical care consistent with the members training (such as by providing first aid and/or transportation to an emergency medical facility).

Members have a duty to continuously monitor individuals / suspect(s) for potential medical intervention after a use of force. Special consideration should also be taken with individuals who may have ingested drugs, are impaired or who demonstrate obvious physical exertion based on the event.

Out of respect for the sanctity of life, members shall closely monitor persons against whom force was used for signs they may require medical assistance. This responsibility applies during transportation and throughout custody. Members shall pay close attention to persons believed to be pregnant, children, the elderly, and physically frail individuals.

Members shall make the scene as safe as practical and shall afford medical assistance to injured persons considering:

- Amount and type of force used
- Any apparent or probable injuries
- Statements made by the person(s)

Medical assistance afforded shall be the same as for any other individual with similar injuries including:

- First aid administered by the member within the limits of member's level of training
- Calling or offering to call emergency medical services as appropriate

Members may elect to transport injured suspects by Patrol vehicle to a medical facility for examination or treatment based on potential security risks, danger presented by the suspect, and other articulable facts.

VII. DUTY TO INTERVENE AND REPORT

CORE PRINCIPLE #6: Members have a duty to stop and report uses of force that violate any applicable law and/or this directive.

Members have a duty to prevent and stop illegal and inappropriate uses of force by other members or another law enforcement officer.

Every member has an obligation to ensure compliance, by themselves and others, with Highway Patrol directives and regulations, as well as all applicable laws, regarding use of force. Any member who observes a member or another law enforcement officer engaging or preparing to engage in force which is illegal, excessive, or otherwise inconsistent with this directive must, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events before the fellow officer does something that makes any official action necessary. Members can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately.

- If any member observes such a violation, the member must issue a command/order to stop the violation.

- If a supervisor observes such a violation, the supervisor must issue a direct order to stop the violation.

Members have a duty to report illegal and inappropriate uses of force by other officers.

Any member who observes or has knowledge of a use of force that is illegal, excessive, or otherwise inconsistent with this directive must:

- Notify a supervisor as soon as possible; *and*

- Submit an individual written report to a supervisor before reporting off duty on the day the member becomes aware of the misconduct.

Members are prohibited from retaliating against an employee who intercedes in or reports illegal or inappropriate uses of force.

No member may retaliate, in any form, against another employee who intercedes in or reports a violation of this directive, or who cooperates with an investigation into a possible violation of this directive.

VIII. DOCUMENTATION ON USE OF FORCE

The appropriate first-level supervisor shall submit form HP-351 (Supervisor Notification of Member Involved Incident) via e-mail within twenty-four (24) hours of any reportable Use of Force incident to include Display of Weapon according to the HP-351 instructions. The appropriate first-level supervisor shall e-mail a copy of

the HP-351 “To:” the appropriate Unit/Troop Headquarters and “CC:” the Use of Force Board Liaison for informational and tracking purposes.

Firearms

- Use of a Firearm, as defined in SHP Directive A.06, shall be reported and documented in BlueTeam on a Firearm Discharge Report in accordance with this directive

- Display only of a firearm, as defined in SHP Directive A.06, shall be reported and documented on the abbreviated Use of Force Report. (See form instructions for the abbreviated report)

- In addition to the Firearm Discharge Report, incidents involving the discharge of a firearm require a HP-721, except when an animal is shot. The HP-721 shall be attached to the Firearm Discharge Report in BlueTeam and then forwarded via chain-of-command to the Unit Commander of Internal Affairs. The Unit Commander of Internal Affairs shall forward the report and investigation to the Commander’s Office.

Other Use of Force

- A member shall complete the Use of Force Report in BlueTeam on each occasion the member strikes a person with any part of his/her body (e.g. fist, elbow, leg, knee or foot) or uses any defensive weapon in order to control a subject. The Use of Force Report shall also be completed in BlueTeam whenever a subject or a member is injured, the subject or member complains of injury, or has visible injury or in any case where a subject is charged with assaulting the member.

- A member shall complete the Use of Force Report in BlueTeam on each occasion in which an “Arm-Bar Takedown,” “Vehicle Extraction Technique” or a “Balance Displacement Technique” is performed regardless if an injury occurs. Each of these actions performed on a suspect have a greater potential for injury occurrence to a suspect and therefore shall require documentation for record purposes.

- On those occasions when the member **“Displayed Only”** any defensive weapon, the member shall complete the abbreviated Use of Force Report as directed in the report’s instructions.

- A member involved in a Use of Force incident, if physically able, must notify his/her immediate supervisor as soon as feasible after the incident. The member shall submit the Use of Force Report in BlueTeam to his/her immediate supervisor within five (5) calendar days of the incident. If the member is unable due to injuries, the immediate supervisor will complete the Use of Force Report within thirty (30) calendar days, provided the supervisor has sufficient information.

- In all felony cases, a copy of the Use of Force Report shall be provided to the District Attorney pursuant to the requirements of N.C.G.S. 15A-903

IX. REVIEW AND CRITIQUE OF USE OF FORCE

Review by Supervisor

- The member's supervisor shall review the Use of Force Report for completeness with the member prior to submission. In all cases where the member conducted a Terry Frisk, the supervisor shall determine whether the member properly obtained consent to frisk or, absent consent, articulates the specific objective facts that gave rise to reasonable suspicion to believe that the subject may have been armed and presently dangerous. In addition, the supervisor shall review any accompanying video(s) or audio and this directive as it applies to the incident with the member and make an initial determination about whether the member followed Patrol policy and established training practices. A supervisor involved in the incident shall not conduct the review.

  The responsibilities of the member's supervisor extend to also include first level "After Action Review." In completing review of the Use of Force Report, the supervisor shall identify potential policy violations, trends of behavior, training deficiencies, legal consistencies on the force as well as potential options that could have been utilized during the encounter.

  The supervisor will consult with the State Defensive Tactics Coordinator should there be any questions from a training posture. This after-action review may occur during below noted Step 2 but shall be documented in the comments section and must occur within **ten (10) calendar days** of the incident in order to provide the member adequate response from a training opportunity.

  The First Sergeant or appropriate second-level supervisor shall make comments (Refer to the Use of Force BlueTeam Instructions) in the "Comment" section during the approval process in BlueTeam. The comments should indicate the video(s) was reviewed and the course of action **(i.e. *A review of the video indicated established training practices and policy were or were not complied with during this Use of Force / The video of this Use of Force was reviewed. Refer to the attached NCVIP and/or Remedial Training Memorandum*)**. The name of the defensive tactics instructor who may have consulted or reviewed the video shall also be documented.

  The following dissemination process shall be followed when submitting a Use of Force Report:

  - **Step 1:** Trooper completes and submits report for approval, to supervisor via BlueTeam. Use of Force Report due within five (5) calendar days of the incident to the appropriate first-level supervisor.

  - **Step 2:** The appropriate first-level supervisor reviews report including video(s) or audio and relevant documentation in BlueTeam for accuracy and

clarification. The appropriate first-level supervisor shall make comments (Refer to the Use of Force BlueTeam Instructions) in the “Comment” section

that a video review was conducted during the approval process. If issues are found:

- Communicate with Trooper for clarification
- Reject the report in BlueTeam
- Review resubmission from Trooper
- Approve and forward to First Sergeant or appropriate second-level supervisor for review and approval via BlueTeam

- **Step 3:** First Sergeant or appropriate second-level supervisor reviews the report including video(s) or audio and relevant documentation to check for accuracy and policy violations or training needs. The First Sergeant or appropriate second-level supervisor shall make comments (Refer to the Use of Force BlueTeam Instructions) in the “Comment” section that a video or audio review was conducted. First Sergeant or appropriate second-level supervisor forwards the approved, completed report, with attachments, to the Unit/Troop Supervisor or Section Director for their review, no later than thirty (30) calendar days of the incident.

- **Step 4:** The Unit/Troop Supervisor or Section Director (third-level review) will only have forty-five (45) calendar days from the date of the incident to review the report including video(s) or audio and relevant documentation to verify for accuracy, clarification, and discrepancies. The Unit/Troop Supervisor or Section Director shall make comments (Refer to the Use of Force BlueTeam Instructions) in the “Comment” section that a video review was conducted. The Unit/Troop Supervisor or Section Director will also identify any policy violations or training needs. For use of force incidents that involve a fatality or serious personal injury, the Unit Commander of Internal Affairs will be notified and determine if policy violations may exist and classify those potential violations as deemed appropriate. (Refer to Policy Directive H.02).

  The appropriate third-level supervisor will immediately forward the report via BlueTeam, “TO” the Chairman of the Use of Force Review Board. The appropriate third-level supervisor shall also carbon copy (cc) the Use of Force Review Board and the District First Sergeant. Groups for the Chairman of the Use of Force Review Board and the Use of Force Review Board have been created in BlueTeam.

  - NOTE: First Sergeants or appropriate second-level supervisor shall expedite a completed copy of the report as close to incident date as possible in order for the Unit/Troop Supervisor or Section Director to

verify for accuracy, clarifications and/or discrepancy in order to comply with the forty-five (45) calendar day dissemination period

- The member shall print the approved report for their record. In the event a video **or audio** of the occurrence exists, the supervisor will label the

  video file as the sequence number to include the members rank, first and middle initial with last name (e.g. 170725001CA Trp J K Smith). Upload the video(s) or audio file within 30 calendar days of the incident at the following address located on the "G" drive:

  - BlueTeam Videos / Troop / District

- The appropriate District First Sergeant will manage the authorized Troop/District video(s) or audio file on the G Drive and delete the uploaded file four (4) months after the occurrence date of the incident.

- Supervisors shall indicate the video has been reviewed in the "Comment" section of the BlueTeam submission process. If no video or audio exists, then an explanation shall be documented in the "Comment" section of the BlueTeam submission process. Attach a copy of the CL-29 if applicable by the appropriate level supervisor.

- Should the initial BlueTeam report be sent to the Use of Force Board later than the forty-five (45) calendar day deadline, but before sixty (60) calendar days, then a detailed explanation describing the reason the report is late in the form of an email shall be sent to the Chairman of the Use of Force Board.

- Should the initial BlueTeam report be sent to the Use of Force Board later than sixty (60) days, then documentation in the form of NCVIP and HR562 (Documented Counseling Session) detailing the reason the report is late and that this discrepancy has been documented shall be emailed to the Chairman of the Use of Force Board by the Unit/Troop Supervisor or Section Director. **These unrelated documents to the Use of Force incident shall not be attached to the BlueTeam Report.**

- **Step 5:** The Use of Force Review Board reviews the incident including videos or audio and relevant documentation and discusses discrepancies and/or needed remediation. The Chairman of the Use of Force Review Board or designee shall reject a report in BlueTeam for discrepancies and provide instructions in the designated space. The rejected report will be forwarded via BlueTeam to the effected Unit/Troop Commander/Section Director requesting revision or remediation. The Chairman of the Use of Force Review Board or designee shall route approved reports "To" the BlueTeam Administrator.

- In cases involving a SBI investigation or Internal Affairs investigation, the Use of Force Board will review the BlueTeam report for accuracy and training purposes only.

- **Step 6:** When a Unit/Troop Commander/Section Director is forwarded a rejected report, he/she shall in turn forward it to the appropriate district for corrections. The Unit/Troop Commander/Section Director shall ensure the

  corrected report is re-submitted to the Use of Force Review Board via the chain of command within fifteen (15) calendar days.

X. REVIEW AND CRITIQUE OF DISPLAY OF WEAPON (USE OF FORCE REPORT DISPLAY OF WEAPONS)

Review by Supervisor

- The member's supervisor shall review the report for completeness with the member(s) prior to submission. In addition, the supervisor shall review any accompanying video(s) and this directive as it applies to the incident with the member and make an initial determination about whether the member followed Patrol policy and established training practices. The supervisor shall acknowledge that the review with the member(s) has taken place by making the appropriate comment (Refer to the Display of Weapon BlueTeam Instructions) in the "Comment" section during the approval process in BlueTeam. The appropriate supervisor shall indicate the date the review was completed. A supervisor involved in the incident shall not conduct the review.

- If the supervisor approves the report, he/she will then forward the report to the First Sergeant or appropriate second-level supervisor.

- If the report is accompanied by a video(s) or audio, the First Sergeant or appropriate second-level supervisor shall review any accompanying video(s) or audio to ensure compliance with Patrol policy and established training practices. If there is not a video or audio recording available, then a detailed explanation is required. Attach a copy of the CL-29 if applicable. The First Sergeant or appropriate second-level supervisor shall provide a copy of the report and video to a defensive tactics instructor for review and after reviewing the incident with the instructor, address any identified training, policy deficiencies, or other issues with affected member(s)

- Training, policy deficiencies, and/or remedial training shall be documented in accordance with policy

- The First Sergeant or appropriate second-level supervisor shall make comments (Refer to the Display of Weapon BlueTeam Instructions) in the "Comment" section during the approval process in BlueTeam. The comments should indicate the video(s) was reviewed and the course of action **(i.e. *A review of the video indicated established training practices and policy were or were not complied with during this Use of Force / The video of***

***this Use of Force was reviewed. Refer to the attached NCVIP and/or Remedial Training Memorandum*)**. The name of the defensive tactics instructor who reviewed the video shall also be documented.

- The First Sergeant or appropriate second-level supervisor shall forward the Use of Force Report, along with any applicable supporting documents "To" the BlueTeam Administrator.

XI. REVIEW BY BOARD

- All Use of Force/Assault Reports and the accompanying video(s) will be reviewed and analyzed monthly or no more than bi-monthly by the Use of Force Review Board as directed by the Board Chairperson. The Board may request, through the chain-of-command, additional information and clarification on any report.

- Training or policy issues identified during the district or unit review shall not be addressed in the Use of Force Report, but instead shall be documented on the appropriate form(s) (Remedial Training Memorandum, Performance Record, Personnel Complaint, etc.) and processed in accordance with the Forms and Reports System. A copy of the form(s) shall be attached and forwarded along with the Use of Force Report to the Chairman of the Use of Force Review Board via BlueTeam. The Use of Force Board shall receive a carbon copy (Cc) of the report.

The Use of Force Review Board does not review use of force incidents which only involve the display of a weapon.

- The Director of Professional Standards shall appoint Board members for not more than two (2) years from the following sections excluding the one member holding the rank of Captain who will serve as the chairperson:

  - Captain (Chairperson)
  - Troop Lieutenant – (Co-chair)
  - District First Sergeant
  - District Sergeant
  - Internal Affairs – One member
  - Training Academy – A member of the Defensive Tactics Unit (Use of Force Board Liaison)
  - Two (2) District Troopers
  - Legal Section – One staff attorney

- The Use of Force Review Board is empowered to conduct an administrative review and inquiry into the circumstances of an incident. The objective of the board is to identify trends within the agency's use of force, policies and potential training opportunities. Within this review process, the board may recognize policy violations and will refer the reported incident to the appropriate board member from Internal Affairs.

  The board does not have the authority to recommend discipline.

  Any analysis regarding the involved employee's actions conducted by the board will be in accordance with the Highway Patrol's disciplinary procedures, the Personnel Complaints Policy, and any applicable state or federal law.

  The board shall make one of the following recommended findings:

  (a) The employee's actions were within agency policy and procedure and were consistent with training guidelines

  (b) The employee's actions were in violation of agency policy and procedure or established training practices and guidelines

- The Use of Force Review Board shall submit a monthly meeting summary report to the Commander's Office within ten (10) business days addressing the following:

  - Number of reports and videos reviewed
  - Breakdown of incidents within policy and laws
  - Breakdown of reports with training issues and number of reports referred to Internal Affairs
  - Significant issues discovered by the board during their review

If a member is involved in three (3) or more Use of Force/Assault incidents in a consecutive twelve-month (12) period, the Early Intervention System within the IAPro Software will create an Alert in the Internal Affairs Unit. Once an Early Intervention Alert is received in the Internal Affairs Unit, the Alert shall be assigned by the BlueTeam Administrator and sent to the Unit/Troop Commander for appropriate action and documentation.

I. POLICY

This policy guides and directs members utilizing Patrol vehicles to enforce motor vehicle laws or other highway related offenses in a safe and efficient manner. This policy shall govern a member's conduct in the evaluation of situations, which may require the extraordinary operation of a Patrol vehicle. Members are at all times subject to the provisions of the General Statutes and the Highway Patrol Policy.

II. TRAINING

Members shall be given initial and periodic update training in pursuit policy and safe driving tactics, and a review annually thereafter.

III. FACTORS TO BE CONSIDERED PRIOR TO INITIATING EXTRAORDINARY PATROL VEHICLE OPERATION

The Nature and Gravity of the Offense or Situation

- **Criminal Offenders.** Criminal offenders shall be divided into three (3) categories based upon their increasing threat to the public. The nature of this threat must be taken into consideration at all times during the initiation and continuation of extraordinary Patrol vehicle operation.

    - **Non-Hazardous Violators.** Technical violators, such as motorists with license, registration, or equipment violations pose the least hazard and represent the lowest priority. These violators pose no immediate threat to the safety of the public.

    - **Instantaneous Moving Violators.** Drivers who engage in unlawful conduct for a brief moment then resume lawful operation. Such individuals include stop sign violators and others who do not present a continuing hazard to the public. They are of an intermediate priority.

    - **Continuing Moving Violators.** Speeders, suspected impaired drivers, and others who present a substantial continuing hazard to the public are of a higher priority. Likewise, persons suspected of armed robbery, kidnapping, assault on a government official and similar crimes of violence pose an immediate hazard to the public. These persons should be apprehended as quickly as possible, consistent with the exercise of due care for the public's safety.

Collisions

- **Property Damage.** Collisions reported involving only property damage are low priority and do not justify an emergency response except in extreme circumstances where threats to public safety exist.

- **Personal Injury.** Collisions reported involving personal injuries are higher priority and may, in some situations, justify an emergency response. Members shall not exceed the posted speed limit when traveling to a Personal Injury collision unless the imminent danger to human life or the public safety outweighs the considerations above. In these instances, blue lights and siren shall be activated when exceeding the speed limit or taking the right-of-way.

An Officer's Call for Assistance

- **Life-Threatening.** An officer's call for assistance, due to the officer being exposed to a life-threatening situation is high priority that justifies an emergency response.

- **Non-Life-Threatening.** An officer's call for assistance (such as directing traffic) that involves no imminent danger is low priority and does not justify an emergency response.

External Physical Conditions

- Width or physical condition of the highway

- Weather conditions

- Nature of the neighborhood (rural, semi-urban, urban, business, or residential)

- Volume or density of pedestrian and vehicular traffic

- Number or proximity of intersections, side streets, and driveway connections

- Performance capabilities of the Patrol vehicle

- Passengers in the suspect/violator vehicle

- Familiarity with area and surrounding highways

Liability

Members shall at all times exercise due care in the operation of their vehicles. In any civil action resulting from the vehicular chase of a violator, the gross negligence standard shall apply in determining a member’s liability. Gross

negligence is defined as wanton conduct done with conscious or reckless disregard for the rights and safety of others. An act becomes wanton when it is committed for a purpose, or when committed needlessly, manifesting a reckless indifference to the rights of others. Parish v. Hill, 350 NC 231, 239 (1999).

IV. TRAFFIC ENFORCEMENT RESPONSE

Any member in an authorized Patrol vehicle may initiate a traffic enforcement response. Prior to initiating such action, the member shall determine if the traffic enforcement response can be accomplished with due regard for the safety of the public, the member, and the suspect or violator. Members shall activate their blue lights and siren when exceeding the posted speed limit or when taking the right of way in a Traffic Enforcement Response.

A Post Chase Report does not apply to this section and should not be completed.

V. EMERGENCY RESPONSE

Any member in an authorized Patrol vehicle may engage in an emergency response if, after considering the nature and gravity of the offense or situation and the external physical conditions, the member determines that such need for the response outweighs the danger created and that the emergency response can be accomplished with due regard for the safety of others and the member.

Emergency response driving is essentially the type of driving necessary to respond to a life-threatening situation, the type of situation where the swiftness of the law enforcement officer's response can actually diminish or eliminate an ongoing threat to someone's life. Accordingly, members shall not exceed the posted speed limit when traveling to an accident scene, when conducting a relay, or when responding to a request for assistance unless the imminent danger to human life or the public safety outweighs the considerations above. In these instances, blue lights and siren shall be activated when exceeding the speed limit or taking the right-of-way.

VI. CHASES

Chases Initiated by Patrol Members

Any member in an authorized Patrol vehicle may initiate a chase when the member, after weighing the factors to be considered prior to initiating extraordinary vehicle operation and determining that the need for immediate apprehension of the suspect or violator is greater than the danger of the chase to the public, the member, and the suspect or violator and that such chase can be accomplished with due regard for the safety of others. When engaged in a chase, the blue lights and siren shall be activated.

A member and his/her supervisor shall constantly evaluate his/her decision to continue a chase. In weighing the decision to continue a chase, they shall

consider the likely harm from not apprehending the suspect as soon as possible. Additionally, they should consider the following:

- The danger to the public created by the fleeing suspect's driving, including indications the suspect may be impaired, or an apparent willingness on the part of the suspect to inflict serious injury on others, or reckless and threatening driving by a suspect all of which increases the need to apprehend immediately

- Whether the crime the suspect is believed to have committed is dangerous to persons or property, is a felony or serious misdemeanor, or involves conduct that threatens persons or property – serious crime, violent or threatening crime increases the need to apprehend immediately.

- Whether the suspect can be apprehended at a later time with little risk or danger to the public.

- Whether the chase will likely be successful in apprehending the suspect, given all factors of the chase – a chase with little chance of stopping the suspect should cause the member to terminate the chase, e.g. the distance between the primary vehicle and the fleeing vehicle is so great that chasing the vehicle may become a greater danger to the public.

- External physical conditions substantially increase the danger of chasing beyond the importance of apprehending the suspect or violator.

- The member shall consider whether the chase can be terminated by using the prima facie rule of evidence in N.C.G.S. § 20-141.5(c). **In cases where the prima facie rule of evidence is applicable, the member shall not continue to chase without supervisory authority.**

- The prima facie rule applies unless one of the following circumstances exists:

    - Vehicle has been reported stolen.
    - Vehicle registration is known to be fictitious.
    - Vehicle is registered in another state.
    - Vehicle has a temporary registration plate

Termination of Chase

A decision to terminate a chase may be the safest and most rational means of preserving the lives and property of the public and the members and suspects or violators engaged in the chase. A chase may be terminated at any time by the primary or secondary unit, the supervisor, or higher authority.

The communications center shall immediately contact the on-call district supervisor when a member advises they are in an active chase (10-43). If a supervisor is the primary unit in a chase, the next level supervisor shall be contacted by the communications center to supervise the chase. A supervisor,

not in the primary position, may authorize a chase to continue only when, in the judgement of the supervisor, the likely harm from not apprehending the violator immediately outweighs the danger created by the chase itself thereby warranting continuation of the chase. After gathering all pertinent information, the supervisor monitoring the chase shall immediately advise the member(s) to continue or discontinue the chase.

In the event a supervisor is not available during a chase, members shall immediately discontinue the chase if the prima facie rule of evidence is applicable, unless the member has probable cause to believe the driver and/or other vehicle occupants are fleeing after having committed a violent felony resulting in serious personal injury or loss of life and the need for immediate apprehension outweighs the hazards of continuing the chase.

There should be no more than three (3) authorized Patrol vehicles involved in the chase, the primary chase vehicle, the secondary chase vehicle and the third chase vehicle which will serve as a backup for the primary and secondary vehicles. When additional units are needed due to extenuating factors, and approved by a supervisor, additional units may proceed towards the chase but should use alternate roadways if available.

In the event the primary vehicle becomes disabled, the secondary vehicle will move to the primary position and the third vehicle will assume the secondary role. If available, another authorized Patrol vehicle (excluding motorcycle) will engage in the chase and assume the third position.

Unmarked vehicles will be replaced by marked vehicles (excluding motorcycles) as soon as possible. If there are only two vehicles available, and one is unmarked, the unmarked vehicle will assume the secondary position.

Members shall not chase a suspect vehicle the wrong way on an interstate or other highway with lanes of travel separated by a median or other physical barrier. Notwithstanding this restriction, in extreme circumstances a member may drive the wrong way on an interstate or divided highway, for a short distance, for the limited purpose of making a forced vehicle stop when deemed reasonably necessary to abate an imminently dangerous situation.

In some situations, it may be necessary for members involved in pursuits or emergency response situations to drive left of center. When a member has cause to drive left of center the member is to ensure that the operation of his vehicle does not interfere with oncoming traffic. The member must have a clear line of sight so as to be able to see oncoming vehicles. Members must keep in mind that “Due Regard for the Safety of Others” is of the utmost importance when driving left of center.

If a vehicle from another agency joins a chase initiated by the Patrol and authorized Patrol vehicles occupy the primary and secondary positions, the driver of the primary vehicle, secondary vehicle, or a Patrol supervisor shall request (via the communications center) for the allied agency vehicle to disengage from the

chase. The chase need not be terminated solely due to the allied agency's refusal to disengage from the chase.

Members are not authorized to take enforcement action or engage in extraordinary vehicle operations with non-sworn passengers. Members shall not initiate or engage in a chase with non-sworn passengers in the vehicle. Exceptions to this policy require the authority of a Section Director/Troop Commander or higher authority.

Under extreme circumstances, members may initiate a traffic enforcement response in a Patrol vehicle excluded in the authorized patrol vehicle definition when the risk of injury or death to others is imminent if the suspect or violator is not apprehended. This section in no way permits members to utilize these vehicles in a chase or emergency response. Members shall not under any circumstances engage in a chase in a non-Highway Patrol Vehicle.

Chases Involving Other Agencies or Jurisdictions

- Members shall not become involved in a chase initiated by another agency except when formally requested by that agency through the communications center. Members will assume the secondary position. If two or more allied agency vehicles are chasing, members will not become involved nor remain in the chase unless special circumstances dictate otherwise, and **supervisory approval** is obtained.

- Members shall terminate a chase whenever an initiating allied agency discontinues the chase. This provision need not apply when a chasing officer of the allied agency discontinues due to mechanical or communication failure or when a supervisor authorizes the continuation of the chase **and** the violator has committed a violent felony other than felony speeding to elude and the immediate apprehension of the violator is necessary. However, the mere fact that an allied agency continues a chase does not require a member to remain in the chase if he/she feels the risks outweigh the need to continue.

- **Upon conclusion of a chase, regardless if the chase involves allied agency personnel or only Patrol personnel, members have a duty to prevent and stop illegal and inappropriate uses of force by other law enforcement officers.** Every employee has an obligation to ensure compliance, by themselves and others, with Department directives and regulations, as well as all applicable laws, regarding use of force. Any member who observes a law enforcement officer about to use force that is illegal, excessive, or otherwise inconsistent with this directive must, absent extraordinary circumstances, take reasonable steps he/she can to interrupt the flow of events before that law enforcement officer does something that makes any official action necessary. Members can serve each other and the public by simply saying or doing the right thing to prevent a fellow law enforcement officer from resorting to force illegally or inappropriately. Similarly, any member who observes a law enforcement officer using force that is illegal, excessive, or otherwise inconsistent with this directive must,

absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events and stop the use of force. Members who have the knowledge or observe an excessive use or application of force shall have the responsibility and duty to intervene by stopping, identifying and ultimately reporting same. Members are to follow implemented training principles and standards regarding the Felony / High-Risk approach.

Chases Involving Highway Patrol Motorcycles

- Members operating Patrol motorcycles shall be governed by procedures outlined in this directive and Directive B.03 (Forced Vehicle Stops).

- Members operating Patrol motorcycles are governed by Directive N.05 (Motor Unit).

- Members operating Patrol motorcycles shall not participate in chases when another agency is participating unless authorized by a supervisor.

- The necessity of an immediate apprehension must outweigh the level of danger created by the chase.

- The motorcycle operator initiating the chase will assume the primary position. He/she shall notify the communications center and request an authorized marked or unmarked Patrol vehicle to respond. When another authorized Patrol vehicle (other than a motorcycle) assumes the primary position, the motorcycle operator shall disengage from the chase and notify the communications center. Members operating Patrol motorcycles shall not assume a secondary position unless authorized by a supervisor. In the instance when a Patrol motorcycle operator is in an authorized secondary position, he/she shall disengage from the chase and notify the communications center upon the arrival of another authorized Patrol vehicle (other than another motorcycle).

Chases Involving Patrol Aircraft

- When available, the aircraft will assist in establishing a perimeter and maintain observation until the subject(s) have been apprehended or the perimeter is secured.

- The aircraft will fly at a safe altitude determined by the pilot and maintain a sufficient distance to avoid alerting the subject(s).

- Use of the searchlight or other visual aids will be at the discretion of the pilot.

- The aircraft may disengage from the chase at any time at the discretion of the pilot.

Chases into Adjoining State

- Members shall not chase a violator into any contiguous state (Georgia, Tennessee, Virginia, or South Carolina) without the approval of a Section Director/Troop Commander or higher authority, and no such authority shall be given unless the violator committed a felony in North Carolina and the likely harm from not apprehending the violator immediately warrants continuation of the chase.

- For purposes of this policy, the felony violation used to justify the chase may not be felony speeding to elude arrest.

- Members are authorized to arrest a violator in Georgia, Tennessee, Virginia, or South Carolina for a felony committed in North Carolina. Members who arrest a violator in Georgia, Tennessee, Virginia, or South Carolina must take the violator before a judicial official of the state where arrested and follow that state's procedures on completing custody. The arrestee may not be returned to North Carolina except by due process of law.

- In any case where an out of state officer chases a violator into North Carolina, the violator shall be taken before a North Carolina magistrate for processing. Under no circumstances, will the out of state officer be authorized to transport the violator back to the originating state without a court order.

Chases Involving Motorcycles

Members shall carefully weigh all risk factors associated with the pursuit of motorcycles including but not limited to the initial reason for the chase, the increased potential for excessive speeds and the maneuverability of motorcycles within traffic before initiating a pursuit. Absent exigent circumstances, members shall not engage in the chase of a motorcycle if there is a passenger on the motorcycle; nor should members continue the chase of a motorcycle if the motorcycle is weaving in and out of traffic at high speeds, lane splitting or driving on shoulders. If the suspect is taking such actions to gain distance from the member, the chase must be terminated.

Forced Vehicle Stops

- Utilization of a forced vehicle stop option must conform to the guidelines set forth in Directive B.03.

- When additional vehicles are authorized to enter the chase in order to execute a forced vehicle stop, members are permitted to utilize car-to-car communication to coordinate the maneuver. However, the driver of the primary vehicle or his/her designee shall keep the communications center apprised of the chase status.

- Members may pull up beside of a fleeing vehicle for the limited purpose of checking for children or innocent passengers prior to initiating a P.I.T. maneuver or attempting a rolling roadblock.

- Members assisting an allied agency as the secondary unit in a chase for the purpose of a rolling road block may assist with a rolling roadblock only when:

    - the primary allied agency unit passes the suspect vehicle and maintains a position in front of the suspect vehicle and;

    - the member has communication with all vehicles participating in the rolling roadblock.

    - If the rolling roadblock is unsuccessful, the member shall not become the primary unit and will assume the secondary position immediately.

Apprehension / Post Chase Responsibility

- The driver of the primary vehicle will have controlling responsibility at the scene of termination, unless relieved by a higher authority, and shall ensure that all appropriate arrests or charges are made.

- Members involved in chases shall not investigate violator collisions occurring during that chase.

- Members shall adhere to all established training recommendations and principles concerning the approach and completion of a high-risk approach technique. Members are encouraged to apply all officer safety guidelines within any interaction and to balance this safety recommendation all the while preserving life and property. After the scene is appropriately assessed and cautiously evaluated, a member's action to provide medical assistance may outweigh the need or requirement of executing a high-risk approach. In such instances, a member should commit effort toward personal officer safety first and proceed to suspect/victim to assess and potentially provide medical attention. Members may utilize the Contact / Cover technique.

- Members and/or other law enforcement officers have a sworn duty and obligation to protect members of the public. Consistent with this obligation, members should take a preventive approach, whenever possible, if observing behavior which suggests another member and/or other law enforcement officer is about to engage in unlawful or inappropriate behavior, as described more fully below.

  Members and/or other law enforcement officers have an ethical and legal duty to intervene when necessary to prevent or stop another officer from using a level of force that the member or officer knows, or should reasonably be expected to know, is excessive or unwarranted under the existing circumstances. Members shall also intervene in any case where the member

observes another law enforcement officer treating a member of the public in any manner that is inconsistent with law or policy (i.e. conducting an unlawful detention or making an unlawful arrest). This duty also extends when the North Carolina State Highway Patrol is called to assist, or is assisting, any other law enforcement agency.

- Failure to intervene, as required by this policy, may result in disciplinary action up to and including dismissal.

VII. COMMUNICATIONS

Traffic Enforcement Response

Members are not required to notify the communications center when they initiate a traffic enforcement response.

Chases

The chasing member shall immediately notify the communications center that a chase is underway. The member shall provide the communications center with the following information:

- Unit identification
- Location, speed, and direction of travel of the fleeing vehicle
- Description and license plate number, of the fleeing vehicle, if known
- Number and description of occupants in the fleeing vehicle, if known
- Reason for initiating the chase
- External physical conditions i.e. traffic, weather, etc.
- Whether additional units are involved or following the chase

The driver of the primary vehicle will direct the chase and relay all information to include updates as external conditions change to the communications center; however, he/she may direct the driver of the secondary vehicle to relay information via radio so he/she may concentrate on driving.

Whenever a Patrol aircraft is assisting with a chase the pilot shall be given radio priority to relay speed, direction of travel, potential hazards, and possible apprehension sites to Patrol members and supervisors.

Members shall immediately terminate a chase if the member is unable to communicate with a Patrol communications center.

Upon apprehension of the suspect/violator vehicle, the driver of the primary vehicle will immediately notify the communications center.

Communications centers and Telecommunicators shall follow chase procedures as outlined in TC-09D: Major Incidents and Special Considerations of the Telecommunications Manual to include notifying the appropriate supervisor and providing updates during the chase.

VIII. SUPERVISION

In addition to the other provisions set forth in this directive, supervisors shall also be governed by the following criteria:

Emergency Response

When appropriate, supervisors shall intervene and designate vehicles to be involved in an emergency response and may terminate such a response at any time.

Chases

An immediate or designated supervisor of a member involved in a chase will supervise the progress of the chase, consider the external physical conditions and other pertinent facts and have the authority to terminate the chase at any time. Additionally, they may designate the primary and secondary vehicles and may authorize additional vehicles if circumstances require. Supervisors must govern the execution of forced vehicle stops in accordance with Directive B.03 (Forced Vehicle Stops).

A supervisor who has been notified of and approves the continuation of a chase when the prima facia rule of evidence applies, or other chase requiring supervisor authorization must submit a written memorandum (addressed to the next level supervisor) justifying the continuation of the chase. The memorandum will be sent as an attached document with the Post Chase Report through BlueTeam. A supervisor who authorizes the continuation of a chase shall not be part of the review process in BlueTeam.

When a Patrol aircraft assists with a chase, the supervisor may direct the primary unit and/or the secondary unit to continue or terminate the chase. This decision shall be in accordance with factors listed in Section V (Chases) of this directive. The supervisor in charge shall notify the pilot to continue observation of the fleeing vehicle or abandon further efforts. The decision to terminate the aircraft's assistance is the responsibility of the concerned supervisor or higher authority and will be dictated by the circumstances on a case-by-case basis.

Permission to chase into Georgia, Tennessee, Virginia, or South Carolina requires the approval of a Section Director/Troop Commander or higher authority and no such authority shall be given unless the violator committed a felony in

North Carolina and the likely harm from not apprehending the violator immediately warrants continuation of the chase. For purposes of this policy, the felony violation used to justify the chase may not be felony speeding to elude arrest.

When feasible, a supervisor shall respond to the location where a vehicle has stopped following a pursuit. Collisions occurring during chases involving serious personal injury, fatalities, or third parties shall be investigated by a supervisor.

IX. POST CHASE REPORT

The appropriate first-level supervisor shall submit form HP-351 (Supervisor Notification of Member Involved Incident (24 Hours)) via e-mail within twenty-four (24) hours of any chase to include a TDD deployment according to the HP-351 instructions. The appropriate first-level supervisor shall e-mail a copy of the HP-351 "To:" the appropriate Unit/Troop Headquarters and "CC:" the Post Chase Board Liaison for informational and tracking purposes.

Following a member's involvement in a chase, a Post Chase Report shall be completed and submitted via BlueTeam to the Post Chase Board Liaison. Only one report should be submitted per chase and routed via the chain-of-command. In all felony cases, a copy of the Post Chase Report shall be provided to the District Attorney pursuant to the requirements of NC Gen. Stat. § 15A-903.

In the event there are two or more members involved in the same chase, the member that initiates the chase will be responsible for completing the Post Chase Report in BlueTeam.

When a chase involves multiple troops, the Director of Field Operations or his/her designee will designate which troop will be responsible for completing the Post Chase Report. During multiple district chases, troop headquarters will coordinate the completion of the Post Chase Report. Collisions involving members during multiple troop or district chases will be investigated by supervisors in the district of occurrence.

IX. REVIEW AND CRITIQUE OF CHASE

Review by Supervisor

- The member's supervisor shall review the Post Chase Report for completeness with the member prior to submission. The supervisor shall review any accompanying video(s) or audio and this directive as it applies to the incident with the member and make an initial determination about whether the member followed Patrol policy and established training practices. A supervisor that is involved in the incident or approves the continuation of a chase shall not conduct the review.

- The following dissemination process shall be followed when submitting a Post Chase Report:

- **Step 1:** Trooper completes and submits report for approval, to supervisor via BlueTeam. Post Chase Report due within five (5) calendar days of the incident to the appropriate first-level supervisor.

- **Step 2:** The appropriate first-level supervisor reviews report including video(s) or audio and relevant documentation in BlueTeam for accuracy and clarification. The appropriate first-level supervisor shall make comments (Refer to the Post Chase BlueTeam Instructions) in the "Comment" section that a video review and policy review was conducted and indicate the date the review was conducted during the approval process. If issues are found:

  - Communicate with the Trooper for clarification

  - Reject the report in BlueTeam

  - Review resubmission from Trooper

  - Approve and forward to First Sergeant or appropriate second-level supervisor for review and approval via BlueTeam

- **Step 3:** First Sergeant or appropriate second-level supervisor reviews the report including video(s) or audio and relevant documentation to check for accuracy and policy violations or training needs. The First Sergeant or appropriate second-level supervisor shall make comments (Refer to the Post Chase BlueTeam Instructions) in the "Comment" section that a video review was conducted. First Sergeant or appropriate second-level supervisor forwards the approved, completed report, with attachments, to the Unit/Troop Supervisor or Section Director for their review, no later than thirty (30) calendar days of the incident.

- **Step 4:** The Unit/Troop Supervisor or Section Director (third-level review) will only have forty-five (45) calendar days from the date of the incident to review the report including video(s) or audio and relevant documentation to verify for accuracy, clarification, and discrepancies and to approve the incident. The Unit/Troop Supervisor or Section Director shall make comments (Refer to the Post Chase BlueTeam Instructions) in the "Comment" section that a video review was conducted. The Unit/Troop Supervisor or Section Director will also identify any policy violations or training needs. For chase incidents that involve a fatality or serious personal injury, the Unit Commander of Internal Affairs will be notified and determine if policy violations may exist and classify those potential violations as deemed appropriate. (Refer to Policy Directive H.02).

  The appropriate third-level supervisor will immediately forward the report via BlueTeam, "TO" the Chairman of the Post Chase Review Board. The appropriate third-level supervisor shall also carbon copy (cc) the Post Chase Review Board and the District First Sergeant. Groups for the

Chairman of the Post Chase Review Board and the Post Chase Review Board have been created in BlueTeam.

- NOTE: First Sergeants or appropriate second-level supervisor shall expedite a completed copy of the report as close to incident date as possible in order for the Unit/Troop Supervisor or Section Director to verify for accuracy, clarifications and/or discrepancy in order to comply with the forty-five (45) calendar day dissemination period.

- If a First Sergeant is involved in the chase or continuation of a chase and is required to submit a statement, then the Troop Lieutenant will take over the responsibilities associated with step 2 and 3 and the Troop Commander will take over the responsibilities associated with step 4.

- The member shall print the approved report for their record. In the event a video **or audio** of the occurrence exists, the supervisor will label the video file as the sequence number to include the members rank, first and middle initial with last name (e.g. 170725001CA Trp J K Smith). Upload the video(s) or audio file within thirty (30) calendar days of the incident at the following address:

    - G:/BlueTeam Videos/Respective Troop/District

- The appropriate District First Sergeant will manage the authorized Troop/District video(s) or audio file on the G Drive and delete the uploaded file four (4) months after the occurrence date of the incident.

- Supervisors shall indicate the video has been reviewed in the "Comment" section of the BlueTeam submission process. If no video or audio exists, then an explanation shall be documented in the "Comment" section of the BlueTeam submission process. Attach a copy of the CL-29 if applicable by the appropriate level supervisor.

- Should the initial BlueTeam report be sent to the Post Chase Board later than the forty-five (45) calendar day deadline, but before sixty (60) calendar days, then a detailed explanation describing the reason the report is late in the form of an email shall be sent to the Chairman of the Post Chase Board.

- Should the initial BlueTeam report be sent to the Post Chase Board later than sixty (60) calendar days, then documentation in the form of NCVIP and HR562 (Documented Counseling Session) detailing the reason the report is late and that this discrepancy has been documented shall be emailed to the Chairman of the Post Chase Board by the Unit/Troop Supervisor or Section Director. **These unrelated documents to the Chase shall not be attached to the BlueTeam Report.**

- **Step 5:** The Post Chase Review Board reviews the incident including videos or audio and relevant documentation and discusses discrepancies and/or needed remediation. The Chairman of the Post Chase Review Board or designee shall reject a report in BlueTeam for discrepancies and provide instructions in the designated space. The rejected report will be forwarded via BlueTeam to the effected Unit/Troop Commander/Section Director requesting revision or remediation. The Chairman of the Post Chase Review Board or designee shall route approved reports "To" the BlueTeam Administrator.

  - In cases involving an SBI investigation or Internal Affairs investigation, the Post Chase Board will review the BlueTeam report for accuracy and training purposes only.

- **Step 6:** When a Unit/Troop Commander/Section Director is forwarded a rejected report, he/she shall in turn forward it to the appropriate district for corrections. The Unit/Troop Commander/Section Director shall ensure the corrected report is re-submitted to the Post Chase Review Board via the chain of command within fifteen (15) calendar days.

XI. REVIEW BY BOARD

All Post Chase Reports will be reviewed and analyzed monthly or as otherwise scheduled by the Post Chase Review Board. The Board will review any video(s) and relevant documentation associated with the event. The Board may request additional information and clarification on any Post Chase Report. The Commander's Office or designee (for the purpose of this policy, the Director of Professional Standards shall serve as the designee) will appoint the chairperson and members of the Board from the following sections.

The Director of Professional Standards shall appoint Board members for not more than two (2) years from the following sections, excluding the one member holding the rank of Captain, who will serve as the chairperson:

- Captain (Serving as Chairperson)
- Troop Lieutenant – Co-chair
- District First Sergeant
- District Sergeant
- Internal Affairs – One member
- Training Academy – A member of the Driver's Training Unit (Post Chase Board Liaison)
- Two (2) District Troopers

- Legal Section – One staff attorney

- The Post Chase Review Board is empowered to conduct an administrative review and inquiry into the circumstances of an incident. The objective of the board is to identify trends within the agency's chase procedures, policies and potential training opportunities. Within this review process, the board may recognize policy violations and will refer the reported incident to the appropriate board member from Internal Affairs.

  The board does not have the authority to recommend discipline.

  Any analysis regarding the involved employee's actions conducted by the board will be in accordance with the Highway Patrol's disciplinary procedures, the Personnel Complaints Policy, and any applicable state or federal law.

  The board shall make one of the following recommended findings:

  (a) The employee's actions were within agency policy and procedure and were consistent with training guidelines

  (b) The employee's actions were in violation of agency policy and procedure or established training practices and guidelines

- The Post Chase Review Board shall submit a monthly meeting summary report to the Commander's Office within ten (10) business day addressing the following:

  - Number of reports and videos reviewed

  - Breakdown of incidents within policy and laws

  - Breakdown of reports with training issues and number of reports referred to Internal Affairs

The Training Academy shall conduct a documented annual analysis of pursuit reports, to include a review of policy and reporting procedures, approved by the Commander's Office

XII. APPLICABLE LAWS / STATUTORY LAW

Speeding to Elude Arrest (NC Gen. Stat. § 20-141.5)

- Provides the element of misdemeanor speeding to elude.

- Outlines the aggravating factors which make speeding to elude a felony.

- Defines the "prima facie" law concerning registered owners of fleeing vehicles.

NC Gen. Stat. § 20-141.5(c)

Whenever evidence is presented in any court or administrative hearing of the fact that a vehicle was operated in violation of this section, it shall be prima facie evidence that the vehicle was operated by the person in whose name the vehicle was registered at the time of the violation, according to the Division's records. If the vehicle is rented, then proof of that rental shall be prima facie evidence that the vehicle was operated by the renter of the vehicle at the time of the violation.

Provides for the termination of a chase based on factors to be considered according to departmental policy

Speed Limit (NC Gen. Stat. § 20-145)

NC Gen. Stat. § 20-145 provides a limited and conditional exception to the speed limit law.

When Speed Limit Not Applicable (NC Gen. Stat. § 20-145)

The speed limitations set forth in this Article shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any violation. This exemption shall not, however, protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others.

Exceptions to the Right-of-Way Rule (NC Gen. Stat. § 20-156)

(b) The driver of a vehicle upon a highway shall yield the right-of-way to police vehicles when the operators of said vehicles are giving warning signal by appropriate light and by bell, siren, or exhaust whistle audible under normal conditions from a distance of not less than 1,000 feet. When appropriate warning signals are being given, as provided in this subsection, an emergency vehicle may proceed through an intersection or other place when the emergency vehicle is facing a stop sign, a yield sign, or a traffic light which is emitting a flashing strobe signal or a beam of steady or flashing red light. This provision shall not operate to relieve the driver of a police vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle from the consequence of any arbitrary exercise of such right-of-way.

XIII. MANDATORY PROVISIONS

Seat Belts. Members shall have seat belt and shoulder harnesses properly fastened around them while operating a Patrol vehicle so equipped.

Air Bags. Members shall not attempt to render air bags inoperable in a Patrol vehicle so equipped.

Forced Vehicle Stops

Applicable to: Members

Directive B.03
Revised 11/13/2020
Effective 1/1/2015

I. POLICY

This policy establishes guidelines related to forced vehicle stops with regard for the safety of motorists and the members executing the stop. Members shall execute all vehicle stops only in strict conformance with the United States Constitution, the laws and Constitution of North Carolina, and this policy.

II. STANDARDS FOR ALL FORCED VEHICLE STOPS

Prior to attempting any forced vehicle stop members shall seek prior authorization from a district non-commissioned officer or higher authority. However, if the situation mandates immediate action and authorization is impractical or not possible under the circumstances the member(s) are authorized to establish a forced vehicle stop unless Patrol policy specifically prohibits such action being attempted. NOTE: See Section III (Stationary Roadblock).

Members must maintain radio contact with the communications center.

Use of force and arrests made shall be in accordance with constitutional and statutory law and Patrol policy.

While operating a Highway Patrol motorcycle, members shall not engage in forced vehicle stops.

III. STATIONARY ROADBLOCK

Stationary roadblocks shall be marked by signs, activated emergency lights, marked Patrol vehicles parked in conspicuous locations, or other ways to ensure motorists are aware that an authorized roadblock is being conducted. Blue lights on at least one Patrol vehicle shall be operated at all times.

A stationary roadblock should be used only as a last resort when attempting to apprehend dangerous fleeing criminals. Before such a roadblock is authorized, a troop commissioned officer or higher authority must determine that such action is necessary because it will likely result in the apprehension of a suspect who poses a danger to life and property. This officer must be satisfied that a less obstructive means would not be appropriate.

The location, equipment, time, and operation of the roadblock must be in accordance with Directive K.04 (Checking Stations).

A stationary roadblock is appropriate only when it reasonably appears that it can be established without creating undue risk of harm to innocent motorists.

When the suspect sought to be apprehended by the roadblock has a hostage in the vehicle or the member reasonably believes a hostage is in the vehicle, the priority shifts from apprehending the suspect to preserving the life of the hostage. The member is governed by Section 09 (Crisis Situations) of the *Unusual Occurrence Manual*.

IV. ROLLING ROADBLOCK

A rolling roadblock is appropriate only when it reasonably appears there is imminent danger to life and property if the vehicle is not stopped at the earliest possible time.

When a rolling roadblock is established, members shall exercise due regard for the safety of others. The roadblock must be aborted if an unreasonable risk of injury is apparent.

Members operating all vehicles involved in a rolling roadblock shall at all times use blue lights and sirens.

Unmarked Patrol vehicles should only be utilized when marked Patrol vehicles are not available.

No passing maneuvers shall be attempted if the pursuing member can be assisted by another member of the Patrol who is already in position to assist and is in front of the violator vehicle. Should the circumstances dictate, it is acceptable for members to pass the violator vehicle in order to establish the rolling road block. This passing maneuver should be performed in a safe location and on a portion of the roadway that would allow the passing Patrol vehicle to obtain enough speed so as to quickly overtake and pass the violator.

A rolling road block **should not** be executed if the suspect vehicle has attempted to strike or ram a Patrol vehicle.

Members shall not attempt a rolling roadblock on large commercial vehicles or any vehicle with fewer than 4 wheels.

Engaging in rolling roadblocks with other law enforcement agencies is permitted but only if the member has direct car to car communication with all vehicles participating in the rolling roadblock.

If members are involved in a pursuit in which they have knowledge that the violator is in fact armed or has committed previously reported assaults that resulted in death or serious injury to others, passing maneuvers shall not be attempted.

V. TIRE DEFLATION DEVICES

The use of Tire Deflation Devices (TDD) shall be governed by sound professional judgment, procedures outlined in this policy, and in accordance with procedures established by the Highway Patrol during training for these devices.

Prior to utilizing TDD, members shall have completed training on the use of these devices.

All of the following criteria shall be met prior to the use of TDD:

- There is reasonable cause to believe the suspect has committed an offense justifying his/her arrest.
- The member attempting to apprehend the suspect has given notice of command to stop the suspect by blue lights and siren.
- The suspect ignores the efforts and warnings obvious and visible to a reasonable person in the suspect's position.
- Members utilizing TDD shall consider the following prior to utilization of TDD:
    - An effective and safe location for the placement of TDD
    - Deployment locations should have reasonably good sight distances to enable the member deploying the devices to observe the chase and other traffic as it approaches.
- Deployment shall not occur on:
    - Curves
    - Bridges
    - Locations where reasonable judgment under the circumstances would dictate avoidance
- The member deploying TDD should choose a location with natural barriers such as roadway overpasses, guardrails, or shrubbery. These barriers will conceal the member from the suspect's view and allow deployment of the devices in a relative position of safety.
- Traffic, construction, special events, and/or activities may create situations where the use of the device would be inappropriate.
- Position and vulnerability of the public, private property, and other assisting units and equipment shall be considered.

TDD shall not be deployed to stop any vehicle with fewer than 4 wheels.

Chasing vehicles shall coordinate with the member(s) and/or agencies deploying the devices or assisting in the chase in order to ensure the safe and effective use of the devices.

- When the decision is made to deploy the TDD, chasing units shall notify the member deploying the device as far in advance as possible of the necessity of their use.

- The member deploying the devices shall be in a position at a predetermined location in sufficient time for proper deployment. All chasing units shall be notified when the device is in place. If direct communication with outside agencies is available, it shall be utilized by the member deploying the TDD. The member deploying the device shall also notify the appropriate SHP communications center and any other involved Patrol members to advise of the deployment.

- The TDD shall be deployed in accordance with the manufacturer's recommendations and Highway Patrol training guidelines.

- After deploying the TDD, all persons at the scene should immediately seek protection.

- Once a TDD has been deployed, chasing members shall increase their following distance in order to avoid striking the devices.

- The member(s) deploying the TDD shall be responsible for securing the device immediately after use. This includes searching the immediate area where the devices were used and collecting any spikes or points, which may have become detached.

In the event a third party strikes the deployed TDD, the supervisor or designee shall provide the third party with the Property Damage Claim Form to seek reimbursement for any damages caused by the TDD.

The following documents should be sent to the Commanders Office for review:

1. The Property Damage Claim Form
2. Repair receipts for the damaged tire(s) or any other resultant damage
3. Photos of the damaged tire and/or vehicle if available
4. Members statement.

The Commander’s officer shall have the sole authority to accept liability for third party property damage for review by the Commander. No member may expend Patrol funds or otherwise accept liability for third party property damage without the express authorization of the Commander’s Office.

If a Patrol vehicle is the primary vehicle in a chase involving another agency and a decision is made to deploy TDD, the local agency shall be informed of the deployment whenever practicable.

TDD may be used to prevent stationary vehicles from being moved in an attempt to flee a scene.

Members engaged in chases involving TDD shall indicate such use on the Post Chase Report.

VI. PRECISION IMMOBILIZATION TECHNIQUE (P.I.T.)

The use of the Precision Immobilization Technique (P.I.T.) shall be governed by sound professional judgment, procedures outlined in this policy, and in accordance with procedures established by the Highway Patrol during training for this technique

Members implementing the Precision Immobilization Technique (P.I.T.) shall have received appropriate training prior to utilizing the P.I.T. maneuver.

All of the following criteria shall be met prior to the use of the P.I.T.:

- Only members who are operating authorized Patrol vehicles, other than a motorcycle, shall be authorized to initiate the P.I.T.

- The P.I.T. **shall not** be attempted unless the member has a reasonable belief that there are no children in the vehicle.

- The P.I.T. shall not be attempted unless the member has a reasonable belief that there are no adult passengers in the vehicle. An exception to this restriction shall apply if the member can articulate that the passengers were involved in criminal behavior justifying their arrest.

- The use of the P.I.T. shall be governed by the same external physical factors as for other forced vehicle stops, i.e. traffic density, width of roadway, topography, time of day, location, speed and shall only be used when the member has determined the benefit of immediate apprehension outweighs the decision to discontinue the chase.

- The P.I.T. shall not be attempted at a speed greater than 55 mph unless one of the following criteria exists:

    - The member has probable cause to believe the occupants of the vehicle have committed a violent felony; or
    - Other extenuating circumstances exist that warrant the use of deadly force.

If a tire deflation device (TDD) is deployed, or another tire deflation technique is used, and one or more tires are deflated or flattened, the P.I.T. shall **not** be attempted on the violator vehicle if the P.I.T. maneuver is executed on the side away from the deflated or flattened tire. (Example: Violator vehicle has a deflated or flattened tire(s) on the right side of that vehicle. The P.I.T. is **not** authorized if the maneuver is applied on the left side of the violator vehicle). This restriction shall not apply in cases where the violator's behavior has risen to a level which requires the fleeing vehicle be stopped immediately due to the exceptionally reckless driving or other actions that are placing the public in immediate danger of loss of life or serious bodily injury.

The P.I.T. is authorized if the maneuver is applied on the same side as the deflated or flattened tire(s) on the violator vehicle.

Members shall not attempt to P.I.T. the following vehicles:

- Large commercial vehicles
- 2 or 3 wheel vehicles
- Convertibles
- Recreational ATVs
- Any vehicle with a high center of gravity which would be an obvious rollover risk

Members shall consider the following vehicle factors that would affect the safety of using the P.I.T.

- Pickup truck with high center of gravity and narrow wheel base
- Small car with narrow wheel base and small tires
- Van with high center of gravity and narrow wheel base

If the first attempt of the P.I.T. is unsuccessful, subsequent attempts may be attempted only after the situation has been re-evaluated by the participating member.

Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injuries or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

Members engaged in chases involving the P.I.T., shall indicate its use on the Post Chase Report, and if any damage occurs as a result of the P.I.T., a supervisor shall complete a DMV-349, clearly indicating across the top "For Internal Use Only" (in red ink). In addition, a HP-351 shall be completed whenever damage occurs and forwarded via email to the appropriate Unit/Troop Headquarters and CC: both the Post Chase Board Liaison and Patrol Vehicle Collision/Incident Committee distribution lists. If the P.I.T. results in injury to a person, **other than the operator of the vehicle, and/or damage to a third-party vehicle or other property is damaged**, a supervisor shall complete a

reportable DMV-349, HP-721A, the HP-351, and obtain all other applicable documents. The supervisor shall complete a Vehicle Accident/Incident Report in BlueTeam. All supporting documentation shall be attached to the Accident/Incident Report in BlueTeam and forwarded via chain-of-command to the Chairman and the Patrol Vehicle Collision/Incident Committee. All original documentation must be maintained based on the filing guide at the originating District/Section.

VII. HIGH RISK VEHICLE STOP

As described within Policy Directive B.02, upon the conclusion of a chase, members shall adhere to all established training recommendations and principles concerning the approach and completion of a high-risk approach technique. Members are encouraged to apply all officer safety guidelines within any interaction and to balance this safety recommendation all the while preserving life and property. After the scene is appropriately assessed and cautiously evaluated, a member's action to provide medical assistance may outweigh the need or requirement of executing a high-risk approach. In such instances, a member should commit effort toward personal officer safety first and proceed to suspect/victim to assess and potentially provide medical attention. Members may utilize the Contact / Cover technique.

Members and/or other law enforcement officers have a sworn duty and obligation to protect members of the public. Consistent with this obligation, members should take a preventive approach, whenever possible, if observing behavior which suggests another member and/or law enforcement officer is about to engage in unlawful or inappropriate behavior, as described more fully below.

Members and/or other law enforcement officers have an ethical and legal duty to intervene when necessary to prevent or stop another law enforcement officer from using a level of force that the member or officer knows, or should reasonably be expected to know, is excessive or unwarranted under the existing circumstances. Members shall also intervene in any case where the member observes another law enforcement officer treating a member of the public in any manner that is inconsistent with law or policy (i.e. conducting an unlawful detention or making an unlawful arrest). This duty also extends when the North Carolina State Highway Patrol is called to assist, or is assisting, any other law enforcement agency.

Failure to intervene, as required by this policy, may result in disciplinary action up to and including dismissal.

VIII. RECORD OF REIMBURSEMENT

District Responsibility

The District First Sergeant shall seek initial reimbursement for all Forced Vehicle Stops and P.I.T.'s when damage has occurred to a Patrol Vehicle within their respective districts.

- Document each attempt for reimbursement to the responsible party in detail on the CL-38 (Patrol Vehicle Damage Reimbursement). He/She shall diligently seek reimbursement at least once every (30) thirty days for a period of (90) ninety days from the date of the incident. If reimbursement has not been obtained in ninety (90) days, the CL-38 shall immediately be forwarded to the Unit Commander of Logistics or his/her designee.

- Contact the responsible insurance company, by telephone, and request reimbursement for damage to be paid directly to the State of N.C. Insurance settlement checks shall be made payable to the North Carolina Department of Public Safety. The reimbursement should include the amount listed on the CL-36 (Estimate of Vehicle Repair Cost) and **any additional equipment damage**. The CL-36, DMV 349, and additional equipment damaged (if applicable) should be faxed to the insurance company at the time of the request. If the insurance company agrees to make reimbursement, the First Sergeant shall instruct the insurance company to forward the settlement check to the district office. The settlement check and CL-38 shall then be forwarded directly to the Unit Commander of Logistics or designee.

- Private Sector estimate of damages may exceed the amount listed on the CL-36. In these cases, the District First Sergeant should accept either payment and forward to the Unit Commander of Logistics or designee.

- At **no time** will the First Sergeant enter into negotiations for settlement of damages. If an insurance company requests a negotiated settlement, the First Sergeant will document this information on the CL-38 and forward it immediately to the Unit Commander of Logistics or designee.

- At no time will the First Sergeant enter into any agreement related to personal injury.

- If at any time during the ninety (90) day period the insurance company denies responsibility or refuses to make reimbursement for total damages, the First Sergeant shall document this information in detail on the CL-38 and immediately forward the CL-38 to the Unit Commander of Logistics or designee.

- The District First Sergeant shall also file a CL-38A (Reimbursement of Damage to State Property) or CL-38B (Reimbursement of Damage to State Property Memo Patrol Equipment Due to P.I.T Maneuver) in the Judiciary

District of occurrence. It is the responsibility of the District First Sergeant to track reimbursement through the courts until the case is closed and/or resolved by the insurance company or for three (3) years and (1) month from the date of offense. The District First Sergeant will then document this information on the CL-38 and forward it to the Unit Commander of Logistics or their designee. If the insurance company makes a settlement payment for the damages to a patrol vehicle, the District First Sergeant shall contact the District Attorney to discuss suitable resolutions to the court restitution proceedings.

- If the CL-36 (Estimate of Vehicle Repair Cost) indicates the patrol vehicle is a "Total Loss" the District First Sergeant will not be required to attempt reimbursement from the insurance company. He/She shall document this on the CL-38 and immediately forward the CL-38 to the Unit Commander of Logistics or designee. The filing for court proceedings will still have to be completed by the District First Sergeant from the mentioned proceedings above and indicate on the CL-38 that the proceedings are filed in the Judicial System. If the insurance company makes a settlement payment for the damages to the patrol vehicle, then Unit Commander of Logistics or designee will make contact with the District First Sergeant to inform the District Attorney of this settlement, and this information shall be discussed in order to make suitable resolutions to the court restitution proceedings.

- A copy of all CL-38s must be maintained according to the District Filing Guide.

Logistics Responsibility

The Unit Commander of Logistics or designee shall be responsible for seeking reimbursement in all cases where reimbursement was not, or could not, be achieved at the district level.

Upon receipt of a CL-38 indicating reimbursement was denied, the Unit Commander of Logistics or his/her designee shall contact the responsible insurance company, by telephone, and request reimbursement. He/She shall also, regardless of whether reimbursement is agreed upon, forward a written notification letter to the insurance company. The notification letter will advise the insurance company that they have (30) thirty days to make full reimbursement and if reimbursement is not received, all documents related to the reimbursement claim will be forwarded to the Highway Patrol's Legal Section for appropriate action.

The Highway Patrol's Legal Section, in consultation with the Commander's Office, will determine the appropriate response to all unresolved pending Patrol vehicle reimbursements.

The Unit Commander of Logistics shall maintain records pertaining to monetary damages to Patrol property.

Treatment of Persons In and Out of Custody

Directive B.04

Applicable to: Members

Revised 11/13/2020
Effective 10/1/1999

I. POLICY

This policy establishes guidelines for personnel with regards to treatment of persons in custody. It shall be the policy of the Patrol to take the precautions necessary while transporting prisoners to protect the lives and safety of members, the public, and the person taken into custody. All persons under arrest or in custody shall be searched and handcuffed prior to transportation.

II. TREATMENT OF PERSONS IN CUSTODY

Members shall not mistreat persons who are in their custody. Members shall handle such persons in accordance with established Patrol procedures and applicable law.

III. MEMBERS MUST PROMPTLY PROVIDE OR REQUEST MEDICAL AID. MEMBERS HAVE A DUTY TO PROVIDE MEDICAL CARE.

Members shall always treat people with dignity and respect. Whenever a person is injured, complains of an injury, or requests medical attention, as soon as it is safe and practical, officers shall request medical aid (such as by contacting emergency medical services) and provide appropriate medical care consistent with the officer's training (such as by providing first aid and/or transportation to an emergency medical facility).

IV. VEHICLE STOPS

Vehicle stops may be based on any of the following:

- Probable cause to believe that a crime or traffic violation has occurred or is about to occur
- Reasonable articulable suspicion that a crime or traffic violation has occurred or is about to occur
- In connection with a lawfully conducted checking station
- In connection with enforcement of state and federal laws and regulations at any lawfully operated weight station.
- In connection with enforcement of federal laws and regulations by members certified to complete the North American Standard (CVSA) inspection.

V. FOOT PURSUIT (JUMP AND RUN)

If a suspect jumps and runs the escape must be reported immediately to the appropriate Communications Center. The reporting member shall give a physical and clothing description of the suspect, the location of the jump and run, any weapon information, and the last known method and direction of travel. Communications personnel shall promptly dispatch information concerning the escape to other members and affected law enforcement agencies (i.e. Sheriff's Department, Police Department, or the Division of Adult Correction).

Officer safety is paramount in these circumstances. The member may not pursue the suspect on foot prior to contacting the appropriate Communications Center and providing the required information and requesting back-up.

If the escapee is not apprehended, the affected member may have the violator's vehicle towed and stored only when authorized by law and patrol policy.

VI. DETENTION

Motorists stopped for investigation of routine criminal or traffic violations may be detained for a reasonable period of time sufficient to conduct those duties normally associated with traffic stop investigations. Such investigations include, but are not limited to; checking the status of the driver's license, vehicle registration, vehicle identification number (VIN), appropriate motor carrier documentation or other pertinent information, completing any related paperwork, and use of a canine unit to conduct a vehicle sniff for controlled substances or other contraband.

Members should not conduct violator interviews in the patrol car unless extenuating circumstances exists. Violator interviews shall be conducted with the violator seated in his/her own vehicle or in a safe location outside the patrol vehicle. Members should not check the status of a violator's license and registration while the violator is seated in the patrol vehicle unless the violator is properly handcuffed as described in Section X below. Exceptions may be made when investigating collisions or minor traffic violations during inclement weather or when the violator is elderly, frail, or has an obvious medical condition that necessitates an accommodation, or when engaged in criminal interdiction activities, as a member of the Patrol's Criminal Interdiction Unit, pursuant to Directive N.03.

If a member determines that, under the circumstances, it is necessary to handcuff a violator or vehicle occupant prior to determining whether an arrest is warranted, the member shall inform the violator or occupant that he/she is not under arrest and that he/she is being temporarily detained and handcuffed for his/her own safety and for the safety of the member. The violator or vehicle occupant shall be handcuffed with his/her hands behind his/her back as more fully described in Section X below.

VII. INTERROGATION

Members shall be thoroughly familiar with and comply with the provisions of SHP Directive I.04 as it relates to interrogation of suspects.

Violators are not normally considered to be "in custody" for Miranda purposes during an investigative stop. Accordingly, members are not normally required to give Miranda warnings prior to formally arresting a violator. If a violator is handcuffed for any reason, he/she should not be questioned or otherwise interrogated without first being given Miranda warnings; this includes a suspect who is handcuffed during detention for the safety of the member.

VIII. VEHICLE SEARCHES

Consent Searches

- Voluntary consent to search by the owner/operator of the vehicle confers authority to conduct such a search. Consent to a search must be voluntary and freely given rather than a mere submission to expressed or implied authority, duress, or coercion. Although consent to search need not, as a matter of law, be written, members shall pursuant to this policy, attempt to obtain written consent whenever practical. In those cases where an individual indicates a willingness to consent to a search of the vehicle but desires not to sign a Consent to Search (HP-52A), the member shall document the verbal consent on the HP-52A and proceed with the vehicle search. In all cases where a consent search is conducted, a copy of the HP-52A shall be furnished to the person consenting to the search. Once consent to search is obtained, members shall, as expeditiously as possible, either confirm or dispel their belief that controlled substances or other contraband are present in the vehicle. In no case shall any person or vehicle be detained for a period of time longer than is reasonably necessary under the existing circumstances. Whenever available, a Canine Team will be requested to assist in the search of the vehicle unless use of the Canine Team would delay rather than expedite the search. While conducting a vehicle search, members shall, at all times, treat the motorists in a courteous and considerate manner and provide for their comfort and safety. **Prior to conducting any vehicle search where there is a potential safety threat, or multiple occupants, the member shall contact the appropriate Communications Center and request the assistance of another member, or an officer from another law enforcement agency.**

Probable Cause Search

- Members may search a vehicle if he/she has probable cause to believe controlled substances, contraband or other evidence of criminal activity will be found in the location searched

Search Incident to Arrest

- If an occupant of the vehicle is arrested, members may search the passenger compartment of a vehicle incident to that arrest only under the following circumstances:

  - The arrestee is within reaching distance of the passenger compartment at the time of the search; or

  - It is reasonable to believe the vehicle contains evidence of the offense of arrest

- When these justifications are absent, a warrantless search of an arrestee's vehicle may not be conducted unless another exception to the warrant requirement applies. Other exceptions include consent, probable cause, or, when appropriate, inventory search.

Vehicle Frisk

- Members may frisk the passenger compartment of a vehicle for weapons with the consent of the driver or other person having lawful possession of the vehicle, or when the member has a reasonable and articulable suspicion to believe there may be dangerous weapon concealed in the passenger compartment of the vehicle.

IX. SEARCH OF PERSONS IN CUSTODY OR UNDER ARREST

Members may frisk or search persons in accordance with the U. S. Constitution, State law, and Highway Patrol policy. A canine shall never be utilized to conduct a sniff of a person for controlled substances or other contraband.

Persons who are detained may be frisked for weapons provided the member either obtains consent from the person to be frisked or has a reasonable and articulable suspicion to believe the person being frisked may be armed and dangerous. Consent to search a vehicle does not authorize a member to frisk the occupants of the vehicle.

Members may search detained persons with their consent or if the member has probable cause to believe contraband or other evidence will be found.

Members shall search all prisoners incident to arrest prior to transporting and take possession of all weapons and evidence. The only exception to this policy is when the member(s) and prisoner(s) safety is in jeopardy due to extenuating circumstances.

Members shall search any prisoner whose custody is turned over to them by another member or officer from another law enforcement agency.

Search of Prisoners of the Opposite Sex

- A member shall search a prisoner of the opposite sex only when an immediate search is necessary to ensure the safety of the prisoner, member, or others or to preserve evidence which otherwise might be destroyed. If a member of the same sex as the prisoner is not available, only a pat-down search will be conducted unless circumstances warrant an immediate, thorough search.

- A pat-down search may be delayed until the arrival of a second officer. If a second officer is not available and/or there is a safety issue, the pat-down search will not be delayed.

- Searches made under such conditions shall be made with all possible regard for decency and a witness should be present

Strip and Body Cavity Searches

- The use of strip and body cavity searches may, under certain conditions, be necessary to protect the safety of members, civilians, and other prisoners and to detect and secure evidence. Such searches shall be conducted only with proper justification and in accordance with the procedural guidelines for conducting such searches as set forth in this policy.

- Strip searches are defined as any search of an individual requiring the removal of **all clothing** to permit the visual inspection of skin surfaces including genital areas. Strip searches may be conducted only by Patrol personnel of the same sex as the person being searched and under conditions that provide privacy from all but those authorized to conduct the search.

- Before performing a strip search of transgender individuals, members will inform them of the right to express a preference for the sex of the member who will conduct the search. If the transgender individual has a preference, at least one member of the sex requested will conduct the search. If the transgender individual does not specify or is unable to provide a preference, at least one member of the same sex as the transgender individual's gender expression will conduct the search.

- Field strip searches of a suspect may be conducted only if there are exigent circumstances and the member has probable cause to believe that the life of a member or another may be at risk, or evidence will be lost if the strip search is not performed. If a field strip search is conducted, it must be done discreetly and out of the view of the public. All **strip** searches shall be documented as follows:

    - If evidence is found as a result of a **strip** search, it shall be documented on a Seized Property Report (HP-52)

- If no evidence is found as a result of a **strip** search, the member shall write a memorandum to the First Sergeant documenting the strip search. This memorandum shall be retained in the First Sergeant's office for one (1) year for record keeping purposes only.

- If a member believes a strip search is necessary to locate contraband and the person under arrest will be committed to a jail, the member may choose to inform the jail personnel of potential contraband and allow them to perform the strip search as part of jail procedures

- Body cavity searches are defined as any search involving not only visual inspection of skin surfaces, but also the internal physical examination of body cavities, such as the rectal or vaginal cavity

- Should visual examination of a suspect during a strip search and/or other information lead a member to have probable cause to believe that a suspect is concealing a weapon, evidence, or contraband within a body cavity, the following procedures shall be followed:

  - The member shall consult with his/her immediate supervisor to determine whether probable cause exists to arrest the subject and seek a search warrant for a body cavity search. A subject can consent to a body cavity search by medical personnel.

  - A body cavity search shall be performed pursuant to a search warrant or consent by a physician or other medically trained personnel at the physician's direction. Only a member of the same sex as the person being searched shall be present when the search is conducted.

  - Body cavity searches shall be performed with due recognition of privacy and hygienic concerns.

  - The authorized medical personnel conducting the search shall furnish a copy of his/her report to the member serving the search warrant

X. PROPERTY OF PRISONERS

Members shall take all reasonable measures to protect the personal property in the possession of prisoners at the time of arrest or detention.

When a member stores or takes possession of a vehicle containing a domesticated animal or arrests an individual that has a domesticated animal in his/her possession, the member shall make reasonable efforts to ensure the safety and wellbeing of the animal. Reasonable efforts may include contacting the animal's owner or an immediate family member of the owner. If these efforts fail, an animal shelter or an animal control officer should be contacted to remove the animal.

XI. SECURITY AND TRANSPORTATION OF PRISONERS

Positional Asphyxiation

- Positional asphyxiation may occur when the position of the body interferes with respiration. The deleterious positional effect may result from either interference with the muscular or mechanical component of respiration or both. Medical evidence has shown in all cases of positional asphyxia that one or more contributory factors provide an explanation for the inability of the victim to correct the injurious and potentially lethal position; for example, alcohol/drug intoxication, concussive head injury, entrapment, restraint or physical disability.

- An arrestee who engages in strenuous physical activity while intoxicated or under the influence of drugs and is then placed facedown for any reason will possibly suffer **death**. The facedown position prevents adequate breathing because the abdomen chest walls and diaphragm muscles are hyperextended or otherwise prevented from functioning normally due to the arrestee's prone position. The combination of these factors can lead to a fatal inability of the arrestee to breathe.

- Members shall not transport anyone in a facedown prone or facedown bound (hog-tied) position. Members experiencing an arrestee who may be uncontrollable requiring them to be restrained and transported shall ensure the person is properly seated. If the person transported must be restrained by being bound or strapped down with plastic ties, it is the member's responsibility to ensure the person is not placed in a facedown position.

- **Persons under a member's control should be positioned in a way so their breathing is not obstructed.**

  After gaining control and handcuffing procedures are established, members should position the person in a manner to allow the person to breathe unobstructed. This means that members should not sit, kneel, or stand on a person's chest or back, and whenever feasible should not force the person to lie on his or her stomach while restrained or handcuffed.

Procedures

- Prior to transportation, members shall handcuff all persons under arrest or in custody regardless of the charge. (If a member's safety is threatened, the member may transport a prisoner to a safe location prior to handcuffing.) Prisoners are to be handcuffed with their hands behind their backs, with the cuffs only tightened to the extent necessary to prevent escape and "double locked". Prisoners are not to be handcuffed to any part of the vehicle. (Members may use discretion in handcuffing a violator with the hands in front if there is a compelling reason such as obesity, physical, or other condition that precludes applying the handcuffs behind the violator's back). Restraining

measures in addition to handcuffing may be necessary when dealing with combative persons (e.g. flex-cuffs or hobble strap may be used as restraints and should be applied around the knees or ankles).

- Suspects should always be handcuffed in a safe location outside the patrol vehicle

- In extraordinary circumstances, members may use their discretion to make exceptions to the handcuffing policy. These exceptions may include the sick, injured, disabled, handicapped, elderly, or other persons whose physical condition may be aggravated by handcuffing. Sound professional judgment should be used when exceptions are made and alternate safety precautions should be taken to guard against injury and/or escape.

- Physically or mentally handicapped persons and persons with cognitive impairment or developmental disabilities require special care and attention. Members shall use their own discretion in determining what, if any, restraining devices will be used on handicapped prisoners and whether or not a Patrol vehicle is appropriate for transporting purposes. Members should request the assistance of EMS, or the appropriate city or county law enforcement agency when it becomes necessary to transport a person suffering from a mental illness.

- The transportation of prisoners is a constant and frequent activity with a potentially high degree of violent confrontation requiring appropriate safety and security measures

  - Members shall examine their Patrol vehicle at the beginning of each shift to ensure that it is safe, properly equipped, and free of weapons or evidence. An additional search shall be completed immediately after transporting a prisoner(s) or other person(s), including under the seats, to ensure that no weapons are accessible and that no weapons or evidence was left in the vehicle.

  - When transporting a prisoner of the opposite sex, two members will be used when available. When only one officer is available, the member will inform the Telecommunicator of the description of the prisoner, location, destination, and odometer reading. Upon arrival at destination, the member will repeat the odometer reading and location.

  - If members are transporting a prisoner without assistance, the prisoner will be placed in the right front seat. It is strongly recommended that one member not transport more than two prisoners. When it is necessary to transport more than two prisoners the arresting member will request a second unit. When it is necessary to transport two prisoners, one will be placed in the right front seat and the second in the right rear seat. Both prisoners shall be handcuffed, and the seat belts fastened. If two members are present in one vehicle, the prisoner is to be placed in the

right front seat and the second officer directly behind the driver or the prisoner.

- The safety belt will be applied and the door locked to secure the prisoner. Restraining devices will be used on all prisoners when physically possible. Mental patients, sick, injured, or handicapped persons will be restrained in the member's patrol car or provisions shall be made for transportation in an ambulance.

- Communications by the prisoner with persons other than the transporting or arresting member will be restricted until the prisoner has reached the booking location. Under no circumstances will the violator be allowed out of sight of the arresting or transporting member. If a member must leave the vehicle, the keys will be removed from the vehicle.

- A transporting member should stop and respond to law enforcement need only when the risk to third parties is clear and grave and the risk to the prisoner is minimal. Members shall not engage in any extraordinary vehicle operation while transporting prisoners unless a life-threatening situation occurs.

- If a prisoner being transported escapes from custody, the escape shall be reported immediately to the appropriate supervisor and Communications Center. The reporting member shall give a physical and clothing description of the prisoner, the location of the escape, any weapon information, and the last known method and direction of travel. Communications personnel shall promptly dispatch information concerning the escape to other members and affected law enforcement agencies (i.e. Sheriff's Department, Police Department, or the Division of Adult Correction and Juvenile Justice).

- If the escapee is not apprehended the affected member shall consult with the local District Attorney and/or the Magistrate to initiate any criminal proceedings. The affected member's immediate supervisor shall record the facts of the escape and any pertinent follow up information he/she deems necessary on a Report of Investigation (HP-721).

- Prior to entering any detention facility, members shall secure their duty and backup firearm(s) in accordance with the rules or guidelines established by the detention facility or in the trunk of the Patrol vehicle

- Prisoners turned over to jail personnel become the jailer's responsibility and members are free to resume duty after completing the required booking procedures. However, members shall notify the appropriate agency, jail facility or court when a prisoner turned over to their custody is a security risk.

- Handcuffs are not to be removed from arrestees until they are delivered to the detention facility unless the following exceptions apply:

- Handcuffs may be removed upon entry into a secure location
- Handcuffs may be temporarily removed at other locations
  - When necessary during medical treatment
  - When performing psychophysical tests for driving while impaired (DWI)
  - Other purposes deemed necessary by the arresting member

- Handcuffs should be removed only until the necessary function is completed. If the subject is combative, the handcuffs should not be removed and test(s) omitted. Members shall advise detention facility personnel of any potential medical or security hazards.

- Members shall consider their safety and that of the passenger(s) when deciding upon the transportation of authorized passengers (e.g. accident victims, stranded motorists, witnesses, or other persons required in the line of duty) in a Patrol vehicle.

- The transportation of a passenger and a prisoner at the same time is discouraged. If the situation requires transport of a passenger while transporting a prisoner, the member shall exercise every reasonable precaution to ensure his/her safety, the safety of the prisoner, the passenger, and other users of the highways.

Security and Control of Prisoners Transported to Medical / Mental Health Facilities

- Prisoner custody and wellbeing is solely the responsibility of the arresting member. If a prisoner becomes sick or is injured incidental to the arrest, the member will immediately seek medical attention through the appropriate Communications Center. The member shall be governed by the decision of the Emergency Medical Services personnel regarding the need for hospitalization. The member shall remain with the prisoner unless urgent medical circumstances exist or relieved by a supervisor. In the event the prisoner is admitted to the hospital, the member shall contact his/her supervisor concerning additional security measures from the Division of Adult Correction and Juvenile Justice. When it becomes necessary to transport a prisoner to a mental health facility for the purpose of treatment or evaluation, the arresting member must secure a “Involuntary Commitment Order” from the appropriate Magistrate’s Office prior to the prisoner being transported. The arresting member shall request assistance from EMS or the appropriate city/county law enforcement agency when transporting a mentally ill prisoner pursuant to an Involuntary Commitment Order. In the event the mentally ill prisoner requires additional security, the arresting member shall be responsible to ensure that the prisoner is transported to a facility that is

equipped and staffed, to accommodate the additional security measures request.

XII. MONITORING A PERSON'S PHYSICAL CONDITION

The physical and mental condition must be monitored during the time the prisoner is in the member's custody. A prisoner who appears to be sick or injured must be provided medical attention by medical personnel.

When a member arrests a person who is unconscious, semiconscious, or otherwise apparently suffering from some disabling condition and who is unable to provide information on the cause of the condition, the member shall make a reasonable effort to determine if the person is wearing a Medic Alert bracelet or necklace containing the emergency alert symbol indicating a condition or illness which could cause loss of consciousness. Upon finding such a symbol, the member shall make a reasonable effort to obtain appropriate medical care for the individual.

A prisoner who exhibits any of the following characteristics must be taken for immediate medical attention:

- Loses consciousness (this does not include an obviously intoxicated person who goes to sleep)
- Sweats profusely without reason
- Appears very sick
- Engages in deranged or irrational conduct or speech without any obvious reason, such as impairment from alcohol or drugs
- Has an obvious injury
- Complains of significant injury or illness and requests medical attention

A prisoner who exhibits any of the following characteristics must be particularly monitored for potential physical problems:

- Old or frail
- Known diabetics or asthmatics
- Have a known history of heart or lung problems or seizure disorder
- Are substantially impaired by drugs or alcohol
- Have run or fought with member or violently resisted arrest

- Are breathing very rapidly, sweating heavily, or exhibiting pale skin

- Engage in deranged or irrational conduct or speech
- Are very obese

- Complain of health problems

XIII. COMMUNICATING WITH PEOPLE WHO ARE DEAF OR HARD OF HEARING

As law enforcement officer, you can expect to encounter people who are deaf or hard of hearing. It is important that members understand their role in this communication and adjust or modify their response to ensure effective attention is provided. Consistent with the Americans with Disabilities Act (ADA), the North Carolina State Highway Patrol has specific legal obligations to communicate effectively with people who are deaf or hard of hearing.

Consistent with requirements defined in North Carolina General Statute, Chapter 8B-1(3) and Title II of the Federal Americans with Disabilities Act (ADA), the courts shall appoint a qualified (licensed) interpreter for any deaf or hard of hearing party or witness in any civil or criminal proceeding, including juvenile proceedings, special proceedings, and proceedings before a magistrate.

People who are deaf or hard of hearing are entitled to a level of service equivalent to that provided to other persons. Members are encouraged to make every effort to extend appropriate, effective communication when dealing with individuals who are deaf or hard of hearing.

Various types of communication aids – known as “auxiliary aids and services” – are used to communicate with people who are deaf or hard of hearing. These may include use of gestures or visual aids to supplement oral communication; use of a notepad and pen or pencil to exchange written notes; use of an assistive listening system or device to amplify sound for persons who are hard of hearing; or use of a qualified oral or sign language interpreter.

Members may find a variety of communication aids useful in different situations and could include the following:

- Speech supplemented by gestures and visual aids can be used in some cases.

- A pad and pencil, a word processor, computer or cell phone can be used to exchange written notes.

- An assistive listening system or device to amplify sound can be used when speaking with a person who is hard of hearing.

- A sign language interpreter can be used when speaking with a person who knows sign language.

- An oral interpreter can be used when speaking with a person who has been trained to speech read (read lips). **Note:** Do not assume that speech reading will be effective in most situations. On average, only about one third of spoken words can be understood by speech reading.

The type of situation, as well as the individual's abilities, will determine which aid or service is needed to communicate effectively.

XIV. HANDLING THE MENTALLY ILL

Recognition

- Patrol members may occasionally be called upon to control or restrain an individual when mental illness provokes anti-social behavior. Suicide attempts, violent behavior, imaginary persecution, hallucinations, illusions of grandeur, and other deviations from what is considered normal or expected behavior are indications of mental illness. Careful observation of the victim, including how he/she talks, what he/she says, and how they behave can lead you to believe they are suffering from some type of mental illness. This visual observation may also be supplemented by information obtained from friends or relatives of the victim. The information gathering process will be a great aid on how to handle the situation. Some specific indicators to look for and note are:

  - Determine if Injured or Ill – Is the person physically ill or injured? There are a great many physiological reasons that can cause a person to act abnormally. A blow to the head, a high fever, shock from a crash or reaction to medication can cause a person to appear disoriented. On the other hand, a person who is mentally ill may not react to pain as we would expect a normal person to react. If there is an injury and first aid is required, do what you can for the person, but do not force treatment unless it involves a life-threatening situation.

  - Obtain Past History – Attempt to learn as much as possible about the past history of the person. Have they previously been confined? If a past record of mental illness is discovered, they should be returned to the institution where they were treated or their attending physician should be contacted.

  - Consider Hospitalization – When a member feels that a person should be hospitalized due to mental illness, the local mental health facility shall be contacted. Necessary arrangements can be made for evaluation and commitment to the nearest state hospital or medical facility for treatment or detention. The member must feel that the person is a risk to themselves or others.

  - Identify Any Criminal Behavior – Has the person committed a crime? If a crime has been committed, especially a felony, the prosecutor should be

contacted for advice. The past record of the person and the willingness of the hospital to accept him/her will have some direct bearing on this problem. In any case, the person must be removed from contact with the community until he/she can be stabilized. If a felony has been committed, the officer has the responsibility to guard the person until secured, either in a mental facility or a jail. It still remains a function of the court to determine guilt, innocence or insanity.

General Guidelines

- Be Sympathetic – Do not argue or antagonize the person. Most likely they will not respond to logical arguments. Take your time, keep cool and use a quiet conversational tone of voice when dealing with them. The tone of voice, more often than the words spoken, will have a great influence on the person. You must try to convince them that you are on their side and are there to help them.

- Avoid Physical Contact – Do not touch them unless it is absolutely necessary. The mentally ill person may be inclined to interpret this as an attempt to restrain him/her and overreact.

- Do Not Mislead – Do not mislead or try to trick a mentally ill person. It may work for you temporarily but can cause more serious problems later.

- Use Available Assistance – It may be necessary to summon medical assistance and have the person sedated if he/she is exceptionally violent. Obtain assistance whenever possible. It is always best to call for assistance from another member even if things appear to be normal. A friend or relative may be most valuable in controlling the person. Any person that appears to agitate the mentally ill person should be removed from the scene as soon as possible. Members should contact the appropriate city or county law enforcement agency for assistance when a mentally ill person requires transportation to a treatment facility.

I. POLICY

This policy establishes guidelines and procedures for dealing with persons exhibiting symptoms of mental illness.

It shall be the policy of the North Carolina State Highway Patrol to ensure that a consistently high level of service is provided to the citizens of North Carolina. Patrol personnel shall afford persons who have a mental illness the same rights, dignity, and access to law enforcement and other government and community services as are provided to all citizens while exercising due caution. Although no single policy or procedure can address all of the situations in which Patrol personnel may be required to provide assistance to persons who have a mental illness, this policy is intended to address the most common types of interactions with persons who may suffer from a mental illness.

II. AUTHORIZATION

The Americans with Disabilities Act (ADA) entitles persons with a mental illness or disabilities to the same services and protections that law enforcement agencies provide to anyone else. They should not be excluded from services or otherwise be provided with lesser services or protection than are provided to others.

The ADA, in many circumstances, may require law enforcement agencies to make reasonable adjustments and modifications in their policies, practices, or procedures on a case-by-case basis. For example, if a person exhibits symptoms of mental illness, expresses that he or she has a mental illness or requests accommodation for a mental illness (such as access to medication), Patrol personnel may need to modify routine practices and procedures, take more time, or show more sensitivity to extend the services or protections that would be extended to someone else in a similar circumstance.

In addition, Chapter 122C of the North Carolina General Statutes, referred to as the Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985, establishes policy and guidelines for dealing with individuals with mental health, development disabilities, and substance abuse problems and requires that they be treated with dignity and respect. Part 9 of this Act also provides guidance for law enforcement officers when dealing with individuals who may be found intoxicated in a public place.

III. TRAINING

In order to prepare Patrol personnel, both sworn and civilian who, during the course of their normal duties, may encounter person(s) with a mental illness, the North Carolina State Highway Patrol Training Academy shall be responsible for providing mental illness training to entry-level personnel, and refresher training annually.

IV. RECOGNIZING CHARACTERISTICS OF MENTAL ILLNESS

Patrol personnel must be prepared to deal with situations involving a person(s) who has a mental illness and know how to respond to these situations in an appropriate and sensitive manner.

Symptoms of different mental illnesses may include, but are not limited to:

- Loss of memory
- Delusions
- Depression, deep feelings of sadness, hopelessness, or uselessness
- Hallucinations
- Manic behavior, accelerated thinking and speaking, or hyperactivity
- Confusion
- Incoherence
- Extreme paranoia

The degree to which these symptoms exist varies from person to person according to the type and severity of the mental illness. Many of these symptoms represent internal, emotional states that are not readily observable from a distance, but are noticeable in conversation with the individual. Patrol personnel are not expected to diagnose a mental illness but to decide on the appropriate response to the individual and situation. Recognizing that symptoms may indicate mental illness could help personnel decide on an appropriate response and disposition.

Obtaining relevant information from family members, friends, or others at the scene that know the individual and his or her history or seeking advice from mental health professionals can also assist personnel in taking the appropriate action. Patrol personnel on the scene will also have to determine the severity of the behavior, the potential for change in the behavior, and the potential for danger presented by the individual to themselves or to others.

V. COMMUNICATIONS RESPONSIBILITIES

It shall be the responsibility of the Accreditation Manager to forward a copy of the updated North Carolina Area Mental Health Developmental Disabilities Substance Abuse Programs booklet, which contains available community mental health resources and authorized emergency evaluation facilities located in their area of responsibility, to each SHP Communication Center Supervisor by 1 June of each year. Upon request, the appropriate SHP Telecommunicator shall provide such information to Patrol members as requested. Communications center personnel will refer such person/persons to the local police or sheriff agency that handles mental illness situations.

VI. RESPONSE TO CALLS FOR SERVICE INVOLVING PERSONS WITH MENTAL ILLNESS

Calls for service involving persons with mental illness should normally be handled by city or county law enforcement officers. Nonetheless, members may, in some cases be the first to arrive or may be called upon to assist another agency. Accordingly, members must be familiar with the appropriate manner in which to respond to these calls for service.

When responding to a call that involves a person who has, or exhibits symptoms of a mental illness, members shall obtain as much information as possible to assess, and then stabilize the situation. The member shall gather information regarding the nature of the abnormal behavior and/or events that may have precipitated the person's behavior, and particularly the presence of any weapons.

The following guidelines detail how the responding member should approach and interact with a person who has or is suspected of suffering from a mental illness, who may be a crime victim, witness, or suspect. These guidelines should be followed in all contacts, whether on the street or during more formal interviews and interrogations, but the safety of the responding member and the public shall be first and foremost:

- Remain calm and avoid overreacting
- Be helpful and professional
- Provide or obtain on-scene emergency aid when treatment of an injury is urgent
- Check for and follow procedures indicated on medical alert bracelets or necklaces
- Indicate a willingness to understand and help
- Speak simply and briefly, and move slowly

- Remove distractions, upsetting influences and disruptive people from the scene

- Understand that a rational discussion may not take place

- Recognize that the person may be overwhelmed by sensations, thoughts, frightening beliefs, sounds ("voices") or the environment

- Be friendly, patient, accepting, and encouraging, but remain firm and professional

- Be aware that the uniform, gun, handcuffs, and other law enforcement equipment may frighten the person with a mental illness; attempt to reassure him or her that no harm is intended

- Do not mislead the person suffering from mental illness

- Release to care of family, care giver or mental health provider

- Refer or transport to mental health services **(members should contact the appropriate city or county law enforcement agency for assistance, and should only transport as a last resort)**

- Refer or transport to substance abuse services **(members should contact the appropriate city or county law enforcement agency for assistance, and should only transport as a last resort)**

- Assist in arranging voluntary admission to a mental health facility if requested, by contacting the appropriate city or county law enforcement agency

- Transport for involuntary emergency psychiatric evaluation, if the person's behavior meets the criteria for this action **(members should contact the appropriate city or county law enforcement agency for assistance, and should only transport as a last resort)**

- **Note: N.C.G.S. 122C-251 provides that transportation is to be provided by the city or county for all involuntary commitment proceedings. Accordingly, members will not normally provide transport for this purpose.**

Once sufficient information has been gathered which allows the member to stabilize a situation involving a mentally ill person(s), there are a range of options members should consider when selecting an appropriate disposition. These options include, but are not limited to the following:

- Refer or transport the person for medical treatment if he or she is injured or abused **(members should contact EMS or the appropriate city or county**

law enforcement agency for assistance, and should only transport as a last resort)

- Outright release
- Recognize and acknowledge that a person's delusional or hallucinatory experience is real to him or her
- Announce actions before initiating them
- Gather information from family or bystanders
- If the person is experiencing a psychiatric crisis, attempt to have a local mental health professional respond to the scene

While each incident may pose its own unique set of circumstances, Patrol personnel, when dealing with a person who may suffer from a mental illness, should be aware that their own actions may have an adverse effect on the outcome of the situation. Some of the actions Patrol personnel should generally avoid include:

- Moving suddenly, giving rapid orders, or shouting
- Forcing discussion
- Direct, continuous eye contact
- Touching the person (unless essential to safety)
- Crowding the person or moving into his or her zone of comfort
- Expressing anger, impatience, or irritation
- Assuming that a person who does not respond cannot hear
- Using inflammatory language, such as "mental" or "mental subject"
- Challenging delusional or hallucinatory statements
- Arrest, if a crime has not been committed

Members should remember that having a mental illness is not a crime. No individual should be arrested for behavioral manifestations of mental illness that are not criminal in nature. Taking a person who has a mental illness into custody can occur only when:

- The individual has committed a crime

- The individual presents a danger to the life and safety of themselves or others, and meets the state's criteria for involuntary emergency evaluation

- In response to a court order or directive of a mental health or medical practitioner who has legal authority to commit a person to a mental health facility

VII. USE OF FORCE / OFFICER SAFETY

If it is determined that a serious crime has been committed, or the person is a threat to him/herself and/or others, the member shall request the assistance of another member or law enforcement agency, if possible, prior to handling the individual. If restraint or use of force is required, try to avoid any restraint, or use of force that works on the theory of leverage and pain. Mentally ill persons often do not react to pain in a normal fashion, and this could result in severe injury to the mentally ill person. The Use of Force provisions as set out in State Highway Patrol Directive B.01 shall otherwise apply.

VIII. TRANSPORTING MENTALLY ILL PERSONS

When transporting or handling a person suspected of, or suffering from, a mental illness, members shall be governed by Directive B.04, Section X (Security and Transportation of Prisoners) and Section XII (Handling the Mentally Ill)

Bloodborne Pathogens

Directive B.06

Applicable to: Employees

Revised 08/27/2020
Effective 10/18/1999

I. POLICY

The purpose of this policy is to provide a safe and healthful environment for all employees of the Patrol who have the potential for occupational exposure to blood or other potentially infectious materials. In an effort to prevent exposure or decrease potential risk should an exposure occur, this directive identifies and increases awareness of this potential health hazard and provides guidelines and precautions to be used when encountering suspected carriers of an infectious disease. This policy is written to comply with OSHA Bloodborne Pathogen Standard 29 CFR part 1910.1030.

It is the policy of the Patrol to provide employees with the safest possible work environment that limits exposure to recognized hazards which may cause death or serious physical harm. To this end, the Patrol will provide personal protective equipment, adequate training in work practices and procedures, and ensure that employees who have a bloodborne pathogen exposure incident are provided with confidential medical evaluation and treatment. This medical evaluation and treatment will be at no cost to the employee.

Each employee has the responsibility to control exposure and prevent the spread of bloodborne pathogens and shall follow procedures outlined in this directive. Fear of contracting a communicable disease does not free employees from the obligation to perform their duties.

II. EXPOSURE DETERMINATION

This policy applies to all employees whose job duties involve the potential for occupational exposure to blood and/or potentially contaminated materials.

Exposure hazards include, but are not limited to the following:

- Administering first aid and other direct patient care (e.g. CPR, bandaging wounds, etc.)
- Blind searches
- Evidence handling, packaging, and storage
- Handling of deceased persons
- Accident scene and crime scene processing
- Decontamination of equipment and vehicles
- Effecting the arrest and control of suspects

III. UNIVERSAL PRECAUTIONS

Universal precautions shall be observed to prevent contact with blood or other potentially infectious materials. Under circumstances in which differentiation between body fluid types is difficult or impossible, all body fluids shall be considered potentially infectious materials.

IV. ENGINEERING AND WORK PRACTICE CONTROLS

Engineering and work practice controls shall be used to eliminate or minimize employee exposure. Where occupational exposure remains after institution of these controls, personal protective equipment shall also be used.

- Employees shall wash their hands and any other contaminated skin with soap and water if visibly soiled or with an alcohol-based sanitizer if not visibly soiled as soon as possible following contact with blood or other potentially contaminated material. If a hand washing facility is not readily accessible, employees shall then use antiseptic hand cleanser or towelettes and proceed to a hand washing facility as soon as feasible. Employees will be provided with an adequate supply of antiseptic hand cleanser or towelettes.

- Disposable (single use) gloves shall be worn at all times when it can be reasonably anticipated that an exposure to blood or infectious materials is possible. Hands shall be washed immediately with soap and water or an alcohol-based sanitizer after the removal of gloves.

- An employee who has contaminated fluids splashed in the eyes shall immediately flush the eyes with water or eyewash and as soon as possible proceed to a facility where continued flushing of the eyes is available. Eyes should be flushed for at least 10 minutes.

- Employees shall not bend, re-cap, shear, break, or remove needles or other sharps unless a mechanical device is used to reduce the likelihood of a needle-stick by a contaminated needle or other sharp implement. Contaminated needles or other sharps shall be placed in labeled, puncture-resistant containers.

- Employees shall not eat, drink, smoke, apply lip balm, or handle contact lenses in areas where occupational exposure to bloodborne pathogens may occur

- Food and drink may not be stored in places where blood or other potentially infectious materials are handled or kept

- Leak proof containers must be used to prevent leakage during collection, processing, storage, transport, or shipping and must be color-coded or labeled with the biohazard symbol prior to shipping

- All contaminated equipment must be decontaminated prior to servicing to the extent feasible. If the equipment cannot be decontaminated, the contaminated portions must be labeled and persons likely to come in contact with the equipment must be notified of the presence of contaminants prior to shipment.

V. PERSONAL PROTECTIVE EQUIPMENT

Personal protective equipment shall be worn whenever it can be reasonably anticipated that an occupational exposure may occur.

An employee will not be in violation of this directive if he/she temporarily and briefly declined to use personal protective equipment when, under rare and extraordinary circumstances, it was the employee's professional judgment that in the specific instance its use would have prevented the delivery of health care or public safety services or would have posed an increased hazard to the safety of the employee or his/her coworkers. The employee shall then notify his/her superior so this event can be investigated and documented in order to determine whether changes can be instituted to prevent such occurrences in the future.

All members shall be issued the following personal protective equipment:

- Disposable (single use) gloves
- A supply of 70% alcohol or other germicidal antiseptic hand cleanser or towelettes
- OSHA-approved protective eye wear with solid side shields. Corrective eye glasses and sunglasses are not considered OSHA-approved protective eye wear.
- Sharps containers
- Pocket mask resuscitators equipped with anti-backflow valve
- Hazardous materials disposal bags
- Protective face masks

If a glove allergy exists, an appropriate substitution will be provided (e.g. hypoallergenic gloves, powderless gloves, glove liners, etc).

Members shall maintain adequate supplies of protective equipment readily available for use and shall notify the immediate supervisor when such equipment is depleted or in need of replacement.

VI. HEPATITIS B VACCINATIONS

The Department of Public Safety (DPS) shall make available the Hepatitis B vaccine to all members whose job duties involve a risk of exposure to blood, body fluids, and/or other potentially contaminated materials.

- Administration of the Hepatitis B vaccine program and the required record keeping shall be the responsibility of the Patrol Medical Director in conjunction with the DPS Benefits and Safety Officer

- All members who have the potential for occupational exposure shall have the Hepatitis vaccination made available to them within ten (10) working days of employment

- Any member who chooses to decline the Hepatitis B vaccine and vaccination series shall be required to complete an Employee Hepatitis B Vaccine Declination form. If the member then decides to accept the Hepatitis B vaccination at a later date, it shall be made available.

- Members with documented HBV immunity do not require additional immunization

- If a routine booster dose(s) of Hepatitis B vaccine is recommended by the Centers for Disease Control and Prevention (CDC) at a future date, it shall be made available to the member.

VII. FIRST AID AND CPR PRECAUTIONS

Disposable single use gloves will be worn by all employees who administer first aid or CPR when there is a reasonably anticipated contact with blood, mucus membranes, or non-intact skin.

Issued pocket masks will be utilized in all CPR and mouth-to-mouth resuscitation efforts if available.

In the event of massive arterial bleeding, combative bleeding persons, or other circumstances in which blood or other body fluids may be splashed about, employees should wear gloves, masks, eye shields, rain coat, and rain hat cover.

VIII. SEARCH AND EVIDENCE-HANDLING PRECAUTIONS

Members conducting searches of bloodied individuals should wear disposable single use gloves. Members are discouraged from conducting "blind searches" in vehicles, residences, etc.

Members are encouraged to use very careful judgment before placing their hands inside an individual's pockets, clothing, etc. Outside pat-down procedures

should be carefully conducted in order to locate any potentially sharp objects within an individual's clothing.

Members who seize any hypodermic syringe that has the needle exposed will immediately place the seized item into an approved puncture proof container prior to transporting. The syringe will not be removed from the container except by mechanical means that do not require touching the syringe. Any hypodermic syringe will be treated as a potential source of exposure to an infectious disease.

IX. BODY FLUIDS AND HANDLING OF DECEASED PERSONS

All body fluid spills will be regarded as potentially infectious. Disposable single use gloves, protective eyewear, and facemasks will be worn whenever contact with body fluid spills is necessary or likely. Members should make every effort to avoid having body fluids splashed in their mouths or eyes (use protective facemask).

Members are frequently called upon by Emergency Medical Services personnel to provide supplementary manpower in the removal of injured or deceased persons. Members will continue to provide such assistance when requested; however, they will first consult with Emergency Medical Services personnel about appropriate precautions and shall then adhere to those precautions in addition to the guidelines set forth in this directive.

Members will adhere to the decontamination procedure as set forth in this directive after dealing with body fluid spills of injured or deceased persons.

X. DECONTAMINATION AND CLEANUP PROCEDURES

Employees should clean equipment such as batons, flashlights, handcuffs, etc. immediately after body fluid exposure with a freshly-mixed solution of one (1) part household bleach and ten (10) parts water applied with a spray bottle or approved viricidal wipes. Lysol Aerosol Spray is also an effective virucidal against most infectious diseases. Disposable single use gloves should be worn during the decontamination of equipment. Contaminated fluids should be washed off with hot soapy water as outlined in this directive.

Contaminated clothing shall be removed immediately and isolated in a plastic bag until laundering or dry cleaning. Heavily contaminated clothing shall be placed in a hazardous materials bag or plastic bag labeled with biohazard labels to identify and notify laundry or cleaning personnel.

Employees shall dispose of contaminated items in the following manner: The contaminated, disposable items shall be secured in the hazardous materials disposal bag provided the employee. The bag shall be placed in the hazardous materials disposal container in the district headquarters and sharps or syringes shall be placed in the sharps collection container at the district office (use a method that does not require touching the sharps).

The supervisor shall establish a collection and disposal system for contaminated disposable equipment and contaminated sharps within each district.

In the event that a body fluid spill occurs within a Patrol vehicle (does not apply to feces, nasal secretions, sputum, sweat, tears, urine, or emesis unless they contain visible blood):

- Employees should follow normal decontamination procedures as set forth in this directive (household bleach should not be used)

- Patrol vehicles contaminated with large amounts of blood should be taken to a Patrol garage for decontamination. A Biohazard Warning Label must be obtained from a supervisor or garage personnel and attached to the vehicle in a conspicuous location to alert garage or other personnel to the potentially infectious material. The label shall contain information relating to the type and location of hazardous material in the vehicle.

- Garage personnel will decontaminate the vehicle prior to returning it to service

XI. POST-EXPOSURE EXAMINATION AND FOLLOW-UP PROCEDURE

Employees who have an "exposure incident" as defined by this directive shall:

- Take all applicable precautionary post-exposure measures as set forth in this directive and **notify their immediate supervisor without delay**

Upon being notified of an exposure incident, the supervisor shall:

- Confirm that the employees have made every effort to decontaminate themselves as set forth in this directive

- Determine if a "true" exposure has occurred. When in doubt or if there is a difference of opinion, the supervisor shall contact the Patrol Medical Director or his/her designee as soon as possible for guidance and advice. The Patrol Medical Director or his/her designee shall also be contacted in all cases where the supervisor determines that a true exposure incident has occurred. The Medical Director or his/her designee will advise specific procedures to be followed for the drawing, storing, or transporting of blood samples drawn from an employee or source person if applicable.

  Ensure a Body Fluid Exposure Form (DPS-187), Workers Comp – Employee Initial Report of Injury (HR-201) and Workers Comp – Accident/Incident Investigation Report (HR-203) are completed by the employee and the supervisor. If the exposed employee is unable to complete the applicable section, then the employee's supervisor will complete that portion of the form for the employee. The reverse side of the exposure form provides the proper procedures in the event of an exposure.

- **Whether or not the source person is an arrestee,** unless done by investigating health officials, interview the source individual and request that he voluntarily submit to have blood drawn and tested for Hepatitis B antigen, Hepatitis C antibody, and HIV antibody. If the source individual is willing to consent, the supervisor will make every effort to secure a signed Antibody Testing Consent and Consent to Release Medical Information Form (DPS-180). (Note: County health officials need not be contacted if source person consents to testing unless source person is immediately found infectious or already known to be infectious.)

  If the source person is not an arrestee and refuses to consent to be tested or is no longer available for testing, the public health director shall be contacted and requested to institute regulatory procedures to locate and/or require testing of the source person.

- **If the source person refuses to be tested and is an arrestee,** direct the exposed employee to prepare a written affidavit detailing the extent of the exposure and all obtainable information about the suspected disease carrier (source). The affidavit should contain such available information as the name, address, sex, date of birth, and if possible, sexual history, illicit drug use history, and past medical history of the suspected carrier. The affidavit should contain any relevant information that may help the magistrate or other judicial official determine whether there is probable cause to believe that the employee was exposed to the source person in a manner that poses a significant risk of Hepatitis or HIV.

- **If the source person is an arrestee and refuses to be tested**, prepare a written Motion to Investigate Exposure (DPS-181) to be presented to the magistrate or other judicial official during the arrestee's initial appearance requesting that the arrestee be detained for a reasonable period of time, not to exceed 24 hours, for investigation by public health officials and for testing for HIV and Hepatitis B infection if required by public health officials pursuant to N.C.G.S. §15A-534.3, 130A-144, 130A-148, and 10A NCAC 41A.0202 and .0203.

- Present the Motion to Investigate Exposure (DPS-181) and Order to Investigate Exposure (DPS-182) to the magistrate at the time of the initial appearance

  The Motion and Order may be standard DPS-181 and DPS-182 forms or any other suitable forms approved by the local District Attorney and/or the Chief District Court Judge.

- If the magistrate finds probable cause to believe that the employee was exposed to an arrestee in a manner that poses a significant risk of transmission of HIV or Hepatitis B, take such reasonable steps as may be necessary to assist the magistrate in serving a copy of the order on a local health director or in his absence other licensed physician or other designated representative of the local health department

- If the circumstances surrounding the exposure are determined by the health department to pose a significant risk of transmission of either HIV or Hepatitis B and the source individual is not a known carrier, ensure that this determination is communicated to the magistrate. In these cases, the magistrate or other judicial official is presented a copy of the DPS-183 or a copy of a suitable Order approved by the local District Attorney or Chief District Judge, for the purpose of ordering the taking of an adequate amount of the arrestee's blood for the purpose of testing for HIV and/or Hepatitis B.

- If the magistrate issues the order in paragraph 8, coordinate with and assist the investigating health care professional in providing such pre-test counseling for the source person as required by 15A NCAC 19A, .0202 (9)(10). Once this pre-test counseling is either accomplished or refused, unless county health officials are able to determine without testing, that the defendant is a known carrier of HIV or Hepatitis B, ensure that the arrestee's blood is drawn for the purpose of testing. If this cannot be accomplished by a trained nurse or other licensed medical practitioner at the jail, the defendant should be transported to a local medical facility (i.e. hospital emergency room) in accordance with the Order issued by the magistrate or other judicial official.

- Assist the employee in consulting with an on-duty physician for testing and/or treatment that may be recommended by the physician. The exposed employee's blood shall be collected as soon as feasible unless the employee chooses not to have his/her blood drawn. If the employee consents to base line blood collection but at that time does not consent to testing, the sample shall be preserved for not less than ninety (90) days.

- Provide the health care professional evaluating the employee with the following information:

  - A copy of the 29 CFR 1910.1030

  - A description of the exposed employee's duties as they relate to the exposure incident

  - The details related to the exposure incident

  - The name, address, and telephone number, if known, of the local health official who conducted the initial investigation so that they may obtain results of the source individual's blood testing, if available and other pertinent information

  - The medical records relevant to the appropriate treatment of the employee including vaccination status

- Ensure that the exposed employee signs the appropriate Employee Antibody Testing Consent and Authorization to Release Medical Information form

(DPS-184), allowing the treating physician and laboratory to disclose necessary information to the DPS Benefits and Safety Officer and to the Highway Patrol Medical Director for follow-up treatment and record keeping purposes as required by law.

- Complete Form DPS-187 and forward to the Patrol Medical Director and the DPS Benefits and Safety Officer

  - The Patrol Medical Director shall coordinate follow-up steps and procedures.

  - At no expense to the employee, the Medical Director or their designee with the assistance of the DPS Benefits and Safety Officer shall:

    - Inform the exposed employee of the results of testing and all applicable laws and regulations concerning disclosure of the identity and infectious status of the source individual

    - Ensure that all necessary laboratory tests were conducted.

    - Inform the exposed employee of any medical condition resulting from the exposure to blood or other potentially infectious materials which require further evaluation or treatment as soon as may be practicable, but not later than ten (10) days after the blood has been drawn

    - Coordinate and/or provide follow-up testing, evaluation, and treatment as may be appropriate unless the exposed employee refuses to consent to such follow-up testing, evaluation, or treatment

    - Coordinate and/or provide such counseling as may be deemed appropriate

    - Maintain medical records in accordance with the provisions of 29 CFR 1910.1030(h)(1)

The Medical Director or their designee shall also ensure that the exposed employee and the DPS Benefits and Safety Officer are furnished with a copy of the evaluating health care professional's written opinion within fifteen (15) days of the completion of the evaluation, which shall contain the following information:

- The opinion for the Hepatitis B vaccination shall be limited to whether the Hepatitis B vaccination is indicated for the employee and if the employee has received such vaccination

- The opinion for the post-exposure evaluation and follow-up shall be limited to the following information:

  - The employee has been informed of the results of the evaluation

- The employee has been told about any medical conditions resulting from exposure to blood or other potentially infectious materials, which require further evaluation or treatment

- All other findings or diagnoses shall remain confidential and shall not be included in the written report

XII. OSHA REPORTING

An occupational bloodborne pathogen exposure in and of itself is not recordable. An exposure which results in a recordable work injury (e.g. needle stick or laceration) or illness (diagnosed) should be recorded on OSHA Form 300.

XIII. INFECTIOUS DISEASE RISK MANAGEMENT

The Director of Medical Services shall be responsible for maintaining a constant awareness of current research and developments regarding infectious diseases, recommending policy updates concerning infectious diseases to the Commander's Office, developing, coordinating, and implementing initial and continued Departmental training on infectious diseases risk management, maintaining a list of resource consultants who will assist the Department on infectious diseases risk issues, serving as a resource person to assist employees and supervisors in dealing with specific exposure instances set forth by this directive, and evaluating the circumstances surrounding exposure incidents and evaluate the policy, work practices, engineering controls, and protective equipment in use at the time of the exposure and make recommendations for improvement if necessary.

XIV. DISCLOSURE OF CONFIDENTIAL MEDICAL INFORMATION

In accordance with N.C.G.S. § 130A-143, all information and records that identify a person who has the AIDS virus infection or who has or may have a disease or condition stated in this directive shall be kept strictly confidential. This information shall not be released to anyone without prior written approval from the Commander's Office or his/her designee.

Administration, Organization, and Troop / District Boundaries

Directive C.01
Revised 02/11/2021
Effective 03/2014

Applicable to: Employees

I. POLICY

This policy establishes guidelines and the organizational structure as related to the operation of Patrol business. The Secretary of the Department of Public Safety, under the direction of the Governor, shall adopt such rules and regulations, as he/she considers necessary for the conduct of Highway Patrol business. The Secretary may delegate to the Patrol Commander responsibility for the control, management, and direction of all employees and for the administration and operation of the Highway Patrol, with full power to assign any employee to such public service, as he/she may deem appropriate. This policy shall include the organizational charts and Troops and District boundaries. **Organizational Charts and Troops and District Boundaries are posted on the Highway Patrol internal website.**

II. ADMINISTRATION

Under the direction of the Secretary, the Patrol Commander may decentralize the administration of the Highway Patrol by delegating specific authority and duties to subordinates. Supervisory personnel are accountable for the activities of employees under their immediate control.

Highway Patrol employees shall be held accountable for the efficient performance of all duties and tasks assigned by proper authority. Each duty and responsibility is accompanied by the appropriate authority to execute the assigned task. The failure to exercise authority when required shall subject employees to disciplinary action.

To establish a chain-of-command, organizational components have been established, and the authority to direct the activities of others has been delegated to commanders, directors, and supervisors for those components. Such authority is commensurate with that needed to perform the tasks for which each is responsible. All employees are accountable to their immediate supervisor for the use of inherent authority, delegated authority, or the failure to properly use such authority.

Employees placed in charge of organizational components will direct all other employees assigned to that component. Employees will be accountable to only one immediate supervisor at a time and will follow the chain-of-command regardless of rank or position unless special circumstances require deviation. When deviation is necessary, the employee shall inform all persons bypassed at the earliest practical time concerning the information relayed, decisions made, and instructions given or received.

III. DUTIES OF THE PATROL COMMANDER

- Reports directly to the Secretary
- Exercises such powers and fulfills those responsibilities connected with his/her office as provided by law and as directed by the Governor and the Secretary
- Manages the planning, organizing, staffing, controlling, coordinating, reporting, and budgeting of the Highway Patrol
- Provides efficient and effective police traffic supervision and related services for highway users and maintains public order during emergency situations, as assigned
- Develops and implements highway safety programs and coordinates the Patrol's participation with other governmental agencies and civic groups
- Provides traffic safety information services
- Carries out those assigned duties and responsibilities set forth in Highway Patrol directives
- Supervises and evaluates the work of Field Operations, Professional Standards, Support Services, and the Training Academy

IV. ORGANIZATION

The Highway Patrol is organized into functional areas consisting of administrative, line, and support service units as set forth in the following organizational chart.

Director of Field Operations (Deputy Commander - LTC)	
Troop Operations	Troops A-I
Commercial Vehicle Enforcement Section	MCSAP FuelTaCS Size & Weight
Executive Protection Detail	EP Staff
Professional Standards	Inspections & Compliance Unit Internal Affairs Unit Performance Management Promotion Unit

Director of Support Operations (Lieutenant Colonel)	
Support Services	Benefits Unit Budget and Grants Unit Logistics Unit Personnel Unit Technical Services Unit

Training Academy	Armory Basic & Fast Track Schools Civilian Training Collision Investigation Training Drivers Training Emergency Medical Training Field Training Program In-Service Training Medical Office Motor Carrier Training Recruiting Program RADAR / LIDAR / Time Distance Training Trooper Selection Unit

The state shall be divided into Highway Patrol Troops and Districts as defined herein.

Troop A – Greenville		
A/I	Manteo	Dare and Currituck Counties
A/II	Ahoskie	Hertford, Bertie, and Gates Counties
A/III	Elizabeth City	Pasquotank, Camden, Chowan, and Perquimans Counties
A/IV	Washington	Beaufort, Washington, Hyde, and Tyrrell Counties
A/V	Greenville	Pitt and Martin Counties
A/VI	New Bern	Craven and Pamlico Counties
A/VII	Kinston	Lenoir and Jones Counties
A/VIII	Morehead City	Carteret County
A/IX		CVE Troop A

Troop B – Fayetteville		
B/I	Fayetteville	Cumberland County
B/II	Clinton	Sampson County
B/III	Jacksonville	Onslow County
B/IV	Kenansville	Duplin and Pender Counties
B/V	Whiteville	Columbus and Bladen Counties
B/VI	Wilmington	New Hanover and Brunswick Counties
B/VII	Lumberton	Robeson County
B/VIII	Lillington	Harnett County
B/IX		CVE Troop B

Troop C – Raleigh		
C/I	Rocky Mount	Nash and Edgecombe Counties
C/II	Goldsboro	Wayne County
C/III	Raleigh	Wake County
C/IV	Henderson	Vance, Franklin, and Warren Counties
C/V	Wilson	Wilson and Greene Counties

C/VI	Smithfield	Johnston County
C/VII	Durham	Durham and Granville Counties
C/VIII	Roanoke Rapids	Halifax and Northampton Counties
C/IX		CVE Troop C

Troop D – Greensboro		
D/I	Siler City	Chatham and Lee Counties
D/II	High Point	Guilford County
D/III	Reidsville	Rockingham County
D/IV	Roxboro	Person and Caswell Counties
D/V	Graham	Alamance County
D/VI	Asheboro	Randolph County
D/VII	Hillsborough	Orange County
D/IX		CVE Troop D

Troop E – Salisbury		
E/I	Lexington	Davidson County
E/II	Albemarle	Montgomery and Stanly Counties
E/III	Salisbury	Rowan County
E/IV	Winston Salem	Forsyth County
E/V	King	Surry and Stokes Counties
E/VI	Concord	Cabarrus County
E/VII	Yadkinville	Davie and Yadkin Counties
E/IX		CVE Troop E

Troop F – Newton		
F/I	Morganton	Burke County
F/II	Wilkesboro	Wilkes, Alleghany, and Ashe Counties
F/III	Lenoir	Caldwell and Watauga Counties
F/IV	Statesville	Iredell and Alexander Counties
F/V	Hickory	Catawba and Lincoln Counties
F/IX		CVE Troop F

Troop G – Asheville		
G/I	Burnsville	Yancey, Avery, Madison, and Mitchell Counties
G/II	Marion	McDowell and Rutherford Counties
G/III	Hendersonville	Henderson, Polk, and Transylvania Counties
G/IV	Asheville	Buncombe County
G/V	Waynesville	Haywood and Jackson Counties
G/VI	Bryson City	Swain, Cherokee, Clay, Graham, and Macon Counties
G/IX		CVE Troop G

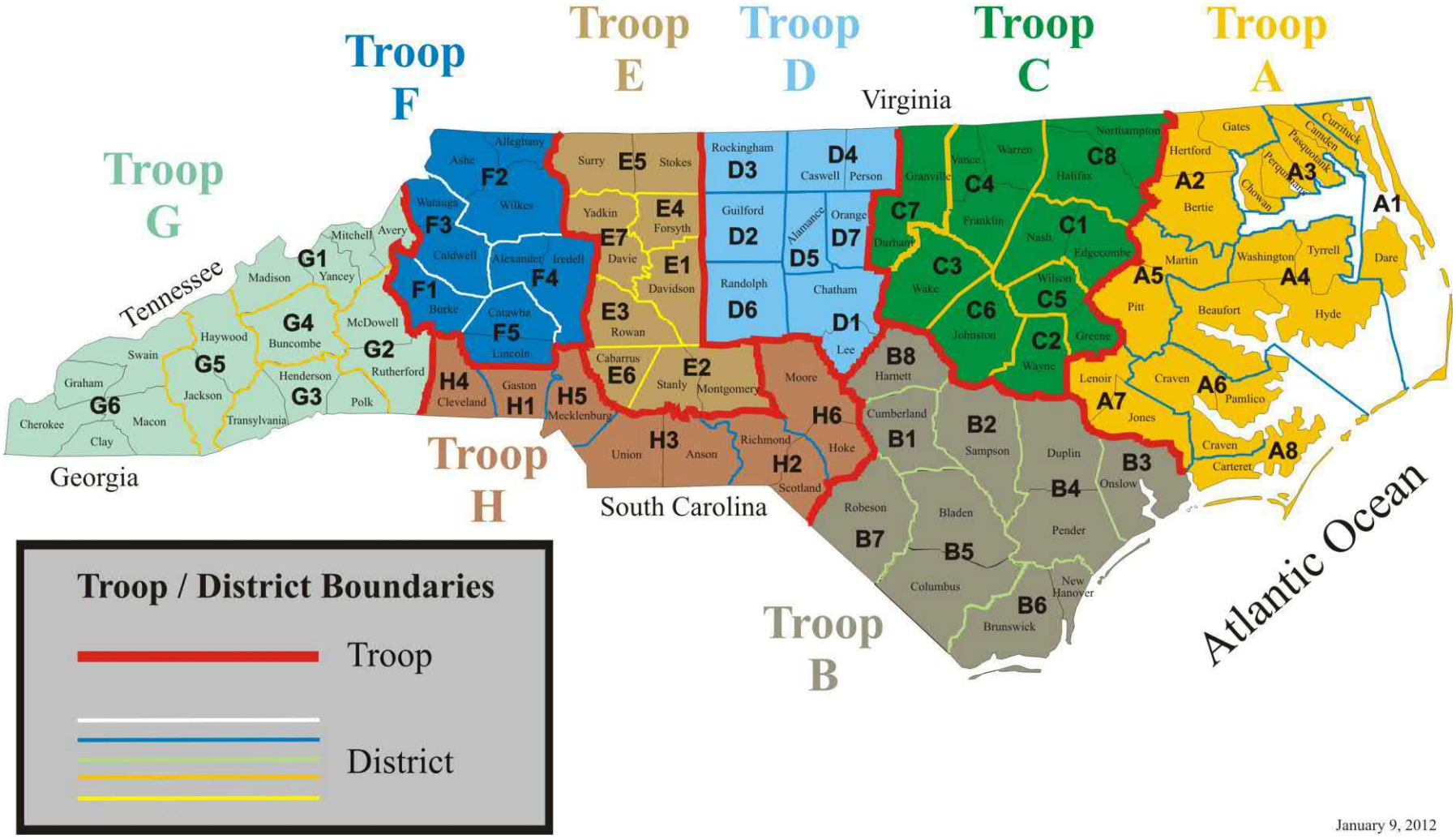
Troop H – Monroe		
H/I	Gastonia	Gaston County
H/II	Rockingham	Richmond and Scotland Counties
H/III	Monroe	Union and Anson Counties
H/IV	Shelby	Cleveland County
H/V	Charlotte	Mecklenburg County
H/VI	Aberdeen	Moore and Hoke Counties
H/IX		CVE Troop H

Troop I – Cary		
I/1	Winston-Salem	Criminal Interdiction Unit / Canine Training
I/II	Cary	Motor Unit
I/III	Cary	Collision Reconstruction Unit
I/IV	Raleigh	Aviation Unit
I/V	Cary	Hazardous Materials / Nuclear Safety Unit

V. ORGANIZATION REQUIREMENTS

All employees of the State Highway Patrol, to include volunteers, shall be issued an official agency photo identification card. Issued identification cards will indicate if the employee is a Member, Civilian Employee, Volunteer, or Chaplain. Employees, while on duty, shall wear and/or have in their possessions their issued IDs in accordance with this policy or the appropriate Standard Operating Procedures, and must be able to produce their IDs upon request. Members shall have in their possessions while off duty, and carrying an approved concealed weapon, their issued Highway Patrol credentials (Photo ID card and Badge).

North Carolina State Highway Patrol
Troop and District Boundaries



Officers of the Day

Applicable to: Members

Directive C.02
Revised 07/10/2017
Effective 5/1994

I. POLICY

Ranking officers of the North Carolina State Highway Patrol on State, troop, and district levels shall assign a member of their respective units to serve as Officer of the Day (OD) during all non-office hours.

II. STATE DUTY OFFICER OF THE DAY

In the absence of the Patrol Commander, the Patrol's Deputy Commander shall act as Commander of the State Highway Patrol. In the absence of the Patrol Commander and Deputy Commander, the assigned State Officer of the Day (OD) shall act as Commander of the State Highway Patrol and shall have the full authority and responsibility of the Commander's Office including commitment of Patrol resources. Until relieved by higher authority, the Officer of the Day on any level shall direct, supervise, and be responsible for Patrol operations to the extent practicable and feasible, commensurate with law and policy.

The State OD shall relay pertinent information to proper authorities on the Department level at the earliest practical time. If the incident is one, which might require the deployment of personnel or equipment from other divisions or agencies of government, the State OD should notify the Secretary of the Department of Public Safety or his/her designee immediately!

The State OD will be assigned responsibilities for an entire week beginning on Monday at 8:00 a.m. and ending the following Monday at 8:00 a.m. The Secretary and all Patrol Communications Centers will be supplied a schedule of State OD assignments.

The State OD will be responsible to ensure that all members have been notified of any incident which involves the death of an active member. The State OD shall also be responsible to ensure that the Secretary of the Department of Public Safety, the Commander's Office, and all Section Directors have been notified of any major incident which requires the deployment of patrol personnel, or significant news worthy occurrence.

III. AUTHORITY AND RESPONSIBILITY OF OFFICERS OF THE DAY

Troop and District ODs will serve for periods designated by the ranking officer in each unit. The schedules for Officer of the Day assignments will be furnished to the appropriate Communications Center each week and a copy will be filed at the appropriate troop headquarters. Officers of the Day shall keep themselves available for immediate contact either by telephone, radio, or pager.

During non-office hours, Officers of the Day on troop and district levels shall report all pertinent information concerning an emergency or unusual incident to the Officer of the Day on the next higher level at the earliest practical time.

When it is not possible or necessary for the highest ranking notified Officer of the Day to proceed to the scene of an emergency or other unusual incident, he/she shall, if practicable, designate a subordinate commissioned or noncommissioned officer to proceed to the scene, direct operations, and make timely progress reports to him/her. This action shall in no way relieve the highest ranking Officer of the Day of making command decisions commensurate with need; however, the designated commissioned or noncommissioned officer on the scene shall have the authority and responsibility of directing Highway Patrol operations as emergency developments require without consulting with the highest ranking Officer of the Day, if time and logic dictate immediate action.

When it is not possible or necessary for the State OD or Troop OD to proceed to the scene of an emergency or unusual incident, he/she shall ensure that he/she is at a facility where he/she can effectively direct operations; if practicable, he/she may proceed to the nearest Patrol Communications Center to direct operations.

When the location of an emergency situation moves from one district to another or from one troop to another, the affected District and/or Troop OD in whose area the incident begins shall maintain direction and control of Patrol operations until specifically relieved by the Officer of the Day in the district or troop to which the emergency situation has moved. The Officer of the Day in whose area the emergency situation arrives shall immediately assume command, but may request and receive the assistance of the Officer of the Day from whose area the emergency situation just moved.

If the Officer of the Day on any level is not the ranking officer and an incident is one of sufficient magnitude, the Officer of the Day shall inform or have the ranking officer informed of all pertinent facts immediately.

Officers of the Day may release arrest, investigation, and personnel information to the news media only in strict compliance with Patrol directive. All Officers of the Day shall make every effort to make public as early as possible all information affecting the safety of the general public. Requests for additional information are to be directed to the State OD. The State OD shall consult with the appropriate Department of Public Safety official prior to releasing further information.

To ensure uniformity and to determine if a felony drug or currency seizure case warrants Federal adoption, it shall be the responsibility of the affected Section Director, Troop/Unit Commander responsible for the area of a felony drug or currency seizure, to contact the Criminal Interdiction Team Officer of the Day (CIT OD) after being notified by a member under his/her command of the seizure prior to making any decision to seek adoption of the case for either criminal prosecution or civil forfeiture. The CIT OD shall be responsible for notifying the

State OD in all cases where drugs or currency has been seized, by e-mail when appropriate.

I. POLICY (CALEA 16.1.2)

This policy establishes guidelines related to the manpower allocation procedure.

The Office of Traffic Safety of the National Highway Traffic Safety Administration, United States Department of Transportation contracted with The Traffic Institute of Northwestern University to develop a method of allocating manpower for State law enforcement agencies. The resulting product, the Police Allocation Manual (PAM), was an innovative manpower allocation procedure that determines the number of required staff based on an analysis of workload in terms of the amount of time required to complete various tasks.

The North Carolina State Highway Patrol has adopted the basic concept of the PAM as the primary method of projecting manpower and staffing level requirements. Although the entire process is rather complex, the basic formula in the PAM model is used to derive the average daily number of on-duty members. Highway Patrol manpower needs are computed by an automatic process of data collection and analysis. This automated process is referred to as the PATROL AUTOMATED MANPOWER ALLOCATION (PAMA).

Data elements used in the PAMA formula are captured from the State Highway Patrols Computer Assisted Dispatch (CAD) system and Information Management System (IMS). Setting performance objectives, which are basically policy decisions, is a required factor in the formula.

II. PAMA METHODOLOGY

Time Based Model (CALEA 16.1.2)

- The procedures that are used in the PAMA model to determine the total staff requirements for the delivery of statewide Patrol traffic services are based on an analysis of workload requirements and performance objectives, measured in time, and associated with major field activities. The PAMA divides all Trooper activities into four time components:
    - Reactive Time (Calls for service)
    - Proactive Time (Self initiated activities)
    - Proactive Time (Patrol on uncommitted time)
    - Administrative Time

III. AUTONOMOUS PATROL AREAS (APA) (CALEA 16.1.2)

The PAMA model procedures are designed to determine total staffing requirements for APA. For the purpose of manpower allocation, the State Highway Patrol defines an autonomous Patrol area as a single county. APA's are geographical areas, which exhibit the following characteristics:

- Virtually all of the calls for services (CFS) that originate in the area are managed and handled by Troopers assigned to the area.

- Troopers assigned to the area are rarely assigned to CFS outside of the area.

- Although Troopers may be assigned to specific geographic subdivisions within the area for patrolling purposes, a Trooper may be dispatched, if required, to a CFS anywhere within the area.

The ability to tailor the PAMA procedures to reflect the particular data collection practices of the Highway Patrol is a strength of the model. Rather than requiring the Patrol to redefine existing data collection procedures to "fit" the model, it is possible to tailor the PAMA model to accommodate changing methods of Highway Patrol data collection.

Traffic patterns and volumes vary seasonally with additional industry, vacation regions, etc. Furthermore, the shifting of personnel from one duty station to another is required on occasion to maintain a standard of professionalism within the ranks of the Patrol and nothing in this policy shall prohibit the Commander's Office from exercising its powers when deemed appropriate. **(CALEA 16.1.2)**

Highway Patrol Jurisdiction on Federal Property: National Parks, Forests, Roadways, and Reservations

Directive C.04
Revised 9/28/2011
Effective 5/1994

Applicable to: Members
CALEA Chapter 2

I. POLICY

This policy sets forth State Highway Patrol jurisdiction on federal property. This includes federal parks, national forests, The Blue Ridge Parkway, national seashores, and certain other federally owned or controlled properties. Members shall enforce all laws of the State of North Carolina in accordance with the guidelines set forth in Concurrent and Exclusive Jurisdictions.

II. NATIONAL FORESTS (CALEA 2.1.2)

Concurrent Jurisdiction – The Jurisdiction is concurrent. 16 U.S.C. 480.

Highways and Public Vehicular Areas

- State maintained roads within a national forest are highways within the meaning of N.C.G.S. § 20-4.01(13).
- Forest development roads, driveways, and parking lots, built and maintained by federal authorities are public vehicular areas pursuant to N.C.G.S. § 20-4.01(32).
- Trails or private roads should be treated as private property.

National Forests

- Croatan National Forest
- Uwharrie National Forest
- Pisgah National Forest
- Nantahala National Forest

III. GREAT SMOKY MOUNTAINS NATIONAL PARK (CALEA 2.1.2)

Concurrent Jurisdiction – The jurisdiction in the Great Smoky Mountains National Park is concurrent. (See 27 July 1984 agreement between U.S. Department of Interior and the State of North Carolina.)

Streets and Public Vehicular Areas

- State-maintained highways and interstates are highways within the meaning of N.C.G.S. § 20-4.01(13).

- Federally maintained roads, parking lots, and driveways are public vehicular areas within the meaning of N.C.G.S. § 20-4.01(32).

- Trails or private roads are treated as private property.

IV. BLUE RIDGE PARKWAY (CALEA 2.1.2)

Concurrent Jurisdiction – The Jurisdiction is concurrent. (See 27 July 1984 agreement between U.S. Department of Interior and the State of North Carolina.)

The Parkway is a federally maintained facility and is a public vehicular area within the meaning of N.C.G.S. § 20-4.01(32) and not a street or highway.

V. NATIONAL SEASHORE (CALEA 2.1.2)

Concurrent Jurisdiction – The jurisdiction is concurrent. (See 27 July 1984 agreement between U.S. Department of Interior and the State of North Carolina.)

Streets and Public Vehicular Areas

- State-maintained highways are considered highways within the meaning of N.C.G.S. § 20-4.01(13).

- Federally maintained roads, parking lots, and driveways are public vehicular areas within the meaning of N.C.G.S. § 20-4.01(32).

- Trails and private roads are considered private property.

- Beach area open to vehicular traffic is considered a public vehicular area within the meaning of N.C.G.S. § 20-4.01(32).

National Seashores

- Cape Hatteras National Seashore

- Cape Lookout National Seashore

VI. CHEROKEE INDIAN RESERVATION (CALEA 2.1.2)

Motor Vehicle Law Violations

- Cherokee Indians

    - All members of the Patrol have been granted authority to enforce the following Chapter 20 violations against Cherokee Indians:

        - N.C.G.S. § 20-4.1-4.12 (Reciprocity as to registration and licensing)

- N.C.G.S. § 20-28, 20-28.2, 20-29 (DWLR, DWI forfeiture, surrender of license)
- N.C.G.S. § 20-71 (Forging Title and Registration Card)
- N.C.G.S. § 20-114.1 (Failure to Obey LEO)
- N.C.G.S. § 20-138.1 through 20-171 (Rules of Road)
- N.C.G.S. § 20-216 through 20-218.2 (Miscellaneous Provisions)

o The Eastern Band of Cherokee Indians are issued identification cards. Such Cherokee Indians must be cited to Cherokee Court for violations of the Motor Vehicle Code. The citation should be modified to strike "State of North Carolina" and substitute "Eastern Band of Cherokee Indians."

- Non-Native Americans and Non-Cherokee Indians

o All members have the authority to cite to federal or State courts non-Indians and non-Cherokee Indians violating the provisions of the Motor Vehicle Code for either misdemeanors or infractions adopted by the Tribe, on the Reservation.

Other Crimes

- A non-Native American or non-Cherokee Indian who commits a crime against another Native American (Cherokee or non-Cherokee) must be processed through a federal court. Williams v. United States, 327 U.S. 711 (1946). Members who witness such an offense being committed in their presence should detain the offender until an appropriate tribal or federal law enforcement official arrives.

- Any Native American (Cherokee or non-Cherokee) who commits any of the following crimes must be processed in federal court:

o Murder

o Manslaughter

o Kidnapping

o Maiming

o Felonious Sexual Abuse

o Incest

o Assault with Intent to Commit Murder

- Assault with a Dangerous Weapon
- Assault Resulting in Serious Bodily Injury
- Arson
- Burglary
- Robbery
- Larceny of Property in Excess of $1000 value (18 U.S.C 661; 1153; 2241)

- Any Native American (Cherokee or non-Cherokee) who commits a misdemeanor assault on a law enforcement officer is taken before the tribal court.

- Any non-Native American who commits a misdemeanor or felony under State law and the crime is not against a Native American (Cherokee or non-Cherokee) may be arrested for violating State law and processed in State court by any member of the Highway Patrol.

Highways and Public Vehicular Areas

- State maintained roads built on or running through the Reservation are highways within the meaning of N.C.G.S. § 204.01(13).

- Roads, driveways, and parking lots maintained by the Bureau of Indian Affairs (BIA) or the Cherokee Indian Tribe are public vehicular areas pursuant to N.C.G.S. § 204.01(32).

Accident Investigations

- Members are authorized to investigate all motor vehicle collisions and file the required reports for accidents occurring on State and BIA or Tribe roads on any part of the Reservation.

VII. OTHER FEDERAL PROPERTY (CALEA 2.1.2)

Except as set forth in this directive, State highways running through federal reservations remain subject to State Highway Patrol jurisdiction, as does any State highway. Federal authorities may have concurrent jurisdiction

Roadways, streets, driveways, and parking lots on property owned, occupied, or controlled by the federal government over which the State exercises concurrent jurisdiction are public vehicular areas.

The State possesses no authority over areas under exclusive federal jurisdiction. Such areas exist within military bases or other federal reservations.

Members may obtain information concerning these areas from their troop or district offices.

Concurrent jurisdiction exists over the following federal properties based upon the 27 July 1984 agreement between the U.S. Department of Interior and the State of North Carolina:

- Carl Sandburg Home National Historic Site (Henderson County)
- Fort Raleigh National Historic Site (Dare County)
- Guilford Courthouse National Military Park (Guilford County)
- Moores Creek National Military Park (Pender County)
- Wright Brothers National Monument (Dare County)

Concurrent jurisdiction also exists over the following federal properties:

- Radio Island (Carteret County)
- B. Everett Jordan Lake (Wake and Chatham Counties)
- W. Kerr Scott Dam and Reservoir (Wilkes County)

Concurrent jurisdiction exists over the following properties:

- National Wildlife Refuges:
    - Alligator River
    - Cedar Island
    - Currituck
    - Great Dismal Swamp
    - MacKay Island
    - Mattamuskeet
    - Pea Island
    - Pee Dee
    - Pocosin Lakes
    - Roanoke River

- Swanquarter

- National Fish Hatcheries:
  - Edenton
  - McKinney Lake

I. POLICY

This policy sets forth guidelines to ensure uniformity in the development, revision, and issuance of written Highway Patrol policy.

- All employees are charged with the responsibility of being familiar with and abiding by the provisions of the written policies.

- The written policy of the Patrol shall include:

  - **Policy and Procedures** consisting of written directives

  - **Forms** consisting of Patrol and other agencies' forms, reports, and instructions

  - **Memorandums** issued by the Commander's Office

  - **Standard Operating Procedures (SOP)** issued with the approval of the Commander's Office

  - **Promotional System Process Guide** issued with the approval of the Director of Professional Standards after consulting with the Commander's Office

II. FUNCTION AND PREPARATION OF WRITTEN POLICY / FORMS

Written policy governing the Patrol in its internal and external affairs shall be issued only by the Commander's Office subject to the approval of the Secretary of the Department of Public Safety. The Commander's Office shall have the authority to issue, modify, and approve written directives.

- Policy and Procedures

  - **Rules and Regulations:** Certain written policies contained within the Policy and Procedures System must be adopted as rules pursuant to the North Carolina Administrative Procedure Act of the North Carolina Administrative Code. The rules and regulations can be found in the Policies and Procedures System in the form of written directives, which have been merged with certain rules from Subchapter 9 of the North Carolina Administrative Code and previously adopted. Modification of the contents of any paragraph in these subchapters will be indicated underlining the new or revised material.

- **Written Directives:** Each written directive will be identified by a letter and an Arabic number.

- **Effective Date:** The date the policy is first issued. This date shall be considered the effective date of the rule, regulation, or written directive unless otherwise directed in writing by the Commander's Office. This date shall be placed on the front page in the upper right hand corner below the revision date.

- **Revision Date:** This date shall be placed on the front page in the upper right hand corner of the revised policy. This date shall be considered the effective date of the revision of the rule, regulation, or written directive. All portions of the policy which have been changed shall be underlined in order to identify the revised segments of any policy.

- **Forms**

  - Forms are located and updated to the Patrol's intranet site / ePolicy system where each form and applicable instructions document can be downloaded by Patrol employees for completion. All forms shall be typed or completed using black ink; however, black or blue ink may be used for signatures. Each form and instructions document shall have a number assigned by the Compliance Manager to be printed in the upper left corner of the form. The words "New" or "Rev." preceding the date (mm/yyyy) of approval shall fall immediately below the form number. The issuance or revision date shall be considered the effective date of the form.

  - The Compliance Manager may request to create a committee consisting of Process Owners to modify and/or improve a selected form. The committee shall make recommendations concerning the revision of a form to the Compliance Manager. The Compliance Manager shall be responsible for providing information concerning the progress of a form to the Commander's Office for final approval.

  - When it is determined that the creation of a new form is needed or an existing form needs to be deleted, the Compliance Manager shall be notified to start the appropriate process.

Review of Policy by Process Owner

- At least once every three (3) years, the Compliance Manager shall identify and task the Process Owner of Highway Patrol Directives to thoroughly review assigned directive(s) to ensure they accurately reflect operational procedures currently being used by the Patrol. Once the directive(s) have been reviewed by the Process Owner, all recommendations shall be forwarded to the Compliance Manager in the Professional Standards Section for review, and possible implementation upon approval of the Commander's Office.

New or Revised Written Policy / Forms

- All Section Directors, Troop/Unit Commanders shall forward, through the chain-of-command, any needed policy/form changes or recommendations affecting their sections or the agency, to the Compliance Manager as appropriate. Any employee discovering material that is no longer current or has a discrepancy is encouraged to report such information via chain-of-command to the appropriate Compliance Manager in the Professional Standards Section for all issues concerning policy or forms. The employee should make recommendations for changes or additions to the form, the form instructions, and/or any affected policy.

- Proposed changes of written policy or forms must be made in writing and directed to the appropriate manager. The Compliance Manager will evaluate the proposal(s) in consultation with the Director of Professional Standards or his/her designee and determine the appropriate course of action, which may include the member(s) making the request for the change(s) to provide all documentation that will support the proposed change(s). Additionally, the appropriate Section Director or designee must be prepared to discuss any proposed change(s) to policy or forms during scheduled senior staff meetings.

- When it is determined that a new or revised written policy/form is needed, the Professional Standards Section may:

    - Task the process owners with the responsibility of assisting with the research and development of a revision or draft policy/form.

    - Revise or draft policy and forms shall be returned to the Professional Standards Section for review, editing, and/or formatting.

    - Ensure that proposed revisions or additions are reviewed by the Commander's Office and others deemed appropriate. Recommendations for changes in the new or revised policy/form may be made during the review process. The Commander's Office shall determine what recommendations, if any are to be included. The draft should be returned the Professional Standards Section for preparation of the change(s) in policy/form.

    - Prepare the policy change in final form and submit to the Commander's Office for signature.

    - Ensure documentation is posted to the Highway Patrol ePolicy System.

- When a change of policy must be made without delay, the Commander's Office shall issue a memorandum changing the policy immediately. Each employee shall follow such memorandum even when it conflicts with existing policies. The memorandum will remain in effect until the Commander's Office revokes it or the appropriate policy is changed in accordance with this

directive. Patrol policies changed by memorandum shall also be recorded in the ePolicy System.

- The Professional Standards Section is responsible for the indexing, distribution, and/or purging of all written policies.

III. DISTRIBUTION OF WRITTEN POLICY

Each employee of the Highway Patrol and designated employees of the Department of Public Safety shall have access to the ePolicy System. Employees are responsible for the maintenance of currently posted directives.

If available, electronic copies of forms will be maintained on the Intranet.

Each employee shall be required to acknowledge that he/she has received and read his/her revised policy by electronic acceptance via the ePolicy System. Each ranking supervisor shall ensure policy acceptance by all employees via the ePolicy reporting function.

Each employee shall be required to sign for, and acknowledge receipt of the policy with the understanding that they are accepting responsibility for reviewing the content within the policy.

Supervisors will utilize the ePolicy reporting function during periodic inspections to ensure that each employee's policies are kept up to date and properly signed.

IV. OTHER CORRESPONDENCE

In order to facilitate effective, efficient communication and inform employees of specific correspondence related to legal briefs, training issues, Legislative Law Changes, or other pertinent information, the following forms of communications may be utilized: CAD, E-Mail, Mobile Data Computer (MDC), memorandum, Intranet, ePolicy System, etc.

The aforementioned forms of communications are designed to enhance employee's knowledge, skills, and abilities necessary to perform their jobs. These will supplement other types of formal training and may relate to more than one section/unit within the Highway Patrol.

Special Orders

Applicable to: Employees
CALEA Chapter 12

Directive D.02
Revised 9/29/2011
Effective 5/1994

I. POLICY

This policy establishes a guideline for the development and issuance of *Special Orders*. Highway Patrol *Special Orders* shall be issued as directed by the Commander's Office and shall pertain only to administrative matters affecting one or more employees or individuals named in the *Special Order*. It serves as direction and authority for affected employees to carry out the action called for in the order.

II. FUNCTION, FORMAT, AND DISTRIBUTION (CALEA 12.1.4)

The first *Special Order* published in each year shall be designated *Special Order* No. 1, and all succeeding *Special Orders* for the year shall be numbered consecutively. All *Special Orders* will be dated and shall be signed by the Commander's Office or his/her designee.

Special Orders will include, but are not limited to, the following personnel actions: Deaths, Retirements, Resignations, Dismissals, Promotions, Transfers, Call Number Changes, Military Leave, Leave of Absence, or Assignments of New Personnel.

Special Orders shall be posted and available on the Intranet.

Copies may be forwarded to affected State agencies per request.

First Sergeants shall forward a copy to retired employees living in their districts.

Records Accountability: Personnel, Reproduction, and Registered Symbols

Directive D.03
Revised 10/2014
Effective 11/10/2004

Applicable to: Employees

I. POLICY

This policy sets forth procedures and accountability for records, records reproduction, personnel records and the utilization of the Patrol's registered identification symbols. The use of such symbols by other persons, firms, or corporations requires **prior** written permission of the Commander's Office.

II. RECORDS REPRODUCTION

It shall be the policy of the Highway Patrol to make copies of Traffic Crash Reports (DMV-349) available for inspection as required by G.S. 20-166.1.

It shall be the policy of the Highway Patrol to reproduce and provide copies of Driving While Impaired Report (HP-327) prior to the criminal trial only with the consent of the District Attorney. The First Sergeant shall consult and comply with the policy of the District Attorney.

It shall be the policy of the Highway Patrol to reproduce and provide copies of patrol citations, summons, warrants, or other documents relating to an infraction or criminal investigation, which are on file in the office of the Clerk of Superior Court. Copies of other documents, including chemical analysis forms relating to a criminal investigation, shall not be provided to non-law enforcement personnel without the consent of the District Attorney unless the criminal charges have been adjudicated. Copies shall not be made of any document relating to juvenile proceedings.

Copies shall not be made of materials relating to personnel of the Highway Patrol, including Post Chase and Use of Force reports, except for official authorized internal use.

Requests for copies of policies and/or forms should be forwarded to the Office of Professional Standards.

Copies of driving records or other information generated from the Division of Motor Vehicles (DMV) computer or Division of Criminal Information (DCI) computer may only be provided to other federal, state, or local law enforcement agencies in accordance with DMV or DCI regulations.

Questions about which documents may be copied shall be referred via chain-of-command to Field Operations.

Refer to Directive I.06 (Juvenile Offender Procedures) for any questions relating to juvenile records.

III. PROCEDURES FOR REPRODUCING RECORDS

Any person may request a copy of a document from a district office, which has the requested document on file.

If authorized, the district secretary or district supervisory personnel shall provide a copy of the requested record as soon as possible without disruption of other office duties. Request for any record after regular working hours shall be directed to the District Supervisor on-duty or on-call.

No fee shall be collected for copies of paper reports.

All investigative reports and materials associated with pending criminal or infraction cases (such as HP-327, etc.) are NOT public records and cannot be released without the written permission of the District Attorney. With the permission of the District Attorney, the following fees are applicable:

- No charge for copying paper reports
- Actual cost of processing for photographs

If the District Attorney will not pursue criminal or infraction cases or if the cases are closed, investigatory notes and materials are public records and must be reproduced.

IV. ACCOUNTABILITY FOR FUNDS COLLECTED

The First Sergeant shall be responsible for the proper handling of any funds received in his/her respective district and shall assure that:

- Funds are submitted to the Director of Support Services within five (5) business days from receipt
- The funds are submitted to the Support Services Section, Archdale Building, Raleigh, NC 27699-4231 or Courier Box: 52-01-30
- All checks and/or money orders are to be made payable to the Department of Public Safety
- The collection of cash as payment for any reason is strictly prohibited
- If any funds are received, a memorandum directed to the Director of Support Services shall be attached containing what the funds were collected for, the amount of funds received and a photocopy of the check(s)/ or money order(s). The Director of Support Services shall be responsible for forwarding all funds received, along with a memorandum summarizing the receipts, to the Controllers Office.

V. CRASH REPORT COPIES

Traffic crash reports are made available to the public by accessing the Highway Patrol's website.

Nothing in this regulation shall prohibit members from using crash reports to release authorized information to the news media.

VI. AUTHORIZED COPYING, USE OR SALE OF PATROL SYMBOLS

Trademark registered identification symbols include, but are not limited to, the name of the Highway Patrol, the badge, the shoulder patch, the door seal on Patrol vehicles, the hat badge, and all other Patrol-specific symbols which identify the North Carolina Highway Patrol.

Employees, both active and retired, may use the Patrol symbols for business cards when there is no personal message of any kind printed or hand-written on the card. Only the name, address, telephone, facsimile and pager numbers, and e-mail address may be placed on the card. It is permissible to write in an additional address, telephone, facsimile and pager number, e-mail address, or directions. Drive safely, have a nice day, or other personal messages shall never be printed or written on the card.

All other use, or sale, of registered identification symbols requires prior written permission of the Commander's Office.

VII. UNAUTHORIZED COPYING OR USE OF PATROL SYMBOLS

Unauthorized copying or use of Patrol symbols is a violation of law and Patrol Policy and shall be dealt with according to Patrol policy.

VIII. PERSONNEL RECORDS

Location of Personnel Records of Patrol Employees

Personnel record files for each full-time employee of the Highway Patrol shall be maintained as follows:

- A master personnel file for all NCSHP employees shall be maintained in the Department's Human Resources Office in Raleigh by the Director of Human Resources under the personal supervision of the Secretary of the Department of Public Safety

- Agency level personnel files shall be maintained at each troop/district/ section for each employee assigned to that location according to the State Highway Patrol Filing Guide

IX. RULES GOVERNING THE PRIVACY OF PERSONNEL FILES

Access to all State Highway Patrol personnel files shall be governed by:

N.C.G.S. § 126-22: Personnel files not subject to inspection under N.C.G.S. § 132.6. Personnel files of State employees, former State employees, or applicants for State employment shall not be subject to inspection and examination as authorized by N.C.G.S. § 132.6. For purposes of this Article, a personnel file consists of any information gathered by the department, division, bureau, commission, council, or other agency subject to Article 7 of this Chapter which employs an individual, previously employed an individual, or considered an individual's application for employment, or by the office of State Personnel, and which information relates to the individual's application, selection or non-selection, promotions, demotions, transfers, leave, salary, suspension, performance evaluation forms, disciplinary actions, and termination of employment wherever located and in whatever form. Personnel files of former State employees who have been separated from State employment for 10 or more years may be open to inspection and examined except for papers and documents relating to demotion and to disciplinary actions resulting in the dismissal of the employee.

N.C.G.S. § 126-23. Certain records to be kept by State agencies open to inspection

- Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee:

    - Name.
    - Age.
    - Date of original employment or appointment to State service.
    - The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession.
    - Current position.
    - Title.
    - Current salary.
    - Date and amount of each increase or decrease in salary with that department, agency, institution, commission, or bureau.
    - Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that department, agency, institution, commission, or bureau.
    - Date and general description of the reasons for each promotion with that department, agency, institution, commission, or bureau.
    - Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the department, agency, institution, commission, or bureau. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the head of the department setting forth the specific acts or omissions that are the basis of the dismissal.

- The office or station to which the employee is currently assigned.

- For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

- Subject only to rules and regulations for the safekeeping of the records, adopted by the State Personnel Commission, every person having custody of such records shall permit them to be inspected and examined and copies thereof made by any person during regular business hours. Any person who is denied access to any such record for the purpose of inspecting, examining or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

N.C.G.S. § 126-24: Confidential information in personnel files; access to such information. All other information contained in a personnel file is confidential and shall not be open for inspection and examination except to the following persons.

- The employee, applicant for employment, former employee, or his/her properly authorized agent, who may examine his/her own personnel file in its entirety except for (i) letters of reference solicited prior to employment, or (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient. An employee's medical record may be disclosed to a licensed physician designated in writing by the employee.

- The supervisor of the employee;

- Members of the General Assembly who may inspect and examine personnel records under the authority of N.C.G.S. § 120-19;

- A party by authority of a proper court order may inspect and examine a particular confidential portion of a State employee's personnel file; and

- An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the department head of the employee whose record is to be inspected or, in the case of an applicant for employment or a former employee by the department head of the agency in which the record is maintained as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation."

Notwithstanding any other provision of this Chapter, any department head may, in his/her discretion, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or non-employment of an applicant, employee or former employee employed by or assigned to his/her department or whose personnel file is

maintained in his/her department and the reasons thereof and may allow the personnel file of such person or any portion thereof to be inspected and examined by any person or corporation when such department head shall determine that the release of such information or the inspection and examination of such file or portion thereof is essential to maintaining the integrity of such department or to maintaining the level or quality of services provided by such department; provided that prior to releasing such information or making such file or portion thereof available as provided herein, such department head shall prepare a memorandum setting forth the circumstances which the department head deems to require such disclosure and the information to be disclosed. The memorandum shall be retained in the files of said department head and shall be a public record.

N.C.G.S. § 126-25: Remedies of employee objecting to material in file. Any employee, former employee, or applicant for employment who objects to material in his/her file may place in his/her file a statement relating to the material he/she considers to be inaccurate or misleading. An employee, former employee or applicant for employment who objects to material in his/her file because he/she considers it inaccurate or misleading may seek the removal of such material from his/her file in accordance with the grievance procedure of that department, including appeal to the State Personnel Commission. When a department, division, bureau, commission, or other agency agrees or is ordered by the State Personnel Commission or by the General Court of Justice of this State to remove inaccurate or misleading material from an employee's file, which information was placed in the file by the supervisor or other agent of management, it shall destroy the original and all copies of the material removed and may not retain any inaccurate or misleading information derived from the material removed.

N.C.G.S. § 126-27: Penalty for permitting access to confidential file by unauthorized person. Any public official or employee who shall knowingly and willfully permit any person to have access to or custody or possession of any portion of a personnel file designated as confidential by this Article, unless such person is one specifically authorized by N.C.G.S. § 126-24 to have access thereto for inspection and examination, shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars ($500.00).

N.C.G.S. § 126-28: Penalty for examining, copying, etc., confidential file without authority. Any person, not specifically authorized by N.C.G.S. § 126-24 to have access to personnel files designated as confidential by this Article, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court, but not in excess of five hundred dollars ($500.00).

N.C.G.S. § 126-29: Access to material in file for agency hearing. A party to a quasi-judicial hearing of a State agency subject to Article 7 of this Chapter, or a State agency subject to Article 7 of this Chapter which is conducting a quasi-judicial hearing may have access to relevant material in personnel files and

may introduce copies of such material or information based on such material as evidence in the hearing either upon consent of the employee, former employee, or applicant for employment or upon subpoena properly issued by the agency either upon request of a party or on its own motion. Nothing in this Article shall impose liability on any agent or officer of the State for compliance with this provision, notwithstanding any other provision of this Article.

Employee Benefits

Applicable to: Employees

Directive E.01
Revised 12/03/2021
Effective 10/1/1999

I. POLICY

This policy sets forth procedures for employee benefits afforded to Patrol employees.

II. GENERAL

Member benefits (some optional and some compulsory) shall include Social Security, Workers' Compensation, health and other group insurance programs, Separate Insurance Benefit Fund, Special Death Benefits for Law Enforcement Officers (State and Federal), Special Separation Allowance for Law Enforcement Officers, Supplemental Retirement Income Plans (401(K) and 457b), the State's Disability Salary Continuation Plan, and other Retirement System benefits for law enforcement officers.

Nothing in this directive is intended to expand, in any way, the statutory liability of the State and/or the Department of Public Safety, but is intended only as an explanation of available benefits and required procedures. If the member needs information, which cannot be supplied at the field level, he/she may consult with the Benefits Unit. Benefit forms and the Workers' Compensation Physician list may be located and obtained on the DPS Website at the following link: http://www2.ncdps.gov/Index2.cfm?a=000002,002675 .

The Benefits Unit shall be responsible for notifying the affected Section Director/Troop Commander concerning any member benefit matter coming to his/her attention which might have a bearing upon supervisory decisions.

III. EMPLOYEE JOB-RELATED INJURY / ILLNESS

Employee Responsibility

- When an employee suffers an on duty compensable injury, the member or the employee's representative shall immediately contact the immediate supervisor to report the injury. The employee or the employee's representative shall immediately or as soon thereafter as possible, provide the supervisor with a written statement describing the injury and how it occurred on the Employee's Initial Report of Injury / Illness (DPS-WC-EE).

- If the injury is obviously minor in nature and no medical attention is necessary, the supervisor shall have the employee resume regular duties. Should the employee and supervisor disagree on the need for medical attention as a result of the compensable injury, the employee shall report to an assigned physician immediately.

- If a compensable injury occurs which requires immediate medical treatment during physician office hours, the employee shall request the supervisor to assign an approved physician on the list at **www.talispoint.com.** The username is strata and the password is SONC99. If medically necessary, the employee shall go directly to the nearest emergency room or urgent care facility.

- If the injury occurs after physician office hours and is of a nature that would require examination by a physician but would pose no further harm to the employee if not immediately examined **and the injury will not cause the employee to stop work immediately**, the employee may wait until the following business day to seek treatment from an assigned authorized physician.

- When an employee is injured and disability is not apparent at the time of the injury but develops later, the employee must contact his/her immediate supervisor for assignment of a CCMSI physician before non-emergency treatment located at the following link **www.talispoint.com.** The username is strata and the password is SONC99. Further, the attending physician's statement will be required certifying that the employee's disability is justified. Such certification shall be provided by the employee to the immediate supervisor who will forward without delay to the Benefits Unit.

- In all cases where a physician is utilized, the employee shall provide the supervisor with a copy of the physician's statement specifying if a disability exists. If the physician's statement indicates a non-disabling injury, the employee shall be required to return to duty immediately. If disability is indicated, the employee shall provide a statement from the attending physician containing the description of such disability, the anticipated assignment, and any pertinent restrictions. The employee shall not return to duty prior to notification from the Benefits Unit via the chain-of-command for clearance to return to limited/full duty status.

- When an employee has been made aware by a treating physician that the employee is capable of performing limited/full duty, the employee shall immediately advise the immediate supervisor of same and provide the supervisor a copy of the physician's clearance letter stating date of return to work, limited/full duty status, and restrictions, if any, that may apply.

Each injured employee is personally responsible to assure any change of treatment plans and referrals to physicians other than the initial assignment to a physician by a supervisor are cleared with a CCMSI adjuster.

Supervisor Responsibility

- Upon learning of a compensable injury of an employee, the supervisor shall issue the injured employee a copy of the CCMSI First Fill Letter and the Employee's Initial Report of Injury / Illness (DPS-WC-EE) and the CCMSI Sonic-Initial Medical Treatment Authorization Form.

  If applicable, the supervisor shall assign a treating physician/facility, call and advise the physician the injured employee is en-route for treatment, and further advise the physician/facility to mail all statements of charges associated with the injury to the third-party administrator (CCMSI).

- In the event of serious injury, the supervisor shall send the injured employee directly to the nearest emergency room or urgent care facility. (In the case of **severe** injury contact the Benefits Unit immediately and after business hours; the supervisor shall also contact a CCMSI (1-888-596-8771) adjuster to begin coordination of extensive medical treatment needs).

- Any request for change of doctor, referral to a specialist, or Workers Compensation related bills received should be directed to CCMSI.

- The supervisor shall investigate an employee's report of on-the-job injury. The supervisor shall complete an Employer's Accident/Incident Investigation Report (DPS-WC-IR).

- The supervisor shall obtain a detailed statement on the Employee's Initial Report of Injury / Illness (DPS-WC-EE) from the member and statements from any additional witnesses on the Voluntary Statement (HP-326A) or Member's Statement (HP-326B or HP-326B1) describing the injury and how it occurred.

- When a job-related injury/illness requires an employee to be **hospitalized immediately**, it will be the responsibility of the supervisor to obtain a statement from the attending physician relative to the employee's condition and anticipated length of disability.

- Within 24 hours of the injury or the next business day, the immediate supervisor shall forward via e-mail/fax the following supporting documents to the Benefits Unit:

  - Employer's Accident/Incident Investigation Report (DPS-WC-IR)
  - Employee's Initial Report of Injury / Illness (DPS-WC-EE)
  - DMV-349 and insurance information (if applicable)
  - Body Fluid Exposure Form (DPS-187) (if applicable)
  - Physicians statement (if applicable)

- All other available witness statements (HP-326A / HP-326B or HP-326B1)

- The hard copy of all forms associated with this injury shall be maintained in the employee's personnel file located at his/her assigned duty station.

- If the assigned treating physician confirms in writing that a disability exists, the employee is to remain on injury leave until approval to return to duty is confirmed by the Benefits Unit. The HR-205 WC Leave Request shall be completed after the first day of missed work.

- The immediate supervisor shall submit a Worker's Compensation Leave Request Form (WC-LVE-REQ) to the Benefits Unit when an employee misses the first scheduled work day due to an on-duty injury. Should the employee remain on injury leave in excess of 30 calendar days, the Worker's Compensation Leave Request Form (WC-LVE-REQ) shall be submitted to the Benefits Unit on a monthly basis thereafter until the condition changes.

- When an employee is on injury leave, the immediate supervisor shall personally contact the employee once weekly to monitor medical status, needs, and progress. Any suspicion of abuse of leave shall be immediately brought to the attention of the Benefits Unit through established channels. A physical evaluation by the Patrol Medical Director may be required.

- Upon receiving written notice an employee is cleared by the treating physician to return to limited/full duty, the immediate supervisor shall forward a copy of the physician's statement and a request form Return to Work Request/Plan (DPS-RTWP) for the employee to perform limited/full duty immediately to the Benefits Unit. Upon receipt, the Benefits Unit will confer with the NCSHP Medical Director or the designee regarding the request. If no adverse issues exist regarding the employee's return to duty, the Benefits Unit will then forward by e-mail the approval to Field Operations and the appropriate Section or Troop headquarters.

Members Only

- The salary of a member disabled as the result of a heightened risk compensable injury/illness shall continue as long as such disability lasts (if there is no refusal to perform limited duty), not to exceed two years from the date of initial incapacity. A member's injury leave for a heightened risk compensable injury/illness shall not be charged to sick or other leave during the first two (2) years of a member's disability with the exception of designated holidays.

- A member's injury leave for a non-heightened risk compensable injury/illness shall be transferred to CCMSI payroll after the 7th day is missed. A member shall use personal leave for the first 7 days of absence.

- When the member reaches maximum medical improvement, and is found capable of performing the prior job function, the Commander's Office shall return the member to a position comparable to the position held prior to the injury leave.

- In the event the disability is permanent, the member shall contact the Benefits Unit to arrange for continued benefits provided by the Workers' Compensation Act. At that time, information on continued benefits will be discussed. The member's District First Sergeant or immediate supervisor shall assist in this regard.

IV. SPECIAL INCIDENCES

Should a compensable injury include a specific occupational bloodborne pathogen exposure, a Body Fluid Exposure Form (DPS-187) shall be completed and appropriate testing done as soon as possible. The Patrol Medical Director/designee shall be contacted to aid and/or direct the testing procedures. A copy of the Body Fluid Exposure Form (DPS-187) shall be faxed to the Benefits Unit along with the Employee's Accident/Incident Investigation Report (DPS-WC-IR), and the employee's statement on the Employee's Initial Report of Injury / Illness (DPS-WC-EE). If an employee receives a specific occupational bloodborne pathogen exposure and there is no injury, all listed forms except the DPS-WC-IR shall be completed.

V. MANDATORY REQUIREMENTS

The Benefits Unit is responsible for forwarding all applicable forms to CCMSI, immediately upon receipt.

An employee sustaining a compensable job-related injury/illness as a result of the actions of a third party and who subsequently agrees to a settlement with the third party shall notify the Department's Benefits Unit prior to settlement. The Benefits Unit will take appropriate action to assure that the State is reimbursed for all benefits paid on behalf of the employee through Workers' Compensation and Salary Disability Continuation Plan.

Employees disabled from job-related injuries/illness shall, in addition to statutory requirements, be governed by policies and procedures established by the Secretary and the Patrol Commander.

Failure to follow this procedure shall bar the employee from receiving further Workers' Compensation benefits unless in the opinion of the Industrial Commission the circumstances justified the employee's action.

It is unlawful for any person, including physicians, nurses, and hospitals, to accept a fee, gift, or any remuneration for any service in connection with the claim of any person awarded compensation unless such fee or other

consideration has been approved by the Industrial Commission. No employee should pay any such fee unless so approved.

If an employee is injured while on duty, and the injury is not compensable as defined by the Workers' Compensation Act, the cost/utilization of any medical treatment the employee may deem necessary will be the sole responsibility of the injured employee. Further, any leave necessary to secure said medical treatment and/or any leave taken on account of said injury shall be governed by Directive E.04, Section IX (Leave of Absence Without Pay), as it relates to sick leave or leave without pay.

VI. LIMITED DUTY – MEMBERS ONLY

On-Duty Related Injury / Illness

A member on Workers' Compensation leave from a job-related injury/illness who has not reached maximum medical improvement and retains some disability which prevents successful performance in the original position may be required to perform limited duty. Limited duty assignments are assigned duties that fall within the member's scope of employment but do not require the same physical condition of normal duty assignments. In incidents of minor injury/illness or extended recovery periods, the member may request or the supervisor may recommend assignment to limited duty.

Refusal by a member to perform assigned limited duty work will initiate the termination of salary continuation under N.C.G.S. § 143-166.14 and medical payments under Workers' Compensation. N.C.G.S. § 143-166.19, relating to salary continuation states, upon filing of the report, the secretary or other head of the department shall determine the cause of the incapacity and to what extent the claimant may be assigned to other than his normal duties. Any person who refuses to perform any duties, to which he may be properly assigned as a result of the finding of the secretary, other head of department, or the North Carolina Industrial Commission, shall be entitled to no benefits pursuant to this Article as long as the refusal continues.

Off-Duty Related Injury / Illness

A member who suffers an off-duty disabling injury/illness that results in an inability to perform normal duties and for which the member has not reached maximum medical improvement, may request a limited duty assignment through their proper chain of command. The same medical approval for limited duty required for on-duty injury/illness is also required for off-duty injury/illness. The immediate supervisor shall examine for available work that is meaningful, productive, and suitable to the member's capacity; and the advantage of such work to the member and the Patrol when considering the member's request. Limited duty for on-duty injury/illness shall take priority over limited duty for off-duty injury/illness. If there is inadequate meaningful, productive, and advantageous work to support the number of members eligible for limited duty,

members disabled as a result of on-duty injury/illness shall be given the limited duty assignment and all others shall be denied or have their current limited duty terminated. The appropriate Section Director or his/her designee shall have discretion in determining whether limited duty will be granted and the length of any such duty.

When limited duty resulting from an off-duty injury / illness is approved, it shall not last more than 90 calendar days from the approval date. An additional 90 calendar day continuation of limited duty may be approved at the discretion of the Director of Support Services or designee. If an employee is not able to be placed back to full duty status after 180 calendar days, the employee shall use other time (i.e. sick, vacation, bonus, etc.). If the employee exhausts all leave time, the employee shall go on leave without pay as described in Directive E.04.

At the member's request, a pregnant member may perform limited duty the entire term of the pregnancy once the Return to Work Request/Plan (DPS-RTWP) is approved. Refer to E.04 Maternity Leave.

This directive does not create a right to limited duty or a right to continue limited duty. Limited duty may be terminated at any time by the appropriate Section Director, Troop Commander, or higher authority.

Requesting Process and Restrictions

Upon a request to perform limited/full duty from a member or a supervisor, the Return to Work Request/Plan (DPS-RTWP), and a letter from the member's physician authorizing return to limited/full duty shall be faxed to the Benefits Unit by the appropriate Section Director/Troop Commander.

In cases that involve off-duty, non-compensable injuries/illnesses, the supervisor shall ensure the member has signed a release of medical information form at his/her physician's office releasing any and all information relating to the injury/illness to the Patrol Medical Director and the Benefits Unit prior to faxing the request.

Upon receipt of the required faxed information, the Benefits Unit shall seek the recommendation of the Patrol Medical Director.

For On-Duty injury leave only, the Patrol Medical Director, through a consultation with the treating physician or by personal examination, shall recommend the type of limited duty the member is capable of performing. The Patrol may provide work suitable to the member's capacity that is meaningful, productive, and advantageous to the member and the Patrol. This work assignment shall be a temporary assignment and shall not exceed ninety (90) days without approval from the Lieutenant Colonel or designee. Under no circumstances will limited duty be allowed after the member has reached maximum medical improvement. Limited duty may be terminated at any time in the discretion of the Section Director, Troop Commander, or higher authority.

The Benefits Unit will furnish Field Operations a copy of the received fax/e-mail regarding the request from a Section Director/Troop Commander. Field Operations will notify the requesting Section Director/Troop Commander by e-mail if/when the member may report for limited/full duty.

The designated Section/Troop/District Supervisor shall assign and supervise limited duty.

A member assigned limited duty may not wear a uniform, drive or ride as a passenger in an assigned Patrol vehicle, and he/she must provide personal transportation to the work place. Upon the approval of the appropriate Section Director/Troop Commander, the affected member may be transported to court or any other administrative function. The member assigned Limited Duty may also have the option of driving their personal vehicle to court, in which case a request for mileage reimbursement at the approved state rate must be made by the member to his/her supervisor and approved in advance. Suitable business attire must be worn and all regulations in this manual must be complied with when performing these assignments. The limited duty supervisor may permit deviation from the dress code to accomplish specific work objectives and/or as a consideration in adjusting to seasonal temperature variance. Member's limited duty assignments shall not include enforcement action.

If the Patrol Medical Director determines that a member has reached maximum medical improvement the member shall no longer be eligible for limited duty.

If it appears a member will be on limited duty for ninety (90) calendar days or more, the issued Patrol vehicle and firearms shall be surrendered to his/her immediate supervisor. The supervisor shall transport the equipment to a location designated by the appropriate Section Director/Troop Commander for storage, required maintenance, or re-issuance. The safekeeping of property provision of Directive J.01 shall apply to any equipment stored in an evidence locker. Upon being cleared for duty, the surrendered equipment or a replacement shall be returned to the affected member immediately.

Unless otherwise determined by the Medical Director a member who receives an injury to his/her dominant or non-dominant hand, arm, or shoulder, shall re-qualify with all issued service weapons prior to submitting their request (DPS-RTWP) to return to full-duty status.

The Patrol Medical Director, in his/her discretion, may request that a member re-qualify with all service weapons because of the nature of an injury/illness prior to returning to full-duty status.

Section Director/Troop Commander shall ensure a certified Firearms Instructor completes the re-qualifying process of the injured member after approval from the member’s physician and the Patrol Medical Director.

The assigned Firearms Instructor shall provide the affected Section Director/Troop Commander with the results of the injured member's re-qualification, and a memorandum describing what procedures were followed during the re-qualification process. Section Directors/Troop Commanders must forward this information to the Patrol's Armorer, who will maintain these records and notify the Benefits Unit via e-mail prior to the member being approved to return for duty.

VII. CIVILIAN EMPLOYEES

Claims

Claims processed for civilian employees shall be in accordance with Office of State Personnel policy.

Training and Orientation

Newly hired civilian employees will be provided the current employee orientation material by the Department of Public Safety.

VIII. INTERPRETATION

All employee benefits described in this directive are subject to interpretation and modification by the appropriate administering agencies, contracts with insurers, and applicable State statutes.

Drug and Alcohol Screening

Directive E.02

Applicable to: Members

Revised 9/2013
Effective 8/1/2002

I. POLICY

This policy establishes guidelines for the drug screening of Patrol members and Trooper applicants to ensure a drug free workplace. This program shall include drug and alcohol testing, to enable members to be fit to carry out their assigned duties and responsibilities which will help to preserve public trust and is consistent with the high standards of the Highway Patrol.

II. CONFIDENTIALITY

Drug Test Results

- All test results shall be released to the Commander's Office, the Director of Professional Standards, or to the Unit Commander of Internal Affairs as may be necessary for an investigation; and to the Criminal Justice Education and Training Standards Commission when applicable as required by law. The results are included in a member's personnel file maintained in accordance with State policies and procedures.

III. DRUG TESTING PROTOCOL

Drug tests administered shall comply with the procedures for specimen collection, testing, and other safeguards provided in the North Carolina Controlled substance Examination Regulation Act (Sections 95-230 through 95-235 of the North Carolina General Statutes), North Carolina Department of Labor Controlled Substance Examination Regulation (title 13, Chapter 20 of the NC Administrative Code), 12 NCAC 9B.0101, and this directive.

The laboratory shall report results of all drug tests directly to the Patrol Medical Director. In those cases where a confirmed positive result is received, the Medical Director shall:

- Conduct an interview with the member or applicant

- Interpret and evaluate all drug test results of members and applicants tested under procedures described in this directive and make a final determination as to whether the results are positive or negative.

- Advise the member or applicant of their right to have the sample re-tested and the cost associated with the re-test if the Medical Director determines the drug test results positive.

The Medical Director shall report all members' and applicants' drug screen results to the Commander's Office or his/her designee of any confirmed positive result. The Unit Commander of Internal Affairs shall be responsible for conducting an

administrative investigation in any case where a member has a confirmed positive drug screen.

Upon written request, the member or applicant in question shall have the right to have a confirmed positive urine specimen retested at the same or another approved laboratory pursuant to N.C.G.S. § 95-232(f). The requesting member/applicant shall be responsible for all reasonable expenses for chain of custody procedures, shipping, and re-testing of confirmed positive samples. The Medical Director shall inform the affected member/applicant that full payment to cover the cost of expenses associated with the re-testing must be sent to the Director of Professional Standards prior to the sample being released. Payment can be made by personal/certified check or money order made payable to: Department Of Crime Control and Public Safety. **Cash will not be an acceptable means of payment.**

IV. PROHIBITED DRUG ACTIVITY

The following rules shall apply to members:

- No member shall possess or ingest any illegal controlled substance, or other drug in a manner which is illegal under State or federal law.

- No member shall ingest any controlled substance without a prescription.

- No member shall ingest any prescribed drug(s) or controlled substance in amounts above prescribed dosage or otherwise contrary to medical advice.

- No member shall order, or have ordered on his/her behalf, any controlled substance from an internet provider, unless such drug was prescribed by a physician licensed by the State of North Carolina, with whom the member has developed a physician – patient relationship, and the drug is prescribed for a legitimate medical purpose.

V. TYPES OF MANDATORY DRUG AND ALCOHOL TESTS

Members shall be required to submit to drug testing under the following circumstances:

- **Reasonable Suspicion Testing.** A supervisor who suspects that a member is abusing drugs or alcohol based on objective factors shall contact the Unit Commander of Internal Affairs, via the chain-of-command. If the Unit Commander of Internal Affairs agrees that reasonable suspicion exists, the Unit Commander of Internal Affairs shall either authorize the supervisor to direct the member to submit to a drug screen or direct that an investigation be conducted in order to obtain additional facts prior to making a determination as to whether the member should be required to submit to a drug screen. In any case where a drug screen is authorized, the Unit Commander of Internal Affairs shall prepare a summary of the facts supporting the order to submit to

testing and these facts shall be maintained by Internal Affairs. Factors may include, but are not limited to, the following:

- o Evidence of impairment during working hours
- o Incapable of performing assigned duties
- o Reduced productivity
- o Excessive vehicle collisions
- o High absenteeism
- o Observations of the member's behavior which pose a threat to the safety or health of the member or another person
- o Reporting for duty with odor of alcoholic beverage on breath
- o Any other facts and circumstances from which a rational inference that a person is using illegal drugs may be inferred.

- **Occurrence Testing.** A supervisor shall order a member to take a drug and alcohol test to eliminate the possibility that drug or alcohol use may have affected the member's actions or judgment in any case where the member:
  - o Is involved in a fatal vehicle collision
  - o Is involved in a vehicle collision which results in serious bodily injury as defined in N.C.G.S. § 14-32.4
  - o Intentionally or accidentally discharges issued firearms, on or off-duty, other than training

- **Random Testing.** All members shall be subject to drug tests in any unannounced, random selected testing required by the Patrol. Under the supervision of the Director of Professional Standards or his/her designee, members will be randomly selected by computer for testing. The Commander's Office or his/her designee shall determine the frequency of tests.

VI. DRUG TESTING PROCEDURES

Reasonable Suspicion or Occurrence Testing

- When the Commander's Office orders a member to submit to drug and/or alcohol testing in "Reasonable Suspicion" incidents, he/she shall immediately instruct the appropriate supervisor to accompany the member to the testing facility and ensure compliance with testing procedures.

- The member and supervisor shall report to the nearest testing facility **immediately** after notification has been made, and the member shall comply with the testing procedures.

    - For drug testing during normal business hours, the affected member shall be transported to the nearest medical facility, LabCorp facility or to the Highway Patrol Medical Director's office. For drug testing after business hours, the affected member shall be transported to the nearest medical facility. The Medical Director, if necessary, may be contacted for further instructions. Supervisors are authorized to use the same drug test kit which is used for "Occurrence Testing", when the member is transported to a medical facility other than LabCorp.

    - The local medical facility shall be advised to forward an invoice for these services to the:

      Director of Professional Standards
      North Carolina State Highway Patrol
      4231 Mail Service Center
      Raleigh, NC 27699-4231

    - When testing for alcohol, the supervisor conducting the test shall adhere to the testing procedures outlined in Section VII "Alcohol Violations".

    - During "Occurrence Testing", if the member is injured and transported to a medical facility, a copy of the results from any blood work performed shall be requested by the affected member's supervisor to be forwarded to the Patrol's Medical Director.

    - The procedures to be followed for "Occurrence Testing" are posted on the Patrol's intranet under 'Procedures" and then "Employee Drug Testing."

    - Prior to performing the drug and alcohol screening test as a result of the aforementioned, the appropriate supervisor must notify the Patrol's Medical Staff for assistance, and Internal Affairs of the incident. It shall be the responsibility of the involved member's Troop/Unit Commander to ensure that the appropriate testing procedures are followed, and the test samples are transported to the Patrol's Medical Office on the day of the occurrence, or the next business day.

- A member who willfully refuses to comply with the testing procedures shall be considered unfit for duty, and shall be relieved of duty in accordance with Patrol Policy. The Section Director, Troop/Unit Commander shall submit a Personnel Complaint to the Unit Commander of Internal Affairs for investigation.

Random Testing

- The Director of Professional Standards shall notify the appropriate Section Director, Troop/Unit Commander of the names of personnel randomly selected for testing.

- The Section Director, Troop/Unit Commander shall instruct the supervisor of the selected member to notify the member in person to report to the testing facility without delay, and comply with the testing procedures. **A supervisor shall accompany the member to a LabCorp facility (a designated testing facility) or to the Highway Patrol Medical Director's Office.** If the affected member is off, the supervisor shall wait until the member's next scheduled work day to make notification.

- The assigned supervisor shall notify the Section Director, Troop/Unit Commander when a designated member refuses to report and/or comply with the testing procedures.

- A member who willfully refuses to report and/or comply with the testing procedures shall be considered unfit for duty, and shall be relieved of duty in accordance with Patrol Policy. The Section Director, Troop/Unit Commander shall submit a Personnel Complaint to the Unit Commander of Internal Affairs for investigation.

VII. ALCOHOL VIOLATIONS

A member shall immediately notify his/her supervisor when he/she reasonably suspects any other member or civilian employee of having any concentration of alcohol in his or her body or who detects an odor of alcohol on the member's or civilian employee's breath while the member or civilian employee is on duty.

- When warranted, a criminal investigation shall be conducted to include, but not limited to, requesting the member to submit to an alcohol-screening test (Alco-Sensor) and, when appropriate, the Psychophysical Tests, as set out in Phase III, of the Department of Health and Human Services, Forensic Test for Alcohol Branch "Driving While Impaired Report" Form. If there is probable cause to believe the member committed an implied consent offense, the appropriate criminal process shall be initiated, including **requesting** the member to submit to an Approved Breath Testing Instrument test.

    - In the event the member refuses to submit to an Approved Breath Testing Instrument test, and the member was involved in a fatal vehicle collision or a vehicle collision which resulted in serious physical injury, a warrant for blood shall be requested. In those cases where a blood test is required pursuant to a warrant, a supervisor of the member being investigated shall transport the member under investigation to a local medical facility, where a qualified person shall be requested to obtain a blood sample for alcohol testing. A standard Blood Alcohol Kit shall be utilized to collect the blood sample from the member being investigated. The supervisor shall then

follow the procedures outlined in Directive J.02, “Chemical Analysis for Alcohol” when submitting the blood sample for analysis.

- In the event a member refuses to submit to an Approved Breath Testing Instrument test, and there was no collision involved, the Approved Breath Testing Instrument operator shall indicate the test as a refusal, and the appropriate criminal process initiated.

- In those cases where criminal action is not deemed warranted, the immediate supervisor shall as soon as possible, require the member under investigation to submit to an alcohol-screening test (Alco-Sensor), and, when appropriate, the Psychophysical Tests, as set out in Phase III, of the Department of Health and Human Services, Forensic Test for Alcohol Branch “Driving While Impaired Report” Form. If the results of the Alco-Sensor test indicate any amount of alcohol, or if the member appears impaired, the supervisor shall require the member under investigation to submit to an Approved Breath Testing Instrument test of their breath. The Medical Director, if necessary, may be contacted for further instructions.

- The supervisor or other qualified person conducting the Approved Breath Testing Instrument test shall adhere to the following testing procedures:

  - Utilization of the 15 minute observation period prior to testing is required.

  - The rights of the person being tested, as found on the Test Record Ticket, do not apply and should not be read.

  - The member being tested is not entitled to a witness and the test shall not be delayed for this purpose.

  - The member shall provide sequential breath samples, from consecutively administered tests; and

  - The readings do not differ from each other by an alcohol concentration greater than 0.02.

  - For purposes of data entry on the Approved Breath Testing Instrument, the supervisor or other qualified person conducting the Approved Breath Testing Instrument test shall adhere to the guidelines titled, “For Administrative Use Only: Data Entry Prompts.” These guidelines can be found under the Employee Drug Testing Procedures located on the Intranet.

  - The supervisor or other qualified person conducting the test shall prepare the Approved Breath Testing Instrument for the test, and at the appropriate time, the supervisor shall **order** the member to submit to the test. If the member refuses to be tested, or the member fails to provide an adequate breath sample, the Approved Breath Testing Instrument operator shall indicate the test as a refusal.

The Unit Commander of Internal Affairs shall be contacted for further instructions if the member tested produces a breath result indicating any amount of alcohol, refuses to submit to the Approved Breath Testing Instrument test, or fails to provide an adequate breath sample.

VIII. ADMINISTRATIVE ACTION ON DRUG TESTS

If a member possesses a Commercial Driver's License (CDL) as a requirement of his/her job, the Medical Director shall notify the North Carolina Division of Motor Vehicles within five (5) days when the effected member's drug screen produces a **positive** test result.

IX. PRESCRIBED MEDICATIONS

Members using prescribed drug(s) under a physician's direction who have been informed the drug has the potential to impair job performance must notify the appropriate supervisor prior to reporting for duty. The member shall advise the supervisor of the known side effects of such medication, the prescribed dosage, and period of use.

- Supervisors shall document this information through the use of a memorandum and maintain this memorandum in a secured file.

- A supervisor who determines that a member is unfit to perform his/her duties due to a prescribed medication shall relieve the member of duty following the provisions of Directive H.04, Section X (Additional Authorized Patrol Administrative Actions) (Relief From Duty).

- Under no circumstances shall a member be authorized to operate any state owned motor vehicle or aircraft while taking a medication that may impair the member's ability to safely operate a motor vehicle or aircraft.

- It shall be the responsibility of the supervisor who relieved the member of duty to contact the Highway Patrol Medical Director, via the chain-of-command, and advise him/her of the relieved member's condition and prescribed medication taken.

X. SUBSTANCE ABUSE

Available Treatment for Members for Substance Abuse (Alcohol)

- The Patrol encourages members who feel they have a substance abuse problem to get treatment and the Patrol will confidentially assist members to find treatment. Additionally, the Patrol will not stigmatize or penalize in any way any member who asks for or receives treatment so long as there is no violation of policy or law. However, Directive H.01, Sections XI (Use of Alcoholic Beverages), XII (Use of Alcoholic Beverages While Off-Duty), and

XIII (Use of Drugs) concerning violations of policy or law associated with the use of alcohol or unlawful use of drugs will continue to be followed explicitly.

- The request for substance abuse assistance can be made directly by the member to a member's supervisor, the "Employee Assistance Program", located in the DPS Manual, under the "DPS Alcohol / Drug-Free Workplace Policy" section, or to the Medical Director. However, a member or his or her family may seek assistance anonymously by calling a designated telephone number, which will be posted in every district and section office. This contact will provide direction, transportation, assistance with family issues, or any other appropriate service in as confidential a manner as possible.

This program is meant to provide the member with proactive means for seeking assistance for substance abuse before any conduct violation may occur.

Civilian Employee / Drug and Alcohol Screening

E.02C

Applicable to: Employees
CALEA Chapters 1; 33; 52

Revised 1/13/2012
Effective 10/3/2006

I. POLICY

This policy establishes guidelines for the drug screening of civilian employees and civilian employee applicants to ensure a drug free workplace. This program shall include drug and alcohol testing to ensure civilian employees are fit to carry out their assigned duties and responsibilities in a manner which preserves the public trust and is consistent with the high standards of the Highway Patrol.

All new hires must, as a condition of employment, submit to a drug screen following the protocol set-forth in this policy. The Director of Professional Standards shall be responsible to ensure the potential employee is made aware of this requirement, and that such test is conducted prior to employment. Upon being hired, and after reporting to his/her Section/Troop, it shall be the responsibility of the ranking member to ensure that all newly hired civilian employees are provided a copy of this policy, and sign an HP-19 during the employee's section or troop orientation.

II. CONFIDENTIALITY

Drug Test Results

All test results shall be released to the Commander's Office, the Director of Professional Standards, or to the Unit Commander of Internal Affairs as may be necessary for an investigation. The results are included in the affected employee's personnel file maintained in accordance with State policies and procedures.

III. DRUG TESTING PROTOCOL

Drug tests administered shall comply with the procedures for specimen collection, testing, and other safeguards provided in the North Carolina Controlled substance Examination Regulation Act (Sections 95-230 through 95-235 of the North Carolina General Statutes), North Carolina Department of Labor Controlled Substance Examination Regulation (Title 13, Chapter 20 of the NC Administrative Code), and this directive.

The laboratory shall report results of all drug tests directly to the Patrol Medical Director. In those cases where a confirmed positive result is received, the Medical Director shall:

- Conduct an interview with the employee or applicant.
- Interpret and evaluate all drug test results of employees and applicants tested under procedures described in this directive and make a final determination as to whether the results are positive or negative.

- Advise the employee or applicant of their right to have the sample re-tested and the cost associated with the re-test if the Medical Director determines the drug test results positive.

The Medical Director shall report all applicant drug screen results to the Director of Professional Standards.

The Medical Director shall inform the Commander's Office or his/her designee of any confirmed positive drug screen results pertaining to an employee. The Unit Commander of Internal Affairs shall, in turn, be responsible for conducting an administrative investigation in any case where an employee has a confirmed positive drug screen.

Upon written request, the applicant or employee in question shall have the right to have a confirmed positive urine specimen retested at the same or another approved laboratory pursuant to N.C.G.S. § 95-232(f). The requesting applicant or employee shall be responsible for all reasonable expenses for chain of custody procedures, shipping, and re-testing of positive samples related to this request. The Medical Director shall inform the affected applicant or employee that full payment to cover the cost of expenses associated with the re-testing must be sent to the Director of Professional Standards prior to the sample being released. Payment can be made by personal / certified check, or money order made payable to the: Department of Public Safety. **Cash will not be an acceptable means of payment.**

IV. PROHIBITED DRUG ACTIVITY (CALEA 33.7.1)

The following rules shall apply to all employees:

- No employee shall possess or ingest any controlled substance or other drug in a manner which is illegal under State or federal law.

- No employee shall ingest any controlled substance without a prescription.

- No employee shall ingest any prescribed drug(s) or controlled substance in amounts above prescribed dosage or otherwise contrary to medical advice.

- No employee shall order any controlled substance from an internet provider, unless such drug was prescribed by a physician licensed by the State of North Carolina, with whom the employee has developed a physician – patient relationship, and the drug is prescribed for a legitimate medical purpose.

V. TYPES OF MANDATORY DRUG AND ALCOHOL TESTS

Employees shall be required to submit to drug testing under the following circumstances:

- **Reasonable Suspicion Testing.** A supervisor who suspects that a employee is abusing drugs or alcohol based on objective factors shall contact the Unit Commander of Internal Affairs, via the chain-of-command. If the Unit Commander of Internal Affairs agrees that reasonable suspicion exists, the Unit Commander of Internal Affairs shall either authorize the supervisor to direct the employee to submit to a drug screen or direct that an investigation be conducted in order to obtain additional facts prior to making a determination as to whether the employee should be required to submit to a drug screen. In any case where a drug screen is authorized, the Unit Commander of Internal Affairs shall prepare a summary of the facts supporting the order to submit to testing and these facts shall be maintained by Internal Affairs. Factors may include, but are not limited to, the following: **(CALEA 52.2.6)**

    - o Evidence of impairment during work hours
    - o Incapable of performing assigned job duties
    - o Reduced productivity or other change in work habits
    - o Excessive vehicle collisions (shall apply if the employee is require to operate a state owned vehicle)
    - o High absenteeism
    - o Observations of the employee's behavior which pose a threat to the safety or health of the employee or another person
    - o Reporting for duty with odor of alcoholic beverage on breath
    - o Any other facts and circumstances from which a rational inference that a person is using illegal drugs may be inferred.

- **Occurrence Testing.** A supervisor shall order an employee to take a drug and alcohol test to eliminate the possibility that drug/alcohol use may have affected the employee's actions or judgment in any case where the employee: **(CALEA 52.2.6)**

    - o Is involved in a fatal vehicle collision (if operating a state owned vehicle), or if death occurs to another person while performing one of the job duties deemed critical by this policy. **(CALEA 1.3.8)**
    - o Is involved in a vehicle collision which results in serious bodily injury (if operating a state owned vehicle) as defined by N.C.G.S. § 14-32.4, or if

another person suffers serious bodily injury while performing, or as a result of a performed task if associated with one of the job duties deemed critical by this policy. **(CALEA 1.3.6)**

- **Random Testing.** The following described employees have employment responsibilities or duties that involve public safety or safety concerns for others and, therefore, shall be subject to drug tests in any unannounced, random selected testing required by the Patrol. Under the supervision of the Director of Professional Standards or his/her designee, employees will be randomly selected by computer for testing. The Commander's Office or his/her designee shall determine the frequency of tests. Employees subject to random testing are as follows:

  - Aircraft Mechanic
  - Auto Body Mechanic
  - Auto Body Supervisor
  - Mechanic II
  - Mechanic Supervisor I
  - Mechanic Supervisor II

VI. DRUG TESTING PROCEDURES

Reasonable Suspicion or Occurrence Testing

- When the Unit Commander of Internal Affairs orders a employee to submit to drug and/or alcohol testing in "Reasonable Suspicion" incidents, he/she shall immediately instruct the appropriate supervisor to accompany the employee to the testing facility and ensure compliance with testing procedures. **(CALEA 52.2.6)**

- The employee and supervisor shall report to the testing facility **immediately** after notification has been made, and the employee shall comply with the testing procedures.

  - For drug testing during normal business hours the affected employee shall be transported to the nearest medical facility, LabCorp facility or to the Highway Patrol Medical Director's office. For drug testing after business hours, the affected employee shall be transported to the nearest medical facility. The Medical Director, if necessary, may be contacted for further instructions. Supervisors are authorized to use the same drug test kit which is used for "Occurrence Testing", when the member is transported to a medical facility other than LabCorp, and the test samples are transported to the Patrol's Medical Office on the day of the occurrence, or the next business day.

- The local medical facility shall be advised to forward an invoice for these services to the:

  Director of Professional Standards
  North Carolina State Highway Patrol
  4702 Mail Service Center
  Raleigh, NC 27699-4702

- When testing for alcohol, the supervisor conducting the test shall adhere to testing procedures outlined in Section VII Alcohol Violations.

- During "Occurrence Testing," if the employee is injured, and transported to a medical facility, a copy of the results from any blood work performed shall be requested by the affected employee's supervisor to be forwarded to the Patrol's Medical Director.

- The procedures to be followed for "Occurrence Testing" are posted on the Patrol's intranet under 'Procedures" and then "Employee Drug Testing."

- Prior to performing the drug and alcohol screening test as a result of the aforementioned, the appropriate supervisor must notify the Patrol's Medical Staff for assistance, and Internal Affairs of the incident. It shall be the responsibility of the involved employee's Troop/Unit Commander to ensure that the appropriate testing procedures are followed, and the test samples are transported to the Patrol's Medical Office on the day of the occurrence, or the next business day.

- An employee who willfully refuses to report and/or comply with the testing procedures shall be considered unfit to perform his/her job responsibilities and relieved as directed in Section 7 of the State Personnel Manual, (Investigatory Placement with Pay). The Section Director, Troop/Unit Commander shall submit a Personnel Complaint, in the form of a memorandum, to the Unit Commander of Internal Affairs for investigation.

Random Testing

- The Director of Professional Standards shall notify the appropriate Section Director, Troop/Unit Commander of the names of personnel randomly selected for testing.

- The Section Director, Troop/Unit Commander shall instruct the supervisor of the selected employee to notify the employee in person to report to the testing facility and comply with the testing procedures. **A supervisor shall accompany the employee to a LabCorp facility or to the Highway Patrol Medical Director's Office.** If the affected employee is off, the supervisor shall wait until the employee's next scheduled work day to make notification.

- The assigned supervisor shall notify the Section Director, Troop/Unit Commander when a designated employee refuses to report and/or comply with the testing procedures.

- An employee who willfully refuses to report and/or comply with the testing procedures shall be considered unfit to perform his/her job responsibilities and relieved as directed in Section 7 of the State Personnel Manual, (Investigatory Placement with Pay). The Section Director, Troop/Unit Commander shall submit a Personnel Complaint, in the form of a memorandum, to the Unit Commander of Internal Affairs for investigation.

VII. ALCOHOL VIOLATIONS

A civilian employee shall immediately notify his/her supervisor when he/she reasonably suspects any other employee or uniformed member of having any concentration of alcohol in his or her body or who detects an odor of alcohol on the employee's or member's breath while such employee or uniformed member is on duty.

- When warranted, a criminal investigation shall be conducted to include, but not limited to, requesting the employee to submit to an alcohol-screening test (Alco-Sensor) and, when appropriate the Psychophysical Tests, as set out in Phase III, of the Department of Health and Human Services, Forensic Test for Alcohol Branch "Driving While Impaired Report" Form. If there is probable cause to believe the employee committed an implied consent offense, the appropriate criminal process shall be initiated, including **requesting** the employee to submit to an Approved Breath Testing Instrument test.

    - In the event an employee refuses to submit to an Approved Breath Testing Instrument test, and the employee was is involved in a fatal vehicle collision, or vehicle collision which results in serious physical injury, a warrant for blood shall be requested. In those cases where a blood test is required pursuant to a warrant, a supervisor of the employee being investigated shall transport the employee under investigation to a local medical facility, where a qualified person shall be requested to obtain a blood sample for alcohol testing. A standard Blood Alcohol Kit shall be utilized to collect the blood sample from the employee being investigated. The supervisor shall then follow the procedures outlined in Directive J.02, "Chemical Analysis for Alcohol" when submitting the blood sample for analysis.

    - In the event an employee refuses to submit to an Approved Breath Testing Instrument test, and there was no collision involved, the Approved Breath Testing Instrument operator shall indicate the test as a refusal, and the appropriate criminal process initiated.

- In those cases where criminal action is not deemed warranted, the immediate supervisor shall as soon as possible, require the employee under investigation to submit to an alcohol-screening test (Alco-Sensor), and when

appropriate, the Psychophysical Tests, as set out in Phase III, of the Department of Health and Human Services, Forensic Test for Alcohol Branch "Driving While Impaired Report" Form. If the results of the Alco-Sensor test indicate any amount of alcohol, or if the employee appears impaired, the supervisor shall require the employee under investigation to submit to an Approved Breath Testing Instrument test of their breath. The Medical Director, if necessary, may be contacted for further instructions.

- The supervisor or other qualified person conducting the Approved Breath Testing Instrument test shall adhere to the following testing procedures:

  - Utilization of the 15 minute observation period prior to testing is required.

  - The rights of the person being tested, as found on the top of the test ticket, do not apply and should not be read.

  - The employee being tested is not entitled to a witness and the test shall not be delayed for this purpose.

  - The employee shall provide sequential breath samples, from consecutively administered test; and

  - The readings do not differ from each other by an alcohol concentration greater than 0.02.

  - For purposes of data entry on the Approved Breath Testing Instrument, the supervisor or other qualified person conducting the Approved Breath Testing Instrument test shall adhere to the guidelines titled, "For Administrative Use Only: Data Entry Prompts." These guidelines can be found under the Employee Drug Testing Procedures located on the Intranet.

  - The supervisor or other qualified person conducting the test shall prepare the Approved Breath Testing Instrument for the test, and at the appropriate time, the supervisor shall **order** the employee to submit to the test. If the employee refuses to be tested, or the employee fails to provide an adequate breath sample, the Approved Breath Testing Instrument operator shall indicate the test as a refusal.

The Unit Commander of Internal Affairs shall be contacted for further instructions if the employee tested produces a breath result indicating any amount of alcohol, refuses to submit to Approved Breath Testing Instrument test, or fails to provide an adequate breath sample.

VIII. ADMINISTRATIVE ACTION ON DRUG TESTS

In the case of random and applicant drug screens, the Medical Director shall notify the Director of Professional Standards of positive or negative test results.

In all other cases, the Medical Director shall notify the Unit Commander of Internal Affairs.

If an employee possesses a Commercial Driver's License (CDL) as a requirement of his/her job, the Medical Director shall notify the North Carolina Division of Motor Vehicles within five (5) days when the effected employees' drug screen produces a **positive** test result.

Any employee whose actions results in death or serious physical injury to anyone, after consultation between the employee's Section Director / Troop Commander and State OD, shall be removed from his/her normal assignment immediately as directed by the Patrol Commander. **(CALEA 1.3.6)**

IX. PRESCRIBED MEDICATIONS

Employees who perform duties that are deemed critical by the Commander's Office **(i.e. Patrol Physicians, Patrol Nurse, Agency General Counsel, Aircraft Mechanics, Courier Driver, Mail Clerk, Auto Mechanics, Radio Engineers, Civilian Weight Station Operators, CVSA New Entrant Auditors, Trades Workers or any employee who drives a state owned vehicle.)** using prescribed drug(s) under a physician's direction who have been informed the drug has the potential to impair job performance must notify the appropriate supervisor. At the beginning of his/her shift, the employee shall advise the supervisor of the known side effects of such medication, the prescribed dosage, and period of use.

- Supervisors shall document this information through the use of a memorandum and maintain this memorandum in a secured file.

- A supervisor who determines that a employee is unfit to perform his/her job responsibilities due to a prescribed medication shall relieve the employee of his/her job responsibilities, after consulting with the Unit Commander of Internal Affairs, via the chain-of-command, Under no circumstances shall a employee who is relieved of duties pursuant to this provision be allowed to leave without having a responsible person to provide transportation. The supervisor should assist the employee in making arrangements to have someone else drive him/her from the work place if necessary.

- Under no circumstances shall an employee of the Patrol be authorized to operate any state owned vehicle while taking a medication that may impair the employee's ability to safely operate a motor vehicle.

- It shall be the responsibility of the supervisor who relieved the employee of his/her job duties to contact the Highway Patrol Medical Director, via the chain-of-command and advise him/her of the relieved employee's condition and prescribed medication taken.

X. SUBSTANCE ABUSE

Available Treatment for Substance Abuse (Alcohol) (CALEA 35.1.9)

- The Patrol encourages personnel who feel they have a substance abuse problem to get treatment and the Patrol will confidentially assist personnel to find treatment. Additionally, the Patrol will not stigmatize or penalize in any way any of its employees who ask for or receive treatment so long as there is no violation of the DPS policy, State Personnel policy, or state and/or federal law. Supervisors and employees should refer to the "Employee Assistance Program", located in the DPS Manual under the "DPS Alcohol / Drug-Free Workplace Policy" section for information related to available substance abuse programs, and the procedures for accessing these resources.

This program is meant to provide the employee with proactive means for seeking assistance for substance abuse before any conduct violation may occur.

I. POLICY

This policy sets forth the guidelines for salary benefits for employees of the Highway Patrol.

II. REGULAR SALARY

Salary grades and schedules for the various classes of Patrol positions shall be maintained by the Human Resources Section of the department.

Legislative salary increases do not affect an employee's increment status nor do they affect eligibility for annual salary increases.

III. HOLIDAY PREMIUM PAY

Employees who are required to work on days designated by the Human Resources Commission as holidays (New Year's Day, Martin Luther King, Jr.'s Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving and Christmas) shall be given, in addition to regular salary, premium pay equal to one-half of their regular straight-time hourly rate for such hours worked on those days. In addition, equal holiday time off shall be given, not to exceed eight (8) hours (Refer to Directive E.04 for instructions on equal time off.).

IV. SHIFT PREMIUM PAY

Additional compensation will be provided to members who are regularly scheduled to work on either a second or third shift. The classes of eligible employees and the rate of shift premium pay is based on documented survey data of prevailing practices in the applicable labor market, and shall be determined by the Office of State Human Resources Shift premium pay shall be in addition to any other premium pay to which the employee may be entitled, such as holiday pay. The rate of shift premium pay shall be 10% of the regular hourly salary rate.

A shift is considered to be eight (8) hours or more and is pro-rated for part-time employees. An employee shall receive premium pay for all hours worked on the second or third shift. This includes any hours worked beyond the regular second or third shift hours if the hours are necessary to complete the work assignment (i.e. Trooper is assigned to investigate a collision and the investigation extends beyond the assigned shift).

Interpretation

Regular recurring shall be interpreted to mean a position that requires a daily schedule that is repeated at specified intervals for an indefinite period of time. In addition, an employee required to **substitute** in a position eligible for shift premium pay due to a vacancy or incumbent's absence shall receive such shift premium pay for time worked in that position.

V. SPECIAL PROJECTS FOR INCREASING PREVENTIVE PATROL HOURS

To increase preventative patrol hours, special legislative or other funding may be available to pay a Trooper/Sergeant for hours worked in excess of assigned work hours. All hours worked during designated special projects shall be compensated at one and one-half (1.5) the member's hourly rate of pay.

VI. OVERTIME TO COMPLETE ESSENTIAL LAW ENFORCEMENT FUNCTIONS (NON-EXEMPT MEMBERS)

It is the Highway Patrol's policy to give compensatory time off in lieu of monetary compensation for overtime hours worked performing essential law enforcement functions, unless special legislative or other funding is available.

A Trooper/Sergeant is not authorized to work overtime without prior approval of his/her immediate supervisor or higher authority, except when completing essential law enforcement functions.

A Trooper/Sergeant required to work overtime that is anticipated to be extensive must report that information immediately to his/her supervisor. The supervisor will make arrangements for relief or authorize continued overtime accumulation. Otherwise, overtime will be reported to a supervisor as soon as possible, but no later than the next scheduled workday.

The Trooper's/Sergeant's supervisor shall review and evaluate all overtime hours to ensure justification.

The Trooper/Sergeant **work period** shall consist of 28 consecutive days in which the member is required to work 160 hours and may be required to work up to and including 171 hours. A Trooper/Sergeant must have worked the entire **work period** of 160 hours plus an additional 11 hours (171 hours total) before he/she becomes eligible to receive compensatory time off at the rate of one and one-half (1.5) hours of compensatory time off for each hour of overtime worked.

Hours worked in excess of the assigned work hours in a work period up to and including 171 hours, within a 28-day work cycle will be compensated on an hour-for-hour (minute-for-minute) basis.

Hours worked in excess of 171 hours in a work period will be compensated at a rate of one and one-half (1.5) hours of compensatory time for each hour (15-minute increments) of overtime worked in excess of 171 hours.

Compensatory time will accrue in 15-minute increments.

Authority of Federal Regulations Code 29 CFR 785.48(b), the following shall apply:

- Compensatory time for all applicable employees shall be rounded down to zero (0) minutes for one (1) to seven (7) minutes.

- Compensatory time for all applicable employees shall be rounded up to fifteen (15) minutes for eight (8) to fourteen (14) minutes.

North Carolina Office of State Human Resources (OSHR) governs the method in which overtime compensation is calculated. OSHR policy defines number of **hours worked** by an employee within a given 28-day cycle as: "*all time during which an employee is required to be on duty on the employer's premises or at a prescribed workplace, and all time during which an employee is suffered or permitted to work whether or not required to do so "Time spent on vacation, sick leave and holidays will not be counted as time worked."* **(OSHR Personnel Policy, Section 4).** Injury leave, educational leave, leave without pay, or other authorized leave will not be considered as hours worked.

Example #1: In a 28-day cycle, a member is assigned four work weeks of 40 hours each or 160 hours for the **work period**. However, during the fourth week the member works 45 hours or a total of 165 hours during the 28-day cycle. The Trooper/Sergeant would be compensated on an hour-for-hour basis for a total of five (5) hours of compensatory time off.

Example #2: In a 28-day cycle, a member is assigned four work weeks of 40 hours each or 160 hours for the **work period**. During two of the work weeks the Trooper/Officer works 40 hours. However during the two remaining work periods the Trooper/Sergeant works 46 hours and 47 hours respectfully for a total of 173 hours for the work period.

The Trooper/Sergeant would be compensated at an hour-for-hour basis for 11 hours and would be compensated at one and one-half hours (1.5) of compensatory time off for each hour of overtime worked in excess of 171 hours for a total of 14 hours of compensatory time off.

Example #3: In a 28 day cycle, a member is assigned three work weeks of 40 hours each **(3 weeks X 40 hours = 120 hours)** and one week the Trooper/Sergeant is assigned 32 work hours **(4 days X 8 hours = 32 hours)** and a holiday **(8 hours).** During this 28-day cycle the Trooper/Sergeant is assigned 152 hours as his/her assigned work hours in the **work period**.

During this work period the Trooper/Sergeant works the following hours:

Week	Assigned Work Period Hours	Hours Actually Worked
1	40 hours	45 hours
2	40 hours	43 hours
3	40 (32 hours actually worked and 8 hours holiday taken)	32 hours
4	40 hours	49 hours
Total	**152 hours worked + 8 hours Holiday Taken = 160 hours**	**169 hours**

In this scenario the Trooper/Sergeant will be compensated on an hour-for-hour basis for hours worked in excess of assigned work period hours up to 171 hours. The Trooper/Sergeant in this scenario earned a total of 9 hours of compensatory time off.

If a Trooper/Sergeant is required to remain by a telephone at his/her residence for immediate response to an anticipated emergency situation (not a Signal 11), as directed by the Director of Field Operations, his/her designee, the State O.D., or higher authority, the Trooper/Sergeant shall count this time as hours worked. During such times, the Trooper/Sergeant shall be governed by Directive H.01, Section XI (Use of Alcoholic Beverages).

Supervisors shall use an Emergency Callback procedure when a FLSA non-exempt employee has left the work site and is requested to respond on short notice to an emergency work situation to avoid significant service disruption, avoid placing employees or the public in unsafe situations, and/or provide emergency services to protect property or equipment.

- "Emergency Call Back" time hours will count as hours worked. When less than two (2) hours are actually worked, the member will be compensated a minimum of two (2) hours.

Compensatory time off in lieu of monetary compensation will be granted in accordance with Directive E.04. However, when funding is available, hours worked on Special Projects" and performing law enforcement activities during a gubernatorial declaration of a state of emergency/disaster will not be considered as hours worked for the purpose of receiving compensatory time off pursuant to this Directive.

VII. LONGEVITY

Longevity pay is automatic for those employees who have at least ten (10) years of aggregate qualifying service and have full-time permanent appointments.

Longevity payments shall be made in a lump sum during the monthly pay period next following the date the employee is eligible to receive longevity pay.

If an employee retires, resigns or is otherwise separated, or dies on or after the date on which he/she becomes eligible for a longevity payment, the payment shall be made to him/her or to his/her estate if he/she is deceased.

Annual longevity pay amounts are based on the length of Aggregate State service and a percentage of the employee's annual rate of base pay on the date of eligibility. Longevity pay amounts are computed by multiplying the employee's base pay rate by the appropriate percentage from the following table.

Years of Aggregate State Service	Longevity Pay Rate
10 but less than 15	1.50%
15 but less than 20	2.25%
20 but less than 25	3.25%
25 or more	4.50%

Credit for the aggregate service requirement shall not be given for temporary or part-time employment and periods of break-in-service or leave without pay in excess of one-half the workdays in a month with the exception of military leave.

Prorated Longevity

- An employee who is otherwise eligible for longevity pay and who separates from State service before the date on which the next annual payment is due may receive the prorated amount he/she has earned toward the next payment. This policy shall apply to an employee separating from state service for any reason. It will also apply to one changing from a permanent, full-time status to temporary, part-time status.

- If an employee separates from a state agency and receives a partial longevity payment and is reinstated in another state agency, the balance of the longevity shall be made upon completion of additional service totaling 12 months since the last full longevity payment. The balance due is computed on the annual salary being made at the completion of the 12 months.

  The payment shall be computed the same as an annual payment except that it is prorated by an annual amount of the proportion of the year which he/she has worked toward his/her annual eligibility date. In other words, the employee will receive 1/12 of the annual amount for each month he/she has worked toward the next longevity payment. For example, if an employee received longevity on January 1 and separates on July 31, he/she would receive 7/12 of the full longevity payment. The employee will receive payment for each month he/she is in a pay status half the workdays in that month.

VIII. PAY FOR "ACTING SUPERVISORS"

In the event a supervisor with the rank of First Sergeant or above is unavailable to carry out his/her assigned duties, an immediate subordinate supervisor may be temporarily promoted (**in salary only**) and designated as "acting supervisor"

(e.g. injured, sick, or militarily activated for an indefinite period of time, other approved leave, or another type of assignment).

When a civilian employee is designated as “acting supervisor,” the provisions set forth in Section 4 of the State Human Resources Manual shall be followed.

These temporary promotions may be made when an employee is placed in an “acting” capacity for a specified period of time. At the discretion of management, one of the following may occur:

- The employee may be placed in the higher level position (if vacant) with a promotional increase and with an understanding that the employee will return to the former position and salary when the position is filled; or

- A promotional salary increase may be given in the present position with the understanding that the salary will be decreased when the “acting” capacity ends. The salary may not exceed the maximum of the “acting” salary grade.

The provisions for salary increases are **contingent on the availability of funds** and are for permanent promotions apply; however, the amount of the promotional salary increase shall be determined by the degree of assumption of the higher level duties.

Authorized Time Off

Applicable to: Employees

Directive E.04
Revised 12/03/2021
Effective 1/19/2000

I. POLICY

This policy establishes guidelines for authorized time off as well as recording time worked and leave taken.

Employees who are absent without approved leave, may be subject to disciplinary action. Thus, all employees shall request approval for authorized time off directly from their supervisor in person or by telephone.

All employees with BEACON Employee Self Service (ESS) security with time shall be required to record time worked and leave taken weekly. All supervisors with BEACON Manager Self Service (MSS) security shall approve time worked and leave taken weekly. Employees who do not have ESS security with time will have their time worked and leave taken entered by a Time Administrator weekly.

All supervisors shall ensure the accurate recording of all time worked and leave taken in BEACON for their assigned employees. All employees, with the exception of Sergeants and Troopers, will be required to enter 40 hours of time worked and/or leave taken weekly. Sergeants and Troopers shall enter at least 160 hours of time worked and/or leave taken in each 28-day cycle.

All time worked or leave taken shall be recorded in 15-minute increments (i.e. 15 min = .25, 30 min = .50 and 45 min =.75).

Authority of Federal Regulations Code 29 CFR 785.48(b), the following shall apply:

- Compensatory time for all applicable employees shall be rounded down to zero (0) minutes for one (1) to seven (7) minutes.

Compensatory time for all applicable employees shall be rounded up to fifteen (15) minutes for eight (8) to fourteen (14) minutes.

Employees taking leave for 15 calendar days or more shall be required to complete a DPS “Leave of Absence Request” form and submit it through their chain-of-command for processing and approval by the Personnel Unit.

II. EMPLOYEES SUBJECT TO DUTY

Members and key COOP-identified employees taking authorized time off for vacation shall be subject to report for duty at any time at the discretion of the Section Director or Troop/Unit Commander or higher authority.

Members and key COOP-identified employees who are off duty because of holidays or regular time off shall be subject to report for duty at any time at the discretion of their supervisor.

III. VACATION

Vacation is earned as follows:

Years of Aggregate State Service	Hours Granted Per Month	Days Earned Per Year
Less than 5 years	9 hours 20 minutes	14
5 but less than 10 years	11 hours 20 minutes	17
10 but less than 15 years	13 hours 20 minutes	20
15 but less than 20 years	15 hours 20 minutes	23
20 years or more	17 hours 20 minutes	26

General Rules

- A maximum of 20% of district members may be granted vacation leave at any one time.

- In lieu of sick leave, an employee may request to utilize approved leave.

- Thirty consecutive workdays or less may be taken at any one time, when normal conditions prevail; however, any leave of 15 calendar days or more shall be reported to the Personnel Unit by the employee's supervisor.

- On December 31, any employee with more than 240 hours (30 days) of vacation leave shall have the excess accumulation converted to sick leave, so that only 240 hours of vacation are carried forward to January 1 of the next calendar year. Vacation may be granted in 15-minute segments.

- Vacation leave will be granted as scheduled for the year by the Supervisor. Changes may be made at the employee's request provided such change does not adversely affect the operation of the district or violate the rules provided herein. Supervisors shall prepare vacation schedules each January for the current year based on the requests of each member insofar as possible. Choice of vacation dates shall be based on seniority where possible; however, scheduling shall be accomplished to enable all members desiring vacation during the months of June through August to receive at least one week during that period.

- Normally only one district noncommissioned officer shall take vacation at one time. Troop and Patrol Headquarters command personnel shall monitor scheduling of vacation for their respective headquarters personnel.

- Supervisors may grant unscheduled vacation for subordinates provided it does not impact Section / Troop / District operations.

- Employees shall not be granted vacation in excess of that actually accrued during the first six months of employment. Thereafter, upon request, employees may be permitted the full vacation leave which would accrue to their credit during the balance of the calendar year pending approval by Director of Support Services. Upon termination of Patrol employment, the employee's final pay shall have deducted from it an amount sufficient to reimburse the State for vacation taken but not earned.

If a member separates from service, payment for accumulated vacation leave shall not exceed 240 hours.

Employees whose Patrol employment terminates and those granted leave without pay to enter military service shall be paid for accrued vacation leave not exceeding 30 days, except that employees transferring to other State agencies may take their accrued vacation with them. When an employee dies, his/her estate shall be paid for accrued leave not exceeding thirty (30) days.

IV. HOLIDAYS

Official State holidays as presently determined by the State Personnel Commission, include New Year's Day; Martin Luther King, Jr.'s Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving (2 days), and Christmas (2 or 3 days).

Section Directors/Troop Commanders shall ensure a sufficient number of members are scheduled to work on State observed holidays to ensure the goals and mission of the Patrol are accomplished.

Employees who are required to work on a holiday shall be given equal time off (not to exceed 8 hours) at the convenience of the Patrol. Section Directors/Troop Commanders shall ensure holiday hours are assigned and taken by employees under their command.

Eligible holiday hours may be taken up to 30-days before or after the holiday; thus, future holidays cannot be taken more than thirty (30) days in advance of the actual holiday.

Employees not required to work on a holiday shall observe the designated holiday by entering eight (8) hours holiday leave. If the employee has no balance of holiday hours, he/she must record eight (8) hours of approved leave.

When a workday greater than 8 hours has been established, all hours above 8 shall be changed to approved leave to equalize holiday benefits.

- Members who are on 10 hour shifts and off on a holiday not to include regularly scheduled days off shall use 8 hours of holiday leave (9300) and 2 hours of approved leave (9000).

If the employee works on the holiday or does not use the holiday within the 60-day window, the time is converted to Holiday Compensatory time.

Supervisors shall ensure all employees have utilized holiday compensatory time within 11 months from the time they earned it.

V. SHIFT SCHEDULE / REGULAR DAYS OFF

Members' work schedules shall be entered into the CAD at least 3-weeks in advance. Work schedules shall be posted in District Offices no less than 14 days in advance; however, changes shall be posted when circumstances dictate. Current or future leave taken by the member shall be recorded as "**0200**" on the scheduled shift line in CAD.

First Sergeants shall assign members to shifts based on collision analysis and Patrol coverage with the efficiency and morale of members being considered.

Supervisors scheduling shifts differing from the standard 8-hour shift shall ensure employees' work hours are in compliance with Section VI of this policy.

Assigned shifts may be rotated on an equitable basis to include early and late work assignments. First Sergeants shall ensure 24-hour coverage in each respective county through actual Patrol duty or early and late call status.

First Sergeants shall assign members to geographical areas within their assigned duty station. Although members may be assigned to a specific area for patrolling purposes, they may be dispatched to any location within the district or state if needed.

Unless otherwise directed by the Commander's Office, all district members shall be scheduled at a minimum of one weekend off (Saturday and Sunday) approximately every fourth week. Weekends assigned off due to training, special assignment, or annual leave shall be considered as a weekend off.

Unless prohibited by circumstances, employees shall receive 2 consecutive days off weekly. Days off shall be assigned on an equitable basis, with efficiency and the morale of members being considered.

All employees with the exception of Sergeants and Troopers will be required to work a 40-hour week. Sergeants and Troopers will be required to work 160-hours in a 28-day cycle.

Assigned Meal Hour

Shifts of 8 hours or more may include one hour unpaid meal period per the following:

Example 1. 8 hours plus 1 hour meal period equaling 9 hours scheduled, i.e. 8:00 a.m. – 5:00 p.m. shift or 6:00 p.m. – 3:00 a.m. shift.

Example 2. 10 hours plus 1 hour meal period equaling 11 hours scheduled, i.e. 6:00 a.m. – 5:00 p.m. shift or 3:00 p.m. – 2:00 a.m. shift.

- Meal periods of less than 30 consecutive minutes must be considered as hours worked for members who are non-exempt and must be compensated accordingly.

- Meal periods of at least 30 minutes may be taken within the normal work hours to meet the needs of the employee and the working unit, but shall not be used to shorten the workday without the approval of a supervisor.

The only exception to this policy is assigned meal periods shall not apply to the midnight shift, i.e. 10:00 p.m. – 6:00 a.m.

VI. COMPENSATORY TIME OFF (NON-EXEMPT)

An employee who is on call for early calls, late calls, for court, or for any other reason may not be required to remain at his/her residence. An employee is only required to leave word as to where he/she may be reached and must be close enough to his/her residence to be able to be dressed and to check on duty within 45 minutes. During on-call time, an employee may not consume alcohol. If an employee is required to remain by a telephone at his/her residence, the employee should count this as work time and be provided compensatory time.

Employees shall not be allowed to voluntarily work overtime for nonessential purposes and supervisors must ensure that compensatory time earned by employees under his/her command is justified.

28-Day Work Cycle for Trooper / Sergeant

- Whenever possible, it is the policy of the Highway Patrol to give compensatory time off in lieu of monetary compensation for hours worked overtime, unless funding is available. The work period shall consist of 28 consecutive days in which the member is required to work 160 hours and may be required up to 171 hours.

- Time worked in excess of an assigned shift, but less than 171 hours in a 28-day cycle, shall accumulate as gap time on an hour-for-hour basis. Any hours worked in excess of 171 in a 28-day cycle will accumulate as overtime compensatory time on a time-and-one-half (1.5) basis. All Compensatory time (gap & overtime) may be granted in 15-minute increments. Supervisors

are responsible for ensuring all compensatory time (gap and overtime) are utilized within 11-months from the time it was earned.

- If a Sergeant / Trooper exceeds 171 hours during a 28-day work cycle, their supervisor must notify the Troop Commander / Section Director in writing with justification for exceeding the 171-hour limit. This correspondence must be filed for one (1) year for inspection purposes.

An employee shall be allowed to take compensatory time upon request unless the supervisor determines that the Patrol will not be able to provide services of an acceptable quality to the public. The Supervisor shall then allow the employee to take his/her compensatory time at any other time he/she requests that will not unduly disrupt the functioning of the district/section.

All accumulated compensatory time for employees subject to the Fair Labor Standards Act (FLSA) (non-exempt) must be exhausted prior to retirement or prior to being promoted to a rank/job classification that is not subject to the Fair Labor Standards Act (FLSA) (exempt). Monetary compensation must be made in accordance with State Personnel policy for employees subject to the Fair Labor Standards Act (FLSA) if this time is not exhausted prior to promotion or retirement.

If an employee transfers to another agency or terminates employment, the employee shall be paid for any unused accumulated compensatory time at his/her regular rate of pay as determined in accordance with State Personnel policy.

VII. COMPENSATORY TIME OFF FOR EMPLOYEES NOT SUBJECT TO FLSA (EXEMPT)

In accordance with provisions of the Fair Labor Standards Act (FLSA) and based on the assigned duties of the position it may be designated as overtime exempt. However, it is the policy of the Highway Patrol an exempt employee may earn compensatory time under the following guidelines:

- Compensatory time begins to accrue in 15-minute increments after the supervisor works beyond his/her assigned 40-hours work week. (**Note**: The standard work week for exempt employees is five (5) days per week, eight (8) hours a day plus a meal break.)

- If the supervisor is unable to take a meal break due to a required duty response, the meal break should be recorded as time worked.

An exempt employee shall not be allowed to utilize more than 240 hours of compensatory time within a calendar year unless it is for sick leave purposes and approved by the Patrol Commander.

Compensatory time cannot be advanced.

Compensatory time off may be granted in 15-minute increments. **Prior to granting leave, his/her supervisor shall determine that the Patrol will be able to provide service of an acceptable quality to the public during their absence.**

Supervisors shall be responsible to ensure compensatory time earned by employees under his/her command is justified.

Upon separation from the Patrol, accumulated compensatory time shall not be compensated or reimbursed to an exempt employee.

Pursuant to this policy, an exempt employee shall not receive monetary compensation for compensatory time earned.

VIII. SICK LEAVE

Sick leave is granted to employees who are in pay status for one half or more of the regularly scheduled workdays and holidays in the pay period. If eligible, full-time employees will earn 8 hours of sick leave monthly. There are no limitations on the number of sick leave days an employee may accrue.

When an employee is sick on holidays or on regular days off, these days will not be charged as sick leave but will be counted as holidays and regular days off.

Sick leave may be granted only in the following circumstances:

- For illness which prevents performance of duties
- To an employee quarantined because of a contagious disease
- When there is a death in the employee's immediate family. (not to exceed 3 days) Immediate family includes spouse, parents, brothers and sisters, children, mother-in-law and father-in-law, son-in-law, daughter-in-law, grandparents, grandchildren, and step relations.
- For illness in an employee's immediate family (spouse, parent, and child including all step relationships and dependents living in the employee’s household).

Upon resignation, sick leave is not permitted on terminal leave payments when an employee separates from State service. Employees separated because of lack of funds or curtailment of service shall be credited with accumulated sick leave if re-employed within five years. Employees returning to work within 90 days following separation from compulsory military service will retain all sick leave accrued prior to taking military leave.

An employee on sick or injury leave due to psychologically related problems, drug or alcohol dependency shall surrender his/her issued Patrol vehicle, firearms, uniform badges, and/or identification credentials to his/her immediate

supervisor. The supervisor shall transport the equipment to a location designated by the appropriate Section Director or Troop/Unit Commander for storage, required maintenance, or re-issuance. The safekeeping of property provision in Directive J.01 shall apply to any equipment stored in an evidence locker. Upon being cleared for duty, the surrendered equipment or a replacement shall be returned to the affected employee prior to his/her return to duty.

If it appears that an employee will be on sick or injury leave for 30 **calendar days or more**, the issued Patrol vehicle and/or firearms shall be surrendered to his/her immediate supervisor. The supervisor shall transport the equipment to a location designated by the appropriate Section Director or Troop/Unit Commander for storage, required maintenance, or re-issuance. The safekeeping provision in Directive J.01 shall apply to any equipment stored in the evidence locker. Upon being cleared for duty, the surrendered equipment or a replacement shall be returned to the affected employee. The Commander's Office or his/her designee may waive the surrendering of equipment in certain instances.

Employees transferring to or from another state agency shall be credited with accrued sick leave.

Supervisors may require a doctor's certificate for any employee taking excessive sick leave days. Feigning illness is a violation of Patrol Code of Conduct. Disciplinary action shall be administered for fictitious illness or injury.

DPS Human Resources will be entering leave taken by the employee for any leave of absence that extends for 15 calendar days or more; thus, the employee or supervisor will only enter leave taken through the 14th day of absence. Human Resources require a doctor's note for any absence that results in 15 calendar days or more when sick leave is exhausted.

IX. LEAVE OF ABSENCE WITHOUT PAY

An employee shall:

- Apply in writing to their supervisor for leave without pay,
- Give written notice of intention to return to work at least thirty (30) days prior to the end of the leave, and
- Return to duty within or at the end of the time granted, or
- Notify their supervisor immediately when there is a decision not to return.

As soon as a supervisor is made aware that an employee will be out of work for fifteen (15) calendar days or more, he/she shall notify the Personnel Unit.

The Commander's Office may grant leave of absence without pay for extended illness of an employee or his/her immediate family, for attending school to

prepare for Patrol duties, for duties with the U.S. Government in emergencies, or when the State will profit by the experience gained by the employee. (A one-year limitation applies to **special work** leaves.)

Leave of absence without pay shall not be granted to allow an employee to transfer to another gainful occupation.

Leave without pay because of illness begins when all accumulated sick leave is exhausted. An employee going on leave without pay may exhaust vacation leave or may retain part or all accumulated leave until the employee returns. The only exceptions being: (a) if an employee has accumulated vacation leave, all leave must be exhausted before going on leave without pay for vacation purposes, or (b) if an employee requests leave for other personal reasons for a period not to exceed 10 workdays, leave must be used if available. If the leave is for a period longer than 10 workdays, the employee may choose to use vacation leave or retain it for future use.

At his/her request, an employee shall be reinstated following leave of absence without pay to a position of the same class and pay range held prior to taking leave, unless his/her position is no longer available due to a budget reduction or for other reasons. Failure to report for work when leave expires shall be considered as a resignation.

If it appears the employee will be on leave of absence without pay for 30 calendar days or more, the issued Patrol vehicle and/or firearms shall be surrendered to his/her immediate supervisor. The supervisor shall transport the equipment to a location designated by the appropriate Section Director or Troop/Unit Commander for storage, required maintenance, or re-issuance. The safekeeping of property provision in Directive J.01 shall apply to any equipment stored in an evidence locker. Upon being cleared for duty, the surrendered equipment or replacement(s) shall be returned to the affected employee.

X. MILITARY LEAVE

Upon receipt of any military obligation, employees shall immediately submit a written memorandum to utilize any military leave**,** provide a copy of the original military orders, and a preferred method of communication while on leave to their immediate supervisor. The immediate supervisor shall, through their chain of command, provide the Section Director or Troop/Unit Commander all required documentation, who shall without delay forward to the Personnel Unit. The Personnel Unit shall ensure all required documentation is completed and sent to the DPS HR for processing. Upon return from an **active duty deployment**, the employee shall immediately submit a written memorandum requesting to return to duty to their immediate supervisor. The immediate supervisor shall:

1) Schedule an appointment with the SHP Medical Office.
2) Coordinate and schedule with the Training Academy any in-service training required for the calendar year.
3) Forward all documentation to the Personnel Unit for further processing to DPS HR.

Note: *For purposes of this policy, the employee's Troop/Unit Commander or Section Director will be the designee of the Colonel.*

Human Resources will be entering leave taken by the employee for any military leave that extends for 15 calendar days or more; thus, employee or supervisor will only enter time worked or leave taken on the last day prior to military leave and the first day of their return from military duty. Members must be reverted to a Monday-Friday 8x5 schedule while on Military Leave of Absence.

Prior to being granted military leave, employees shall inform their Troop/Unit Commander, through their chain-of-command, the best means in which to contact and disseminate information to them while on military leave. This may include but is not limited to a personal cell phone number and/or email address. The Troop/Unit Commander or designee shall be responsible for facilitating ongoing communication with the employee as needed during the time of leave.

Leave with Pay

- Leave with pay, up to the maximum of 120 hours during the Federal fiscal year, 1 October – 30 September, shall be granted to:
    - Members of the Uniformed Services for:
        - Active duty for training (annual training, pre-mobilization training or special schools)
        - Inactive duty training (drills – usually on weekends). If the drill is not scheduled on the employee's off-days, the employee has the option of requesting that the work schedule be rearranged, or the employee may use any unused portion of the 120 hours leave with pay, vacation, or leave without pay.
    - Members of the State Defense Militia (as defined further in this policy)
    - Civil Air Patrol members (as defined further in this policy)

      Note: When a military obligation is less than 31 days, a member is authorized eight hours recoup time before and after performance of military duties or military training. This time may also be charged to the 120 hours leave with pay, leave without pay, or vacation leave.

- In addition to the above 120 hours, leave with pay shall be granted for a required physical examination relating to membership in the uniformed services.

- In addition to leave with pay for training explained above, the following shall apply when ordered to State or Federal active duty for each period of involuntary service:

- Employees shall receive up to 30 calendar days of full pay.

- After the 30-day period, employees shall receive differential pay for any period of involuntary service. This pay shall be the difference between military base pay and the employee's regular State pay if military pay is the lesser. Employees will be required to provide a copy of their Leave Earnings Statement or similar document covering the period eligible for differential pay.

- Prior to the 30 days of full pay and the differential pay, the employee may choose to use any accumulated vacation/bonus leave. The employee may also choose to have accumulated vacation/bonus leave paid in a lump sum (maximum of 240 hours of vacation leave).

- During the period of reserve active duty, whether receiving full State pay, differential pay, or no pay, the employee shall not incur any loss of total State service or retirement service or suffer any adverse service rating. The employee shall continue to accumulate sick and vacation leave, total State service credit, and receive any promotion or salary for which otherwise eligible. When federally activated, employees shall not be engaged in Patrol duties.

- When on State duty, the State continues to pay for health coverage for members of the National Guard. When on Federal active duty, coverage in the State Health Plan ends on the last day of the month in which the individual enters active duty. The military health and benefits program covers the reservists and their dependents.

- Employees and/or their dependents whose health coverage ceases because of entry into the military service are eligible for COBRA coverage for a period of up to 18 months. The employee must pay the full coverage for periods in excess of 30 days.

- If it appears that the employee will be on active military duty for 30 calendar days or more, the issued Patrol vehicle and/or firearms shall be surrendered to his/her immediate supervisor prior to the effective date of the call-up (mobilization). The supervisor shall ensure that all collected equipment is transported to a location designated by the appropriate Section Director or Troop/Unit Commander for storage, required maintenance, or re-issuance. The safekeeping provision of Directive J.01 shall apply to any equipment stored in an evidence locker. This directive does not apply to drills (usually on weekends), annual training, or special schools. Upon being cleared for duty, the surrendered equipment or a replacement shall be returned to the affected employee.

Additional Periods of Leave for National Guard Only

- Members of the National Guard are also granted additional time off with pay for:

- Infrequent, special activities in the interest of the State, when so authorized by the Governor or his/her authorized representative.

Periods of Leave for State Defense Militia

- The State Defense Militia is considered a reserve to the National Guard, but it is not a reserve component of the U.S. Armed Forces. Its members are not subject to obligatory service unless they are assigned to a unit that is ordered or called out by the Governor. Only under the following conditions are employees entitled to military leave with pay:

  - Infrequent special activities in the interest of the State, usually not exceeding one day, when so ordered by the Governor or his/her authorized representative

  - State duty for missions related to disasters, search and rescue, etc, again, only when ordered by the Governor or his/her authorized representative

- Under these conditions, an employee may be granted military leave not to exceed **120 hours during any calendar year**.

- Employees who are members of the State Defense Militia are not entitled to military leave with pay when volunteering for support of functions or events sponsored by civic or social organizations even though such support has been "authorized".

- Regularly scheduled unit-training assemblies, usually occurring on weekends, are not acceptable for military leave; however, Patrol supervisors are encouraged to arrange work schedules to allow employees to attend this training.

- Duty status may be verified with the Office of Adjutant General, North Carolina National Guard; ATTN: Vice Chief of Staff – State Operations (VCSOP).

Periods of Leave for Civil Air Patrol

- While the Civil Air Patrol is not a reserve component, it is an auxiliary to the Air Force. Its members are not subject to obligatory service. When performing missions or encampments authorized and requested by the U.S. Air Force or emergency missions for the State at the request of the Governor or the Secretary of the Department of Public Safety (DPS), its members are entitled to military leave with pay not to exceed **120 hours in any calendar year**. The Governor may grant exceptions. The Secretary of DPS may verify such service upon request by the Patrol. Regularly scheduled unit-training assemblies, usually occurring on weekends, are not acceptable for military leave; however, Patrol supervisors are encouraged to arrange work schedules to allow employees to attend this training.

Leave without Pay

- Military leave without pay shall be granted for all uniformed service duty that is not covered by military leave with pay, such as:

  - Extended active duty for a period not to exceed five years plus any additional service imposed by law (see note below)

  - Full time National Guard duty (usually a three-year contract)

  - Initial active duty for training (initial enlistment)

- The following absences may be taken as leave without pay or as available vacation leave, or a combination of the two:

  - Duties resulting from disciplinary action imposed by military authorities

  - Inactive duty training (drills) performed for the convenience of the member, such as equivalent training, split unit assemblies, make-up drills, etc.

    Note: The Patrol is not required to excuse employees for incidental military activities such as volunteer work at military facilities (not in duty status), unofficial military activities, etc.

- During periods eligible for military leave without pay, the employee shall continue to earn time toward total State service if reinstated with the time limits outlined below. The employee shall not accumulate vacation or sick leave. Leave is earned only when the employee is on leave with pay or on reserve active duty.

- Employees shall submit a written request to return to duty along with a copy of their discharged papers to their Section Director or Troop/Unit Commander,

  who shall forward a copy to the Personnel Unit without delay within the following time constraints:

  - Within 14-days after the completion of the period of service lasting more than 30-days but less than 180-days

  - Within 90-days after the completion of the period of service lasting more than 180-days

  - No written request is needed for service lasting less than 31 days

XI. EDUCATIONAL LEAVE

Educational leave with pay may be granted for training (refresher, academic, and commercial courses) in a job-related course of instruction to upgrade knowledge and skills approved by the employee's supervisor and the Director of Support Services or designee. Leave with pay may not exceed actual time for classroom instruction in one such course (one course is defined as a course with a maximum credit of five semester hours or the equivalent) during the semester or quarter of instruction when the course is not offered after working hours. A reasonable amount of time for travel to and from the institution and the place of employment is also allowed. The employee's supervisor shall determine what is a reasonable amount of travel time and whether the institution is located within a distance that could be reached in a reasonable amount of time off.

Employees who are receiving reimbursement for educational expenses from veteran's benefits programs shall not apply to the State for reimbursement of their educational expenses.

The supervisor and the Director of Support Services or designee must endorse an employee's Application for Educational Assistance (form HP-136) for final approval. This form must be submitted in duplicate and one copy will be returned to the employee upon approval.

Extended educational leave without pay shall be granted in accordance with the normal leave policy.

XII. FAMILY AND MEDICAL LEAVE

When an employee is on paid leave but has not given notice of the need for FMLA leave, the supervisor shall, after a period of **10 workdays**, request that the employee provide sufficient information to establish whether the leave is for a FMLA-qualifying reason. This information shall be sent to the Personnel Unit. Supervisors shall also notify the Personnel Unit anytime an employee will be on leave for 15 calendar days or more.

Employee responsibilities include:

- When practicable, request through channels and at least 30 days in advance to take family or medical leave
- May be required to provide reasonable proof of leave taken for adoption or foster care
- May be required to provide doctor's certification of leave taken due to serious illness of the employee or of the employee's child, spouse, or parent
- Must notify supervisor if he/she will not return to work after the leave period, which may be considered a resignation

- Must surrender the issued Patrol vehicle and firearm to his/her immediate supervisor if leave will be for a period of 30 calendar days or more

Employee Options

- **Birth.** For the birth of a child, the employee may choose to exhaust available vacation and/or sick leave, or any portion, or go on leave without pay except that sick leave may be used only during the period of disability. This applies to both parents.

- **Adoption.** For the adoption or foster care of a child, the employee may choose to exhaust available vacation leave, or any portion, or go on leave without pay.

- **Illness of Child, Spouse, Parent.** For the illness of an employee's child, spouse or parent, the employee may choose to exhaust available sick and/or vacation leave, or any portion, or go on leave without pay.

- **Employee's Illness.** For the employee's illness, the employee shall exhaust available sick leave and may choose to exhaust available vacation leave, or any portion, before going on leave without pay. If the illness extends beyond the 60-day waiting period required for short-term disability, the employee may choose to exhaust the balance of available leave or begin drawing short-term disability benefits.

Maternity Leave

- There shall be no arbitrary commencement or termination dates for maternity leave. These dates shall be determined on an individual basis, based on the individual judgment and discretion of the employee and/or the employee's medical provider of the employee's ability or inability to perform the job.

- An employee who is temporarily unable to perform her job due to pregnancy, childbirth or a related medical condition shall be treated the same as any other employee with a temporary disability. All employment practices and procedures for leave relating to temporary disability apply when an employee seeks leave or an accommodation due to a pregnancy or childbirth related medical condition. The employee may be eligible for limited duty status pursuant to the Patrol's limited duty policy and state law. An employee may also be eligible to apply for FMLA, which allows up to 12 weeks of leave.

XIII. Paid Parental Leave

The purpose of parental leave is to optimize the health and well-being of parents and children, support recruitment and retention of employees, and stabilize income for new parents. The qualifying event must have occurred on or after 1 September 2019.

Eligibility determinations are made as of the date the child is born or placed via adoption, foster or other legal placement. Note: Other legal placement does not include parental custody cases or legal assignments as a Guardian ad Litem (GAL).

Paid Parental Leave will be provided as soon as practical following the Qualifying Event. Unless, it is determined that providing Paid Parental Leave will cause a Public Safety concern.

If a Public Safety Concern exists, The Patrol may delay providing Paid Parental Leave or provide Paid Parental Leave in intermittent periods. However, under no circumstances may Paid Parental Leave be denied, delayed, or provided intermittently to an Eligible State Employee who has given birth, unless the member requests intermittent Paid Parental Leave.

- Eight (8) weeks (320 hours) of paid parental leave shall be provided to **Eligible** State Employees who have given birth.

- Four (4) weeks (160 hours) of paid parental leave shall be provided to **Eligible** State Employees to care for and bond with a newborn or newly adopted, foster, or otherwise legally placed child.

- Paid Parental Leave must be used within 12 months of birth, adoption, foster or other legal placement of a child. Each week of Paid Parental Leave will be compensated at 100% of the employee's regular, straight-time weekly pay.

- Eligible State Employees may request intermittent use of paid parental Leave subject to approval by the Director of Support Services or designee.

- Paid Parental Leave runs concurrently with Family and Medical Leave.

Employee responsibilities include:

- Employee shall be required to request leave ten (10) weeks in advance (when possible) of intent to use Paid Parental Leave so the agency may ensure coverage.

- Member shall submit the requested certification of eligibility documents in order to receive Paid Parental Leave within thirty (30) days of the birth or adoption or as soon as it becomes available.

- Members shall comply with the Department of Public Safety leave request procedures absent unusual circumstances.

- Members shall be required to submit documentation providing they will use Paid Parental Leave for a Qualifying Event. Appropriate action will be taken if there is evidence an employee fraudulently requested, used, or otherwise

abused Paid Parental Leave. This action may include revoking approval and disciplinary action up to and including dismissal.

Supervisor responsibilities include:

- Upon receiving a request for Paid Parental Leave and documentation of the birth or placement, the Supervisor must notify the Personnel Unit without delay.

- Upon receiving a request for Paid Parental Leave and documentation of the birth or placement, the agency must notify the member of his or her eligibility status within five (5) business days.

- The Personnel Unit shall provide required documentation to member for completion of the certification process.

XIV. COMMUNITY SERVICE LEAVE

The purpose of community service leave is to promote employees' involvement in schools, communities, and non-profit organizations, and to recognize the commitment of employees to engage in volunteer service. Community service leave may be granted to:

- Parents for child involvement in the schools. Child is defined as a son or daughter who is a biological child, an adopted child, a foster child, a step-child, or a legal ward.

- Employees for volunteer activity in the schools or in a community service organization. Community service organization is defined as a non-profit, non-partisan community organization, which is designated as an IRS Code 501(c)(3) agency, or a human service organization licensed or accredited to serve citizens with special needs including children, youth, and the elderly.

- Employees for tutoring and mentoring in the schools. School, public or private, is defined as one that is authorized to operate under the law of the State of North Carolina and is an elementary school, middle school, high school, or childcare program

Under this policy, permanent, probationary, and trainee employees may be granted 24 hours per year or one hour per week (up to a maximum of 36 hours) for mentoring/tutoring.

The 24 hours of paid leave shall be credited to each employee on January 1 of each year, unless the employee chooses the mentoring/tutoring option. New employees shall be credited with leave immediately upon their employment, prorated at two hours per month for the remainder of the calendar year. For the 24-hour option, the full 24 hours may be taken in three consecutive workdays, or taken throughout the year in increments.

In lieu of the 24-hour award an employee may choose to tutor/mentor in a school. Leave under this option shall be used exclusively for tutoring/mentoring a student in accordance with established standards rules and guidelines for such arrangements as determined and documented by joint agreement with the Patrol and the school. The amount of community service leave for tutoring/mentoring is one hour of community service leave for each week, up to a maximum of 36 hours, that schools are in session as documented by the elected board of the local education agency or the governing authority of any non-public school. For the 36-hour option, a maximum of one hour of community service leave for tutoring/mentoring per week, up to 36 hours per calendar year, is allowable.

Note: Any time used for tutoring/mentoring, including time spent traveling to and from the school, must be accounted for either by the use of the one hour of community service leave or other leave policies.

If an employee chooses to change options during the calendar year, the maximum hours that may be granted is the maximum allowed under the new option chosen minus the amount already used. Only one type of leave is allowed.

Community service, for this purpose, is:

- Meeting with a teacher or administrator concerning the employee's child.

- Attending any function sponsored by the school in which the employee's child is participating. This provision shall only be utilized in conjunction with non-athletic programs that are a part or supplement to the school's academic or artistic program.

- Performing school-approved volunteer work approved by a teacher, school administrator, or program administrator.

- Performing a service for a community service organization.

  Note: Service does not include activities designed to promote religious beliefs such as teaching or leading religious assemblies or in raising funds to support religious activities. Service would include: activities supported by religious organizations such as working in a soup kitchen, homeless shelters, or other community activities.

Employees must receive approval from their supervisor to use this leave. The supervisor may require that the leave be taken at a time other than the one requested, based on the needs of the agency. The Patrol may require acceptable proof that leave taken is within the purpose of this policy.

If an employee transfers to another State agency, any balance of community service leave not used shall be transferred to the new agency. Under the tutoring/mentoring option, the employee should secure approval from the new

supervisor prior to the transfer so that any necessary changes may be communicated to appropriate officials.

Leave not taken in a calendar year is forfeited; it shall not be carried over into the next calendar year.

Employees shall not be paid for this leave upon separation.

I. POLICY

This policy sets forth procedures for expenditures incurred during the course of your duties.

II. LODGING AND MEALS

Reimbursement for lodging, whether in-state or out-of-state, may only be made in the amount documented by a receipt of actual lodging expenses from a commercial lodging establishment in accordance with the rates mandated by the State Budget Director and found on form CNTR003 (Reimbursement of Travel and Other Expenses Incurred in the Discharge of Official Duty). Reimbursement for lunches eaten while on official business will be made only when:

- An overnight stay is required, and an employee is in travel status. Examples include special assignments, administrative transfers at the agency request and promotions.

- Meals and lodging not provided.

- All employees shall attach the original receipt(s) to expense accounts to support lodging expenses.

Overnight Travel

- Employees receive allowances for meals and lodging for full days of travel and for partial days (less than 24-hour period) when the partial day is the day of departure or the day of return and involves an overnight stay. To be eligible for specified meals on partial travel days the employee must:

  - **Breakfast.** Depart duty station prior to 6:00 a.m.

  - **Lunch.** Depart duty station prior to Noon (day of departure) or return to duty station after 2:00 p.m. (day of return).

  - **Dinner.** Depart duty station prior to 5:00 p.m. (day of departure) or return to duty station after 8:00 p.m. (day of return).

  - The rates and prorated amounts shall be paid in accordance with the amounts stipulated by the North Carolina Office of State Budget and Management (OSBM).

  - Departure and return times shall be listed on Form CNTR 003.

Out-of-State Travel

Out-of-state travel status begins the day the employee leaves the State and remains in effect through the day the employee returns to the state. In-state allowances and reimbursement rates apply when employees use hotel and meal facilities located in North Carolina immediately prior to and returning from out-of-state travel during the same travel period.

Subsistence reimbursement rates and prorated amounts shall be paid in accordance with the allowances pursuant to N.C.G.S. § 138-6(5). Subsistence reimbursement rates shall be revised on forms HP-6 (Request for Travel) and CNTR003 (Reimbursement of Travel and Other Expenses Incurred in the Discharge of Official Duty) when mandated by the State Budget Director via memorandum.

An employee may request reimbursement for actual meal and lodging expenses if they are less than the rates shown above.

No subsistence expense is reimbursable if it is incurred within 35 miles of the employee's duty station or home, whichever is less. Per Diem rates include all food, lodging, taxes, and gratuities for meals. Transportation, mileage, tolls, and cab fares are not to be included in the per diem reimbursement rates for subsistence.

Members shall submit expense accounts monthly when applying for reimbursement of expenses, except that expense accounts may be submitted for a period of less than a month for extensive special assignments resulting in major expenses.

III. TRANSPORTATION

Transportation by Personal Vehicle

- Map mileage is reimbursable. Mileage is measured from the closer, duty station or point of departure to destination (and return).

- The business standard mileage rate set by the Internal Revenue Service (IRS) will be paid in accordance to the guidelines below:

    - o Approved round trip 100 miles or less will be reimbursed at a rate of 57.5 cents per mile.
    - o Approved round trip exceeding 100 miles will be reimbursed at a rate of 33 cents per mile.

- Parking fees, tolls, and storage fees are reimbursable.

- Receipts are required.

Use of Public Transportation

- In lieu of using a taxi or airport shuttle, employees can be reimbursed without receipts up to $5.00 for each one-way trip either from the airport to hotel/meeting or from the hotel/meeting to the airport. Employees may also be reimbursed without a receipt up to $5.00 for each one-way trip for using public transportation while on official state business, other than to or from the airport.

Use of Rental Vehicles at the Employee's Travel Destination

- Rental vehicles may be used with the prior approval of the department head or his/her designee; however, rental vehicles may not be used for the sole convenience of the employee (receipt required).

Travel Involving Trips other than to and from the Airport

- The actual cost of taxi and shuttle service fees can be reimbursable when required for travel on official state business. The actual cost of taxi or shuttle service fees must be documented with a receipt. The affected employee may choose to use public transportation in this situation, provided the procedures outlined in the "Use of Public Transportation" section above is followed.

Tips and Gratuity

Reimbursable gratuity or tips must be considered reasonable for items that are not already covered under subsistence. Excessive tips will not be reimbursed. A reasonable tip would be one that a prudent person would give if traveling or conducting personal business and expending personal funds. For the purpose of this section, the following information is provided as guidance when calculating tip:

- Airports: Baggage Handling / Skycaps / Shuttle Drivers – no more than $2.00 per bag

- Parking / Auto Related: Valets – $2.00 per car when collecting the car

- Taxi or car service drivers (Uber, Lyft, etc.) – no more than $5 per trip.

IV. REIMBURSEMENT

The original CNTR 003 (Reimbursement of Travel and Other Expense Incurred in the Discharge of Official Duty), along with necessary receipts for lodging and other expenses must be submitted to the DPS Controller's Office within 30 days of the end of the travel period. Copies of Forms CNTR 003 and receipts shall be kept in a central file at the Section/Location for audit purposes for a period of one

year or longer if a specific regulation requires a different retention period such as with grants.

Travel Period is defined as the calendar month during which the travel occurred. The room rate must be clearly documented on all lodging establishment receipts. Receipts must be itemized showing taxes and other charges separately. Receipts must be submitted for all employee and contractual personnel expenses incurred, excluding meals and certain other expenses specifically identified.

Each employee is responsible for his or her own request for reimbursement. Each employee shall personally sign his or her own Form CNTR 003, as (s)he is "certifying under penalties of perjury that the statements are true and accurate." The employee cannot delegate his or her signing authority to another individual. In addition, Forms CNTR 003 must be signed by the employee's supervisor, indicating that travel expenses have been approved, in order for the expense to be authorized.

V. POST OFFICE BOX, RENT, STAMPS, UTILITY, AND OTHER BILLS

Expenditure for post office box rent shall be paid through the Procurement Card (P-Card) process. The name of the town or city must be shown on the receipt along with a cancellation stamp and turned in with the procurement and transaction log when submitted for reconciliation.

Supervisory personnel that are issued a Procurement Card (P-Card) shall purchase postal stamps as needed and distribute them to subordinates. A Postal Receipt will be completed and signed by the postal employee from whom the purchases are made. The supervisor's name, the name of the city or town where the stamps are purchased, and the postage cancellation stamp must appear on the receipt that shall be attached to the supervisor's procurement and transaction log when submitted for reconciliation.

Troop and district utility bills and other authorized bills shall be submitted to the Unit Commander of Logistics, in duplicate, after being approved and endorsed by the First Sergeant and/or Section Director/Troop Commander. Such bills are to be forwarded in ample time to prevent past due charges. Medical and household moving bills are to be submitted to the Director of Support Services.

VI. MOVING EXPENSES

An employee's allowable household moving expenses may be reimbursed by the State only when a change of residence is deemed by the Commander's Office to be in the best interest of the State and the new duty station is fifty (50) miles or more from the existing residence or a change of county is involved. A change is in the best interest of the State when caused by promotion or otherwise for the advantage and convenience of the Patrol and the State. Moving expenses are not reimbursable if the employee requests the change, or if the employee is

accepting initial employment with the Patrol. Moving expenses may be reimbursed in other extraordinary circumstances if written approval is obtained in advance from the Office of State Budget.

Please note the Internal Revenue Service (IRS) considers moving expenses paid to an employee directly or indirectly as taxable compensation. If an agency elects to pay for an employee's moving expenses, then the agency must treat the payment as employee compensation for purposes of withholding federal, state, and FICA taxes. The Office of State Controller (OSC) has established payroll system payment mechanisms to ensure withholding of taxes for this type of compensation (applicable to agencies whose payroll is processed by OSC).

The employee must comply with State Budget regulations for claiming and obtaining reimbursement for moving household furnishings. Regulations provide, in part, that:

- The member must submit a memo requesting reimbursement of moving expenses to the Budget and Grants Unit and include:
    - Three (3) reputable moving firms submit firm bids for the total cost of the move using Departmental form CNTR 012 (Moving Quotation). The memo and bids are considered confidential and are to be sent via email directly to the Budget and Grants Unit (BudgetGrantsUnit@NCSHP.ORG).

- The move should be accomplished within ninety (90) days. The Secretary of the Department of Public Safety may approve an extension of an additional 90 days. Extension in excess of 180 days may only be approved by the Office of State Budget and Management. The affected employee must submit a written request to the Director of Support Services via chain-of-command **prior to the end of the 90-day period**. The memorandum must state the reason for the additional extension and what actions are being taken to solve the problem.

- Eligible employees who do not wish the State to bear any expense in the moving of household goods shall notify the Director of Support Services of this decision. The notification must be in writing and forwarded via chain-of-command prior to the expiration of the time allotted for moving.

- Claims for household-moving expenses shall not be submitted until the move is complete in all aspects and shall reflect actual expenses incurred.

- Refer to Directive E.09 Section IV (Procedures for Establishing Residence) for guidance regarding non-state funded moves.

Every effort should be made to expedite the movement of the employee's household goods. However, the time allowed for the employee's locating a new

residence and moving should be granted as leave-with-pay, for up to a total of 16 hours, which is accounted for as normal workday activities.

Payment for movement of household and personal goods includes items such as furniture, clothing and personal effects. Any Item that require special handling and/or packing, such as an animal, boat, airplane, antiques, satellite dish, campers, woodworking equipment and building materials are not considered as household or personal goods. Payment includes, and is limited to, the cost of actual packing, transporting and unpacking of a maximum of 15,000 pounds. If the moving cost is calculated on a weight basis (50 miles or more), the maximum cost to be paid can be no more than the lowest available regulated tariff rates. If additional storage is required for any such items, it is the responsibility of the employee and is not reimbursable.

The reasonable costs of disconnection of appliances as defined in this section at the old residence and reconnection or reinstallation of the same appliances at the new residence by the carrier or by a service company may be allowed up to a maximum of $200. This would include items typically found in performing household operations such as electrical, water, gas hook-up, household appliances, and connection of a single telephone. This would not include items considered unnecessary to household operations such as television antennas, cablevision connection, satellite dish, nor any type of power tools or other equipment associated with home workshops, hobbies, or other activities. Also, utility deposits or the running of utility lines are not a reimbursable expense.

In the movement of mobile homes (in lieu of an allowance for packing, unpacking, and insurance coverage) charges not to exceed a total of $500 are allowed for the following costs associated with the movement of mobile homes utilized as the employee's residence:

- Blocking and unblocking
- Anchoring and skirting
- Moving air conditioners and utility buildings
- Wheel rental

Whether performed by the carrier or a service company, claims for service for such services must be supported by itemization on the bill of lading or on paid receipts, as applicable, detailing in either case the appliances serviced, the work done, and the individual cost of each such service. Such services performed by the carrier, and for which he assumes complete responsibility, may be invoiced at the applicable tariff rates, and must be further supported by an affidavit signed by the employee verifying that the carrier performed the services.

Payment for travel expenses incurred in moving the employee and his/her family from the old residence to the new residence is authorized as follows:

- **For Locating New Residence.** Transportation, mileage calculated at the statutory rate for a maximum of 3 round trips by automobile with each trip not to exceed 2 days (2 days, 1 night) for total house hunting trips not to exceed 6 days (6 days, 3 nights). Subsistence for meal costs (as shown in section I) for each employee of the family per trip. If overnight lodging is necessary, subsistence for the following day is allowable. Lodging is limited to 1 double room.

- **For Day of Moving.** Mileage calculated at the statutory rate for a one-way automobile trip (a maximum of 2 vehicles). Subsistence for meal costs (as shown above) may be reimbursed for each employee of the family. If overnight lodging is necessary, subsistence for the following day is allowable. Lodging is limited to 1 double room.

- **New Duty Station.** Subsistence at the new duty station not to exceed five (5) days a week from the time he/she begins work until he/she moves into his/her new residence, not to exceed a total of forty (40) working days excluding days off. This subsistence reimbursement may be considered by the Internal Revenue Service to be income; therefore, employees should be aware of the tax liability in this situation.

- **Use of State-Owned Vehicle.** An employee promoted or administratively transferred may use his/her issued state vehicle to travel one (1) round trip per week to/from their new duty during the first forty (40) working days at the new duty station.

    - Employees residing within fifty (50) miles of their new duty station may travel daily to/from their new duty station during the first forty (40) working days at the new duty station in lieu of claiming subsistence for overnight lodging at the new duty station, upon the approval of the appropriate Section Director, Troop/Unit Commander.

    - The affected members shall check 10-86 with the appropriate communication center at the beginning of off duty travel, and 10-87 with the appropriate communication center at the end of off duty travel. Non-uniformed employees assigned a state-owned vehicle must not show driving time as “time worked” under these circumstances.

    - All requests for use of a Patrol Vehicle for off-duty travel to/from the new duty station must comply with the provisions set forth in Directive O.04 of this manual.

- **Use of Personal Vehicle.** Employees with no assigned state-owned vehicle are allowed mileage for one (1) round trip per week from the employee's current residence to the new duty station, not to the exceed the first forty (40) working days at the new duty station.

Alternate Procedure. (Commonly referred to as Self-Moves) Department heads are authorized to approve moving by an alternate procedure provided the move

is supported by proper documentation and receipts. Prior written approval is required for a self-move. The memorandum should include an itemized list with estimated costs associated with the self-move. The Patrol may reimburse the actual cash expenditure made by another method, if such reimbursement does not exceed that which would have been made if a regulated common carrier had been used. This alternative may be applicable for movement of an employee's goods contained in a house trailer or by a rental trailer or truck or by a non-licensed mover.

VII. CAREER-RELATED COURSES / TUITION REIMBURSEMENT

Employees are encouraged to pursue courses (including refresher, academic, or commercial courses) to develop or improve skills or qualifications directly related to their current job classification or classification series in which they are working. Employees may be entitled to be reimbursed for approved academic courses provided funds are available. When seeking academic assistance, affected employees must follow the procedures set forth in Directive E.14 “Academic Assistance Program” of this manual.

VIII. MODIFICATION

All provisions for expenditures described in this directive are subject to modification by the Office of State Budget and Management (OSBM).

Death of a Member

Directive E.06

Applicable to: Members

Revised 9/2013
Effective 9/1995

I. POLICY

This policy sets forth a guide for members upon learning of the death of a member.

II. SECTION DIRECTOR / TROOP COMMANDER'S RESPONSIBILITIES

Upon learning of the death of a member, the appropriate Section Director/Troop Commander shall immediately inform the State OD who in turn will notify the Commander's Office and the Secretary of the Department of Public Safety. The Commander's Office will send out a statewide message giving the date, hour, and place of funeral service and interment.

The appropriate Section Director/Troop Commander or his/her designee will offer to assist the family in making burial arrangements, determining the executor of the estate, recovering all monies owed the deceased by other members, and filing an expense account for any State funds due.

If requested by the family and under the direction of the appropriate Section Director/Troop Commander, a Patrol funeral will be conducted. The Section Director/Troop Commander will:

- Notify members who are to serve as pallbearers

- Designate the uniform to be worn by members attending (Side arms and hats will be worn by all members except active pallbearers.)

- Assign members for traffic control purposes one (1) hour prior to the funeral service, including escorting the funeral motorcade and expediting safe departure from the cemetery following interment. (One member will precede the motorcade and one will follow the last vehicle in the motorcade. Marked vehicles will be used.)

The Section Director/Troop Commander or his/her designee shall perform any or all of the duties designated in this directive as deemed appropriate, even if the family does not request a formal Patrol funeral.

The Section Director/Troop Commander shall designate an officer-in-charge (he/she may designate himself/herself) to supervise members representing the Patrol at the funeral of a civilian and/or direct Patrol members at a Patrol funeral under the general guidelines of Directive E.7.

The Section Director/Troop Commander shall assign a First Sergeant to obtain all State property from the family of the deceased, except one complete uniform the family may retain for burial purposes. The returned property shall be turned over to the Section Director/Troop Commander.

III. BENEFITS AND SAFETY OFFICER'S RESPONSIBILITIES

The Benefits and Safety Officer shall offer to assist the family of the deceased in collecting all monies due them from Patrol connected mutual benefit funds.

IV. BADGES AND SERVICE SIDE ARMS

Deceased member's surviving spouses or children (or guardians of minor children) shall receive at no cost to them the badge worn or carried by the deceased member. At the discretion of the Secretary, surviving spouses or children (or guardians of minor children), upon request may receive the service side arm worn or carried by the deceased member, at a price determined by the Secretary. Such survivors making requests for the side arm referred to above, must obtain a permit as required by N.C.G.S. § 14-402 et seq. and N.C.G.S. § 20-187.2 unless the side arm shall have been rendered incapable of being fired.

If the deceased member's surviving spouse or children make such a request, the Section director shall ensure all required memorandums are completed and forwarded to the Director of Support Services. The badge the member wore will be presented to the surviving member's family on a folded flag at the funeral. If there is no Patrol graveside service, the badge will be presented at the same time the service weapon is presented.

I. POLICY

This policy ensures statewide conformity and uniformity in attending funerals as a member of the Highway Patrol. These procedural guidelines are recommended in both civilian and law enforcement officer's funerals.

II. GENERAL INFORMATION REGARDING FUNERAL SERVICES

When attending funeral services, members should conduct themselves at all times with the utmost reverence and solemness due such occasions in keeping with the high standards and professional image of the Highway Patrol.

Members may elect to attend a funeral on an individual basis, as a friend of the family, or as a group representing of the Highway Patrol. If three or more uniformed members are in attendance, they are considered a group.

When it is anticipated that a group of members will attend funeral services as representatives of the State Highway Patrol, the Section Director/Troop Commander should designate a member to serve as the officer in charge. Uniformed members should assemble as one unit in a display of Patrol solidarity towards the family of the deceased. The officer in charge should assume responsibility for the conduct of attending members and should coordinate the Patrol's activities with the cemetery superintendent and/or funeral director. The desires of the family are given the fullest consideration at all times.

Members attending funerals in uniform should be dressed in the uniform of the day, including hats and sidearm, as designated by the Section Director/Troop Commander or Commander's Office as appropriate.

Uniformed members may be requested to participate in the services as active pallbearers, honorary pallbearers, or in some other capacity. If such requests are made, the officer in charge should coordinate the Patrol's activities so as not to disrupt normal procedures of the funeral.

If the casket is draped with a United States Flag, uniformed members shall face the casket and execute a hand salute at the following times:

- Any time when the casket is being moved (except when they themselves are moving)
- During cannon salutes
- During the firing of volleys
- While "Taps" is being played.

When appropriate, civilians may be saluted in lieu of removing the headdress as a form of salutation. The officer in charge should make this determination prior to the services and in accordance to the particular circumstances of the deceased.

Uniformed members attending funerals should uncover only when entering places of divine worship or other areas indoors such as funeral homes. Except during the religious service when all personnel bow their heads at the words **"let us pray"**, all members in uniform, other than the active pallbearers, should follow the example of the senior Patrol official present. If he/she uncovers, they uncover; if he/she remains covered, they remain covered. When uncovering, members should remove and hold their hats over the left side of their chest with the right hand over the heart.

III. GROUP PROCEDURES AT THE CHAPEL

Members attending funerals as a group should attempt to gather at the chapel approximately thirty (30) minutes prior to the service. Before the arrival of the family and hearse, the officer in charge should have the members assemble in formation in ranks, standing at **Parade Rest** facing the chapel. As the hearse approaches, the officer in charge should give the command, **Attention**. Under normal circumstances the members remain at **Attention** as the casket is removed from the hearse and carried into the chapel. If the situation warrants and the officer in charge deems it appropriate, he/she should give the command **Present Arms**, at which time the members execute a hand salute. As the casket is carried into the chapel the officer in charge gives the command **Order Arms**.

After the casket and honorary pallbearers (if present) enter the chapel, the officer in charge gives the command **Fall Out**. Members should enter the chapel in a column of twos and occupy seats as designated by the officer in charge as coordinated with the funeral director.

Before and after the chapel service, members who are requested to participate as honorary pallbearers should follow the procedures outlined in Part Two, Highway Patrol funerals, with one exception. When normal circumstances exist and the situation does not warrant executing a hand salute, the members remain at **Attention** as the casket is moved.

After the chapel service, members in general attendance should exit the chapel service, in a column of twos and proceed to the burial site via the proper conveyance.

IV. GROUP PROCEDURES AT THE GRAVESITE

The officer in charge should have the group members in general attendance assemble in formation in ranks, standing at **Parade Rest**, facing the grave. As the hearse approaches, the officer in charge gives the command, **Attention**. Under normal circumstances, members remain at **Attention** until the casket is carried to the grave and placed upon the lowering device. If the situation

warrants and the officer in charge deems it appropriate, he/she should give the command **Present Arms** as the casket is removed from the hearse and members should then execute a hand salute. As the casket is placed upon the lowering device, the officer in charge gives the command **Order Arms**. After the honorary pallbearers proceed to their predetermined position, the officer in charge gives the command **Parade Rest**.

Members participating as honorary pallbearers should follow the procedures outlined in Part Two (Highway Patrol Funerals), with one exception; when the situation does not warrant a hand salute, members should remain at **Attention** as the casket is removed from the hearse, carried to the grave, and placed upon the lowering device.

Members in general attendance remain in formation and at **Parade Rest** until the conclusion of the religious service.

V. CONCLUSION OF THE SERVICE

At the conclusion of the religious service, the officer in charge gives the command, **Attention, Dismissed**. Members are then free to depart the gravesite.

VI. GENERAL INFORMATION REGARDING A PATROL FUNERAL

When requested by the family of the deceased, the Commander's Office may authorize a Patrol funeral for members killed in the line of duty, members that die while still on active duty, or members that have retired with an honorable record.

The Commander's Office may authorize burial in full dress uniform for deceased members entitled to a Patrol funeral. In the case of retired members, the member's physical appearance must comply with the Highway Patrol Rules for Personal Appearance.

The Section Director/Troop Commander or a designated commissioned officer should be responsible for assembling and directing members before and during the funeral service. Arrangements should be coordinated with the cemetery superintendent and/or the funeral director. The desires of the family are given the fullest consideration possible in the selection of elements involved and the sequence of events.

Members should attend Patrol funerals in the **uniform of the day**, hat and sidearm included, as designated by the Section Director/Troop Commander or Commander's Office as appropriate.

When honorary pallbearers are desired, they should be selected by the family, the family's representative, or the Section Director/Troop Commander.

At a Patrol funeral, the casket should be draped with the United States or North Carolina State Flag. Veterans or members serving in the military at the time of

their death, (i.e., Military Reserves or National Guards) shall have their casket draped with the U.S. Flag. All other members shall have their casket draped with the NC State Flag. Members in uniform shall face the casket and execute a hand salute at the following times: when honors are sounded; at any time when the casket is being moved (except when they themselves are moving), during cannon salutes, if sounded; during the firing of volleys; and while "Taps" is being played.

At a Patrol funeral, the family or representatives of the deceased may request fraternal or patriotic organizations of which the deceased was a member to take part in the funeral service. With the immediate family approval, fraternal or patriotic organizations may conduct gravesite services at the conclusion of the Patrol portion of the ceremony signified by the flag presentation to the next of kin.

VII. PROCEDURES AT THE CHAPEL FOR A PATROL FUNERAL

Before the service begins, members in general attendance shall be formed in ranks, standing at **Parade Rest** and facing the chapel. As the hearse approaches, the commissioned officer in charge gives the command **Attention** and salutes as the hearse stops in front of the chapel. When all is in readiness to move the casket in the chapel, the commissioned officer in charge gives the command **Present Arms**. Members execute a hand salute as the casket is removed from the hearse by the active pallbearers and is placed in the chapel. As soon as the casket enters the chapel, the commissioned officer in charge gives the command **Order Arms**. After the honorary pallbearers enter the chapel; the commissioned officer in charge orders **Fall Out**.

When honorary pallbearers are present, they form two ranks, standing at **Parade Rest**, each facing the other, in order of seniority, most senior closest to the hearse, thus forming an aisle from the hearse to the entrance of the chapel. When the hearse arrives, the commissioned officer in charge gives the command **Attention**. When the casket is being borne between their ranks they shall execute a hand salute upon the command **Present Arms**. As the active pallbearers move the casket into the chapel, the officer in charge gives the command **Order Arms**. The honorary pallbearers execute the appropriate facing maneuver and follow the casket into the chapel in a column of twos. The commissioned officer in charge shall then give the command **Fall Out**. Members in general attendance may then enter the chapel. Honorary pallbearers shall occupy seats to the left front of the chapel (or other designated area). Active pallbearers occupy seats as directed.

After the chapel service, the honorary pallbearers precede the casket in column of twos out of the chapel and again form an aisle, ranks facing each other and standing at **Parade Rest**, from the chapel entrance to the hearse, with the senior member closest to the chapel. As the casket approaches, the commissioned officer in charge gives the command **Attention; Present Arms**. The honorary pallbearers execute a hand salute as the casket passes and is placed into the hearse. The commissioned officer in charge gives the command **Order Arms; Dismissed**. They then proceed to the burial site.

VIII. PROCEDURES AT THE GRAVESITE FOR A PATROL FUNERAL

Members in general attendance at the gravesite shall form ranks standing at **Parade Rest**, facing the grave as directed by the commissioned officer in charge. As the hearse approaches, the officer in charge shall give the command **Attention**. As the casket is removed from the hearse, the officer in charge shall give the command, **Present Arms** at which time members render a hand salute. The active pallbearers carry the casket (feet first) to the grave. The officer in charge gives the command **Order Arms** after the casket is placed upon the lowering device. After the honorary pallbearers (if present) proceed to their predetermined position, the commissioned officer in charge gives the command **Parade Rest**.

Honorary pallbearers standing at **Parade Rest** form two ranks and face each other; with the senior members closest to the hearse; thus forming an aisle extending from the hearse toward the grave. When the grave is too near the road to permit this formation, they take their position at the grave before the casket is removed from the hearse. As the hearse approaches, the officer in charge shall give the command, **Attention**.

When all is in readiness to remove the casket from the hearse, the officer in charge gives the command **Present Arms**. The active pallbearers remove the casket from the hearse as the honorary pallbearers execute a hand salute. The minister and/or funeral director precede the active pallbearers bearing the casket (feet first) between the ranks of honorary pallbearers. After the casket has passed and is placed upon the lowering device, the commissioned officer in charge gives the command **Order Arms**. The honorary pallbearers execute the appropriate facing maneuver and proceed to a predetermined position. The officer in charge then gives the command **Parade Rest**.

Upon placing the casket on the lowering device, the active pallbearers move to a predetermined position and await the conclusion of the service.

IX. CONCLUSION OF THE SERVICE

At the conclusion of the service, the commissioned officer in charge gives the command **Attention**. The active pallbearers or the Honor Guard move into position beside the casket and raise the flag in a horizontal position, waist high, until the conclusion of firing of volleys and/or “Taps” (optional). They then fold the flag into the shape of a cocked hat using the military method. (See Illustration) The folded flag is passed to a pallbearer who faces left at the head of the grave and places the flag, at chest level, into the hands of the senior Patrol officer present or his/her designee. The pallbearer salutes the flag for three seconds and then faces right to assume his/her original position. The active pallbearers execute a left or right face together and march away from the grave in a column of twos. The senior Patrol officer present, or his/her designee, presents the folded flag to the next of kin and expresses the Patrol’s condolences.

After the family has moved away from the grave, the officer in charge gives the command **Dismissed**. Members are then free to depart the gravesite.

X. PROCEDURES FOR THE HONOR GUARD

In his/her discretion and if requested by the family, the Commander's Office may authorize the use of an Honor Guard, if requested by the family.

The Section Director/Troop Commander or his/her designee should select members to serve as an Honor Guard. The 8 member Honor Guard should consist of 6 active members, one alternate, and one bugler (optional). Selected members should be capable of displaying a high degree of proficiency in executing both stationary and moving military drill, and have a thorough understanding of ceremonial procedures. The Honor Guard should report in full dress uniform (including hat, sidearm and white gloves) or as instructed by the Section Director/Troop Commander. The Section Director/Troop Commander should designate a Patrol Lieutenant to supervise and direct the duties of the Honor Guard.

The Honor Guard shall follow the *Honor Guard Standing Operating Procedures Manual* that will be provided to each troop/section.

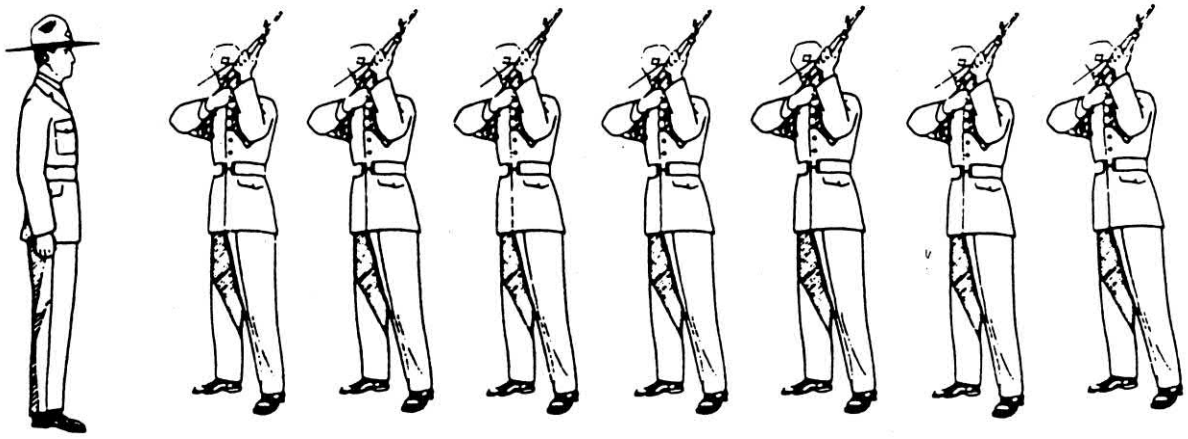
XI. MOURNING BANDS

The mourning band is worn as a visible sign of respect for active or retired law enforcement officers at the time of their death.

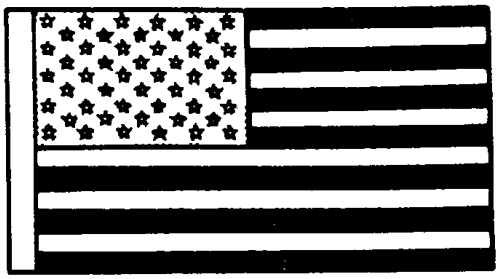
Members shall wear the mourning band under the following circumstances or at the direction of the Commander's Office:

- Upon official notification of the death of any active member(s) until midnight the day of the funeral
- While attending a retired Patrol member's funeral
- Attending any law enforcement officer's funeral in or out-of-state
- When assigned to a district or county where a law enforcement officer is killed in the line-of-duty (the band shall be worn from the time of official notification until midnight the day of the funeral)
- Attending any memorial service honoring law enforcement officers killed in the line-of-duty (i.e. Police Officers Memorial Day Ceremonies the band shall be worn from 0600 hours until midnight the day of service)

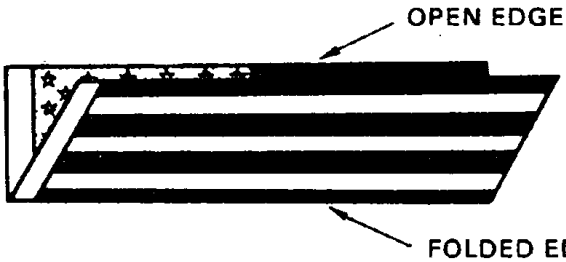
XII. HONOR GUARD POSITION FOR FIRING VOLLEYS

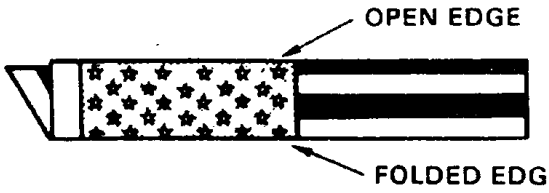


XIII. FLAG FOLDING PROCEDURES



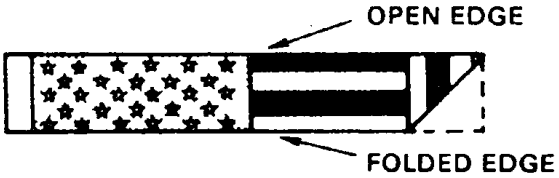
FOLD THE LOWER STRIPED SECTION OF THE FLAG OVER THE BLUE FIELD.





FOLD THE FOLDED EDGE OVER TO MEET THE OPEN EDGE.

START A TRIANGULAR FOLD BY BRINGING THE STRIPED CORNER OF THE FOLDED EDGE TO THE OPEN EDGE.



FOLD THE OUTER POINT INWARD PARALLEL WITH THE OPEN EDGE TO FORM A SECOND TRIANGLE.



CONTINUE FOLDING UNTIL THE ENTIRE LENGTH OF THE FLAG IS FOLDED INTO A TRIANGLE WITH ONLY THE BLUE FIELD AND MARGIN SHOWING.



TUCK THE REMAINING MARGIN INTO THE POCKET FORMED BY THE FOLDS AT THE BLUE FIELD EDGE OF THE FLAG.



THE PROPERLY FOLDED FLAG SHOULD RESEMBLE A COCKED HAT.



Grievance Procedure

Applicable to: Employees

Directive E.08
Revised 02/2016
Effective 12/2013

I. POLICY

State Highway Patrol Directive E.08 has been superseded by the State Human Resources Manual Employee Grievance Policy. This state policy can be found by going to the Department of Public Safety website or using the below link:

http://oshr.nc.gov/policies-forms/discipline-appeals-grievances

Assignments, Transfers, Retirements, Resignations, and Residence Requirements

Directive E.09
Revised 05/22/2020
Effective 11/10/2004

Applicable to: Employees

I. POLICY

This policy sets forth procedures in reference to transfers, retirements, resignations, and residence requirements of members of the Highway Patrol. All assignments and transfers shall be in the best interest of the Patrol as determined by the Commander's Office.

A member's residence must be established to ensure members can respond to calls for service in a timely manner on a 24-hour basis. Members shall reside within North Carolina and in the county of their assigned duty station or reside in an approved location within the designated response time from the county line of their assigned duty station.

II. ASSIGNMENT OF DUTY STATIONS WITHIN THE PATROL BY THE COMMANDER'S OFFICE

The Commander's Office shall assign members to duty stations in such a manner that will allow the Patrol to best fulfill its responsibilities to the entire state. Patrol members or civilian employees who are immediate family members shall not be stationed in a district, troop or section in which one may have direct supervision over the other. Members must be willing to live and work in any section of the state and may be reassigned or transferred at the discretion of the Commander's Office.

A newly promoted Sergeant may not be allowed to remain in his/her current duty station or assigned to a district where he/she has served as a member within two years of the date of promotion. The Commander's Office may provide an exception to this if the promotion is in the best interest of the Patrol.

Cadets may be assigned to the county from which they applied or any county in North Carolina, at the discretion of the Commander's Office, as long as there is an available opening at the time the Cadet is instructed to report. First consideration will be given to those members described in Section III (Transfer to another Duty Station within the Patrol at the Request of the Member) of this directive. If more than one Cadet applied from the same county, assignments will be made based on the recommendations of the Director of Field Operations.

III. TRANSFER TO ANOTHER DUTY STATION WITHIN THE PATROL AT THE REQUEST OF THE MEMBER

A one (1) year commitment to the member's initial duty station shall be required by all members upon graduation/sworn-in date from Patrol Basic School as indicated in CAD. After the one (1) year commitment has been fulfilled, a member may request to transfer to the duty station of his/her choice. If

extenuating circumstances exist, the Commander's Office may waive the one (1) year rule provided the member submits a memorandum documenting the extenuating circumstances via chain-of-command.

Members desiring to transfer into a vacant Size and Weight or MCSAP Trooper position shall meet all of the following minimum qualifications:

- Shall have a minimum of six (6) years of service prior to being considered for transfer into a vacant Size and Weight or MCSAP Trooper position

- Shall have a positive work performance history with no documented conduct issues demonstrating a continuous need for supervisory intervention in their current district(s) for the three (3) previous evaluation years

- Shall complete and pass the North American Standard (NAS) Level III – Driver/Credential/Administrative Inspection Course, and successfully complete the Field Training Inspection (FTI) program prior to transfer

- Shall be able to meet the minimum physical qualifications outlined in the Size and Weight or MCSAP Trooper job description

Transfer requests into a vacant Size and Weight or MCSAP Trooper position that do not meet the aforementioned criteria may be denied.

Members granted a transfer into a MCE position shall be required to make a two (2) year commitment to remain assigned to a MCE position. The date for this requirement will be the official transfer date. If extenuating circumstances exist, the Commander's Office may waive the two (2) year rule provided the member submits a memorandum documenting the extenuating circumstances via chain-of-command.

Each member holding the rank of Trooper, Sergeant, First Sergeant, Lieutenant or Captain who wishes to transfer to a different duty station within the Patrol shall request permission for such transfer by completing an HP-205 (*Request for Transfer*) electronically and submitting it to the Director of Field Operations via chain-of-command. Troopers' requests for transfer of duty stations within one (1) year following the date a member is sworn in shall be denied unless:

- In the discretion of the Commander's Office, extenuating circumstances warrant an exception to this policy. The requesting member should attach a memorandum stating any extenuating circumstances.

- Members who are assigned to a multi-county district who wish to transfer to another county within that district may do so without being required to meet the one (1) year minimum time in duty station requirement.

Requests for transfer shall follow the procedure as outlined below:

- Personnel Unit will post the "Trooper and Motor Carrier Allocation" report on internal website the 10th of each month or the first workday after the 10th of the month for each section, troop, and district. Vacant supervisor positions for the rank of Sergeant and First Sergeant will also be posted.

- Members shall submit transfer requests (HP-205) electronically to their District Supervisor or the appropriate supervisor in their chain-of-command on a quarterly basis (during the months of January, April, July, and October). The (HP-205) must be received electronically on or before the 15th of the above months or on the first workday after the 15th.

- District Supervisors or the appropriate supervisor in the chain-of-command shall make a recommendation as to whether the member's request should be granted or denied, state the reasons therefore, and shall forward the request electronically to the Section Director/Troop Commander no later than the 16th of the month or the first workday after the 16th.

- Section Directors/Troop Commanders or their designees shall make a recommendation as to whether the member's request should be granted or denied, state the reasons therefore, and transmit the request electronically to Field Operations no later than the 17th of the month or the first workday after the 17th. Section Directors, other than those assigned to Field Operations, shall make a recommendation as to whether the member's request should be granted or denied for employees in their chain-of-command and state the reason therefore.

- Transfer requests shall be forwarded to the Commander's Office electronically no later than the 19th or the first workday after the 19th.

The Commander's Office shall approve or deny all transfer requests with a response electronically sent to affected members by the Personnel Unit.

In considering the member's request for transfer, the District Supervisor, Section Director/Unit/Troop Commander, Director of Field Operations, Commander's Office shall first consider the best interest of the Patrol but shall also give consideration to the reason given by the member for requesting the transfer, the living conditions of the member and his/her family, and any special family circumstances which would justify the transfer. The Commander's Office in his/her discretion may grant or deny the request for transfer.

When members are transferred to another duty station pursuant to their own request, they shall be responsible for all moving expenses.

Transfers to Specialized Units

Members wishing to transfer to a specialized unit must follow the transfer guidelines established by that unit. The Commander's Office shall approve all guidelines or amendments to the guidelines. The director of each specialized

unit shall maintain approved guidelines that shall include selection criteria, vacancy announcement procedures, selection procedures, duration of assignment, and post-selection training requirements.

Supervisor Transfers

- Patrol supervisors who request to transfer to another duty station will be required to make a one (1) year commitment to remain in that duty station. The only exceptions to the one (1) year commitment in duty station requirement are:

  - District Supervisors who are assigned to a multi-county district may be allowed to transfer to another county within that district without being required to meet the one (1) year time in duty station requirement. Each District Supervisor shall request permission for such transfer in writing by completing an HP-205 (*Request for Transfer*) by following the aforementioned procedures. It shall be documented in the "Comments" section on the (HP-205) that the transfer being requested is within a multi-county district.

  - As referenced in this policy, members, at the discretion of the Commander's Office, may be reassigned or transferred if the reassignment or transfer is in the best interest of the Patrol, without being required to meet the one (1) year in duty station requirement.

  - The one (1) year in duty station requirement mentioned in the aforementioned does not prohibit a supervisor from being eligible for promotion.

IV. PROCEDURES FOR ESTABLISHING RESIDENCE

Within 180 days of initial assignment or transfer, members shall establish their residence in accordance with this directive. In extenuating circumstances, a 90-day extension may be granted by the Section Director/Troop Commander. The Section Director/Troop Commander may grant an additional 90-day extension; however, the members must establish their residence within twelve months. The affected Section Director/Troop Commander shall submit a written report to the Unit Commander of the Personnel Unit stating the reason granting or denying each extension and describe the progress being made to solve the problem.

Moving and relocation procedures and expenses are governed by the Office of State Budget and Management. Directive E.05 (Expenditures) outlines State budget and management guidelines regarding the moving of household goods, requests for extensions, or other authorized expenses.

Section Directors/Troop Commanders are responsible for determining compliance with this policy and shall approve or deny requests to reside outside of the county of assignment.

A member's supervisor is responsible for ensuring that personnel under their supervision have a correct physical address and telephone number listed on the Computer Assisted Dispatch (CAD) System. If a member has a separate mailing address different from their current physical address, it shall be listed in the comments section on the first page of the personnel information page.

Before establishing or changing a residence, members wishing to reside outside their county of assignment must seek approval from their immediate supervisor by notification of the physical address at which they wish to reside. The following guidelines must be met when establishing a residence:

- **District Personnel**:
  Troopers assigned to a district shall establish a residence in their assigned county or at a location that will allow them to respond to their assigned county within 45 minutes. Sergeants and First Sergeants shall establish a residence within their assigned district or at a location that will allow them to respond to their assigned district within 45 minutes.

- **Troop Headquarters Personnel and members assigned to Specialized Units**:
  Members assigned to Troop Headquarters shall establish a residence within their assigned Troop or at a location that will allow them to respond to their duty station within 45 minutes. Members assigned to specialized units shall establish a residence within the Troop of their assigned area of responsibility or at a location that will allow them to respond to their area of responsibility within 45 minutes. (Example - A member assigned to the Reconstruction Unit in Fayetteville must live within Troop B or within 45 minutes of Cumberland County.)

- **Patrol Headquarters**:
  Members assigned to Patrol Headquarters shall establish a residence within Wake County or at a location that will allow them to respond to Wake County within 60 minutes.

The member's supervisor will then determine whether the proposed location is within the designated response time of the assigned duty station. Approval must be granted **prior** to the member establishing the new residence.

The Commander's Office may approve exception to this policy on a case-by-case basis when, in the discretion of the Commander's Office, such an exception is necessary to prevent a hardship or to benefit the Patrol.

Members shall report any change of address and/or telephone number in writing to their immediate supervisor within twenty-four (24) hours.

Change of Residence Due to Promotion or Transfer

A member shall establish a residence, as defined in this policy, upon the effective date of the transfer, promotion, or as outlined above.

Regulations for Living Outside of Duty Station

- Members living in an approved location outside of the county of their assigned duty station and within the designated response time from the county line of their assigned duty station must be in their assigned duty station at the beginning of their assigned shift. Travel time outside of the member's assigned duty station is not compensatory.

- Should the need arise to make an enforcement contact or provide assistance during the period of en-route travel, members should take the appropriate action.

- All members must remain in their assigned duty station until the end of their assigned shift. Members are not permitted to leave their assigned duty station for meal hour or otherwise unless doing so in accordance with Highway Patrol policy and/or approved by their supervisor.

- This regulation shall not supersede any policy or regulation established prior to the effective date of this policy. However, any member who changes residences subsequent to this policy becoming effective shall adhere to the residence requirements provided herein.

V. TRANSFER TO OTHER STATE AGENCIES

Each member who wishes to transfer to another State agency shall follow the mandates of the State Personnel Manual. Members shall include in their request the following information:

- Reasons for the request

- Name of the agency to which the member desires to transfer

- Description of the position which the member desires

- Name of the supervisor for that position

- Desired effective date of the transfer

VI. RETIREMENT SYSTEM

All Highway Patrol personnel automatically become members of the Teachers' and State Employees' Retirement System of North Carolina upon full-time employment.

VII. RETIREMENT FOR ALL EMPLOYEES

All employees shall submit a memorandum of intent to retire to the Personnel Unit. If the requesting member meets the criteria of "Service Retirement" or "Early Retirement" as defined in Section VIII of this directive, and he/she is not currently under any investigation for serious personal conduct and/or job performance violations of Patrol policy, then the employee's request shall be classified as Honorable.

An Honorable retirement qualifies the employee for the following:

- Engraved Agency Retirement Plaque
- Agency Retirement Certificate
- Long Leaf Pine (30+ years of honorable service for Sworn employees),, Old North State (20+ years of honorable service for Sworn and Civilian employees), or the Certificate of Appreciation (5+ years of honorable service for sworn or civilian employees)
- State Highway Patrol "Retired Identification Card"
- A sworn member shall receive the badge he/she wore or carried while a member of the Patrol.
- A sworn member is eligible to purchase his/her current service side arm if he/she meets the criteria listed in Section IX

VIII. RECOGNITION OF RETIRED MEMBERS

The recognition of a member retiring from the Highway Patrol shall be allowed when one (1) of the following criteria has been met as defined by the state retirement system:

Sworn member:

- "Service Retirement," being not less than 55 years of age and completing 5 or more years of service as a sworn law enforcement officer or, at any age, having completed 30 or more years of credible service; or
- "Early Retirement," being not less than 50 years of age and completing 15 or more years of credible service as a law enforcement officer; or 25 years of service at any age and completing 15 years as a law enforcement officer.

Civilian member:

- "Service Retirement," being not less than 65 years of age and completing 5 or more years of service or, being not less than 60 years of age and completing

25 years of service or, at any age, having completed 30 or more years of credible service; or

- "Early Retirement," being not less than 50 years of age and completing 20 or more years of credible service; or being not less than 60 years of age and completing five or more years of service.

After meeting one (1) of the criteria mentioned above, any Honorably-retiring member may request a retirement ceremony to be conducted in the Commander's Office or at a place designated by the affected retiring member.

Upon the death of an Honorably-retired member, the Patrol Headquarters staff will assist the member's dependents in all matters pertaining to Patrol related benefits and a Patrol funeral may be provided if requested by the family. The Commander's Office or his/her designee shall determine the feasibility of providing a Patrol funeral for a retired member.

IX. BADGES AND SERVICE SIDE ARMS

Upon request and at no cost to them, an Honorably-retiring member shall receive the badge he/she wore or carried while a member of the Patrol.

At the discretion of the Secretary of the Department of Public Safety (DPS) an Honorably-retiring member may purchase his/her service side arm at a price determined by the Secretary.

To be eligible to purchase his/her current service side arm, an Honorably-retiring member must meet one (1) of the criteria outlined in this directive, as defined by the state retirement system, submit the HP-500 to the Personnel Unit and obtain approval from the Commander's Office, and must have carried the current side arm for not less than twelve (12) months prior to retirement. An Honorably-retiring member who does not meet the twelve (12) month criteria may elect to purchase his/her previous side arm provided he/she notified the Commander's Office of his/her intent to retire at the time his/her current side arm was issued.

The twelve (12) month rule may be waived for an Honorably-retiring member at the discretion of the Commander's Office, along with consultation with the Secretary of the Department of Public Safety (DPS).

An Honorably-retiring member making a request to purchase his/her current or previously-issued service side arm must complete form HP-500 and submit the form directly to the Personnel Unit at the time of the member's retirement conference with the Benefits Unit. The member shall submit legible copies of their Patrol Identification Card and driver's license to the Patrol Armory in compliance with N.C.G.S. § 14-404(d) and N.C.G.S. § 20-187.2. Additionally, a cashiers check or money order payable to the NC Department of Public Safety shall be submitted to the Patrol Armory.

On the last day of employment of an Honorably-retiring member that has been approved to purchase his/her service side-arm, the immediate supervisor must complete a HP-500B (Receipt of Service Weapon). The HP-500B shall then be forwarded to the Patrol Armory within ten (10) working days.

X. RESIGNATION

Members who intend to resign should notify the Commander's Office in writing via chain-of-command at least two (2) weeks prior to the date of resignation.

XI. SEPARATIONS – PERSONNEL FILES

The following Personnel Files shall be forwarded to the Personnel Unit within fifteen (15) calendar days of the employee's last scheduled working day:

- General Correspondence
- Certifications
- Copy of Training Records
- HP-35's (members only)
- Performance Appraisals (Current year and three years prior)

These Personnel Files shall then be forwarded to the Department of Public Safety Human Resources Records Coordinator where it shall be maintained for a period of five (5) years. At the completion of this five (5) year retention the DPS HR Records Coordinator shall be responsible for forwarding these files to State Archives where they shall be maintained for 30 years after separation.

The following Personnel Files shall be given back to the member:

- HP-201's and HP-201B's (if applicable to the position)
- Patient Files / Insurance Documents
- Form 19 or DPS-WC-EE
- Bi-Annual Inspection Report (if applicable to the position)
- HP-740 Residence (if applicable to the position)
- HP-745 Secondary Employment
- HP-767 Promotional Process Application (if applicable to the position)
- Commendations
- HP-341 File Transfer / Promotion Checklist

Secondary Employment

Applicable to: Employees

Directive E.10
Revised 10/30/2018
Effective 11/30/1999

I. POLICY

This policy establishes guidelines governing secondary employment for all Patrol employees.

II. EMPLOYMENT RESPONSIBILITIES (CALEA 22.3.4)

The employment responsibilities to the Patrol are primary for any Patrol employee working full-time; any other employment in which that person chooses to engage is secondary. Employees shall not engage in secondary employment without prior *written approval* from their Section Director, Troop/Unit Commander. The purpose of this approval procedure is to determine that the secondary employment does not directly or indirectly create a conflict of interest with the Patrol or impair the employee's ability to perform all expected duties.

All secondary employment shall occur on the employee's day(s) off, holidays, or vacation time, or after the employee's assigned shift has been worked.

All secondary employment ***shall be terminated in sufficient time*** to allow the employee eight (8) hours between secondary employment and on-duty time.

III. PROHIBITED SECONDARY EMPLOYMENT FOR MEMBERS

- Members shall not be certified as a law enforcement officer, deputy sheriff, or criminal justice officer for any other agency.

- Members shall not engage in any secondary employment that requires that they carry a firearm, testify in court, make arrests, detain a subject, or any employment involving the performance of uniformed security duties. This prohibition does not apply to members providing training to other law enforcement officers or agencies through a community college or university.

IV. PROHIBITED SECONDARY EMPLOYMENT (CALEA 22.3.3; 22.3.4)

Employees are prohibited from engaging in any secondary employment that would constitute a conflict of interest or reflect unfavorably upon the Highway Patrol or the employee, impair the operational efficiency of the Patrol, or adversely affect the Patrol.

Employees are specifically prohibited from engaging in the following types of secondary employment:

- Employment as a process server, re-possessor, bill collector, bail bondsman, tower of vehicles subject to repossession, or any other employment in which

police authority might be used to collect money or merchandise for private purposes.

- Employment with a wrecker/towing service or any business that involves selling or doing business with wrecker/towing service.

- Employment with a trucking company or other commercial motor vehicle business if the employee is assigned to enforce size and weight or MCSAP regulations.

- Employment as a personal investigator for the private sector that might require the employee to have access to police information, files, records, or services as a condition of employment.

- Employment at alcohol establishments where the on-premise sale and consumption of alcohol is the primary source of revenue. For the purposes of this directive, events such as festivals, sporting events, and concerts will not be considered alcohol establishments.

- Employment at any establishment of any type if the member will be required to sell or serve alcoholic beverages for on-premises consumption.

- Employment at establishments, which sell merchandise of a sexual or pornographic nature; or that otherwise, provides entertainment or services of a sexual nature. Employment at topless bars, X-rated video or bookstores, or adult entertainment establishments is prohibited.

- Employment at gambling establishments not federally licensed as a casino.

- Employment that would hinder or interfere with the employee's regular duties, including the need to leave court, training or any other assignment early or the inability to complete an assignment due to the starting time for secondary employment.

- For a business or labor group where there are labor protests, picket lines or a strike.

- Employment that involves case preparation for the defense in any criminal action or in any civil action or preceding that is related to a criminal action.

- At any business or with any group that is under investigation for illegal conduct or that may bring the employee in conflict with an investigation or enforcement action by another law enforcement agency as determined in the discretion of the Commander's Office.

- At any other secondary employment that could be viewed as a conflict of interest if the occupation is one that the affected employee must regulate with

corrective law enforcement action during official Highway Patrol duty hours, or reflects negatively upon the Highway Patrol.

V. LIMITATIONS OF SECONDARY EMPLOYMENT (CALEA 22.3.3; 22.3.4)

Employees shall not be eligible to engage in any form of secondary employment for the following:

- Performing work for any secondary employer or for self-employment during on-duty hours.

- Are on injury leave for an on duty injury or through a workers comp claim.

- Are rendered unavailable for emergencies.

- Requires the performance of duties for compensation for any person or firm or by way of self-employment during regular duty hours.

- Physically or mentally exhaust the employee to the point that his/her performance may be affected.

- Requires special consideration when scheduling employee for regular duty hours.

- Employees on medical or other leave due to sickness, temporary disability, or an on-duty injury shall not be eligible to engage in secondary employment. Employees with prior secondary employment approval will have such approval revoked if they continue to engage in secondary employment under these circumstances.

- Any employee on medical or other leave due to sickness, temporary disability, or on light duty for an off-duty injury is not eligible until such case is reviewed and approved by the Section Director/Troop/Unit Commander. The employee shall obtain a letter from his/her attending physician or the Patrol physician describing the injury or illness, estimated time until return to full duty, and any effects of secondary employment impairing recovery time to full duty. The employee shall forward this documentation to the appropriate Section Director/Troop/Unit Commander, via chain-of-command. The Section Director/Troop/Unit Commander should consider if such continuation of employment conflicts with the mission of the Patrol or hinders the employee from returning to duty as soon as possible.

Prior secondary employment approval may be revoked if an employee is found to be in violation of any portion of Patrol policy or receives a disciplinary action. In those cases where an employee has received a disciplinary action greater than a written warning, the appropriate supervisor shall notify the Section Director/Troop/Unit Commander via chain-of-command. The Section Director/Troop/Unit Commander may revoke any existing secondary employment

or deny request for continued secondary employment for any employee who receives a disciplinary action.

VI. APPROVAL OF SECONDARY EMPLOYMENT (CALEA 22.3.4)

The Section Director, Troop/Unit Commander shall determine if such secondary employment is in the best interest of the Patrol and may approve or deny such request for secondary employment. The written request for secondary employment (HP-745) shall be submitted to the employee's immediate supervisor. The supervisor shall, after a preliminary investigation, determine if the employment would create even the appearance of a conflict of interest or otherwise impact adversely on the image of the Patrol. The supervisor shall document the preliminary investigation in the comments section of the HP-745. Supplemental information can be attached if needed. (Requests for secondary employment requiring a permit, license, or certification shall have a copy of such permit, license, or certification attached to and submitted with the HP-745.) The written request will be forwarded to the appropriate Section Director, Troop/Unit Commander for Approval.

At any time the scope, responsibilities, or duties of an approved secondary employment changes, the employee must resubmit form HP-745, which shall include the change in scope, responsibilities, or duties the employee will be performing for approval. The employee must deliver the HP-745 to their immediate supervisor without delay, and the employee **shall not** perform the new duties, responsibilities prior to the HP-745 being approved. This process shall also apply if the employee decides to pursue secondary employment with another agency, or business, even if the duties, scope, or responsibilities are the same as those being performed by the employee at a previously approved secondary employment position. A member that is requesting to terminate secondary employment must submit a memorandum to their immediate supervisor indicating this request and the date that their secondary employment will end.

VII. ELIGIBILITY

In order to be eligible for secondary employment, an employee must be in good standing with the Patrol. Continued approval of an employee's secondary employment is contingent upon such good standing. If an employee's good standing or overall job performance has deteriorated beyond acceptable standards, the affected employee's supervisor may recommend to the appropriate Section Director/Troop/Unit Commander that the affected employee be ineligible to engage in any future secondary employment function or have an active secondary employment status revoked until the employee's overall job performance standards/good standing has reached an acceptable level. This recommendation shall be in writing, and shall include the facts that lead to the supervisor's recommendation. The status of members taking part in the Safety and Courtesy Program (SAC) shall be reviewed on a case-by-case basis.

Employees must have completed their probationary periods of employment before being eligible for secondary employment. On the HP-745 the employee shall list the required duties and responsibilities to be performed. The requesting employee shall submit the HP-745 to the appropriate Section Director, Troop/Unit Commander, via the chain-of-command. The Section Director, Troop/Unit Commander shall have the authority to approve or disapprove the request of the employee.

VIII. WORKERS' COMPENSATION ISSUES

Workers' Compensation for injuries occurring while working an approved secondary employment will be resolved by the secondary employment agency, business, or firm.

Employees who incur injuries while engaged in secondary employment shall contact their immediate supervisor for the approved secondary employment agency for which they are working, to submit the appropriate North Carolina Industrial Commission Forms.

An employee who is injured as a result of performing an approved secondary employment shall as soon as possible, contact their immediate NCSHP supervisor and inform him/her about the nature of the injuries. Injured employees will be required to use an approved "Leave" (Annual or Sick) as outlined in Directive E.04," Authorized Time Off."

IX. SAFETY AND COURTESY PROGRAM (SAC)

The Safety and Courtesy Program (SAC) allows members who reside in multi-family communities or housing, to receive reductions in rent in exchange for non-law enforcement services. These members are encouraged to interact with residents and apartment managerial staff or landlords as necessary, as long as the activities performed are not construed as part of the member's official duties as a member of the North Carolina State Highway Patrol.

Members acting under the capacity of the SAC program shall not become involved in notification of evictions, collection of rent, bad checks, and enforcement of complex rules, regulations or policies.

Members encountering situations requiring law enforcement authority shall immediately notify on-duty law enforcement personnel and serve as a liaison in acquiring such services. However, members shall act appropriately and in accordance with Patrol policy where authorized to act in compliance with their sworn oaths as listed in Directive I.01 (Authority to arrest or detain while out of uniform/off-duty). Members acting under the capacity of the SAC program shall not become involved in domestic or neighborhood related disputes and shall not respond to calls for service in their complexes in which they reside.

The Highway Patrol will not become involved in any civil litigation arising between the housing management and the affected member. All financial

correspondence will occur between the involved member and the housing/complex authority. Members are reminded to report this benefit, as described in the North Carolina and Federal Internal Revenue Services' codes.

Members interested in participating in the SAC program are required to submit the HP-745 to his/her immediate supervisor, who shall responsible for forwarding the HP-745 to the appropriate Section Director, Troop/Unit Commander for approval with the following information:

- Member's full name and duty station
- Date of expected occupancy
- Name of authorizing property manager
- Services to be provided as a result of the arrangement

X. SUPERVISOR CONTACT OF SECONDARY EMPLOYER (CALEA 22.3.4)

The immediate supervisor of any employee engaging in approved secondary employment shall personally contact the employee's employer by 15 February of each year of secondary employment to ensure that all conditions are being met and shall record this contact in the annual review portion of the HP-745A. If the employee is self-employed, the immediate supervisor shall conduct an interview with the employee during the same period mentioned above, to ascertain compliance with this directive.

XI. OTHER RESTRICTIONS (CALEA 22.3.4)

No employee shall engage in secondary employment while on duty or off duty while in a Patrol issued uniform. No employee shall use a cell phone to conduct secondary employment while on duty. No leave without pay will be granted for the purpose of secondary employment under any circumstances unless approved by the Commander's Office. No State property, including vehicles, firearms, Patrol issued uniforms, identification credentials, and telephones shall be used in any manner while engaging in approved secondary employment.

XII. REAPPROVAL PROCESS (CALEA 22.3.4)

Secondary employment approvals shall expire on 15 February of each calendar year. If the employee desires to continue secondary employment, the HP-745A must be submitted via chain-of-command to the appropriate supervisor by 31 January of each calendar year for approval. Employees approved for secondary employment will be responsible for submitting the HP-745A requesting annual re-approval. The appropriate supervisor shall forward the HP-745A via chain-of-command to the appropriate Troop Commander/Section Director if the annual review for re-approval is denied. All reviews of secondary employment shall be completed by 15 February.

If policy violations are found, and the immediate supervisor recommends the secondary employment be revoked or approval is denied, then those recommendations are to be submitted with the HP-745A immediately to the Troop Commander/Section Director.

A member that is requesting to terminate secondary employment must submit a memorandum to their immediate supervisor indicating this request and the date that their secondary employment will end.

XIII. ATTENDING COURT

Employees who may be required to go to court to testify about any matter or incident that may arise while performing an approved secondary employment shall be required to attend court during the member's off-duty time. Employees shall not wear any Patrol issued uniform or equipment that could give a reasonable person the impression that employee is testifying on behalf of the Highway Patrol.

I. POLICY

Law Enforcement Officers, support personnel, and their families have always borne unique burdens because of the stresses related to law enforcement work. A foundation for shouldering these burdens has been support, care and counseling from various sources. Since the stresses and burdens borne by law enforcement are more complex than ever before, there is a need to improve access to various sources of counseling. Thus, the North Carolina Highway Patrol (NCSHP) hereby establishes a volunteer chaplaincy program to provide guidance; assistance and counseling to its employees and their family members who wish to access its services to work in conjunction with the Members Assistance Team.

II. APPOINTMENT OF CHAPLAINCY PROGRAM COORDINATOR AND TROOP CHAPLAIN COORDINATOR

The Commander's Office shall be responsible for appointing the Chaplaincy Program Coordinator, after a thorough review of qualified applicants. The Chaplaincy Program Coordinator shall appoint a Troop Chaplain Coordinator for each Troop from qualified applicants.

III. QUALIFICATIONS OF CHAPLAINCY PROGRAM COORDINATOR

Those who wish to be considered for the position of Chaplaincy Program Coordinator must meet the same qualifications as a Volunteer Chaplain, submit a résumé detailing his/her qualifications, and be interviewed by the Commander's Office.

IV. DUTIES OF THE CHAPLAINCY PROGRAM COORDINATOR

The Chaplaincy Program Coordinator shall report directly to the Director of Professional Standards or designee, and shall be responsible for the following:

- Assign duties and responsibilities to the Troop Chaplain Coordinator
- Oversee the Chaplaincy Program to ensure organizational goals are being met
- Verify the credentials of all Chaplaincy Program Candidates
- Select and supervise appointed Troop Chaplain Coordinator
- Periodically contact appointed Chaplains to discuss and address areas of mutual concern, and to receive in-put on program improvements

- Prepare an annual (December) report for the Director of Professional Standards or designee, outlining the activities of all Volunteer Chaplains, and make recommendations for program improvement

V. DUTIES OF THE TROOP CHAPLAIN COORDINATOR

The Troop Chaplain Coordinator shall report directly to the Chaplaincy Program Coordinator, and shall be responsible for the following:

- Perform duties as assigned by the Chaplaincy Program Coordinator
- Supervise Volunteer Chaplains assigned to the Troop area
- Serve as Program Coordinator in the absence of the Chaplaincy Program Coordinator when assigned by the Chaplaincy Program Coordinator, the Director of Professional Standards or designee, or Commander's Office
- Prepare and forward to the Chaplaincy Program Coordinator quarterly, a written report outlining the activities performed by Volunteer Chaplains under his/her supervision

VI. APPOINTMENT OF VOLUNTER CHAPLAINS

The Chaplaincy Program Coordinator shall appoint Volunteer Chaplains, and provide the Commander's Office with a list of selected Chaplains for review.

The Chaplaincy Program Coordinator shall be responsible to ensure an updated list of Volunteer Chaplains is regularly forwarded to the Director of Professional Standards or designee, who shall maintain and post a list of all approved Volunteer Chaplains and their contact numbers on the Patrol's Intranet.

VII. QUALIFICATIONS OF CHAPLAINS

To be considered for appointment as a Volunteer Chaplain, applicants should:

- Submit a resume or letter of application to the Chaplaincy Program Coordinator detailing his/her qualifications
- Participate in an interview with the Chaplaincy Program Coordinator.
- Be a regular or duly ordained, ecclesiastically certified, minister, priest, imam or rabbi endorsed by a recognized religious body
- Must have a minimum of five (5) years of service in full time public ministry
- Must demonstrate strong communication skills

- Have successfully completed educational programs, credits or courses in the areas of psychology or counseling. At least a bachelor's degree is preferred, but not required.

- Have an interest in the Chaplaincy Program and exhibit a broad base of experience, maturity and flexibility

- Have a caring and considerate attitude towards all employees regardless of their race, sex, creed or religion

- Be available to serve on a twenty-four hour basis, as a volunteer

- Possess a valid North Carolina driver's license

- Agree to a criminal history background check and driver's history check

- Agree to attend, as available, relevant seminars and training, guided by the procedures as recognized and endorsed by the International Critical Incident Stress Foundation as made available

- Be willing to work under the supervision of the Chaplaincy Program Coordinator and/or Troop Chaplain Coordinator

VIII. CONFIDENTIALITY AND CHAPLAIN COUNSELING

A Chaplain shall neither be expected nor required to disclose any information which is communicated and entrusted to him/her by Patrol employees who are seeking counsel and advice of the chaplain in his/her capacity as a minister with the expectation that such information be kept confidential. This provision shall not be construed to expand or diminish the confidentiality provision as set out in N.C.G.S. § 8-53.2.

These confidentiality provisions should not be construed to impede or prevent a Chaplain from reporting his or her chaplaincy work to the Chaplaincy Program Coordinator in a timely manner. He/She shall report such information to the Commander's Office if the situation is one that could affect the reputation of the Patrol.

IX. ACCESS TO HIGHWAY PATROL EMPLOYEES AND PROPERTY

Chaplains are authorized to visit employees and have reasonable access to all buildings and on-site locations as may be appropriate. This includes reasonable use of rooms, offices or other space for meetings so long as that use does not interfere with the operation of the Patrol.

X. RELIGIOUS VIEWS

Because we are an agency with employees who have different religious beliefs, Chaplains must take a non-denominational approach when they are interacting with NCSHP Personnel, unless they have been requested by the affected employee or the employee's family to share a specific doctrine the Volunteer Chaplain is currently practicing.

XI. REQUESTS FOR CHAPLAIN ASSISTANCE

Employees and family members may access chaplaincy services for personal counsel, advice or other support commonly provided by clergy. Supervisors shall make reasonable efforts to accommodate Chaplains in rendering these services to employees.

The names and methods of contacting Chaplains shall be posted on bulletin boards, Patrol's Intranet, and other appropriate locations throughout the Patrol.

XII. RIDE-ALONGS BY CHAPLAINS

In the performance of their duties, Patrol Chaplains may ride in a Patrol vehicle when approved by a First Sergeant or higher authority. The Communications Center shall be advised any time a Chaplain is in a Patrol vehicle. Chaplain ride-alongs are part of the Chaplaincy Program; however, a member may decline to have a Chaplain ride-along with him/her. At no time during the course of the ride-along should a Chaplain interfere with the member in the performance of his or her law enforcement duties. Chaplains who request a ride-along shall sign form HP-3 (Ride Agreement), waiving all claims for any injuries suffered during a ride-along each time they ride along with a member.

Chaplains shall not interfere with any Patrol employee in the performance of his/her duties.

XIII. GENERAL DUTIES

Chaplains shall be available upon request of any employee to perform the following services:

- Counsel employees and members of their families
- Visit sick and injured employees and members of their family in the hospital
- Assist member with making death notifications when requested
- Serve as liaison with other clergy in the community
- Serve in funerals, religious and civil ceremonies, Training Academy graduations, awards ceremonies, swearing in of new members, etc; when

requested by the Commander's Office or designee and/or when requested by cadets, employees, or their families

- Inform the appropriate Troop Chaplain of all activities which they are involved as a representation of the Highway Patrol on a weekly basis

XIV. NOTIFICATION OF CHAPLAINS OF SPECIAL CIRCUMSTANCES

The appropriate supervisor shall notify the State OD of special circumstances when the services of a Chaplain may be needed. This typically may occur when a serious injury, illness or death has happened to an employee or a member of the employee's immediate family, or when a major accident or other disaster strikes.

XV. NORTH CAROLINA STATE HIGHWAY PATROL POLICY DIRECTIVES

Chaplains are expected to comply with all applicable Patrol directives in the performance of their duties. Misconduct of a Chaplain (such as drunkenness, moral misconduct or violation of Patrol Directives) is grounds to be removed as a Chaplain by the Chaplaincy Program Coordinator, and/or the Commander's Office.

XVI. CHAPLAINCY PROGRAM PHOTO IDENTIFICATION CARDS

All Volunteer Chaplains will be issued a distinctive photo identification card. The card must be worn on the outer clothing at all times when representing the Patrol while in the performance of his/her approved duties. All Volunteer Chaplains shall also be required to produce their Patrol issued ID for viewing upon request.

Following acceptance of an individual to serve as a Volunteer Chaplain, the Chaplaincy Program Coordinator shall submit a request via e-mail to the Director of Professional Standards or designee requesting an identification card for the Volunteer Chaplain.

Identification cards are the property of the NCSHP, and Volunteer Chaplains shall return his/her issued identification card to the Chaplaincy Program Coordinator upon separation from the Chaplaincy Program. The Chaplaincy Program Coordinator shall forward all returned identification cards to the Director of Professional Standards or designee.

A Volunteer Chaplain shall not use his/her issued identification card as a means of obtaining privileges not otherwise available to the general public.

If an identification card is lost or stolen, the affected Chaplain shall promptly inform the Chaplaincy Program Coordinator, who shall contact the Director of Professional Standards or designee as soon as practicable, for the purpose of obtaining a replacement identification card. A replacement identification card will be issued upon receipt of a written request from the Chaplaincy Program Coordinator.

The Chaplaincy Program Coordinator and the Director of Professional Standards or designee shall be the sole authorities who may authorize the issuance of an identification card for assigned Chaplains.

I. POLICY

This purpose of this policy is to establish guidelines for the employee awards and recognition program for the North Carolina State Highway Patrol.

II. AWARDS

Award of Valor

Forms: HP-11

- Agency's highest award for heroism
- Recipient must have demonstrated outstanding judgment, courage, personal bravery, and a selfless act of heroism involving risk of life to prevent injury, loss of life, or prevent damage to or loss of property
- The saving of a life or the success of the voluntary heroic act is **not** essential
- An employee who subsequently dies from this act will be nominated for posthumous awarding with the award being presented to the surviving spouse or next of kin
- An employee can be considered for this award in addition to other Patrol awards presented from the same incident. **In order to qualify for this award, the citizen's act has to directly involve the saving of a member/employee or arrest of suspect involved in SHP related arrest.**
- Members who received the North Carolina Award of Honor and the Patrol Award of Valor are authorized to wear the approved ribbon
- The committee will annually review all Valor award recipients for possible submission for the State of North Carolina Award of Honor as described in N.C.G.S. § 20-187.1

Purple Heart Award

Forms: HP-11

- Recipient who has been **injured or wounded** by an act of aggression or assault upon him/her while performing assigned duties
- The injury must be of a serious nature to have required treatment by hospital personnel and be of a significant nature to deserve recognition

- A recipient who dies from this act will be nominated for posthumous awarding with the award being presented to the surviving spouse or next of kin

Samaritan Award

Forms: HP-11

- Recognition of an employee who participated in or assisted in any event of an exceptional nature to save the life of another person or to prevent injury **without** risk of personal life. **A citizen may be nominated for this award only if the rescue involves a SHP employee.**

- This act may have occurred on or off duty. The saving of a life or the success of the voluntary heroic act is not essential.

Meritorious Service Award

Forms: HP-11 for the

- Award can be used to nominate individuals, groups, districts, or sections

- Recognition for outstanding service, accomplishment, clearly placing the employee or group above their peers in one or more categories: Devotion to Duty, Innovations, Public Service, Human Relations, and Cost Saving Initiatives

- Recognition should be given to implementing quality practices. Quality practices are processes that support the delivery of our services in the most effective and efficient way. These may include but are not limited to the following:

    - Saves time, saves money, cuts waste, reduces paperwork, eliminates duplication, eliminates steps in processes

Humanitarian Award

Forms: HP-11

- Recognition for an employee for outstanding volunteer public service that significantly contributes to individuals, groups, organizations, or communities in North Carolina. Volunteer humanitarian actions or public service works should have occurred off-duty and with no compensation.

Captain T. L. Cheek Collision Reduction Award

- The District that has the overall largest percent decrease in reportable collisions over the previous year

Taylor / Cogdill Award

- Awarded to the Troop that has the overall largest percent decrease in reportable Commercial Motor Vehicle collisions over the previous year

Citizen Appreciation Award

- Recognition of a citizen or group who has significantly contributed to the success and mission of the Highway Patrol. Partnerships and contributions are toward enhancing the quality and morale of the agency or creating a better public image of the Highway Patrol (such as positive personal interaction with our employees, through public awareness, project assistance, working to establish partnerships with our agency, or collaboration on projects).

Honorary Trooper Award

- This prestigious award is presented by the North Carolina State Highway Patrol Commander's Office. This special award is to recognize an individual for their significant contribution to the Highway Patrol and is the highest level of recognition that may be bestowed on an individual outside of our agency.

- Nominations can be made on a HP-11 and forwarded to the Commander's Office via the chain-of-command for consideration

III. NOMINATION PROCESS

- Supervisor may nominate employees or groups for any award listed above by submitting the HP-11. Multiple names can be listed on one HP-11 for the same event. The forms and all supporting documentation should be submitted via e-mail to the Awards Coordinator through the appropriate chain-of-command in a Word document. A submission via e-mail is sufficient approval and does not require hard copy signatures.

- An employee that wishes to nominate another employee may do so by contacting the nominee's supervisor and providing all the necessary information so that the HP-11 may be completed. Once the HP-11 is completed, it is to be submitted in the same manner as listed above.

- Section Directors must recommend or not recommend all nominations. If not recommended, the Section Director must list the reasons why not recommend the nomination. Regardless, all nominations are forwarded to the Awards Coordinator.

- Award ceremonies will be held every May and November of each calendar to present those awards received in the previous six (6) months. *Nominations for the May ceremony must be received by the Awards Coordinator by 15 April for the May ceremony and 15 October for the November ceremony*.

IV. AWARDS COMMITTEE

The Director of Professional Standards will appoint four (4) members to serve on the Awards Committee that will consist of the following:

- Awards Coordinator, First Sergeant (The Awards Coordinator will be responsible for organizing, processing all awards and is a permanent committee member).
    - One (1) Sergeant, chairperson in the absence of the First Sergeant
    - Two (2) Members
    - One (1) Civilian Employee
- No Troop or Patrol Headquarters will have more than one (1) representative serving on the committee. No employee will serve more than two (2) terms on the committee.
- Committee members will serve a 2-year term. Appointments begin 1 January of each appointed year
- Committee members will be replaced if promoted, transferred, or leave employment with the Patrol. Appointees who complete the terms of others will serve on the committee until the initial term is completed and may not be appointed again.
- The Awards Coordinator will notify the Director of Professional Standards of term expirations on 1 December of the last year of the members' terms. New appointments will be made by 15 December. The Awards Coordinator will notify the new appointees of the date of the first bi-annual meeting.
- Committee members who are nominated for an award will not be allowed to carry a vote for that nomination
- The committee will meet bi-annually, or as needed, to review award nominations. The first meeting will be held between 15 and 20 January. At least three (3) committee members are required to conduct business.
- Upon receiving the nominations, the Chairperson may require additional information from the nominator concerning the circumstances of the nomination
- When required, supporting documentation shall accompany the nomination for the award

- The act that is the basis for the nomination significantly surpasses that normally exhibited by a civilian employee or member in that position

- Achievement was acquired in spite of an organizational change, a reduction in work force, or a physically challenging work environment

- Achievement resulted in improved services or response to customers, or significant savings in time, money, or materials for the Patrol, Department, or State in general

- Participation was in an activity outside the scope of normal employment that reflects favorably on the Patrol. This act may be as the primary participant or in the assisting capacity.

- The committee will review all HP-11(s) submitted and provide a vote. The decision will be based upon a simple majority vote.

- Nominations will be reviewed within ten (10) calendar days once received by the Awards Coordinator. The Awards Coordinator will forward all nominations to the Director of Professional Standards and the Commander's Office for approval.

V. PRESENTATION OF AWARDS

Upon approval from the Commander's Office, the Awards Coordinator will coordinate and organize the award ceremony to include:

- Reserving a location for the ceremony

- Assisting the Commander's Office in official notification to awardees

- Coordinate award ceremony date with Commander's Office

- Ordering all awards

- Process all invoices related to awards

- Notifying the PIO for media release

- Complete a program for the ceremony

- Disseminating all ceremony announcements to SHP employees

Awards of Valor and Purple Heart Awards will be awarded by the Commander's Office. The Patrol will hold an award ceremony bi-annually in May and November of each year.

VI. DEPARTMENT OF PUBLIC SAFETY AND GOVERNOR'S LEVEL AWARDS

The employees that are awarded agency level awards and meet the criteria will be nominated for the North Carolina Department of Public Safety's *Badge of Excellence Award*

The employees that are awarded the *Badge of Excellence Award* and meet the criteria will be nominated for the *Governor's Award for Excellence*

I. POLICY

This policy sets forth guidelines for the application and selection process for employment with the North Carolina State Highway Patrol. It shall be the policy of the Highway Patrol to give equal opportunity for employment without regard to race, religion, color, creed, national origin, sex, age, or physical disability to all persons otherwise qualified, except where specific age, sex, or physical requirements constitute bona fide occupational qualifications necessary for proper and efficient administration and operation of the Highway Patrol.

II. EQUAL EMPLOYMENT OPPORTUNITY

The commitment to equal career opportunity shall be undertaken through a continuing program of equal employment opportunities involving but not limited to the following activities:

- Recruitment
- Interviewing
- Selection
- Hiring
- Promotion
- Training
- Compensation and Benefits

The Highway Patrol program of equal employment opportunity shall be undertaken at every supervisory level to ensure that personnel policies and practices will guarantee equal opportunities for all members of the Highway Patrol in compliance with all applicable State and federal laws and regulations.

All elements of the selection process for Trooper positions shall be administered, scored, evaluated, and interpreted in a uniform manner.

III. VETERAN'S PREFERENCE POINTS

In appreciation for their service to this State and this Country, Honorably Discharged veterans, surviving spouses and surviving dependents of disabled veterans and spouses of veterans who suffer a service-connected disability, who meet the minimum employment standards of this Directive, will have ten (10)

preference points added to their overall applicant screening score (T-score) at the conclusion of the applicant's initial Screening.

IV. BASIC REQUIREMENTS FOR ENFORCEMENT MEMBERS

Trooper (Sworn School)	Trooper (Non-Sworn Basic School)
Must be U.S. Citizen as of date of application	Must be U.S. Citizen as of date of application
Must be at least 21 years of age prior to first day of patrol school and no more than 39 years of age on the first day of patrol school.	Must be at least 21 years of age prior to first day of patrol school and no more than 39 years of age on the first day of patrol school
Must be NC resident and possess a valid NC driver license as of the first day of basic school.	Must be NC resident and possess a valid NC driver license as of the first day of basic school.
Must have a minimum of an Accredited high school diploma, or Certificate of High School Equivalency (i.e. G.E.D. General Educational Development Certificate)	Must have a minimum of an Accredited high school diploma, or Certificate of High School Equivalency (i.e. G.E.D. General Educational Development Certificate)
Vision requirements: 20/30 vision in each eye; uncorrected vision of no more than 20/200 in each eye. Must be corrected to 20/30 vision in each eye with corrected lenses. Must not be totally color blind, affected by night blindness, and be able to pass depth perception test.	Vision requirements: 20/30 vision in each eye; uncorrected vision of no more than 20/200 in each eye. Must be corrected to 20/30 vision in each eye with corrected lenses. Must not be totally color blind, affected by night blindness, and be able to pass depth perception test.
Must obtain a minimum score of 50 percent for his/her age and gender on the Modified Cooper Fitness Test.	Must obtain a minimum score of 50 percent for his/her age and gender on the Modified Cooper Fitness Test.
Must have satisfactorily completed in its entirety an accredited BLET basic training course with the successful completion of the State Comprehensive Examination. **(Note: Must be sworn in as a Trooper within one (1) year of the successful completion of the State Comprehensive Examination.)**	Must have taken the reading component of a nationally standardized test and scored at or above the tenth (10^{th}) grade level, or the equivalent. **(Note: Test date must be within 12 months of the Basic School start date.)**

An applicant must meet the minimum standards for law enforcement officers established by the North Carolina Criminal Justice Education and Training Standards Commission.

No applicant will be accepted who, during the five (5) years preceding the date of application for employment, was charged with, pled guilty to, entered a plea of no contest, or has been convicted of the traffic offense of Driving While Impaired

(DWI) or an equivalent offense from another state, or another implied consent offense (i.e. DUI, "Driving Under the Influence") or speeding to elude arrest.

No applicant will be accepted who has been convicted for the offense of Driving While Impaired (DWI) or an equivalent offense from another state on more than one (1) occasion.

No applicant will be accepted who, at the time of application has any criminal or traffic charge(s) or investigation(s) pending other than minor traffic offenses. The following are not minor traffic offenses and will disqualify an applicant from the process: DWI, DUI (alcohol or drugs), duty to stop in the event of an accident, driving while license revoked, reckless driving, and speeding to elude arrest.

No applicant will be accepted who, during the three (3) years preceding the date of application or employment, has held a driver license which was in a state of revocation or suspension or has committed, pled guilty to, entered a plea of no contest, or has been convicted of a traffic offense which resulted in the suspension or revocation of his/her driving privileges. An applicant must have a valid North Carolina driver license on the first reporting date of Basic School.

An applicant who has been dismissed from a sworn or certified position with the Patrol or another criminal justice agency for misconduct or unsatisfactory job performance or who resigns from the Patrol or other criminal justice agency following an allegation of misconduct or unsatisfactory job performance is not eligible to apply for a Trooper position for a period of five (5) years from the date of dismissal or resignation. Special consideration may be accepted based on circumstances at the Commander's discretion.

A former Trooper, who resigned from the Patrol for reasons unrelated to allegations of misconduct or unsatisfactory job performance, may reapply at any time provided the member is otherwise qualified for employment as set forth in this directive. Except as otherwise specifically set out herein, former Troopers who apply shall be subject to all requirements for employment as set forth in this directive including successful re-completion of the Basic School.

Former Troopers may reapply for employment with the Patrol provided the former Trooper:

- Has successfully completed Basic School

- Holds a General Certification and remains eligible for certification as a law enforcement officer according to the rules and regulations promulgated by the North Carolina Criminal Justice Commission

- Was not under an active disciplinary action, other than a "Written Warning", at the time of separation. **(In any case where a member resigns while under an active written warning and is later reemployed under this provision, the written warning will be reactivated and the member will be required**

to complete the remaining months at the time of his/her separation from the Patrol).

- Has not previously reapplied for a Patrol position under this provision

- Submits an application for re-employment with the Highway Patrol within ten (10) months of date of separation

Former members meeting all requirements above may, in the discretion of the Commander's Office, be exempt from the requirement of having to re-complete the Basic School and shall not be subject to the maximum age requirement applicable to other applicants. These members may, in the discretion of the Commander's Office, be reinstated at the rank and salary equivalent to that held at the time of separation. If a member has not completed the Field Training and Evaluation Program at the time of separation, the Director of Training or their designee shall establish training guidelines that the member will be required to complete.

V. APPLICATION PROCESS FOR ENFORCEMENT MEMBERS

Application packages for Trooper positions will be disseminated in accordance with the procedures established by the Director of Training and will be accepted and processed throughout the year or for a period of time designated by the Commander's Office.

Applicants shall initially apply for the HP-720 Orientation Packet by going to https://oshr.nc.gov/work-nc/job-application-system entering required personal information and submitted through the NEO GOV system. The applicants then will receive an Orientation Packet through an email from the Trooper Selection Unit.

The HP-720 Application Orientation Packet containing the following information:

- Each prospective applicant will be required to read and sign the HP-720 Application Orientation Packet acknowledging understanding of these requirements set forth in this directive and acceptance of these conditions of employment

- Unless already a career State employee, Trooper Cadet Applicants shall, as a condition of employment, sign an acknowledgment and agreement to serve in a probationary status while attending the Basic School and at all times for a period of 24 months

- During the probationary period, the employee's performance will be continuously evaluated by a supervisor. The Commander's Office reserves the right to evaluate performance and determine continued employment in the best interest of the Patrol.

- Prospective applicants will be given a description of the different basic schools and qualifying criteria for Sworn and Non-Sworn Basic Schools

- Each prospective applicant must possess a valid North Carolina driver license and Social Security Card and have them in possession on the first day of Basic School

Any omitted or incorrect information on application documents may result in disqualification from the application process for one (1) year. Falsification of any record, giving false information, or willfully withholding any pertinent information deemed to be untruthful, shall be grounds for employment rejection for five (5) years.

An applicant orientation packet shall consist of the following:

- HP-720 North Carolina Highway Patrol Application Orientation Packet

- North Carolina Criminal Justice Education and Training Standards Commission Form F-3 (Personal History Statement). This form should be completed **but not notarized.**

- Highway Patrol Applicant Vision Test Form (HP-720A)

- Military Records Request (HP-720B) active military personnel, reservists or National Guard members only

Supporting Documents required to be submitted with the application packet:

- Certified copy of the applicant's birth certificate

- 4"x6" vertical from the waist up photograph not more than six (6) months old

- A **CERTIFIED** High School transcript, G.E.D. (General Educational Development) Certificate (with the **CERTIFIED** score sheet), or Homeschooled transcript (include the list of each course taken, respective **CERTIFIED** grades, and proof of the school's certification with the State Department of Non-Public Instruction). Applicants who attended or graduated from a college, community college or university must submit a copy of their official **CERTIFIED** transcripts from the institution(s) they attended. **Order all transcripts as soon as possible. All transcripts must remain in a sealed envelope. The seal can only be broken by Trooper Selection/Recruiter.**

- A photocopy of the applicants Official High School Diploma

- HP-720E (Authority to Release Information and Agreement Not to Sue) – **Must be notarized**

- HP-720F (Authority for Release of Financial Information and Agreement not to Sue) - **Must be notarized**

- U. S. Selective Service Registration Verification Form **(Obtain at https://www.sss.gov/verify/).**

- Proof of Completion - Nationally Recognized Reading Comprehension Exam (ACCUPLACER, COMPASS, TABE, etc.) **(Contact your local Community College to schedule the test).** Note: This is not required if applicant is a current Law Enforcement Officer or has obtained a current BLET Certification.

- Reading Comprehension Test Results Form – Have the Reading Test Administrator complete this form once the test results are obtained.

- Photocopy of your valid Driver's License and Social Security Card.

- Applicant must submit a certified criminal history records check from each county in which he/she has resided since the age of sixteen (16) and each county or jurisdiction where he/she has been charged with an offense. Applicants may be required to provide other supporting documentation as required by the Director of Training.

- Applicant must submit a certified copy of their driving history from each state they have ever held a driver's license. This must come from a state agency. A non-certified copy purchased online will not suffice.

- Applicants with prior military experience must have received an honorable or uncharacterized discharge and provide a copy of their DD-214 including character of service (Block 24).

The applicant shall sign and date the original HP-720 Application Orientation Packet signifying the packet has been reviewed, and that he/she understands and agrees to all of the conditions.

The applicant shall immediately meet with their Troop Recruiter to forward the HP-720 Application Orientation Packet and supporting documents for processing, in accordance with the procedures established by the Director of Training. The official date of the application is contingent upon the following: the application is received by the Trooper Selection Unit, and all required application documents are included in the application and complete.

At the discretion of the Director of Training and the approval of the Patrol Commander, the application process may be altered to meet the needs of the North Carolina Highway Patrol to fill vacant Trooper positions.

VI. REJECTION BY DIRECTOR OF TRAINING

Employment consideration throughout the application process is dependent upon compliance with Certification Eligibility Guidelines for Law Enforcement Officers

as established by the Criminal Justice Education and Training Standards Commission and North Carolina State Highway Patrol policy. All selection

materials and required application documents are maintained in secured files at the Training Academy and disposed of in accordance with Patrol policy and State law.

The Director of Training shall determine whether an applicant meets the minimum qualifications as identified in this directive. If not, the Director shall notify the applicant in writing and place the application in the inactive applicant file at the Training Academy.

In any case where an applicant is determined to meet the minimum qualifications for employment but, in the discretion of the Director of Training, is not an acceptable candidate for employment the Director may, after conferring with the Commander's Office, notify the applicant in writing of his/her rejection.

Applications submitted and under consideration will become inactive for the period of time indicated under the following circumstances

- Failure to meet the Modified Cooper Physical Fitness requirements for the test: applicant may request a retest within the initial screening processing schedule for the Basic School applied to. The Trooper Selection Unit will make arrangements to allow for retesting of applicants under this policy and will notify applicants of the date of the retest. Failure to retest or meet minimum standards may result in one (1) year denial from date of the failed test or retest. **During retesting the applicant will not receive a score higher than the minimum standard score of 50 percent.**

- It is strongly recommended that the applicant take a reading comprehension test meeting the requirements as set forth in 12 NCAC 09B.0203 and submit the results during the initial screening processing to the Trooper Selection Unit for review to determine if the applicant meets this eligibility standard.

- Knowingly falsifying any record, knowingly give false information during the application process or willfully withholding any pertinent information amounting to untruthfulness: five (5) years from date of application or from the untruthful act, whichever occurs last

- Refusal to participate in and successfully complete required testing will be considered a withdrawal of application

- Use of marijuana anytime within the two (2) years preceding the date of application: two (2) years from the date of application. Applicants who use marijuana subsequent to the date of submission of application shall be rejected for employment for a period of two (2) years from the date of use.

- Failure to comply with any condition(s) set out in the Conditional/Final offer of employment will be considered a withdrawal of application

VII. PRE-EMPLOYMENT POLYGRAPH EXAMINATION

It shall be the policy of the North Carolina Highway Patrol to utilize pre-employment polygraph screening as an administrative tool for Trooper applicants. Failure to report for examination, refusal to participate or failure to comply with the polygraph examination protocol for the test will be considered a withdrawal by the applicant.

The scope of questions arising during pre-employment polygraph screening relate to life experiences in areas referenced in the Personal History Statement (Form F-3).

Information obtained during the pre-employment polygraph interview and polygraph examination may be used for rejection and/or removal from the employment process.

If, following the polygraph exam, facts are disclosed that are not per-se disqualifying but, in the opinion of the Director of Training, reveal that the applicant is not an acceptable candidate for employment the Director may, after conferring with the Commander's Office, notify the applicant in writing of his/her rejection. A rejection under this provision shall be for not less than one (1) year from the date of application or disqualifying event.

VIII. BACKGROUND INVESTIGATION

When an applicant has met the requirements set forth in this directive, the Director of Training shall require a background investigation be conducted on a reasonable number of applicants consistent with projected vacancies. The investigator shall follow the procedures outlined in the Background Investigator's Training Course, reference materials and the Forms and Reports Manual instructions for the Report of Background Investigation (HP-719).

IX. ELIGIBILITY LISTS

The Director of Training shall maintain separate eligibility lists for sworn and non-sworn applicants. Eligible applicants being considered for employment as a Trooper Cadet are subject to different qualifications and requirements, and may be processed separately or together, at the discretion of the Director of Training.

Each applicant shall be screened for employment in the order of Total Applicant Score (T-Score), unless an exception is approved by the Director of Training or the appropriate designee.

Applicants with the same Total Applicant Score (T-Score) shall be ranked on the eligibility list in the order of their official date of application.

The date that the Trooper Selection Unit certifies the application package is complete shall be the official date of application.

An applicant who is denied employment will be eligible to reapply in accordance with this directive.

X. REVIEW BY THE DIRECTOR OF TRAINING

Upon completion of the background investigation, the investigator shall submit the HP-719 with the entire file in accordance with the procedures established by the Director of Training.

XI. APPLICANT REVIEW PROCESS

At the discretion of the Director of Training, an Applicant Review Process shall be conducted in accordance with the procedures established by the Director of Training.

XII. CONDITIONAL OFFER OF CADET EMPLOYMENT

When an applicant has successfully completed the Applicant Review Process, he/she may be extended a conditional offer of employment. When accepted by the applicant, the conditional offer of employment is an agreement to employ the applicant as a Cadet if certain conditions are met:

- Availability of a funded Cadet position with the manner of selection for Cadet positions determined in accordance with this policy.

- Applicant must possess the sufficient physical, mental, and emotional fitness necessary to perform the essential job functions, which will be determined by a licensed doctor and psychologist.

- Applicant must have made full disclosure of any pending criminal or civil action(s) and/or charges filed against him / her

- During the period from the time of the conditional offer until employment, the applicant's conduct will be consistent with the high standard of moral and lawful conduct expected of a member of the North Carolina State Highway Patrol, and the applicant must not commit or be charged with a criminal violation of law, including traffic laws. An applicant may not have any pending criminal charge, investigation, or traffic offense on the date he/she reports to the Basic School.

- Continue to meet or exceed all basic qualifications, requirements and personal characteristics set out in Highway Patrol applicant regulations.

- Understand that if a final offer of employment is made, the applicant will not be allowed to begin and/or continue training at the Basic School if he/she fails to maintain any of the above described standards.

XIII. PHYSICAL SCREENING

The Director of Training shall notify qualified applicants to report to a designated location at a designated time for the purpose of physical screening. If an applicant fails to appear for an physical screening, he/she will be given one alternative date for physical screening. Failure of an applicant to comply with the second physical screening date will be considered a withdrawal by the applicant.

Members of the applicant screening team shall accomplish the following during physical screening:

- Complete the following forms:
    - Consent Form and Physical Activity Readiness Questionnaire (PAR-Q). This is a release from liability for physical injury and a method of medical screening administered prior to the physical fitness test. The physical fitness testing is conducted in accordance with the guidelines established by The Cooper Institute for Aerobics Research, Dallas Texas and the NC Criminal Justice Education and Training Standards law enforcement officer physical fitness lesson plan.

- Applicants, who have not passed a 10^{th} grade reading test, may be administered the exam. Applicants must possess a minimum of a tenth (10^{th}) grade reading comprehension level pursuant to 12 NCAC 09B.0203 prior to the polygraph examination.

- Administer the physical fitness test under the guidelines established by the NC Criminal Justice Education and Training Standards and the Cooper Institute for Aerobics Research, Dallas Texas. This test shall be administered by certified physical fitness instructors.

- Arrange for the administration of a nationally recognized law enforcement entrance screening test to all applicants who meet the minimum physical fitness requirements. These examinations shall be administered in accordance with the instructions provided by the administrator's manual and forwarded to the independent organization managing this test, which has been approved by the Director of Training or his/her designee, for grading. There is no minimum score which an applicant must achieve to receive further employment consideration.

Total Applicant Scores will be computed by adding veteran's preference points, the physical fitness test score and the entrance test score. All examinations produce scores ranging from 1-100. The Total Applicant Score will range from 2-210. This score will be used to rank all applicants. Top-down selection of applicants will be made based on the applicant list. Ties will be broken based on the application date.

Applicants will be notified of their Total Applicant Score after the physical screening is completed. The Director of Training will notify those applicants that are rejected or fail to meet the standards set forth in this directive.

The Director of Training will identify the top applicants based on the Total Applicant Score for further processing.

XIV. PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS

The Director of Training shall make arrangements for physical and psychological examinations of an adequate number of applicants to fill the Basic School.

The Director of Training shall notify the Patrol Medical Services Director of each examination and forward a copy of the results of the applicant's vision and Cooper fitness tests. The Director of Training shall arrange an appointment for each applicant with the Patrol Medical Services Director, shall inform each applicant of the date and time of his/her appointment, and shall provide each applicant with the required medical forms. Each applicant must complete the medical forms and present the completed forms to the Patrol Medical Services Director at the scheduled appointment.

The Director of Training shall make arrangements for a licensed psychiatrist and/or psychologist to conduct an emotional stability and psychological fitness examination of each selected applicant. The examination will be based upon valid and useful methods and shall employ nondiscriminatory procedures.

Each applicant must meet the physical standards set by the Patrol Medical Services Director.

No applicant shall ingest any illegal controlled substance nor ingest any prescribed drugs in amounts above recommended dosages. As a condition of employment and to ensure a fit and drug free Patrol, applicants for Trooper positions shall be required to take a drug test not more than 60 days prior to the date of employment as a Cadet. The sample to be tested will be collected and tested by procedures established by the Patrol Medical Services Director.

Applicants shall be disqualified from further consideration for employment under the following circumstances:

- Refusal to submit to a required drug test

- When the initial drug screening, confirmation drug test, and the Patrol Medical Services Director's investigation of the test results indicate the applicant has engaged in illegal drug use

After the Patrol Medical Services Director has completed the medical examination, he/she shall recommend to the Director of Training whether or not the applicant is fit for duty or requires further medical evaluation as necessary to make this determination.

XV. APPLICANT SELECTION BY THE COMMANDER'S OFFICE

The Commander's Office or his/her designee shall approve the final selections for the Basic School. He/She may accept or reject the recommendations of the Applicant Review Process, the licensed psychiatrist and/or psychologist and the Director of Medical Services. He/She shall determine the eligibility of the applicants for admission to the Basic School based on priority and other requirements set forth in this directive.

The Commander's Office reserves the right to cancel a Sworn Basic School. In the event a Sworn Basic School is not feasible, applicants actively under consideration will continue to be processed for the next school for which they qualify. These applicants will be considered based upon the Total Applicant Score they have previously earned and based upon the active status of their application. They will also be subject to all other qualifications and requirements for employment listed in this directive including the length of time they can remain on the eligibility list.

The Director of Training shall notify each applicant of his/her eligibility for the Basic School approximately two weeks before the school begins. However, should any vacancy occur in the list of candidates scheduled to attend the school prior to the beginning of the Basic School, the Commander's Office or his/her designee may notify the approved applicant next in line.

If the applicant fails to appear for the Basic School or is rejected by the Commander's Office, he/she shall not be permitted to reapply to the Patrol for a period of one (1) year from the date the applicant fails to appear and/or is rejected. This provision may be waived by the Commander's Office if he/she discovers extenuating circumstances, which warrant a waiver.

If an applicant, who is not rejected, is not selected to attend a Basic School based on a low T-Score, they will be eligible to apply for the next Basic School. The applicant will have to submit a new application packet and complete all pre-employment processes.

XVI. BASIC SCHOOL

Upon acceptance of an applicant by the Commander's Office, the Director of Training shall send each approved applicant all necessary information concerning the Basic School including required employment forms.

Each applicant shall report to the site of the Basic School at the time and on the date the school begins. As soon as practical after reporting, Cadets will be required to complete a physical fitness assessment.

Employees of the Patrol attending the Basic School shall be referred to as Cadets.

While attending Basic School, Cadets shall be subject to all regulations, policies, procedures, and standards of conduct set forth in the Cadet Guide and Highway Patrol policy. Each Cadet shall receive a copy of the Cadet Guide. An additional copy is available for inspection at the Patrol Basic School.

Any Cadet who is dismissed or resigns from employment during Basic School or the Field Training and Evaluation Program will be ineligible to reapply for a Trooper position for twelve (12) months from the date of dismissal or resignation. The Commander's Office may waive the provisions of this directive if there are extenuating circumstances.

Any Cadet, who resigns from employment during Basic School due to a hardship or injury, with the concurrence of the Director of Training, may apply for reinstatement in the next available Basic School. The provisions of this directive shall not apply except when determined necessary by the Commander's Office as a result of an interim background investigation, physical examination, physical fitness assessment, and drug testing. The Commander's Office may approve the reinstatement.

Any Cadet who leaves Basic School as a result of being required to fulfill a federal military obligation shall be reinstated to attend the next available Basic School upon his/her return in accordance with Directive E.04, Section X, "Military Leave".

XVII. OATH OF OFFICE / FIELD TRAINING

Unless already a career State employee, each Cadet who graduates from the Basic School shall be sworn in as a Probationary Trooper (PT) of the Patrol.

Each Probationary Trooper shall be required to successfully complete the Field Training and Evaluation Program which includes intensive field training and evaluation. The Probationary Trooper must score **acceptable** on each category and must be recommended for continued employment by the review board.

Academic Assistance Program

Directive E.14

Applicable to: Employees

Revised 06/06/2019
Effective 7/22/2005

I. POLICY

The purpose of the Academic Assistance Program is for workforce planning and development. It provides a tool for managers and employees to support academic activities that directly relate to the organization's identified knowledge, skills, and behaviors (organizational competencies), and which support the mission, vision, and values of the organization. The Academic Assistance Program is not an employee benefit, right or entitlement; it is a management program for workforce development. Denial of participation in the Academic Assistance Program is not grievable, except on grounds of discrimination.

Use of the Academic Assistance Program shall be identified, described and documented in the employee's development plan within his/her work plan. This provides a measurable link between the employees' increased competency and the agency's workforce planning efforts.

The Academic Assistance Program provides reimbursement of academic costs if funds are available at the agency level, and/or time off the job if the course is available only during working hours.

II. ELIGIBILITY

Eligible Employees - Full-time employees who have gained permanent status are eligible for this program.

Ineligible Employees - Employees in part-time, probationary or temporary status are not eligible for academic assistance.

Selective Service Registration - N.C.G.S. § 143B-421.1 requires employees eligible for selective service to be registered in order to be reimbursed academic costs. The federal Selective Service law specifies that males, both US citizens and immigrant aliens residing in the US and its territories, ages 18 through 25, shall register with the Selective Service.

III. APPROVED COURSES

Management, when making the determination whether to provide academic assistance to take a specific course, must consider the basic principle: "deemed beneficial to both the agency and the employee." Completion of the course should have a direct benefit to the organization. The improved knowledge, skills and abilities gained by the employee should benefit the individual in completion of his/her current and/or potential job duties. Management should consider workforce planning, succession planning and career development in approving employees to receive academic assistance.

Guidelines to consider in course selection:

- Courses which provide knowledge and skills directly related to maintaining or improving current job skills ("current job" means same status and pay); courses mandated by law or regulation or which are required by the employer in order for the employee to retain the job;

- Courses directly related to the employee's current job or a documented workforce need

When approving courses, management must consider workforce planning in developing employees who demonstrate the ability to perform at a higher level of responsibility. Hard to recruit classifications are areas in which an employee could be approved to take courses outside his/her current classification level to meet future work needs.

Job-related degrees and corresponding non-work related courses within a degree program may be approved at the discretion of the Director of Support Services.

Academic assistance shall not be approved for courses where management has determined that neither the course nor degree is of benefit to the agency.

The Patrol Commander or designee may approve exceptions to the approved course policy.

IV. ACADEMIC COURSES

Academic courses are defined as a course/degree provided by an accredited community college/college/university. The course must provide academic credit (as opposed to CEUs), be listed in the college/university course catalog and charge tuition in the traditional meaning of tuition (as opposed to only registration fees). Accreditation must be via an accrediting agency authorized by the U.S. Department of Education.

Eligible Sources - Academic courses/degrees from accredited community colleges/colleges/universities via traditional classroom, video-based, distance learning, web-based, e-learning and certain correspondence courses (see Ineligible Sources below) are eligible for approval.

Ineligible Sources - Correspondence/college/university courses not accredited by the US Department of Education or the American Council on Education/CREDIT are ineligible under this policy.

V. AUDITED COURSES

Academic courses that are audited are eligible for academic assistance; however, an employee may be reimbursed for the same course or course

equivalent only once. Reimbursement requires a statement written on school letterhead and signed by the instructor that the employee attended at least 85% of the scheduled class meetings during the academic term.

VI. THESIS / DISSERTATION RESEARCH COURSES

Job related thesis/dissertation research courses at the masters/doctoral level are restricted as follows:

- All required written examinations for the degree shall be successfully completed before the course is approved
- A maximum of fifteen (15) hours leave may be approved for each academic credit hour. All leave hours must be used during the academic term and may not be accumulated.
- A maximum total of nine (9) academic credit hours is allowed for any one employee

VII. CERTIFICATION / LICENSING

Certification/licenses resulting solely from attainment of academic degrees shall be considered under academic assistance for academic coursework. Incumbent employees who meet minimum educational requirements for employment and for whom certification/licensing is required after employment or is deemed desirable by management and approved by the Patrol Commander or designee are eligible for academic assistance under the following conditions:

- Certification/licensing is mandated; or
- Certification/licensing is a policy requirement of the employing agency

Academic assistance is authorized for certification or licensing only if the certification or license is attained via academic course work.

VIII. ORIGIN OF REQUEST

The employee or management may initiate requests for academic assistance.

Employee initiated course to:

- Maintain/enhance current skills
- Develop new skills/competencies for career development within the agency

Management initiated course to:

- Ensure employees have mandated licensure or certification

- Address a shortage of skilled workers in specific classifications

- Develop a pool of employees for succession planning

- Build specific high priority skills

- Address performance expectations of the employee as specified on the performance management improvement plan

The designation, "management initiated," can only be determined with the approval of the Patrol Commander or designee.

IX. REIMBURSEMENT

Academic Costs

- Eligible employees approved for academic assistance may be reimbursed academic costs charged by the academic source at which the employee is enrolled. Academic costs are defined as charges assessed by an academic source to every person enrolling for the course. These charges are required of everyone and are neither negotiable nor discretionary for the individual enrolling in the course. Academic costs include in-state tuition, fees and course/lab fees. Course/lab fees must always be itemized. Reimbursement of course/lab fees may require a written statement from the academic source justifying the fee as a required fee in addition to other fees.

Amount of Reimbursement

- University of North Carolina Institutions and Institutions of the North Carolina Community College System – 100% of academic costs for up to six (6) credit hours per year.

- All academic institutions other than institutions of The University of North Carolina and institutions of the NC Community College System – Up to the maximum academic cost charged by the UNC institutions for up to six (6) credit hours per year. Reimbursement of tuition and fees from out-of-state colleges/universities shall not exceed the amount as specified above.

The agency may also, with a bona fide business justification, reduce the amount of reimbursement per employee to a set amount less than the tuition and fees and/or limit the number of courses for which any one employee may be reimbursed in an academic term. If the agency chooses to reimburse an amount less than the academic costs specified in the paragraph "Academic Costs" this information shall be available to all employees at the beginning of the fiscal year and apply this limitation in a fair and equitable manner to all employees requesting academic assistance in that fiscal year.

Graduate professional programs (medicine, veterinary medicine, business, etc.) with unusual course/lab fees, tuition or other fees will be considered on a course

by course basis. The Patrol Commander or designee may approve payment of these academic costs.

Non-Reimbursable Expenses

- Reimbursement shall not be made for:
    - Charges specifically related to processing or receiving continuing education units (CEUs)
    - Application, examination, and graduation fees
    - Transportation costs
    - Textbooks and supplies

Other Financial Assistance

- Financial assistance from any other financial aid program shall not be duplicated under this program. However, the difference, if any, between such aid and the allowable costs under the Academic Assistance Program may be reimbursed.

Free Tuition

- When employees of an educational institution or any other State agency are granted free tuition and non-negotiable fees, the value of this tuition and non-negotiable fees must be considered as part of the allowable academic costs

Management may consider any current disciplinary action for job performance or personal conduct prior to approval of the application for reimbursement.

If funds are available, the applicant shall receive reimbursement of approved academic costs upon submitting evidence of satisfactory completion or challenge of a pre-approved course. Completion is defined as “Satisfactory,” “Pass,” or a grade of “C” or better for undergraduate courses, and a “B” or better for graduate courses. An “Incomplete” shall not be reimbursed until a final grade is issued.

Requests for reimbursement should be submitted within 30 days of completion of the course or receipt of grade.

Tax Status

- Congress enacted the Economic Growth and Tax Relief Reconciliation Act of 2001 which allows an employer to offer its employees up to $5,250 in tax-free (job related and non job-related) educational assistance for undergraduate and graduate level courses. The American Taxpayer Relief Act of 2012 permanently extends this benefit.

X. ACADEMIC LEAVE

An approved course should be taken on the employee's own time. If a course can be taken only during working hours, eligible employees must request academic leave prior to the beginning of the course on the Application for Academic Assistance (HP-136) allowing sufficient time for the academic assistance request to be reviewed. Academic leave may be granted unless the supervisor identifies work conditions that will not permit the employee to be absent from the job. Supervisors are encouraged to develop alternate work arrangements to complete the work assignments and also grant academic leave. Reasonable travel time as determined by the supervisor may be permitted to attend approved courses.

Management may approve academic leave, and, if approved, academic leave shall not be charged to the employee's vacation leave.

Academic leave during work hours shall not exceed one course (up to five academic credit hours) per academic term. Exceptions to the leave restriction may be addressed using the Academic Leave with Pay provisions of this policy. See chart below to determine how many hours of leave may be granted during an academic term.

Credit Hours Taken During Semester / Quarter / Summer Session	Total Number Hours Leave That May Be Granted
1	15
2	30
3	45
4	60
5	60

XI. COURSES TAKEN AT AGENCY REQUEST

Because of specific high priority skill needs of the department and/or division, employees may be requested by management to take specific courses or degree programs. Under these circumstances, the following applies:

- All limitations under the provisions of the Academic Assistance Policy are waived. Employees are still responsible for requirements for withholding taxes and FICA.

- All expenses to the individual should be reimbursed related to acquiring the necessary course or degree to include: travel costs; examinations and administrative fees; textbooks and other course materials. Any books or materials paid for by the division become the property of the division. Refer to Textbook Reimbursement for specific information on reimbursement of textbooks.

If courses taken at agency request exceed the credit hour per fiscal year limitation of the Academic Assistance program, then the situation shall be administered under the policy provision for Extended Academic Leave.

The designation “At Agency Request” can only be determined with the approval of the Patrol Commander or designee.

Courses specified as part of an employee’s improvement/development plan are not considered to be at agency request unless approved by the Patrol Commander or designee.

XII. EXTENDED LEAVE

Courses taken at agency request that exceed the credit hour per fiscal year limitation must follow the Extended Academic Leave policy. An agency wishing to initiate a program for a number of employees to participate in a degree or certificate program must also refer to the Extended Academic Leave policy. The State may provide leave with pay or leave without pay for certain types of academic courses. The references to these specific policies are set out below.

Academic Leave Without Pay - Extended academic leave without pay may be granted in accordance with the normal leave policy as outlined in the Leave Without Pay Policy of the State Human Resource Commission, or Directive E.04, “Leave of Absence Without Pay” of the Highway Patrol Policy Manual.

Academic Leave With Pay - Extended academic leave with pay may only be granted with Office of State Human Resources approval.

State agencies may consider any employee (permanent, probationary, trainee or time-limited) for extended academic leave to participate in job or career-related work-study, scholarship or fellowship programs based upon the following criteria:

- Verification that both labor market and organizational needs exist for development in the program requested
- Equal opportunity provided in selection of candidates
- Employees are informed of agency policies and procedures regarding:
    - Announcement and application procedures
    - Screening and selection of employees
    - Limitations and restrictions on academic courses
    - Leave, salary, benefit conditions, withholding taxes and FICA, and
    - Reimbursement agreement

Requests for extended academic leave initiated by the employee and which do not meet with the above criteria will be administered according to the Office of State Human Resources policy on leave without pay.

XIII. TEXTBOOK REIMBURSEMENT

If the employee takes a course "At Agency Request," the agency may reimburse the employee for required course textbooks but the textbooks become property of the Patrol. Exception: If an employee enrolls in a microcomputer course through the Professional Skills Program, sponsored by Wake Technical Community College, "At Agency Request," the agency will be invoiced for required textbooks unless the employee requests to retain the textbook as personal property.

Textbooks purchased by the agency must be stamped as NCSHP property and remain with the agency if the employee terminates employment. The Director of Support Services is responsible for determining the processes for ensuring textbooks purchased by the agency are stamped as agency property. Procedures for obtaining textbook reimbursement are as follows:

- The employee is responsible for obtaining a receipt for the textbook whether the textbook is bought at the class or from a bookstore

- The employee shall claim reimbursement for a textbook by completing a Reimbursement of Travel and Other Expenses Incurred form (CNTR-003), attaching the receipt, and submitting the form and receipt through the agency's chain-of-command for approval. The agency forwards the reimbursement request to the office of Support Services.

- If the employee wants to personally own and retain the course textbook, the employee is not eligible to receive reimbursement for the textbook. The employee is ineligible for textbook reimbursement unless he/she is taking the course "At Agency Request."

XIV. APPLICATION PROCEDURES

Instructions for Initiating the Application for Academic Assistance (HP-136)

- Prior to beginning the course, the employee shall complete the Application for Academic Assistance (HP-136) according to instructions listed on the application form

    - Discuss proposed course with his/her supervisor to determine that the course is job related and eligible for academic assistance

    - Complete Section I of the application and submit the application for Troop/Unit Commander supervisory approval (Section II) prior to enrollment

- **Supervisory Approval.** The Troop/Unit Commander completes Section II by signing and dating the form and checking the block "The proposed course is considered to be directly related to the employee's work assignment and will be beneficial to job performance." Approved applications shall be forwarded to the Director of Support Services for approval. If the course is not approved by the Troop/Unit Commander, a written explanation shall be provided to the employee. A copy of the completed application and denial letter shall be provided to the Director of Support Services /designee.

- **Director of Support Services**. The Director of Support Services signature authorizes approval to encumber funds from the agency's budget for approved academic costs and/or for the employee to receive academic leave, if necessary. Agency approval indicates request is in accordance with the provisions of the Academic Assistance Policy. The agency shall indicate the reimbursable amount and budget code in Section II of the form. If the course is not approved by the agency, a written explanation shall be provided to the employee. Agency approval indicates that:

  - The employee is eligible to participate in the Academic Assistance program

  - Course is deemed beneficial to the agency and the employee

  - Course is provided by an accredited institution

  - Money is available to reimburse employee

- **Special Authorizations.** The Director checks the appropriate block(s) if the Application for Academic Assistance is approved as an "Exception to the approved course policy" and/or if the course is authorized "At Agency Request" and forwards the application to the Patrol Commander for approval.

o Complete one form for each course.

- The application should be submitted in advance, in accordance with schedules established by the Director of Support Services, to allow time for appropriate review, approval and notification to the employee prior to the beginning of the course. The Director of Support Services may approve an application received after a course begins if circumstances warrant and if academic assistance funds are available in the division's budget.

- Employees applying for academic assistance shall receive a written response from the office of the Director of Support Services regarding approval/disapproval of academic assistance requests which notes any changes in the application or conditions of approval

Instructions for Filing for Reimbursement after Course Completion

- After completing the course, the employee files for reimbursement using the pre-approved Application for Academic Assistance according to the instructions listed on the form:

  - Attach a receipt (cancelled check will not be accepted) and official course grade or verification of satisfactory completion to the pre-approved Application for Academic Assistance. The department interprets successful completion as a grade of "C" or better if the course is taken for undergraduate academic credit or a "B" or better if the course is taken for graduate academic credit (or an equivalent grade on an alternative grading system).

  - Complete Section III (Reimbursement Application) of the pre-approved Application for Academic Assistance by entering the amount to be reimbursed, signing and dating the application

- The employee shall forward the original pre-approved Application for Academic Assistance, receipt, and course grade or verification of satisfactory course completion to Support Services for reimbursement approval. Upon approval, the Support Services Director/designee shall forward the request to the Fiscal Section for payment. A copy of the approved request shall be returned to the employee.

- Requests for reimbursement should be submitted within thirty (30) days of course completion

XV. VEHICLE USE

Members may drive their assigned vehicles to the location of instruction.

XVI. ADMINISTRATIVE RESPONSIBILITY

The Commander's Office, with guidance from the Office of State Human Resources, is responsible for the interpretation of this policy and administration of the Academic Assistance Program within the State Highway Patrol. The Director of Support Services will annually assess compliance with this policy.

The Director of Support Services is responsible for retaining records of academic assistance activity according to department retention schedules and shall maintain signed copies of all approved and denied applications along with the following information for each **approved** application:

- Employee's Name and Position

- School Attended

- Name of Course
- Course Begin/End Dates
- Course Level (Undergraduate/Graduate)
- Mandated/Required for Certification/Licensure
- Academic Credit Hours
- Academic Leave Granted
- Course Grade
- Amount of Reimbursement
- Other Special Course Features (Audit, Thesis/Dissertation Research Credit, "At Agency Request", or Extended Academic Leave)

Denied applications shall include the accompanying justification letters.

The Director of Support Services is responsible for retaining statistical records of academic assistance activity. This information shall be reported annually upon request and shall include the following data:

- Total number of employees participating in the Academic Assistance Program
- Total amount reimbursed
- Total number of employees granted Academic Leave
- Total number of employees taking courses at agency's request
- Total number of employees granted Extended Academic Leave
- Total number of employees taking audited courses
- Total number of employees taking courses for the purposes of mandated/ required certification/licensing

Statistical information should be kept on a fiscal year basis, beginning on July 1 and ending on June 30. All information should be available to the Office of State Human Resources as requested.

Member Health and Welfare

Applicable to: Members

Directive E.15
Revised 8/19/2021
Effective 08/2002

I. POLICY

This policy provides all members of the Patrol with a medical services program which shall provide the following:

- Occupational medical services including pre-hire fitness examinations and fitness for duty
- Acute and urgent medical care, both routine and during times of disaster
- Programming and training to support disease prevention and health promotion for members
- Medical direction for the Patrol Emergency Medical Services program
- Medical support and involvement in an Early Intervention System

II. CONFIDENTIALITY

Medical Information

- All medical information collected by the Medical Director shall be confidential and shall not be disclosed by the Medical Director outside the Patrol unless:
  - The involved member permits such disclosure
  - Such disclosure is required by law or court order
- The following medical information, collected by the Medical Director, shall be immediately reported to the Commander's Office:
  - Information suggesting a member may be a danger to himself or herself
  - Information suggesting a member may be a danger to another person
  - A violation of State or Federal law, or a serious violation of Patrol Policy as defined in Directive H.04

III. PHYSICAL AND EMOTIONAL REQUIREMENTS FOR MEMBERS OF THE PATROL

The Patrol Medical Director shall establish medical requirements and standards for applicants and members of the Patrol based upon the physical demands of the Patrol duties, subject to approval by the Secretary or designee.

The Medical Director shall make physical and/or emotional examinations of all Patrol members on a schedule to be determined by the Medical Director with approval from the Patrol Commander based upon the age and physical condition of the member and other determining medical factors.

If a Patrol supervisor believes that a medical problem is affecting a member's performance on his/her job, he/she may, as part of his/her complete evaluation of the member's performance require that the member be given a medical examination in addition to the periodic examinations described in this directive.

Members who are on leave due to a suspected illness or injury may be required, at the discretion of the Commander's Office, to be examined under the Patrol Medical Services Program, and the examining physician shall determine whether the member is able to return to duty. Members who have had a major surgical operation or serious or prolonged illness may not return to duty until they have been cleared by the Medical Director. Members who have been on prolonged military leave or any other prolonged leave of absence may not return to duty until the Medical Director has cleared them.

A member who is involved in a critical incident or any other situation, either on or off duty, which may otherwise affect his/her mental well-being, may be referred to a psychologist or psychiatrist for evaluation.

Any member who is directly involved in a shooting, that results in injury, or any other critical incident that results in death to any party, will be referred to a psychologist. In all such cases, the referral is mandatory and implies no judgment concerning the correctness or incorrectness of the member's actions. Following any such incident and referral, the Medical Director shall determine the members' medical and psychological fitness for duty.

All members of the Patrol shall keep physically and emotionally fit and must be able at all times to meet the strength and agility requirements established by the Patrol Medical Director, as described in this directive.

The Medical Director shall keep the Patrol administrative staff informed as to the physical and emotional fitness of each member by means of a code as follows:

- **Fit for full duty.** Shall apply to any member who is determined by the Medical Director to be physically and emotionally capable of performing all of the essential
- duties of a sworn member and any additional duties that may be required by virtue of the member's particular rank and position within the Patrol.

- **Fit for limited duty.** Shall apply to any member who, in the judgment of the Medical Director, has a physical or emotional condition that renders the member incapable of performing all of the essential duties of a sworn member in a safe, effective manner but who is capable of performing certain non-sworn duties.

- **Not fit for duty.** Shall apply to any member who, in the judgment of the Medical Director, has a physical or emotional condition that precludes the member from performing even non-sworn administrative duties in a safe, effective manner.

The determination by the Medical Director as to which code to assign to each member shall be based on his/her evaluation of the physical and emotional demands of the rank and assignment currently held by the member.

The Medical Director can require consultative evaluations from medical and psychiatric or psychological specialists in the process of evaluating fitness for duty. While recommendations as to fitness for duty from health care providers chosen by the member will be carefully considered, the Medical Director shall have the authority to require consultation with one or more medical specialists chosen by the Medical Director and approved by the Commander's Office. In all cases, the Medical Director's decisions on fitness for duty supersede any others pending the formal process of appeal described in Section XI.

IV. INABILITY OF MEMBER TO PERFORM ESSENTIAL JOB FUNCTIONS

If the Commander's Office determines after receiving a recommendation from the Medical Director, that a member has some physical or emotional problem which reduces or eliminates his/her ability to perform the essential job functions of a sworn member, the Commander's Office may take one of the following actions: place the member on leave, reassign the member, transfer the member to a non-law enforcement position, or dismiss the member for that reason provided, however, no member shall be dismissed from State employment until a reasonable effort has been made to reassign or transfer the member to a non-sworn position for which he/she is physically and otherwise qualified. Members may appeal the decision of the Commander's Office only when authorized to do so pursuant to state law and the "Employee Grievance Policy" (refer to SHP Directive E.08)

V. APPEALS BASED UPON THE DECISIONS OF THE MEDICAL DIRECTOR

A member who is a career state employee and who is dismissed or demoted by the Commander's Office, based on the advice of the Medical Director, may appeal the decision (per the State Human Resource Manual, "Employee Grievance Policy") by submitting a grievance with the Department within 15 calendar days of the event.

VI. EARLY INTERVENTION SYSTEM

The Early Intervention System will assist Patrol supervisors in identifying potential problems with members and provide a method to improve their performance. A

member may exhibit negative behavioral patterns that may be indicative of escalating behaviors leading to more serious misconduct.

Supervisors shall review the following reports on an ongoing basis, attempting to identify members who exhibit behavior that may require intervention:

- Use of Force Reports
- Complaints (Internal and external)
- Internal Affairs investigations (Personnel Complaints, HP-343, HP-721, etc.)
- Performance Evaluations (Trooper and Managers Performance Appraisal)
- Excessive Use of Leave (BEACON reports)
- Preventable Patrol Vehicle Collisions

If any of the following criteria is met within a twelve (12) month period, the Early Intervention System will create an alert in the Internal Affairs Unit:

- Three (3) Use of Force Incidents; or
- Two (2) Complaints (that do not require completion of a Personnel Complaint); or
- Two (2) Internal Affairs Investigations where a Personnel Complaint was completed; or
- Three (3) Preventable Patrol Vehicle Collisions; or
- Four (4) Combination of events (any combination totaling 4 of the above)

Once an Early Intervention Alert is received in the Internal Affairs Unit, the alert shall be assigned via BlueTeam to the Unit/Troop Commander for appropriate action and documentation.

Supervisors who identify members in need of early intervention shall develop a proactive plan of action to improve performance by providing the appropriate counseling or training designed to correct the particular behavior. The plan of action may include, but is not limited to:

- Remedial training that is requested through the appropriate chain-of-command channels and is approved by the Director of Training. All remedial training shall be documented through the member performance appraisal system.
- Intervention by the Medical Director

Supervisors shall continue to monitor the member's subsequent performance to prevent the need for formal disciplinary action. It is not the intent of this policy to circumvent the Patrol's disciplinary process.

Supervisory intervention, including corrective action and second-level supervisory review, will be documented:

- Immediately following identification of the member
- In the alert generated by the Early Intervention System
- In the member's next performance review

All components of the Early Intervention System will be reviewed annually by the Unit Commander of Internal Affairs to ensure members who are having job related problems that could escalate to more serious cases of misconduct if not abated through early intervention, are being identified.

Post-Intervention Monitoring and Documentation

- The second level supervisor will ensure appropriate documentation was provided in the alert generated by the Early Intervention System
- The immediate supervisor will monitor the member for any further problematic behavior
- The course of action taken and progress made by the member will be documented by the immediate supervisor in the Performance Improvement Plan section of the member's next Performance Evaluation
- Early Intervention Reports generated by the Early Intervention System will be maintained by the Internal Affairs Unit.

VII. INFLUENZA IMMUNIZATION OF BASIC SCHOOL CADETS AND STAFF

Description

This policy provides a strategy for providing a safer training environment for North Carolina State Highway Patrol cadets and basic school staff through the annual influenza vaccination.

Background

Influenza ("flu") is a contagious, viral disease that is spread by coughing, sneezing, and close contact with others. Complications of flu can cause extended illness,

hospitalization, and death. Those who reside in communal living situations, such as barracks or dormitories, are at an increased risk of contracting the flu. Other high-risk populations include children, the elderly, individuals with compromised immune systems, and those with certain chronic medical conditions. The best way to prevent influenza and reduce the spread of the disease to others is through vaccination. Routine annual influenza vaccination for adults has been recommended by the Centers for Disease Control and Prevention (CDC) since 2010.

Rationale

This policy is intended to:

- Reduce the incidence and spread of a highly contagious disease for those residing in campus dormitories.
- Protect Training Academy employees, students, visitors, and their families from influenza infection through annual immunization of all Basic School Cadets, Sworn Basic School Staff, Medical Staff, and others who are in regular, direct contact with the Basic School Operations.
- Promote a healthy, productive Training Academy community.

Policy for Annual Influenza Immunization

All Basic School Cadets, Sworn Basic School Staff, Medical Staff, and others who are in regular, direct contact with the Basic School Operations must be immunized against influenza each year unless an exemption has been granted pursuant to this policy. Other employees who request immunization pursuant to this policy may receive the vaccination but are not mandated by this policy.

Influenza vaccine will be available each influenza season through scheduled on-campus clinics facilitated by the North Carolina State Highway Patrol Medical Director to all Basic School Cadets, Sworn Basic School Staff, Medical Staff, and others who are in regular, direct contact with the Basic School Operations.

Basic School Cadets, Sworn Basic School Staff, Medical Staff, and others who are in regular, direct contact with the Basic School Operations who are vaccinated prior to the scheduled vaccination pursuant to this policy may provide proof of immunization. This proof may include immunization records, a receipt or note from a physician, licensed independent practitioner (e.g., physician's assistant), or pharmacist.

Exemptions for immunization may be granted only for medical contraindications or religious beliefs. Exemptions for personal or philosophical reasons will not be accepted. Exemptions will be evaluated on an individual basis as follows:

- Religious Beliefs - Personnel claiming exemption due to religious beliefs must complete the Religious Immunization Exemption Certificate confirming that such immunizations are not consistent with their religious beliefs. The Religious Immunization Exemption Certificate must be submitted to the Highway Patrol Medical Office annually, no later than the first day of Basic Patrol School or August 31st, whichever occurs first.

- Medical Contraindication - Personnel claiming exemption due to medical contraindication must complete and submit the Medical Exemption Statement form. Medical exemptions are submitted one time and will be kept on file for affected employees. The Medical Exemption Statement must be submitted no later than the first day of Basic Patrol School or August 31st, whichever occurs first. Once approved, medical exemption statements do not require annual submission.

Each request for medical exemption will be evaluated by the North Carolina State Highway Patrol Medical Director. Standard criteria for medical exemption will be established based on current recommendations from the Centers of Disease Control and Prevention (CDC) and the Advisory Committee on Immunization Practices (ACIP). Basic School Cadets, Basic School Staff and other identified employees who are exercising a medical exemption may be asked to provide proof of medical contraindications to the North Carolina State Highway Patrol Medical Office/Director. The Medical Director shall notify the individual requesting the exemption and the Director of Training/Major of the decision to grant or deny the request.

Infection Control

Basic School Cadets, Sworn Basic School Staff, North Carolina State Highway Patrol Medical Staff, and others who are in regular, direct contact with the Basic School Operations employees will be responsible for reporting to the Medical Director, through the individual's proper chain of command, symptoms consistent with influenza-like disease/upper respiratory tract infections and adhering to work restrictions/quarantine as applicable. Symptoms of contagious illness commonly include (but are not limited to) fever, cough, fatigue, body aches, vomiting, and diarrhea.

Basic School Cadets, Sworn Basic School Staff, North Carolina State Highway Patrol Medical Staff, and others who are in regular, direct contact with the Basic School Operations employees will be responsible for reporting to the Medical Director, through the individual's proper chain of command, a positive influenza test. Approval is required from the Medical Director before returning to campus.

Immunization Records

The North Carolina State Highway Patrol Medical Director will maintain a record of influenza immunization for Basic School Cadets, Basic School Staff, and other identified employees. Medical records will be maintained in a secure manner consistent with the Health Insurance Portability and Accountability Act (HIPAA).

Dates of Annual Immunization

Immunizations will begin annually in September (pending availability of the vaccine). The Highway Patrol Medical Office will be responsible for communications regarding the schedule of on-site flu shot clinics and the availability of vaccines. All identified personnel under this Policy who are not claiming exemption must be vaccinated prior to April of each calendar year.

Compliance

The Director of Training and Medical Director shall be responsible for the proper administration of this policy according to the guidelines found herein.

Compliance with the policy is a condition of employment for Basic School Cadets and is a condition of assignment for Basic School Staff and other identified employees.

VIII. COVID-19 IMMUNIZATION OF BASIC SCHOOL CADETS AND STAFF

Description

This policy provides a strategy for providing a safer training environment for North Carolina State Highway Patrol Cadets and Staff Personnel through COVID-19 vaccination.

Background

COVID-19 is a contagious, viral disease that is spread by coughing, sneezing, and close contact with others. Complications of COVID-19 can cause extended illness, hospitalization, and death. Those who reside in communal living situations, such as barracks or dormitories, are at an increased risk of contracting this virus. Other high-risk populations include the elderly, individuals with compromised immune systems, pregnant women, and those with certain chronic medical conditions including, but no limited to, hypertension, diabetes, and heart disease. The best way to prevent COVID-19 and reduce the spread of disease to others is through vaccination. COVID-19 vaccination for adults has been recommended by the Centers for Disease Control and Prevention (CDC) since 2020.

Rationale

This policy is intended to:

- Reduce the incidence and spread of a highly contagious disease for those residing in campus dormitories
- To protect Training Academy employees, students, visitors, and their families from COVID-19 infection through immunization of all Basic School Cadets, Sworn Basic School Staff Personnel, Medical Staff Personnel, and others who are in regular direct contact with the Basic School Operations
- To promote a healthy, productive Training Academy community

Policy for COVID-19 Immunization

Prior to the first day of Basic School, all Basic School Cadets, Sworn Basic School Staff Personnel, Specialized Instructors, Medical Staff Personnel, and others who are in regular direct contact with the Basic School Operations must be fully vaccinated against COVID-19 per CDC recommendations unless an exemption has been granted pursuant to this policy.

To be fully vaccinated and in compliance with CDC guidelines, at least 14 days must have passed after completion of a COVID vaccine series or single-dose COVID vaccine.

COVID-19 vaccines are available through local health departments, pharmacies, state-sponsored vaccine events, and medical clinics. Assistance with access to vaccination clinics can be facilitated by the North Carolina State Highway Patrol Medical Services.

Basic School Cadets, Sworn Basic School Staff Personnel, Specialized Instructors, Medical Staff Personnel, and others who are in regular direct contact with the Basic School Operations who are fully vaccinated must provide proof of immunization. This proof may include immunization records, a receipt or note from a physician, licensed independent practitioner (e.g., physician's assistant), or pharmacist.

Exemptions for immunization will only be considered for medical contraindications or religious beliefs. Exemptions for personal or philosophical reasons will not be accepted. Exemptions will be evaluated on an individual basis as follows:

- Religious Beliefs - Personnel claiming exemption due to religious beliefs must complete the Religious Immunization Exemption Certificate (COVID-19) confirming that such immunizations are not consistent with their religious beliefs. The Religious Immunization Exemption Certificate (COVID-19) must be

submitted to the Highway Patrol Medical Office per the deadline set by the Patrol Medical Director.

- Medical Contraindication - Personnel claiming exemption due to medical contraindication must complete and submit the Medical Exemption Statement (COVID-19) form. The Medical Exemption Statement (COVID-19) must be submitted to the Highway Patrol Medical Office per the deadline set by the Patrol Medical Director.

Each request for medical exemption will be evaluated by the North Carolina State Highway Patrol Medical Director. Standard criteria for medical exemption will be established based on current recommendations from the Centers of Disease Control and Prevention (CDC) and the Advisory Committee on Immunization Practices (ACIP). Basic School Cadets, Sworn Basic School Staff Personnel, Specialized Instructors, and other identified employees who are exercising a medical exemption may be asked to provide proof of medical contraindications to the North Carolina State Highway Patrol Medical Office/Director. The Medical Director shall notify the individual requesting the exemption and the Director of Training/Major of the decision to grant or deny the request.

Infection Control

Basic School Cadets, Sworn Basic School Staff Personnel, Specialized Instructors, Medical Staff Personnel, and others who are in regular direct contact with the Basic School Operations employees will be responsible for reporting to the Medical Director, through the individual's proper chain of command, symptoms consistent with COVID-19 disease and adhering to work restrictions/quarantine as applicable. Symptoms of contagious illness commonly include (but are not limited to) fever, cough, shortness of breath, fatigue, body aches, sore throat, loss of sense of smell or taste, and diarrhea.

Immunization Records

The North Carolina State Highway Patrol Medical Director will maintain a record of COVID-19 immunization for Basic School Cadets, Sworn Basic School Staff Personnel, Specialized Instructors, and other identified employees. Medical records will be maintained in a secure manner consistent with the Health Insurance Portability and Accountability Act (HIPAA).

Compliance

The Director of Training and Medical Director shall be responsible for the proper administration of this policy according to the guidelines found herein.

Compliance with the policy is a condition of employment for Basic School Cadets and is a condition of assignment for Basic School Staff and other identified employees.

Member's Assistance Team (MAT)

Directive E.16

Applicable to: Employees
CALEA Chapters 1; 22; 26; 35

New
Effective 9/27/2011

I. POLICY (CALEA 26.1.4)

This policy provides all employees of the Patrol with medical direction for a comprehensive employee assistance program that includes professional and peer support after critical incidents and for employees who are experiencing personal or family crisis. **(CALEA 26.1.4; 35.1.9)**

II. PROCEDURES FOR THE MEMBER'S ASSISTANCE TEAM (CALEA 1.3.8; 22.2.3; 22.2.4; 22.2.6; 35.1.9)

Confidentiality (CALEA 22.2.6; 35.1.9)

- Information from debriefings, defusing, Post **Critical Incident Sem**inars (PCIS) and one-on-one counseling sessions gained by members of the MAT, the Medical Director, or the Patrol Psychologist will be held confidential with the following exceptions:

  - Information suggesting the employees are a danger to themselves

  - Information suggesting the employees are a danger to another person

  - Information indicating serious violations of State or Federal law, or a serious violation of Patrol policy as defined in Directive H.04.

- Information meeting these criteria shall be reported to the Patrol Medical Director. The Medical Director shall in turn report such information to the Commander's Office or his/her designee as soon as possible.

- To promote an ethical practice, the Member's Assistance Team Program requires MAT members to adhere to a Code of Ethics. Violation of these standards of conduct or codes of ethic, which may affect a MAT member's Critical Incident Stress Management (CISM) performance, shall be the basis for an investigation and possible disciplinary procedure.

- These Ethical Standards are applicable to the members of the Member's Assistance Team whenever those members are assigned to an official CISM activity or intervention.

- The MAT Program has a responsibility to assure that MAT members are provided a copy of the Ethics Code and applicable training. Program members have an obligation to be familiar with the MAT/CISM Ethics Code and its application to program activities.

- If a MAT Member violates the Ethical disclosure of Confidential Information, the MAT/Coordinator shall record the violation and recommend termination of the membership on the MAT team to the Patrol Medical Director.

It shall be the policy of the NC State Highway Patrol to provide access to Employee Assistance Programs and/or the Member's Assistance Team that will provide peer support. MAT is designed to assist in the identification and resolutions of concerns or problems (personal or job related) which may adversely affect an employee's personal or professional well-being and/or job performance. **(CALEA 35.1.15f)**

These personal concerns may include, but are not limited to health, marital status, family, substance abuse, emotional/stress and other personal matters. **(CALEA 22.2.10a)**

The Medical Office will ensure that professional support for employees is available when their needs exceed the training of any MAT peers involved.

It shall be mandatory that an employee's supervisor notify the Medical Director or MAT Coordinator when the employee is involved in a critical incident or traumatic life event.

Critical incidents / traumatic life event can include, but are not limited to, incidents which involve the following:

- Enforcement situations in which there is discharge of a firearm
- Use of force situations in which there is death or serious injury of any person
- Vehicle pursuits with death of serious injury to any person
- Situations in which there is serious injury or threat of death to an employee
- Accidental discharge of a firearm with injury
- Death of an employee
- In the line-of-duty death
- Serious injury of an employee
- First fatality investigation by a Provisional Trooper
- Collisions involving state-owned vehicles which results in serious injury or death
- Incidents involving:

- Unusually large numbers of victims
- Victims who are familiar to or have a special relationship with employees involved
- Prolonged, stressful involvement of employees
- Special or unusual media attention

Upon the occurrence of a critical incident involving SHP employees or families of members, the responsible supervisor or the officer-of-the-day will contact the SHP Medical Office and provide information on the nature of the incident, the employees involved, and the location of the incident and the current status of the incident.

Supervisors should contact the Medical Office or MAT Coordinator upon the occurrence of situations where an employee has not had an emergent or critical incident but is being affected by concerns or problems (personal or job related) which may adversely affect an employee's personal or professional well-being or job performance.

Referrals for critical and non-critical events can come from other sources:

- Self-referrals from employees
- Referrals by concerned peers
- Referrals by supervisors
- Referrals by family members
- Referrals following airing of an incident by the news media

MAT peer program efforts should support the goals of our agency mission by helping to build partnerships with all levels of government and the public. In doing so, our MAT program may participate in the aiding of our communities by providing peer support upon request. Requests for MAT interventions in our communities and to other agencies shall be made to the MAT Coordinator or Medical Director. The MAT Coordinator will consult the Medical Director and the Director of Professional Standards, in consultation with the Commander's Office, who must approve any external MAT deployments.

The Medical Director, a MAT Zone Coordinator, or the Wellness Coordinator in consultation with the Troop and District Supervisor of the involved employees will determine the resources needed for the response and the timetable for activities.

During office hours, the Medical Director will request the commitment of the MAT via the chain-of-command, or during non-office hours or on holidays, the Medical Director will contact the State OD with the request.

The purpose of the MAT is to provide assistance through crisis intervention and peer-support. Therefore, MAT members shall be guided by the following:

- MAT peer members will adhere to the MAT SOP on all deployments and interventions.

- No activities by MAT personnel shall be considered part of any investigation or operational critique.

- MAT program personnel will not interfere with administrative and criminal investigations following critical incidents.

- MAT personnel will state a warning to employees involved in defusings or other activities that they should not make statements of fact that may be important to any criminal or administrative investigation.

- MAT personnel engaged in defusings, debriefings, PCIS, one-on-one discussions or any other interactions with involved employees will stop employees who appear to be making statements of fact that are important to a criminal or administrative investigation.

- No MAT personnel will provide advice or recommendations that might be considered or are represented to be the appropriate domain of professional medical, psychological, legal or administrative personnel.

- No notes or recordings or other records of information exposed during MAT programs will be made or maintained.

- MAT personnel responding will travel in Patrol vehicles and wear the appropriate approved attire and will be considered on-duty and on special assignment.

MAT operations will be organized according to the “Incident Command” system. The team leader will act as the deployment I.C. and be responsible for assuring that daily briefings and assignments of activities are made as appropriate and for organizing an operational review for the MAT before demobilization. The I.C. is responsible for providing a summary of deployment activities utilizing appropriate MAT forms.

The MAT program will not supplant the responsibility of the Medical Director and Patrol Supervisors to assure that all employees involved in critical incidents be properly referred for any necessary professional psychological or psychiatric evaluation and treatment.

The MAT program will be reviewed annually by a committee of MAT personnel appointed by the Medical Director. A report of this review will be provided to the Commander’s Office on or before 31 August of each year.

The Medical Director, in consultation with the Director of Professional Standards, can immediately suspend from the program any MAT member(s) who violate this policy or any other Patrol policy.

Physical Fitness Requirements

Directive E.17

Applicable to: Sworn Members

Revised 08/19/2021
Effective 05/09/2016

I. POLICY

It is the policy of the North Carolina State Highway Patrol to ensure that all sworn members can perform their essential job functions. This policy is designed to promote a minimum fitness level and a healthier member.

The North Carolina Police Officer Physical Abilities Test (POPAT) test will be a required component of the annual performance process for sworn members. The goal is to promote agency-wide physical fitness and improve the individual member's health and welfare with potential long-term benefits.

Along with the mandatory testing components for sworn members, the North Carolina State Highway Patrol is committed to supporting all of our employees in their quest for excellent physical health. We will continually explore new programs and wellness ideas in order to assist our employees in obtaining and maintaining optimal physical health.

II. FITNESS REQUIREMENTS

All sworn members are required to meet the Patrol's fitness requirements as outlined in this directive. The Patrol will use one standard within its fitness program:

- **Fitness Standard** – The standard all sworn members must meet.

All sworn members are required to complete the POPAT course annually in the Fitness Standard times below approved by the Patrol:

Scenario #1 - Chase/Apprehension Phase: 6:00 minutes or less
Scenario #2 – Rescue Phase: 3:00 minutes or less

- Members who complete the course in the Fitness Standard times or faster are deemed to have met the Patrol's Fitness Standard

- Members who do not complete the course within the required Fitness Standard times are deemed to not have met the Patrol's Fitness Standard and therefore require improvement. This does not apply to a member who suffers an injury while performing the POPAT test and is unable to complete the test as a result of the injury.

III. FAILURE TO MEET THE FITNESS STANDARD

A member who fails to complete the POPAT course within the Fitness Standard time will be expected to demonstrate improvement toward meeting the Fitness Standard time.

The Director of Training will notify the member's supervisor, in writing, through the chain-of-command upon a failure to meet the Fitness Standard time. The member's supervisors will be responsible for documenting the failure as part of the member's annual Performance Appraisal.

Upon a member's failure to meet the Fitness Standard time, the member will be scheduled for an appointment with the Medical Director or designee in conjunction with the Training Academy staff where he/she will be provided with fitness and health guidelines intended to support improvement toward meeting the Fitness Standard time.

IV. MAKE-UP ANNUAL FITNESS TESTING

The Director of Training or designee will schedule make-up days for the annual fitness testing sessions as needed.

Members will be required to complete the missed annual testing within ninety (90) days of returning to full duty.

V. ASSISTANCE TO MEMBERS

The Patrol recognizes the benefit to provide assistance to members who want to improve their physical fitness and/or have difficulty in meeting the Patrol's fitness standards. This may go beyond merely meeting the Fitness Standard and trained instructors are available to develop personalized exercise plans and goals.

The Patrol will offer assistance to members by:

- Providing referrals for health screening and fitness assessment.
- Providing guidance in and/or a referral for the development of an individual physical fitness training program to include individual education and goal setting.
- The Medical Director or designee may refer members for health and nutrition advice through the Patrol's contracted health care insurance provider.
- The Medical Director or designee, in conjunction with the Training Academy Staff, will provide ongoing support and evaluation of officer wellness and fitness.
- The Director of Training will provide an annual report to the Commander's Office.

VI. North Carolina Police Officer Physical Abilities Test (POPAT)

The North Carolina POPAT course effective on 1 July 2015 is as follows:

Scenario #1: Chase/Apprehension
Start Position in Chair

1. Chair to Cone 1 (40 ft.) and back (around chair) 2 times
2. Chair to Cone 2 (60 ft.) while completing the following obstacles: Broad Jump, Fence Climb, and Crawl
3. Cone 2 to mat
4. "Roll Drill," 3 repetitions (a-d equals 1 repetition)
    a. Start on top of 100 lb. heavy bag with left knee on mat
    b. Roll to right until bag is over body
    c. Continue to roll in the same direction until back on top of heavy bag (complete when right knee touches mat)
    d. Perform complete turn to left until left knee touches mat
5. 20 Pushups
6. "Roll Drill," 3 repetitions
7. Mat to Cone 2 while completing the following obstacles: Broad Jump, Fence Climb, and Crawl
8. Cone 2 to step box
9. 30 Steps (up and down) on step box
10. "Roll Drill," 3 repetitions
11. 20 Pushups
12. "Roll Drill," 3 repetitions

Scenario #2: Rescue

1. Run from Cone 1 to Cone 2 (50 ft.) and back 2 times
2. 30 steps (up and down) on step box
3. Run from Cone 1 to Cone 2 (50 ft.) and back 2 times
4. Drag 175 lb. dummy from Cone 3 to Cone 4 (25 ft.) and back to Cone 3 (past line adjacent to cone each way)

I. POLICY

It is the policy of the North Carolina State Highway Patrol to provide a performance management system which evaluates employees' accomplishments and behaviors related to goals and organizational values to achieve organizational mission, goals, and business objectives. An integrated performance management system enables employees to develop and enhance individual performance while contributing to the achievement of organizational mission, goals, and business objectives.

II. OBJECTIVES

In establishing this Performance Management Policy, the State Highway Patrol seeks to achieve the following objectives:

- Facilitate effective communication between employees and immediate supervisors;
- Ensure employees have a clear understanding of the performance expected of them and how their individual work contributes to achievement of the State Highway Patrol's mission;
- Ensure employees provide, as well as receive, input into the development of individual goals and ongoing information about how effectively they are performing relative to established goals
- Identify and implement opportunities for employee development and discussion of career objectives; and
- Provide policy consistency

III. COVERED EMPLOYEES

This policy applies to all sworn, non-sworn, probationary, trainee and permanent employees. This policy does not apply to temporary employees.

IV. PERFORMANCE CYCLE

The State Highway Patrol's performance cycle is from July 1 through June 30. The annual performance evaluation shall be completed, approved, discussed with the employee and entered into the system of record within sixty (60) calendar days of the cycle end date. The State Human Resources Director has the ability to change the dates of the standard performance cycle; however, all covered employees shall be

notified a minimum of sixty (60) calendar days prior to the start of the new performance cycle

V. DOCUMENTATION OF PERFORMANCE

The Highway Patrol recognizes a need for on-going, 'face-to-face' performance counseling which provides professional guidance to an individual to encourage improved performance, career counseling relative to such topics as advancement, specialization, or training appropriate for employee's position and which assists the supervisor to better understand a subordinate's strengths and weaknesses. This directive sets forth policy on documenting performance once a counseling session is complete.

Within the State Highway Patrol, employees' performance shall be documented throughout the appraisal cycle using a pre-formatted performance record.

Supervisors must document all disciplinary actions imposed on employees under their supervision on a performance record.

Only trained supervisors may enter performance records on subordinates. If an employee is promoted to a supervisory position before training is received, the employee may enter performance records in the interim only after approval from the Troop/Unit Performance Appraisal Liaison, in consultation with the Program Administrator. The newly promoted supervisor must complete the full training conducted by the Program Administrator before completing an interim or annual evaluation.

A minimum of two performance records must be completed per Job Task listed under each Goal in order to rate the employee's performance in that particular area on the Annual Performance Appraisal. This minimum requirement does not relieve supervisors from documenting the full range of the employee's performance.

While in Basic School, State Highway Patrol Cadets will initiate their Performance Plan within the Performance Management System. Documentation in the Performance Management System for Probationary Troopers will start following the completion of ROE # 2 during the Field Training Officer's program.

VI. FREQUENCY OF PERFORMANCE REVIEWS

Performance Reviews are required in the following instances:

- **Permanent State Employees**: The immediate supervisor shall establish a performance plan for the employee during the first sixty (60) calendar days of the performance cycle. The immediate supervisor shall conduct an interim review at

the midpoint of the performance cycle and shall conduct a final performance evaluation annually, within 60 calendar days of the cycle end date. The permanent employee shall have been functioning under an issued performance plan for at least six (6) months cumulatively over the performance cycle to be assigned a final overall performance rating.

- **Probationary Employees**: The immediate supervisor shall establish a performance plan for the employee during the first sixty (60) calendar days of employment; however, if the probationary employee's start date is during the last sixty (60) calendar days of the current performance cycle, then the immediate supervisor shall establish a performance plan for the employee during the first sixty (60) calendar days of the next performance cycle. The immediate supervisor shall review the probationary employee's performance by conducting documented performance feedback discussions during the first twelve (12) months of employment. A probationary employee is expected to perform the work at the level expected for this position and consistently meet what is expected in terms of quality, quantity, timeliness, cost, and customer satisfaction on all individual goals and individual values. If the employee's performance indicates he or she is not suited for the position and cannot be expected to meet satisfactory performance standards, the employee shall be separated.

  The immediate supervisor shall conduct an interim review at the midpoint of the performance cycle and shall conduct a final performance evaluation annually, within sixty (60) calendar days of the cycle end date. If the probationary employee's start date is within sixty (60) calendar days of either the interim review or the annual performance evaluation, then an interim review or annual performance evaluation is not required. The probationary employee shall have been functioning under an issued performance plan for at least six (6) months cumulatively over the performance cycle to be assigned a final overall performance rating. To meet the business needs of the work unit, periodic reviews may be conducted as frequently as necessary.

- **Time-Limited and Trainee Employees**: The immediate supervisor shall establish a performance plan for the employee during the first sixty (60) calendar days of employment; however, if the time-limited employee's start date is during the last sixty (60) calendar days of the current performance cycle, then the immediate supervisor shall establish a performance plan for the employee during the first sixty (60) calendar days of the next performance cycle. The immediate supervisor shall review the time-limited employee's performance by conducting documented performance feedback discussions. A time-limited employee is expected to perform the work at the level expected for this position and consistently meet what is expected in terms of quality, quantity, timeliness, cost, and customer satisfaction on all individual goals and individual values. If the employee's performance indicates he or she is not suited for the position and cannot be expected to meet satisfactory performance standards, the employee

shall be separated. The immediate supervisor shall conduct an interim review at the midpoint of the performance cycle and shall conduct a final performance evaluation annually, within sixty (60) calendar days of the cycle end date. If the probationary employee's start date is within sixty (60) calendar days of either the interim review or the annual performance evaluation, then an interim review or annual performance evaluation is not required. The time-limited employee must have been functioning under an issued performance plan for at least six (6) months cumulatively over the performance cycle to be assigned a final overall performance rating. To meet the business needs of the work unit, periodic reviews may be conducted as frequently as necessary. Employees in trainee classifications will have either a probationary or permanent appointment type. The immediate supervisor shall follow the performance management process based on employee appointment (i.e., probationary or time-limited), as outlined in this policy, for employees in trainee classifications.

- **Transfers, Promotions, Demotions**: When an employee transfers (lateral, demotion, reassignment, or promotion) within State government, the existing immediate supervisor shall assess performance and document progress and/or recommended ratings prior to the transfer. If the transfer (lateral, demotion, reassignment, or promotion) occurs during the interim review or annual performance evaluation, then the existing immediate supervisor shall complete the transferring employee's interim review or annual performance evaluation. If the transfer (lateral, demotion, reassignment, or promotion) does not occur during the interim review or annual performance evaluation, then the existing immediate supervisor shall provide written performance information (i.e., documentation in the system of record or email) specific to the employee's achievement of established goals and values to the receiving immediate supervisor. If the transferring employee has been functioning under an issued performance plan for at least six (6) months at the time of the transfer, then the existing immediate supervisor shall recommend performance ratings for goals and values in the system of record, prior to the transfer.

- **Change in Immediate Supervisor**: When there is a change in immediate supervisor, the existing immediate supervisor shall provide written performance information (i.e., documentation in the system of record, email, etc.) specific to the employee's achievement of established goals and values to the receiving immediate supervisor. If the change in immediate supervisor occurs during the interim review or annual performance evaluation, then the existing immediate supervisor shall complete the interim review or annual performance evaluation. If the employee has been functioning under an issued performance plan for at least six (6) months at the time of the change in immediate supervisor , then the existing immediate supervisor shall recommend performance ratings for goals and values in the system of record prior to the change.

- **Separation**: When an employee separates from State Highway Patrol, the immediate supervisor shall assess performance and assign a final overall performance rating, unless the employee's separation is due to a documented disciplinary action, retirement, disability, illness or death. The separating employee must have been functioning under an issued performance plan for at least six (6) months cumulatively over the performance cycle to be assigned a final overall performance rating.

VII. THE PERFORMANCE MANAGEMENT PROCESS

A. Stage One: Performance Planning

1. Each employee shall have an annual Performance Plan to include at least three (3) but not more than five (5) strategically aligned critical individual goals (not an exhaustive list of all responsibilities required for continued employment and does not duplicate information in the position description), a description of how goals shall be measured, and the level of performance required to meet expectations and values. Goals shall be written at the "Meets Expectation" level. The State Highway Patrol shall facilitate calibration discussions to systematically assess goal validity and ensure the Patrol's consistency for all sworn and non-sworn positions.

2. Within ninety (90) calendar days of the onset of a PM cycle, the Office of State Human Resources shall publish and communicate two (2) to four (4) organizational values, which shall be standard for all employees subject to this policy. The Department of Public Safety may choose to add up to five (5) additional organizational values, selected from a predefined list published and communicated by OSHR within ninety (90) calendar days of the onset of the PM cycle.

3. Organizational values shall be 50% of the total weight relative to overall performance. The North Carolina State Highway Patrol will determine weight of specific goals; however, goal weight shall be no more than 50% of the total weight relative to overall performance.

4. Immediate Supervisor shall hold a performance planning discussion with each employee and put a performance plan in place with each employee within forty-five (45) calendar days of:

    a. The beginning of the performance management cycle;

    b. The employee's entry into a position;

    c. A new (probationary or trainee) employee's date of employment; or

d. Any significant change to the performance expectations of the current Performance Plan.

5. Once signed by the immediate supervisor and next-level manager/supervisor, the employee shall review, sign, and date the performance plan. If the employee refuses to sign the performance plan, the immediate supervisor shall document, on the performance plan, the employee's refusal.

6. Each employee shall have ready access to his or her performance plan either via paper or electronically.

B. Stage Two: Performance Feedback

1. Throughout the performance cycle, the immediate supervisor shall document and validate, based on direct observation and/or feedback from others, employee performance results and behaviors on a regular and consistent basis. In addition, the immediate supervisor shall provide feedback to the employee, both positive and corrective, when appropriate. Both the immediate supervisor and employee should document activities and accomplishments related to goals and behaviors during the performance cycle.

2. Immediate supervisor shall conduct a minimum of three (3) formal performance discussions annually, for each employee and timed accordingly:

   - the performance planning discussion, at the beginning of the performance cycle (After July 1st but before August 15th);

   - an interim review at the performance cycle mid-point (After January 1st but before February 15th); and

   - the annual performance evaluation, at the end of the performance cycle (After July 1st but before August 15th)

   The formal discussions provide immediate supervisor and employees with an opportunity to discuss any changes in the Patrol's priorities or employee development goals, review progress and, if necessary, revise performance plans, initiate individual development plans, or address performance problems and identify steps the employee should take to improve or adjust priorities through the remainder of the performance cycle. Additional formal and informal discussions shall also be conducted as needed throughout the performance cycle to adjust cycle goals, document progression, or address fluctuating business requirements.

3. All formal coaching and counseling sessions and formal performance discussions shall be documented.

4. During the Annual Performance Appraisal review each immediate supervisor and employee (sworn and civilian) shall review and sign a new job description.

Addressing Poor Performance

If at any time during the performance cycle an employee is not performing at the satisfactory level for the position, the immediate supervisor will consider the totality of the circumstances in determining at what step to begin the performance discussion. For the majority of performance discussions, the immediate supervisor shall provide feedback to the employee regarding the need for him/her to improve his/her performance. If performance does not improve following the feedback provided by the immediate supervisor, for the majority of performance discussions, the immediate supervisor shall:

Conduct a Documented Counseling Session (DCS) to:

- discuss ways to improve the employee's performance and/or values-based behavior.

- seek input from the employee about whether the performance issue can be corrected through a process change or to determine if the employee needs to receive additional training on current procedures/processes,

- outline the steps to be taken to improve performance, including the specific timeframe for improvement, identify the consequences, including progressive disciplinary action, of failure to improve.

- establish a follow-up date(s).

- DCS (HR562) Link: https://www2.ncdps.gov/emp/HR/HR562%20DCS_Revised%20by%20PHH%20201900403_LC%20Rights.pdf

If performance improves to the satisfactory level during the established timeframe and performance is maintained at the satisfactory level, then the immediate supervisor should document the employee's performance improvement electronically or in writing.

C. III. Stage Three: Annual Performance Evaluation and Rating Scale

1. At the end of the performance cycle, the immediate supervisor shall evaluate employee performance relative to the three (3) to five (5) individual goals as well as the selected organizational values. Immediate supervisor shall use quantitative and qualitative information collected throughout the cycle and documented by various sources, including information documented by the employee, to determine the extent to which the employee's actual performance has met the expectations defined in the performance plan. The immediate supervisor shall evaluate performance based on the collected performance.

2. Each individual goal and value shall be rated using the standardized rating scale. The standardized rating scale shall consist of three (3) levels defined as follows:

   - ***Exceeds Expectations*** - (3) Performance consistently exceeds documented expectations and measurements. The employee consistently does work going far beyond what is expected in terms such as quantity, quality, timeliness, cost, and customer satisfaction. Performance that "Exceeds Expectations" is due to the effort and skills of the employee. Performance is consistently characterized by exceptionally high quality work that requires little or no improvements or corrections. An employee at this level repeatedly makes exceptional or unique contributions to the organization that are above the requirements of his/her duties and responsibilities. An employee performing at this level should be readily recognized by their organization as an outstanding contributor to the organization's mission.

   - ***Meets Expectations*** – (2) Performance consistently meets and occasionally exceeds the documented expectations and measurements. The employee performs according to expectations. The employee does the job at the level expected for this position and consistently meets what is expected in terms such as quantity, quality, timeliness, cost and customer satisfaction. The performance is due to the employee's own effort and skills. An employee performing at this level is dependable and makes valuable contributions to the organization. The employee's judgments are sound, and he or she demonstrates knowledge and mastery of duties and responsibilities. Most employees should meet expectations in a functional, performing work unit.

- ***Does Not Meet Expectations*** – (1) Performance does not meet expectations and measurements and supervisory attempts to encourage performance improvement are unsuccessful. The employee is performing the job at an unsatisfactory performance level in terms such as quantity, quality, timeliness, cost, and customer satisfaction and performance improvement counseling by the immediate supervisor has not resulted in adequate employee performance improvement. Immediate supervisors are required to continue addressing performance issues with an employee with this rating level, documenting management efforts to encourage satisfactory performance. Performance counseling sessions should be guided by next-level management, and may result in disciplinary consequences for the employee who fails to demonstrate improvement.

3. The employee's final annual performance evaluation rating shall be based on results achieved cumulatively over the performance cycle relative to his/her individual goals and organizational values. The final annual performance evaluation rating shall reflect timeliness, quantity, and quality of job performance relative to established goals and identified values. A final annual performance evaluation rating that is higher or lower than what is expected of someone in the position shall be supported by appropriate documentation. An employee who performs below the satisfactory level of performance on any goal or value shall not be awarded a final annual performance evaluation rating above the satisfactory level of performance, regardless of the level of results achieved or adherence to values.

4. The immediate supervisor shall assign a final annual performance evaluation rating and conduct an annual performance evaluation meeting with each employee. The immediate supervisor shall not submit final annual performance evaluation ratings for employees unless an annual performance plan, supported by ongoing performance documentation, has been completed in accordance with this policy.

5. Once signed by the appropriate levels of management, the employee shall review, sign, and date the annual performance evaluation. The employee's signature on the annual performance evaluation acknowledges his/her receipt of the evaluation. If the employee refuses to sign the annual performance evaluation, the immediate supervisor shall document the employee's refusal on the performance evaluation.

6. Each employee shall have ready access to his/her annual performance evaluation either via paper or electronically.

VIII. PERFORMANCE MANAGEMENT RESOURCES AND TRAINING

The State Highway Patrol Performance Management Program Administrator shall:

- Coordinate the development, implementation, and ongoing administration of performance management within the organization

- Provide performance management training to all newly hired or promoted first line supervisors, to be successfully completed within the first three (3) months of the first line supervisor's new role;

- Within the Highway Patrol, The Director of Support Services or the Program Administrator shall designate one Lieutenant from each Troop/Unit as the Performance Appraisal Liaison (PAL). The designated PAL will be responsible for reviewing the interim and annual performance evaluation process within his/her Troop/Unit for all employees. The PAL will also serve as mediator for any rater error or appeal disputes within her/his Troop/Unit. Designated Performance Appraisal Liaisons will receive specialized training from the Program Administrator.

- Provide annual refresher training to all designated Performance Appraisal Liaisons for each Troop/Unit.

IX. CONFIDENTIALITY AND RECORDS RETENTION

Performance evaluations are confidential documents under G.S. 126-22. Any information shared during calibration sessions shall be treated as confidential and shall not be shared outside of the calibration session. A breach of confidentiality shall be considered personal misconduct and may result in disciplinary action up to and including dismissal.

Annual performance evaluations and supporting documentation shall be securely retained for at least three (3) years, and then maintained according to the applicable records retention schedule.

X. PERFORMANCE RATING DISPUTE

Career State employees or former career State employees may grieve an overall performance rating of "Does Not Meet Expectations" in accordance with State Highway Patrol Policy Directive E.08 (Grievance Procedure).

A. Ratings Inconsistent with Policy and Training

In the course of monitoring and evaluating the performance management system, the Program Administrator may identify performance management ratings that appear inconsistent with the standards established in policy and training. The following actions shall be taken:

1. Contact the Performance Appraisal Liaison of the affected employee;

2. Describe the performance management rating being questioned and the reason for questioning the rating, and;
3. Request action on the part of the affected employee

B. Dispute of Final Evaluation by Subordinate Supervisor's Supervisor

In the event a supervisor identifies a potential rating error in a subordinate supervisor's rating(s), he/she shall discuss the rating(s) with the subordinate supervisor. After discussion, the subordinate supervisor may adequately explain the rating or change the rating. If the supervisor still disagrees with the subordinate supervisor, the supervisor may direct him/her to make the adjustment. If a subordinate supervisor conducts the performance appraisal interview with his/her employee(s) and subsequently changes a rating, the subordinate supervisor must provide the affected employee with a copy of the new rating. The affected employee may appeal the rating change in accordance with this policy.

If it is discovered that an employee is not following the procedures prescribed by this Policy Directive or Performance Management Training, the appropriate Performance Appraisal Liaison shall immediately take steps to correct the improper action through remedial training after consultation with Program Administrator. A memorandum describing the improper action and corrective action taken shall be completed and submitted to the Program Administrator.

C. Performance Appraisal Appeal by Employee

An employee may appeal any Overall Performance Rating of "Does Not Meet Expectations" within 15 calendar days of completing the Annual Performance Rating. The overall performance rating differs from the ratings of the individual performance goals. After rating each individual performance goal, supervisors shall rate the employee's overall performance.

D. Dispute Involving a Rating in an Individual Performance Category by Employee

Within fifteen (15) calendar days of completing the Annual Performance Appraisal, any employee who disagrees with a rating "Does Not Meet Expectations" in an individual performance goal area must dispute the rating to his/her supervisor. Upon being notified of the rating disagreement, the supervisor and employee must attempt to resolve the performance rating issue. If the employee still disagrees with the rating, the employee should try to resolve the issue by consulting with the next level manager. If the employee disagrees with the rating decision of the next level manager, then the employee should attempt to resolve the issue by meeting with the Troop/Unit Performance Appraisal Liaison. The Troop/Unit Performance Appraisal

Liaison shall review all information gathered during the appeals process and consult with the Program Administrator who will make a final decision on the appeal. There shall be no further appeal. The Director of Professional Standards, in consultation with the Patrol Commander, will make the final decision on an appeal from a commissioned officer.

Promotion and Reallocation Procedures

Directive F.02

Applicable to: Members

Revised 12/14/2021
Effective 06/21/2018

I. POLICY

This policy sets forth guidelines for the promotion process and reallocation procedures of the North Carolina State Highway Patrol.

II. ADMINISTRATION

- Under authority of the Commanders Office, the Director of Professional Standards will facilitate the promotion process.

- The Program Administrator within Professional Standards will be responsible for management of the promotion process. The testing vendor will be responsible for design, implementation and scoring of the promotion process.

- Promotion results will be retained for a maximum of three (3) years and secured by the Program Administrator in consultation with the testing vendor. Promotion processes are expected to be administered each calendar year. The published promotion eligibility list will expire on June 30th of each calendar year.

- At the end of each promotion process, participants will be given the opportunity to provide feedback and suggestions which will be reviewed by the Director of Professional Standards and the Commander's Office for consideration in future processes.

- All changes to the promotion process will be approved by the Commander's Office and included in this Directive and/or the Promotion Guide.

- Make up tests will only be allowed in extreme circumstances, if approved by the Director of Professional Standards, or in accordance with the Uniform Services Employment and Reemployment Rights Act (USERRA).

III REALLOCATION TO SENIOR TROOPER AND MASTER TROOPER RANKS

- Reallocation to the rank of Senior Trooper and Master Trooper shall be based on length of service, recommendations of unit supervisors and unit commanders and shall not be governed by the requirements of this directive. However, Troopers who are currently under an active disciplinary action shall not be eligible for reallocation to Senior Trooper or Master Trooper until such disciplinary action becomes inactive.

- Patrol Troopers may be reallocated to Senior Trooper upon the completion of three (3) years of service and upon recommendation of their supervisors.

- Senior Troopers may be reallocated to Master Trooper upon the completion of six (6) years of service and upon the recommendation of their supervisors.

- In addition to the years of service requirement, members who have a break in service and are rehired under the former member provisions of E.13 must have a minimum of twelve (12) months of continuous active service at the current rank as of the date of reallocation.

- Supervisors requesting reallocation of members must submit a Request for Reallocation to Senior / Master Trooper (HP-767A), via chain-of-command, to the Personnel Unit.

IV. EXEMPT SUPERVISOR RANKS AND POSITIONS

The below ranks and positions are exempt from the State Human Resources Act and the promotional processes set forth in this directive:

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Patrol Commander

General Statute 20-185 provides that the Patrol Commander [Commanding Officer], whose rank shall be designated by the Governor, shall be appointed by the Governor. The Patrol Commander currently holds the rank of Colonel.

Lieutenant Colonel

A member holding the rank of Captain or higher may be promoted to the rank of Lieutenant Colonel.

Major

A member holding the rank of Captain may be considered for promotion to Major. A member who wishes to be considered for promotion to Major shall submit a resume to the Commander's Office containing the following information:

- Patrol or other law enforcement related experience

- Education

- Management experience

- Community relations activities

- Law enforcement and community relations honors and awards

The Commander's Office will review the resumes and select a minimum of three (3) candidates to be interviewed if available.

The Commander's Office, and/or their designees will interview candidates. At a minimum, promotions will be based on interview ratings.

V. NON-EXEMPT SUPERVISOR RANKS AND POSITIONS

The below ranks and positions are subject to the State Human Resources Act and shall follow the promotional processes outlined herein:

Captain

A member holding the rank of Lieutenant may be considered for promotion to Captain. A member who wishes to be considered for promotion to Captain shall submit a resume to the Commander's Office containing the following information:

- Patrol or other law enforcement related experience
- Education
- Management experience
- Community relations activities
- Law enforcement and community relations honors and awards

The Commander's Office will review the resumes and select the most qualified applicants to continue in the promotional process. Notwithstanding the number of vacancies to be filled, the minimum number of candidates selected to continue in the promotional process shall be three (3). The process shall consist of, at a minimum, a structured panel interview with the Commander's Office or its designee.

Exception: If there are less than three (3) applicants, this provision will be inapplicable.

Lieutenant

A member holding the rank of First Sergeant with two (2) years of experience in grade by the date the Promotion Eligibility List is posted on July 1st of the current year may be considered for promotion to Lieutenant. A member who wishes to be considered for promotion to Lieutenant must indicate their interest by completing the online Promotion Process Application.

First Sergeant

A member holding the rank of Sergeant with three (3) years of experience in grade by the date the Promotion Eligibility List is posted on July 1st of the current year may be considered for promotion to First Sergeant. A member who wishes to be considered for promotion to First Sergeant must indicate their interest by completing the online Promotion Process Application.

Sergeant

A member holding the rank of Master Trooper with eight (8) years of sworn experience (SHP sworn time) by the date the Promotion Eligibility List is posted on July 1st of the current year may be considered for promotion to Sergeant. A member who wishes to be considered for promotion to Sergeant must indicate their interest by completing the online Promotion Process Application.

Participation in the Promotion Process for Promotion to Lieutenant, First Sergeant, and Sergeant

- Members who wish to be considered for promotion to Lieutenant, First Sergeant and Sergeant must indicate their interest by completing the online Promotion Process Application located on the Patrol's Intranet under the Professional Standards section by the deadline, or it shall be deemed that the member does not wish to participate in the promotional process.

- All participating members are encouraged to review the supporting information on the Highway Patrol's Intranet site.

- The deadline for submission of the online Promotion Process Application is December 15th of each applicable process year, unless amended by departmental announcement. All applications must be approved by the member's supervisor by this date for each candidate to participate.

VI. ELIGIBILITY REQUIREMENTS FOR PROMOTION

- Any member who receives a disciplinary action, with the exception of a written warning, shall not be eligible to participate in the promotion process until such disciplinary action becomes inactive.

- Any member who has an active written warning and who is not otherwise ineligible for promotion shall be eligible to participate in the promotion process but shall not be eligible for promotion until the written warning becomes inactive.

- In order to participate in the promotion process, eligible candidates must have achieved a rating of "Meets Expectations", or better, in all performance categories from their previous annual performance appraisal.

  Exception: If the member has a "Below Expectations" rating on his/her previous or current annual performance appraisal as a direct result of a Written Warning that is still active, then the member is still eligible to participate in the promotion process. However, the member will not be eligible for promotion until the written warning becomes inactive and

suitable progress to improve performance in the deficient performance category(s) have been achieved and appropriately documented in the form of an NCVIP comment within a member's performance plan.

- A member participating in the promotion process, or who is on the current promotion list, who fails to maintain ratings of at least "Meets Expectations" in all performance categories, during the member's Annual Performance Evaluation (APE), will be removed from the promotion process or the current promotion list.

- Any member who is participating in the promotion process, or who is on the current promotion list and receives an active disciplinary action, to include a written warning, shall be deemed ineligible for promotion, until such time that the member meets the requirements of this section.

- Any candidate who has a break in service must have a minimum of twelve (12) months continuous service by the online application deadline

VII. THE PROMOTIONAL PROCESS FOR LIEUTENANT, FIRST SERGEANT AND SERGEANT

Components of the Promotional Process

Candidate overall promotional scores shall consist of four (4) components:

- Job Knowledge Written Examination
- Assessment Center
- Administrative Interview
- Preference Points

Job Knowledge Written Examination

All Ranks: All candidates for promotion to Sergeant, First Sergeant and Lieutenant must complete a comprehensive and job-related job knowledge written examination.

The written examination will be based on sources (e.g., policy manual, general statutes, etc.), which will be disclosed to candidates no fewer than 45 days before test administration.

Advancement to the Assessment Center

Candidates shall advance to the Assessment Center as follows:

- The maximum number of candidates which shall advance to the Assessment Center will vary by rank, and can be found in the below chart:

Rank	Maximum Number of Candidates*
Sergeant	100
First Sergeant	50
Lieutenant	30

- Candidates shall advance to the Assessment Center, in rank order, beginning with the highest score on the written job knowledge examination until the maximum number of eligible candidates is met within each rank.

  Exception: If two (2) or more candidates tie for the last available position, all of the candidates tied for that position shall be allowed to advance to the Assessment Center.

Assessment Center Structure

The Assessment Center shall be a structured process in which candidates respond (orally or in writing) to questions and/or a variety of situations or exercises.

The assessors shall be trained in testing, measurement, and evaluation and may include any of the following:

- Individuals external to the agency;

- Law enforcement professionals holding an appropriate level of rank or position (i.e., at or above the rank being assessed).

The assessment panel shall consist of no fewer than two (2) assessors.

Administrative Interview

The Administrative Interview shall be a structured interview process conducted in conjunction with, or separately from the Assessment Center.

All candidates who participate in the Assessment Center shall be eligible to participate in the Administrative Interview.

The assessors of the Administrative Interview may consist of the following:

- Individuals external to the agency with training in testing, measurement and evaluation.

- Law enforcement professionals holding an appropriate level of rank or position (i.e., at or above the rank being assessed).

- Members of the Commander's Office, or their designee(s).

- The assessment panel shall consist of no fewer than two (2) assessors.

Preference Points

Preference points refer to *preferred experience(s),* which may augment candidates' final promotional score. Preference points shall have no impact on who advances to the Assessment Center.

There are two (2) categories of preference points:

- Education Points:

  - Education points will only be calculated for terminal degrees. Members who have obtained a bachelor's, or advanced degree, from an accredited university or community college that is recognized and listed by the Council for Higher Education Accreditation (CHEA) will receive preference points.

  - Education points are calculated as follows:

    - 1 point for associate's degree

    - 2 points for bachelor's degree

    - 3 points for master's degree or above

- Military Points:

  - Members may receive credit for fulltime active duty military experience prior to joining the North Carolina State Highway Patrol as noted on a DD-214. Prior military experience is defined as any member who served fulltime, active duty capacity in a branch of the US Military prior to employment with the Patrol. Members who served or are serving in the National Guard or Reserves may also qualify for military points. Certifications of service shall be submitted using official documentation from the unit in which the member served/serves.

  - Military points are calculated as follows:

    - 3 points for two (2) or more years of active duty with an honorable discharge, or two (2) or more years of duty within the

National Guard or Reserves with an honorable discharge, if applicable.

The maximum preference points a candidate can achieve within one category is 3 points. For example, if a candidate has a bachelor's degree (2 points) and a master's degree (3 points), the candidate may only use the points from the master's degree (3 points). Candidates may not add the points from both degrees.

The maximum preference points a candidate can achieve across all categories is 5 points. For example, if a candidate has a master's degree (3 points) and served two (2) years in the military (3 points), the candidate would have the maximum allowance of 5 points added to the final promotional score.

Placement on the Promotional List

Candidates shall be placed in top down rank order on the promotional list for their respective rank, based upon the following formulas:

Rank	Formula
Sergeant	Final Promotional Score = (Written Exam Score * .25) + (Assessment Center Score * .55) + (Administrative Interview Score * .20) + Accumulated Preference Points
First Sergeant	Final Promotional Score = (Written Exam Score * .25) + (Assessment Center Score * .55) + (Administrative Interview Score * .20) + Accumulated Preference Points
Lieutenant	Final Promotional Score = (Written Exam Score * .20) + (Assessment Center Score * .60) + (Administrative Interview Score * .20) + Accumulated Preference Points

VIII. PROMOTION ELIGIBILITY LIST

The Director of Professional Standards will receive the lists of Troopers, Sergeants, and First Sergeants in descending order of their overall promotional score from the testing vendor and submit them to the Commander's Office for approval to post.

- Scores will be computed to the thousandth of a point
- If the scores of any candidates are equal, the candidate with the highest score on the assessment center will determine their rankings.

- In the event scores remain equal following the above step, the final ranking will be determined based on the candidate's organizational tenure, with the candidate with the longest tenure receiving the higher placement on the list.

- In the event scores remain equal following the above step, the Patrol Commander will determine the ranking

- At a **minimum**, a promotion eligibility list of the top fifty (50) Troopers, the top thirty (30) Sergeants, and the top twenty (20) First Sergeants, will be posted based upon the overall promotion score.

- Each promotion eligibility list will be divided into blocks of ten (10) candidates for each rank. The first block shall be comprised of the top ten (10) candidates of each prospective rank based upon their Total Promotion Score.

- Promotions will be filled from the first block of ten (10), of the promotional list, until all eligible candidates have been promoted, bypassed, or have declined a promotion before moving onto the next block of ten (10).

- The Commander's Office may select any of the candidates in the first block

- Promotions into supervisory positions may be made from the promotional list (in effect at the time), based upon organizational needs, and at the discretion of the Patrol Commander

- The Commander's Office may select the highest-ranking member on the promotion list who possesses the qualifications for a specialized position. These specialized positions and their required qualifications are posted on the Patrol's Intranet. A member that accepts a promotion into a specialized position must remain in that position for a minimum of two (2) years unless they were selected for the promotion within the current block of ten (10).

- Promotional candidates who are offered a promotion and declines the promotion, shall submit a written memorandum through the chain-of-command to the Commander. The promotional candidate will then be placed at the bottom of the promotion list.

- A promotional candidate who is currently under criminal, and/or administrative investigation or has a criminal court action pending or a pending civil action in which the disposition of the court action could cause the member to be unable to perform his/her duties shall be bypassed until the matter has been resolved to the satisfaction of the Commander's Office

- A promotional candidate who receives any disciplinary action to include a written warning shall be bypassed and shall not be eligible for promotion.

- A promotional candidate on the current promotion list who is unfit for duty due to an off-duty or on-duty injury/illness shall be bypassed until they are declared fit for duty by the Patrol Medical Director.

- At the discretion of the Commander's Office, a bypassed candidate may be offered a promotion at a later time

IX. CANDIDATE FEEDBACK

After completion of the promotion process, all eligible candidates will receive scores on the following components:

- Job Knowledge Written Examination

- Assessment Center

- Administrative Interview

- Preference Points

All promotion candidates will receive a comprehensive written feedback document developed by the testing vendor that will be disseminated by the Commander's Office or their designee(s) at the completion of the promotion process.

I. POLICY

To provide a spirit of excellence by continuously improving quality through the involvement of all employees and focusing on services that exceed customer expectations.

II. FOUNDATION OF NORTH CAROLINA STATE HIGHWAY PATROL (NCSHP) QUALITY (CALEA 12.1.4)

The Highway Patrol Foundation of Quality is based upon the following five (5) factors:

- Leadership
- Employees
- Strategic Planning **(CALEA 15.1.3; 15.2.1)**
- Process
- Measurement and Assessment

These factors align and are identical to the Department of Public Safety's (DPS) Five Pillars of Quality.

III. LEADERSHIP

It is the responsibility of senior leaders to set direction, build, and sustain a leadership system conducive to high performance, individual development, initiatives, organizational learning, and enhanced customer partnerships and satisfaction.

Quality Management Board (QMB) Structure (CALEA 15.2.2)

- The QMB is composed of all senior leadership to include:
  - Colonel
  - Lieutenant Colonel
  - Majors
  - Other Sworn and Non-Sworn Section Directors
  - Troop Commanders

- Others designated by the Commander's Office

Quality Management Board (QMB) Responsibilities (CALEA 15.1.3)

- The QMB is responsible for implementing the Highway Patrol's Quality Policy and providing direction and guidance for successful implementation of these initiatives to the field personnel. This includes:
  - Establishing, tracking and evaluating the effectiveness of the Highway Patrol's Strategic Plan **(CALEA 15.2.2)**
  - Linking with Highway Patrol Sections, Units, Troops, and Districts to provide:
    - Continuity of direction and leadership in focusing on quality improvement across the organization
    - Monitoring and evaluating results
    - Integrating best practices within sections, units, troops and districts
  - Promoting quality awareness
  - Communicating progress
  - Meeting routinely to advance quality improvement throughout the State Highway Patrol

IV. EMPLOYEES

The Highway Patrol's greatest and most valuable asset is its employees. The Patrol's success depends increasingly on the knowledge, skills and motivation of the work force and the opportunity to learn and practice new skills. The Highway Patrol will create a work environment that encourages employees to realize their fullest potential and to pursue quality and continuous improvement within the work place. This will be accomplished by:

- Recruiting, selecting, and retaining qualified employees
- Providing competency-based training and career development opportunities for employees
- Increasing employee empowerment, involvement, and innovation in the work place
- Encouraging and rewarding employee contributions and successes through formal and informal recognition systems

- Measuring employee satisfaction on a regular basis and establishing action plans to address organizational and employee issues

- Enhancing open communications throughout the organization

V. STRATEGIC PLANNING (CALEA 15.1.3; 15.2.1)

Strategic planning provides annual systematic planning. The State Highway Patrol must have an effective Strategic Planning process that integrates quality requirements into overall organizational planning. The plans must include strategies for:

- Achieving a vision of the future

- Setting focused, short and long-term directions for quality leadership, operational performance and customer satisfaction goals

- Translating these directions into a clear and actionable plan

The Strategic Plan will include:

- Mission

- Vision

- Values

- Trends and Implications **(CALEA 15.1.3)**

- Goals

- Objectives **(CALEA 15.1.3)**

- Strategies

- Activities

The Highway Patrol Strategic Plan will be linked and aligned with the DPS Strategic Plan.

The Highway Patrol Strategic Plans goals and objectives will be annually reviewed and updated at The Annual Strategic Plan Goals and Objectives review meeting.

VI. PROCESS

To provide excellent service to our customers, it is imperative that the Highway Patrol and its sub-units continuously review and improve key and critical processes. This evaluation considers all process variables including people, machines, equipment, raw materials, methods, and environment that produces a given product or service. **(CALEA 15.1.3)**

Process Management

- The Highway Patrol shall identify, prioritize, and improve designated key and critical processes.

- The Highway Patrol will use data and benchmarking techniques in assessing processes and organizational performance.

Process Improvement

- When improving processes, divisions will seek input from those who use or are affected by the process.

- Teams may be formed to improve processes as follows:

    - The task is complex and is important to justify the time invested.

    - There is no crisis and there is time for team development.

    - The task or process is cross-functional.

    - The path to proceed is unclear with no prior mandated outcome or solution.

- Teams will utilize quality management and planning tools to select the best practices in making process improvements.

- Leadership will consciously strive to support team decisions.

VII. MEASUREMENT AND ASSESSMENT

Measurement

- The use of data, analysis, and measurement shall be the primary means to support decision-making in:

    - Strategic planning

    - Process improvement

    - Performance improvement

- Customer satisfaction
- Employee development and satisfaction

Benchmarking

- Comparisons, benchmarking information, and data will be used to drive improvement of overall performance and process improvements.

Organizational Assessment

- Regular organizational assessments, based on the Public Sector Performance, will be used to determine progress toward organizational goals and to develop action plans.

I. POLICY

This policy sets forth standard guidelines for Staff Inspections, Line Inspections and Bi-Annual Personnel Inspections. These inspections will encompass a comprehensive review of administrative files, current processes, and review of issued equipment, personnel, and the agency's computer assets. All components of the inspection process will be utilized to determine organizational efficiency and the overall readiness of the agency to respond to the needs of the public

II. STAFF INSPECTIONS

The Inspection Unit shall inspect troop and district operations as well as section and subsection operations to determine whether resources are being used effectively, efficiently and in accordance with Patrol Policy, and whether resources are adequate to perform the assigned duties of the Patrol. All findings will be documented on form HP-340 (Inspection Report) and form HP-340A (Observational Checklist). Staff Inspections may be announced or unannounced as determined by the Commander's Office or the Director of Professional Standards.

Mandatory Staff Inspections shall be conducted by the Inspections Unit, within all organizational components, at least every three (3) years in accordance with the published "Calendar of Inspections," which is located on the Highway Patrol's internal website.
Deficiencies identified during Staff Inspections that indicate a rating of BS (Below Standards) and/or CA (Corrective Action) on any category of the HP-340 shall be discussed by the Inspections Unit Manager and the affected troop/district/section/subsection supervisor. Each category of the HP-340 indicating a rating of BS (Below Standards) and/or a rating of CA (Corrective Action) that cannot be immediately corrected will require a separate response in a single memorandum. This memorandum shall be prepared by the affected district first sergeant, subsection manager/supervisor, or other designee, and should describe any and all Corrective Action(s) to bring those areas into compliance. The memorandum shall be forwarded to the appropriate Section Director or Troop/Unit Commander who will forward a copy to the Unit Manager of Inspections. This memorandum shall be filed in the affected section/ sub-section or troop files no later than thirty (30) calendar days from the day the final Inspection Report is received by the affected Section Director or Troop/Unit Commander.

The results of all Staff Inspections shall be recorded on forms HP-340 and HP-340A, and be reviewed by the Unit Manager of Inspections who will then prepare an overview of the Staff Inspection results and submit his/her findings to the Director of Professional Standards, and respective Section Director or

Troop/Unit Commander within fifteen (15) working days of the completion of the Staff Inspection. After review, the Staff Inspection results shall be filed in accordance with the respective Filing Guide requirements. All required responses may be encompassed in a single memorandum to the Unit Manager of Inspections, via the chain-of-command, no later than thirty (30) calendar days from the day the final Inspection Report is received by the affected Section Director or Troop/Unit Commander. Upon final review of the findings, the Unit Commander of Inspections shall forward a copy of the Staff Inspection Summary to the Director of Professional Standards and the Commander's Office for his/her reviews.

During the next Staff Inspection, the inspection team shall review the previous Line Inspection Report (HP-340) while conducting the Staff Inspection. Each category which was rated Meets Standards/Corrective Action or Below Standards, the deficiencies noted on the HP-340 shall be inspected to ensure the corrections which could not be made at the time of the previous inspection were corrected by the appropriate supervisors. If the corrections were not made from the previous Line Inspection, then the applicable category or categories will be rated Below Standards and documented on the current HP-340.

III. LINE INSPECTIONS

Troop Lieutenants (working in tandem), Section Directors or their designee shall inspect troop and district operations as well as section and subsection operations to determine whether resources are being used effectively, efficiently and in accordance with Patrol Policy, and whether resources are adequate to perform the assigned duties of the Patrol. All findings will be documented on forms HP-340 and HP-340A. Line Inspections may be announced or unannounced as determined by the Commander's Office, the Director of Professional Standards, or the appropriate Section Director or Troop/Unit Commander.

Mandatory Line Inspections shall be conducted at least yearly, other than the year when a Staff Inspection is conducted, in accordance with the published "Calendar of Inspections," which is located on the Highway Patrol's internal website.

Deficiencies identified during Line Inspections that indicate a rating of BS (Below Standards) and/or CA (Corrective Action) on any category of the HP-340 shall be discussed by the troop/section inspecting officer and the affected troop/district/section/subsection supervisor. Each category of the HP-340 indicating a rating of BS (Below Standards) and/or a rating of CA (Corrective Action) that cannot be immediately corrected will require a separate response in a single memorandum. This memorandum shall be prepared by the affected district first sergeant, subsection manager/supervisor, or other designee, and should describe any and all Corrective Action(s) to bring those areas into compliance. The memorandum shall be forwarded to the appropriate Section Director or Troop/Unit Commander who will forward a copy to the Unit Manager of Inspections. This memorandum shall be filed in the affected section/ sub-section or troop files no later than thirty (30) calendar days from the completion date indicated on the HP-340.

The results of all Line Inspections shall be recorded on forms HP-340 and HP-340A, and be reviewed by the respective Troop Commander/Section Director. After review, the Line Inspection results shall be filed in accordance with the respective Filing Guide requirements and a copy of the Line Inspection shall be forwarded to the Unit Manager of Inspections within thirty (30) calendar days after completion of the Line Inspection.

During the next Line Inspection, the Troop Lieutenants shall review the previous Staff/Line Inspection Report (HP-340) while conducting the Line Inspection. Each category which was rated Meets Standards/Corrective Action or Below Standards, the deficiencies noted shall be inspected to ensure the corrections which could not be made at the time of the previous inspection were corrected by the appropriate supervisors. If the corrections were not made from the previous Staff/Line Inspection, then the applicable category or categories will be rated Below Standards and documented on the current HP-340.

IV. BI-ANNUAL PERSONNEL INSPECTIONS

Supervisors shall conduct detailed Bi-Annual Personnel Inspections as outlined on the Bi-Annual Personnel Inspection Instructions. Bi-Annual Personnel Inspections must be conducted in April (March 15th – May 15th Inspection Period) and October (September 15th –November 15th Inspections Period) of each respective calendar year for Troopers and Sergeants to ensure operational readiness. All First Sergeants shall be inspected during their Troop/Section Line Inspection. Commissioned Officers shall be inspected during their Staff Inspections. Bi-Annual Personnel Inspections shall be conducted during the member's normal duty hours.

Deficiencies identified in the member's personal grooming, uniforms, vehicle, or equipment that cannot be immediately corrected at the time of the inspection shall be corrected and re-inspected within five (5) working days or as soon as practical after the Bi-Annual Personnel Inspection.
In addition to the mandatory Bi-Annual Personnel Inspections, supervisors may conduct detailed personal inspections at any other time they deem appropriate, (Special Assignments i.e. State Fair, races, football games, other special assignments not mentioned, formal inspection conducted by the appropriate Section Director or Troop/Unit Commander). All inspections shall be conducted in a professional manner and at a location that is inconspicuous to the general public.

Members who are on leave for an injury, illness, maternity, military, education (e.g. SPI, AOMP, FBI), or light duty shall be inspected upon immediate return to full duty status in order to ensure operational readiness.

The inspecting member responsible for conducting the inspection must print a copy of all four (4) pages of the member's CAD-PIF data, (HPC-723.8) to include specialized training codes, before the inspection begins. The member being inspected shall be given a copy of the data prior to the inspection and shall be responsible for reviewing and or updating the information if applicable. During

the inspection, the inspector shall review the information together with the member to ensure accuracy. Both the member and the inspector shall sign the revised CAD information and attach same to the final Bi-Annual Personnel Inspection Report.

Deficiencies in Vital Equipment

- If a member's patrol vehicle, firearm, or other issued vital equipment is found to be unsafe at the time of inspection, it shall be taken out of service until replaced or the deficiency is corrected. The item replaced or corrected shall be re-inspected and all events documented on the Bi-Annual Personnel Inspection Report.

- Should any issued equipment be lost, stolen, or damaged to the point it is rendered ineffective, a memorandum from the member documenting the facts shall be directed to the Ranking Supervisor and then forwarded to the Director of Support Services, Logistics Unit (as soon as possible) via chain-of-command. This should be noted in the comments section of the Bi-Annual Personnel Inspection Report.

Rules of Personal Conduct and Job Performance

Directive H.01

Applicable to: Members
CALEA Chapters 12; 26; 35

Revised 4/8/2008
Effective 8/27/1999

I. POLICY

This policy establishes policies and rules for governing the conduct and performance of Patrol members. **(CALEA 12.2.1; 35.1.9)**

II. GENERAL POLICIES AND PROCEDURES (CALEA 26.1.1; 35.1.9)

The Highway Patrol Rules of Personal Conduct and Job Performance shall govern the official and unofficial actions of each uniformed member of the Patrol. All members shall conduct themselves, both on and off duty, in a manner which will not in any way reflect negatively upon the professional image of the Patrol or of any of its members.

Each member charged with a violation of the rules of conduct or job performance should be charged with a violation under a specific section, when applicable. Any member against whom a charge is filed shall be given notice of the specific section he/she is alleged to have violated. A member charged with violating one of the specific subsections in this directive shall not also be charged with violating Sections III (Conformance to Laws), IV (Violation of Rules), V (Unbecoming Conduct), or VI (Unsatisfactory Job Performance) for the same conduct.

If an investigation reveals that a member has not violated the subsection under which he/she is charged but has instead violated some other subsection, or that the member should be charged with a different type of violation, the investigator shall contact the Unit Commander of Internal Affairs for directions as to how to proceed.

An accumulation of disciplinary actions taken against a member may be deemed sufficient cause for dismissal, demotion, or other disciplinary or administrative action as provided in this manual.

III. CONFORMANCE TO LAWS (CALEA 26.1.1)

Each member shall obey the laws of the United States, the State of North Carolina and of local jurisdictions. If facts revealed by a thorough investigation indicate there is substantial evidence that a member has committed acts which constitute a violation of a civil or criminal law, ordinance, or infraction other than a parking ordinance, then the member may be deemed to have violated this subsection, even if the member is not prosecuted or is found not guilty in court.

The reporting provisions located in Directive H.02, Section V, “Employee Criminal Charges / Arrest Notification Procedures” shall be adhered to.

IV. VIOLATION OF RULES (CALEA 26.1.1)

Members shall not commit any act or fail to perform any act which would constitute a violation of any of the rules, regulations, directives, orders, or policies of the Patrol, whether or not they are stated in this directive. Ignorance of Patrol rules, regulations, directives, orders, or policies shall not justify any such violation. Members shall be responsible for their own acts, and they shall not unjustly attempt to shift to others the responsibility for executing or for failing to execute a lawful order or a Patrol duty.

V. UNBECOMING CONDUCT (CALEA 26.1.1; 35.1.9)

Members shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably upon the Highway Patrol and in keeping with the high standards of professional law enforcement. Unbecoming conduct shall include any conduct that constitutes unacceptable personal conduct pursuant to State Personnel Policy and any conduct which tends to bring the Patrol into disrepute, or which reflects discredit upon any member(s) of the Patrol, or which tends to impair the operation and efficiency of the Patrol or of a member, or which violates Patrol policy.

VI. UNSATISFACTORY JOB PERFORMANCE (CALEA 26.1.1; 35.1.9)

Members shall maintain sufficient competency to properly perform their duties and to assume the responsibilities of their positions. Members shall perform their duties in a manner, which will tend to establish and maintain the highest standards of efficiency in carrying out the functions and objectives of the Patrol.

Examples of unsatisfactory performance include but are not limited to the following:

- Failure to properly supervise subordinates
- Lack of knowledge of the proper application of laws the member is required to enforce
- Unwillingness or inability to perform assigned tasks
- Failure to conform to work standards established for the member's rank, grade, or position
- Failure to take appropriate enforcement action at any time
- Absence without leave
- Unnecessary absence from assigned duty

The following will be considered prima-facie evidence of unsatisfactory performance:

- Repeated poor job performance evaluations

- Repeated infractions of policy, regulations, manuals, or directives

VII. TRUTHFULNESS (CALEA 26.1.1)

Members shall be truthful and complete in all written and oral communications, reports, and testimony. No member shall willfully report any inaccurate, false, improper, or misleading information.

VIII. COURTESY (CALEA 26.1.1; 61.1.8,)

Members shall be as courteous to the public as possible. Members shall be tactful in the performance of their duties. They shall exercise the utmost patience and discretion in performing their duties and shall be as polite as possible with the public. While in uniform, members shall not use coarse, violent, profane, obscene, or insolent language or gestures and shall not publicly express any prejudice concerning race, religion, politics, national origin, life style, or similar personal characteristics.

IX. ABUSE OF POSITION (CALEA 26.1.1)

Members are prohibited from using their official positions or their official identification cards and badges for:

- Intimidating or harassing of anyone for personal reasons

- Obtaining privileges not otherwise available to them or to someone else

- Avoiding the consequences of illegal acts

Members are prohibited from lending their identification cards or badges or any replica thereof to another person or permitting these items to be photographed or reproduced.

X. SEEKING OR ACCEPTING GIFTS, FAVORS, OR BRIBES (CALEA 26.1.1)

Except as authorized by Directive H.03, members shall neither solicit nor accept from any person, business, or organization any gift, favor, or bribe.

XI. USE OF ALCOHOLIC BEVERAGES (CALEA 26.1.1)

Members shall not ingest any intoxicant while in uniform.

Members shall not appear for duty or be on duty while under the influence of intoxicants to any degree whatsoever, nor shall they have any odor of intoxicants on their breath.

Members shall not bring or allow to be brought into or store alcoholic beverages in any Patrol facility or vehicle, except alcoholic beverages which are being held as evidence, and then only in conformance with Patrol procedures.

XII. USE OF ALCOHOLIC BEVERAGES WHILE OFF DUTY (CALEA 26.1.1)

While off duty, members shall refrain from ingesting any intoxicants to the extent that such ingestion results in appreciable impairment which would tend to discredit the member or the Patrol or to render the member unfit to report for his/her next regular tour of duty, including having any amount of intoxicant in his/her system.

XIII. USE OF DRUGS (CALEA 26.1.1)

Members shall not ingest any illegal controlled substance that is illegal under State or federal law.

Members shall not ingest any controlled substance without a prescription.

Members shall not ingest any prescribed drug(s) in amounts above prescribed dosage.

Members shall not possess any illegal controlled substance or any controlled substance without a prescription other than for evidentiary purposes and then only in conformance with Patrol procedures.

Members shall not knowingly use performance enhancing drugs (Anabolic-Androgenic Steroids, Testosterone, Human Growth Hormone) or any other controlled substance that may be used for the purpose of performance enhancement, unless prescribed for use as a medical necessity by a board certified physician who is licensed by the State that he/she generally practices medicine. Except in emergency, life and death circumstances, members who have a prescription for any performance enhancing drug must consult with the Patrol's Medical Director prior to using the drug. Members who are prescribed any performance enhancing drug will not be allowed to report for duty without prior approval of the Medical Director.

XIV. CONFIDENTIALITY OF INFORMATION (CALEA 26.1.1)

Members shall treat the official business of the Patrol as confidential. Information regarding official business shall be disseminated only to those persons for whom it is intended and only in accordance with established Patrol procedures. Members may remove and/or copy official records or reports from Patrol files or from Patrol installations only in accordance with established State Personnel, Departmental, and Patrol procedures. Members shall not divulge the identity of persons giving confidential information except when properly authorized for the performance of Patrol duties.

XV. REPORTING FOR DUTY (CALEA 26.1.1)

Members shall report for duty at the time and place required by assignment or orders and shall be capable of performing their duties. They shall be properly equipped and cognizant of information required for the proper performance of duty so that they can immediately assume their duties. A subpoena or order to appear in court or at an administrative hearing shall constitute an order to appear for duty as provided in this section.

XVI. FICTITIOUS ILLNESS OR INJURY (CALEA 26.1.1)

Members shall not feign illness or injury, falsely report themselves ill or injured or otherwise deceive or attempt to deceive any official of the Patrol as to the condition of their health.

XVII. HIGHWAY PATROL REPORTS (CALEA 26.1.1)

Members shall submit all necessary reports on time and in accordance with established Patrol procedures.

XVIII. INSUBORDINATION (CALEA 12.1.3; 26.1.1)

Members shall promptly obey any lawful order of a superior officer. This will include orders relayed from a superior officer by an employee of the same or lesser rank. Any disrespectful, mutinous, insolent or abusive language, conduct, or attitude directed toward a superior officer or the authority or the position shall be considered insubordination.

XIX. CONFLICTING OR ILLEGAL ORDERS (CALEA 12.1.3; 26.1.1)

Members who are given an order, which is in conflict with a previous order, rule, regulation, directive or manual shall respectfully point out the conflict to the officer issuing the order. If the superior officer issuing the order does not alter or retract the conflicting order, the order shall stand. Under these circumstances, the responsibility for issuing and carrying out a conflicting order shall rest upon the superior officer. Members shall obey the conflicting order and shall not be held responsible for disobedience of the order previously issued. Members shall not obey any order that would require them to commit any illegal act. If in doubt as to the legality of the order, members shall request the issuing officer to clarify the order or shall confer with a higher authority.

XX. OPERATION OF VEHICLES AND AIRCRAFT (CALEA 26.1.1)

Members shall operate official vehicles and aircraft in a careful and prudent manner and shall obey all laws of the State, Federal Regulations, and all Patrol policy pertaining to such operation.

XXI. USE OF PATROL EQUIPMENT (CALEA 26.1.1)

Members shall utilize Patrol equipment only for its intended purpose in accordance with established Patrol procedures and shall not deliberately or through carelessness, abuse, damage, or lose Patrol equipment. All Patrol equipment issued to members, including manuals, shall be maintained in proper order.

Members shall immediately notify the Director of Support Services Section via chain-of-command of any Patrol equipment that is lost or damaged.

A member may receive disciplinary action for lost, damaged, or stolen equipment when caused by negligence of the member. The member's immediate supervisor shall investigate and make recommendations to the appropriate Section Director/Troop Commander. The appropriate Section Director/Troop Commander, with the advice and assistance of the Unit Commander of Internal Affairs will determine whether to conduct a further investigation.

If it is determined that a member was negligent, disciplinary action may be imposed against the member for lost, damaged or stolen equipment. In appropriate circumstances, the State Highway Patrol may take or seek additional appropriate action against the negligent member to obtain restitution.

XXII. REQUESTS FOR ASSISTANCE (CALEA 26.1.1)

When any person applies for assistance or advice, either by telephone or in person, members while on duty or in uniform shall accept all pertinent information in an official and courteous manner and will properly and judiciously act upon such information in a manner consistent with established Patrol procedures.

XXIII. IDENTIFICATION (CALEA 26.1.1)

Members while on duty, while in uniform, or while acting in the capacity of a law enforcement officer shall furnish their names and other identification to any person requesting that information except when the withholding of such information is necessary for the performance of Patrol duties.

XXIV. CITIZEN COMPLAINTS (CALEA 26.1.1; 35.1.9)

Members shall courteously and promptly accept and record complaints made by citizens against any member or any Patrol policy or procedure in accordance with Patrol policy.

XXV. CONDUCT WHILE UNDER INVESTIGATION (CALEA 26.1.1)

Any member being investigated for any reason shall cooperate with investigating officers and shall be subject to the policy set forth in this manual.

XXVI. NEGLECT OF DUTY (CALEA 26.1.1)

Members shall not be inattentive to duty nor neglect their duties. Members shall not engage in any activities or personal business which would cause them to neglect or be inattentive to duty or which would impair their ability to perform such duty.

A supervisor's failure to take appropriate action when he/she has personal knowledge of violations of the Rules of Personal Conduct and Job Performance by subordinates; shall be considered serious neglect of duty.

XXVII. ASSOCIATIONS (CALEA 26.1.1)

Members shall avoid regular or continued association or dealings with persons whom they know, or should know, are under criminal investigation or indictment or who have a reputation for ongoing involvement in felonious or criminal behavior, except as necessary in the performance of official duties.

XXVIII. VISITING PROHIBITED ESTABLISHMENTS (CALEA 26.1.1)

Members shall not willfully visit, enter, or frequent a house of prostitution, gambling house, or establishment wherein the laws of the United States, the State of North Carolina, or the local jurisdiction are regularly violated or reputed to be regularly violated, except in the performance of duty or while acting under proper and specific orders from a superior officer.

XXIX. GAMBLING (CALEA 26.1.1)

Members shall not engage in any form of gambling which is in violation of federal, State, or local laws.

XXX. PAYMENT OF DEBTS (CALEA 26.1.1)

Members shall not undertake any financial obligations which they know or should know they will be unable to meet and shall pay all just debts promptly. An isolated instance of financial irresponsibility will not be grounds for discipline except in unusually severe cases. However, repeated instances of financial irresponsibility shall be cause for disciplinary action.

Financial difficulty stemming from unforeseen medical expenses or personal disaster shall not be cause for discipline, provided that the member is making a reasonable, good faith effort to settle all accounts.

Members shall not become financially obligated to subordinates or supervisors.

XXXI. ENDORSEMENTS AND REFERRALS (CALEA 26.1.1)

Members shall not recommend or suggest in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service, or commercial service such as an attorney, ambulance service, towing service, bondsman or mortician.

In the case of ambulance or towing service, when such service is necessary and the person needing the service is unable or unwilling to procure it or requests assistance, members shall proceed in accordance with established Patrol policy.

XXXII. PUBLIC APPEARANCES AND STATEMENTS (CALEA 26.1.1)

Members shall not publicly criticize or ridicule the Patrol, its policies, or other members by speech, writing, or other expression when such criticism or ridicule directly or visibly affects or would reasonably be expected to directly or visibly affect the operation of the Patrol.

Without official approval, members shall not address gatherings, appear on radio or television, prepare any article for publication, act as correspondents to a newspaper or periodical, or release or divulge investigative information or any other matters pertaining to the Patrol while holding themselves out as having an official capacity in such matters. Official approval may be given to conduct highway safety programs and otherwise release information concerning highway safety matters so long as this activity does not conflict with the official position of the Highway Patrol.

XXXIII. LABOR ACTIVITIES (CALEA 26.1.1)

Members shall have the right to join labor organizations, but nothing shall compel the Patrol to recognize or to engage in collective bargaining with any such labor organizations except as provided by law.

Members shall not engage in any strike. Strike includes the concerted failure by more than one member to report to duty, willful absence from one's position, unauthorized holidays, feigned sickness, the stoppage of work, and improper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of employment.

XXXIV. SEEKING PREFERENTIAL TREATMENT (CALEA 26.1.1)

Members shall not solicit petitions, influence, or intervene with any person outside the Highway Patrol for purposes of preferential treatment, advantage, transfer, advancement, promotion, or change of duty or duty station for themselves or for another member. Members should not knowingly encourage others to take such action on their behalf.

XXXV. OBSTRUCTION OF INVESTIGATION (CALEA 26.1.1)

Patrol members shall not intentionally delay or obstruct the Patrol's response to a complaint or minimize the importance of a problem being complained against or obstruct the proper investigation of a problem which is the subject of a complaint. Patrol members shall not refuse to answer any question which is narrowly and directly related to any matter under investigation.

Investigation of Complaints and Charges Against Highway Patrol Employees

Directive H.02
Revised 11/13/2020
Effective 10/11/2011

Applicable to: Employees

I. POLICY

This policy provides guidelines for accepting, recording, resolving, and forwarding complaints.

For the purpose of this policy, a personnel complaint (complaint) is defined as: an allegation from any source pertaining to a specific act or omission by an employee which if true would constitute a violation of policy or law.

II. ACCEPTING, RECORDING, RESOLVING, AND FORWARDING COMPLAINTS

Accepting Complaints

- A complaint or charge against an employee may originate from within the Patrol or from the general public. Charges from within the Patrol shall be processed as hereinafter provided in this directive. Complaints from the general public shall be courteously accepted by any employee of the Patrol and shall be processed as hereinafter provided in this subchapter. No employee shall attempt to dissuade any person from lodging a complaint. A supervisor has the obligation to investigate possible violations of policy even if the person providing the information does not want a complaint filed.

Resolving Complaints Based on Misunderstanding of Patrol Policy

- In the case of complaints involving a misunderstanding of traffic laws or Patrol policy on the part of the complainant, the employee receiving the complaint shall attempt to resolve the complaint by explaining the law or the policy to the complainant. If unable to resolve the complaint, the employee shall refer the complaint to his/her supervisor, who shall attempt to resolve it. If the supervisor is unable to resolve it, the supervisor shall refer the complaint on up the chain-of-command.

Recording Complaints Alleging Violation of Code of Conduct

- If the complaint involves a possible violation of the Rules of Personal Conduct, Grossly Inefficient Job Performance, or Job Performance by any employee of the Patrol, the employee receiving the complaint shall accept the complaint, record the information and forward the information to his/her appropriate supervisor, who shall be responsible for completing a Personnel Complaint in BlueTeam, if warranted, after consultation with the appropriate Section Director/Troop Commander. Such a complaint shall be accepted and

recorded even when the identity of the complainant and/or the employee is unknown.

- If the complainant indicates no desire to make a formal complaint but has indicated a violation of Patrol policy by an employee, this information must be transmitted to a supervisor. The supervisor must document the information and determine if such information warrants further inquiry to determine if a complaint should be filed by the supervisor. If the supervisor determines a violation of policy may have occurred, the supervisor shall complete the Personnel Complaint in the BlueTeam system, after consultation with the appropriate Section Director/Troop Commander.

- Supervisors shall record, utilizing the BlueTeam Comment on a Trooper, any complaints received which no personnel complaint is generated in BlueTeam and submitted for further investigation. The supervisor shall record any action taken using the Comment on a Trooper form in BlueTeam to ensure all complaints are recorded. The Comment on a Trooper shall be reviewed by the next level supervisor and forwarded to the "BlueTeam Administrator".

Forwarding Complaints Alleging Violation of Code of Conduct

- After completing a Personnel Complaint in BlueTeam, the supervisor shall immediately forward the complaint and any other appropriate documents to the Unit Commander of Internal Affairs. The Unit Commander of Internal Affairs shall acknowledge the receipt of all complaints to the complainant.

III. ADDITIONAL AUTHORIZED PATROL ADMINISTRATIVE ACTIONS

Relief from Duty

A supervisor may, on his/her own initiative, relieve a subordinate employee from duty for a period of not more than one workday at a time when he/she considers the subordinate employee unfit for duty when the subordinate employee:

- Refuses to submit to a drug test or refuses to comply with the testing procedures

- Has a physical or mental condition which might, in the judgment of the supervisor, render the subordinate employee incapable of adequately performing duties

- Has a physical or mental condition which makes a subordinate employee likely to perform duties in such a way as to embarrass or discredit the Patrol or jeopardize the safety of any person or property.

A supervisor who relieves a subordinate employee from duty shall immediately notify, via chain-of-command, the Section Director/Troop/Unit Commander and shall take possession of his/her issued Patrol vehicle, firearms, badges, and

identification credentials during the period of relief from duty. The Commander's Office may at this time order the relieved employee to be examined under the provision of this manual or order an Investigatory Leave in the event of a drug test refusal.

Investigatory Leave with Pay (ILWP)

The Commander's Office may temporarily place an employee on Investigatory Leave with Pay. The Commander's Office or his/her designee shall contact the Department of Public Safety (DPS) Human Resources Employee Relations office before proceeding with this action. Investigatory Leave with Pay shall be used to temporarily remove an employee from work status. Placement on investigatory leave with pay does not constitute a disciplinary action. However, the information discovered during the investigation may lead to disciplinary action. An employee may be placed on Investigatory Leave with Pay for any of the following reasons:

- To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action

- To provide time within which to schedule and conduct a pre-disciplinary conference

- To avoid disruption of the work place and/or to protect the safety of persons or property

Placement on Investigatory Leave with Pay does not constitute a disciplinary action as defined in this directive or State Law and cannot be appealed.

The employee will be notified, in writing of the reason for Investigatory Leave with Pay no later than the second scheduled workday after the beginning of the placement. The leave shall not exceed **30 calendar days** without written approval of extension from the Office of State Human Resources Director. In those cases where an extension is granted, the employee will be notified in writing of the extension, the length of the extension, and the reason for the extension.

If no action has been taken by the agency by the end of the thirty-day (30 day) period and no further extension has been granted, the agency must either take appropriate disciplinary action based on the findings from the investigation or return the employee to active work status.

Under no circumstance is it permissible to use placement on Investigatory Leave with Pay for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

An employee on Investigatory Leave with Pay will surrender his/her issued Patrol vehicle, firearms, uniform badges, and/or identification credentials. The supervisor placing the employee on Investigatory Leave shall ensure the

equipment is collected and transported to a location designated by the appropriate /Troop/Unit Commander for storage, required maintenance, or re-issuance. The safekeeping of property provision of Directive J.01 shall apply to any equipment stored in an evidence locker. Upon being cleared for duty, the surrendered equipment shall be returned to the affected employee.

Administrative Duties

If it is deemed to be in the best interest of the Highway Patrol, the Commander's Office may authorize a member to be placed on Administrative Duties in lieu of Investigatory Leave.

- A member assigned Administrative Duties will surrender his/her issued Patrol vehicle, firearms, uniform badges, and identification credentials. The supervisor placing the member on Administrative Duties shall ensure the equipment is collected and transported to a location designated by the appropriate /Troop/Unit Commander for storage, required maintenance, or re-issuance. The safekeeping of property provision of Directive J.01 shall apply to any equipment stored in an evidence locker. Upon being cleared for duty, the surrendered equipment shall be returned to the affected member.

- A member assigned Administrative Duties may not wear a uniform or drive or ride as a passenger in an assigned Patrol vehicle to and from the work place. The member shall be responsible for providing personal transportation to and from the workplace. Upon the approval of the appropriate supervisor, the affected member may be transported to a doctor's appointment, court, meal break, or any other administrative function. At **no time** will a member assigned Administrative Duties be allowed to ride as a passenger in an authorized Patrol vehicle during non-work hours. The member assigned Administrative Duties may also have the option of driving their personal vehicle to court, at which case, a request for mileage reimbursement at the approved state rate must be made by the member to his/her supervisor in advance. Suitable business attire must be worn and all regulations in this manual must be complied with when performing these assignments. The affected member's supervisor may permit deviation from the dress code to accomplish specific work objectives and/or as a consideration in adjusting to seasonal temperature variance. Member's administrative duties assignments shall not include enforcement action.

- Employees shall ensure they possess, in good standing, all credentials required by law, rule or regulation. Failure to obtain and maintain the legally required credentials is a basis for immediate dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for this reason shall be under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance, including a Pre-Dismissal Conference, written statement of the reason for the action, and appeal rights if a Career State Employee.

Administrative Duty Following Critical Incidents

Procedures following a critical incident:

- Any member whose actions or use of force results in a death or serious physical injury to anyone, after consultation between the member's Section Director/Unit/Troop Commander and State OD, shall be removed from their normal duty assignment immediately. The member's Section Director/Unit/Troop Commander shall request the Director of Support Services to place the member on Administrative Duty **upon being authorized by the Commander's Office**. The Section Director/Unit/Troop Commander shall follow-up in writing in the form of a memorandum outlining the reason(s) for the Administrative Duty and the member's limitations while on Administrative Duty. The memorandum shall be completed no later than the first scheduled workday after placing the member on Administrative Duty. The memorandum shall be forwarded to the Unit Commander of Internal Affairs via the chain-of-command. The Unit Commander of Internal Affairs shall provide a copy of the memorandum to the Director of Professional Standards. The Director of Support Services will oversee and track the affected member's Administrative Duty. Administrative Duty is not limited to shootings but shall include actions or uses of force which result in a death or serious injury including the **Precision Immobilization Technique (P.I.T.).**

- A supervisor shall order a member to take a drug and alcohol test to eliminate the possibility that drug or alcohol use may have affected the member's actions or judgment in any case where the member:

    - Intentionally or accidentally discharges his/her issued firearm, on or off duty. Exceptions to this include if a member is in training or if a member uses his firearm to put down a domestic or non-domesticated animal.

    - Is involved in a fatal motor vehicle collision.

    - Is involved in a motor vehicle collision which results in an apparent serious bodily injury as defined in N. C. General Statute § 14-32.4.

    - Has utilized the Precision Immobilization Technique (P.I.T) which results in an apparent serious bodily injury as defined in N. C. G. S. § 14-32.4 or death.

- A member on Administrative Duty may be required to surrender his/her issued Patrol vehicle, firearms, uniform badges, and identification credentials.

- A member assigned Administrative Duty may not wear a uniform or drive or ride as a passenger in an assigned Patrol vehicle to and from the work place. The member shall be responsible for providing personal transportation to and from the work place. Upon the approval of the appropriate supervisor, the affected member may be transported to a doctor's appointment, court, meal break, or any other administrative function. At no time will a member

assigned Administrative Duty be allowed to ride as a passenger in an authorized Patrol vehicle during non-work hours. Suitable business attire must be worn and all regulations in this manual must be complied with when performing these assignments. Member's Administrative Duty assignments shall not include enforcement action.

- Members who are involved in any critical incidents shall be referred to the Patrol Medical Office for evaluation of fitness-for-duty determination outlined in Directive E.15 (Member Health and Welfare).

IV. RESPONSIBILITY OF SUPERVISOR

It shall be the responsibility of the District First Sergeant, or, the ranking supervisor of a Troop/Unit to contact the District Attorney's Office when a member under their supervision is placed on Investigatory Leave, or Administrative Duties in lieu of Investigatory Leave. The affected supervisor should advise the appropriate court official of the member's inability to represent the Highway Patrol, and all requests for court appearances should be made by subpoena in the name of the affected member.

V. PRELIMINARY INVESTIGATIONS

Upon notification of incidents not clearly defined as violations of Patrol Policy or law or where the identity of the involved member(s) or employee(s) cannot be readily ascertained, the Unit Commander of Internal Affairs may direct a preliminary investigation be conducted. The purpose of this investigation shall be to gather additional foundational information to determine if in fact any violation(s) on the part of members has occurred. The investigation may evolve into a formal complaint dependent upon discovery of further evidence. Preliminary investigations, whether conducted in the field or within the Internal Affairs Unit, are assigned sequential numbers and are filed when completed at the Internal Affairs Unit.

VI. CLASSIFYING AND ASSIGNING COMPLAINT INVESTIGATIONS

Classification:

- The Unit Commander of Internal Affairs shall classify the alleged complaint as a Personal Conduct, Grossly Inefficient Job Performance, or Job Performance violation and direct an investigation.

Personal Conduct

- Personal Conduct violations are defined as actions which no reasonable person could or should, expect to receive prior warnings, or as otherwise defined in State law. As indicated by NC OSHR Disciplinary Action Policy,

Personal Conduct violations may include intentional or unintentional acts and may be job-related (on duty) or off duty so long as there is sufficient connection between the off duty conduct and the employee's job. Further definition of Personal Conduct Violations shall be found in The NC OSHR Disciplinary Action Policy Section IV. C. Disciplinary Action for Personal Conduct Violations are discussed in Policy H.04, Section V.

Grossly Inefficient Job Performance

- Grossly Inefficient Job Performance violations are defined as when an employee fails to satisfactorily perform job requirements as specified in his/her job description, work plan, or as directed by the management of the work unit or agency, and that failure results in the creation of the potential for death or serious bodily injury to Patrol employee(s), to members of the public, or to person(s) over whom the employee has responsibility; or the loss of or damage to State property or funds that result in a serious impact on the State and/or the Patrol. Disciplinary Actions for violations of Grossly Inefficient Job Performance are discussed in Policy H.04, Section V.

Job Performance

- Job Performance violations are defined as unsatisfactory job performance or less than serious violations of policy, which supervisors can educate, correct, and continue to promote improved employee performance. Specific examples are provided in the NC OSHR Disciplinary Action Policy Section IV. A.

Assigning Complaint Investigations:

- Once classified, the Unit Commander of Internal Affairs shall consider the following criteria in determining whether an investigation is assigned to supervisors other than Internal Affairs personnel: severity of the potential policy violation being investigated, and the prior work/disciplinary history of the accused employee.

- When an investigation is assigned to supervisors other than Internal Affairs personnel, the Section Director/Troop Commander shall designate the level of supervisory personnel to conduct the investigation.

VII. INVESTIGATION OF COMPLAINTS BY THE SECTION, TROOP, OR DISTRICT SUPERVISORY STAFF LEVEL

Designation of Investigator

- The supervisor responsible for imposing disciplinary action against an employee accused of a Personal Conduct, Grossly Inefficient Job Performance, or Job Performance violation may designate a subordinate within the supervisor's command to investigate the complaint. An investigator

must hold at least the rank of Sergeant. In complex investigations, any supervisor may request that the Internal Affairs Unit at Patrol Headquarters in Raleigh assist or take charge of, any specific investigation.

Conduct of the Investigation

- Before permitting the investigation to begin, the supervisor of the employee being investigated shall notify the employee of the investigation except in cases where such notification would jeopardize the investigation. Should the employee admit the conduct alleged and that such conduct is, in fact, a violation of policy, then the supervisor, in consultation with Internal Affairs, may impose the appropriate disciplinary action without further investigation. In the event the employee denies the violation with which the employee is charged, the investigation shall proceed as hereinafter provided.

- The employee shall be given an opportunity to supply the investigator with evidence or witnesses favorable to the employee. No decision as to <u>whether</u> the employee violated the rules of Personal Conduct, Grossly Inefficient Job Performance, or Job Performance shall be made against a charged employee until the employee has had a reasonable opportunity to produce evidence or witnesses and has had an opportunity to explain the employee's actions.

- The employee chosen to investigate the case shall not go outside the employee's assigned jurisdiction or neglect regular duties in order to carry out such investigation without the authority of the immediate supervisor. No investigative action shall be taken in any case where it might jeopardize a simultaneous or subsequent investigation.

- The investigator shall make every effort to complete the investigation within 30 calendar days. If unable to do so, the investigator shall inform the supervisor requesting the investigation who shall in turn notify Internal Affairs as to the reasons why the investigation cannot be completed within 30 calendar days and shall estimate the additional time needed to complete the investigation.

- <u>Upon conclusion of the investigation, the complainant shall be notified that the investigation has been completed.</u>

- If upon completion of the investigation, the First Sergeant or other supervisor authorized to impose disciplinary action determines that the final disposition of the investigation is unfounded, not sustained, or exonerated; the supervisor shall (after conferring with the Unit Commander of Internal Affairs) inform the employee and forward the Report of Investigation and all related documents to the Unit Commander of Internal Affairs for filing in the employee's personnel file.

If, upon completion of the investigation and after allowing the charged employee an opportunity to explain his/her actions, the supervisor determines that the allegation is sustained and that the employee should be disciplined, the

supervisor shall confer with the appropriate Section Director/Troop Commander and shall administer disciplinary action within the options authorized by the Unit Commander of Internal Affairs. Prior to authorizing the imposition of a written warning, the Unit Commander of Internal Affairs or their designee may consult with DPS Human Resources. Prior to authorizing the imposition of a suspension without pay, the Unit Commander of Internal Affairs or their designee shall consult with DPS General Counsel's Office and with DPS Human Resources.

VIII. INVESTIGATION OF COMPLAINTS BY THE INTERNAL AFFAIRS UNIT

The Unit Commander of Internal Affairs shall be responsible for the supervision of all complaints initiated at the request of the Commander's Office. The DPS Office of Special Investigations (OSI) will review all internal investigations involving in-custody deaths and shootings involving Patrol members.

Internal Affairs Investigation Procedures

- The Internal Affairs Unit shall notify the employee to be investigated and the employee's Section Director/Troop Commander that an investigation is to be made except in cases where such notification would jeopardize the investigation. In the event the charged employee admits the violation with which the employee is charged, the Internal Affairs Unit shall prepare for the Commander's Office a statement of the facts. The entire file, containing all documents pertaining to the investigation, shall be given to the Commander's Office for consideration, pursuant to the provisions of this directive. In the event the charged employee denies the violation with which the employee is charged, then the investigation shall proceed as hereinafter provided.

- The employee shall be given an opportunity to supply the investigator with evidence or witnesses favorable to the employee. No decision as to whether the employee violated the Rules of Personal Conduct, Grossly Inefficient Job Performance, or Job Performance shall be made against a charged employee until the employee has had a reasonable opportunity to produce evidence or witnesses and has had an opportunity to explain his/her actions.

- If an investigation uncovers evidence of a possible criminal violation by an employee, the Internal Affairs Unit shall immediately notify the Commander's Office which decides whether appropriate authorities should be notified and take such other disciplinary or administrative action necessary consistent with the provisions of this policy.

- If an investigator uncovers evidence of additional violations of policy, an additional Personnel Complaint need not be completed in BlueTeam. The employee must be informed of the allegations and must be given an opportunity to respond to the potential new charges.

- Upon completion of the investigation, the Internal Affairs Unit shall prepare a summary report of the investigation setting forth the facts of the case and

shall submit the summary report to the Director of Professional Standards for review in accordance with Directive H.04, Section XII.

- If, upon review of the investigation, the Director of Professional Standards determines that he or she is inclined to recommend disciplinary action in the form of a written warning, the Director of Professional Standards or their designee may first consult with DPS Human Resources.

- If, upon review of the investigation, the Director of Professional Standards determines that he or she is inclined to recommend any form of disciplinary action for which a pre-disciplinary conference is required (any disciplinary action more serious than a written warning), the Director of Professional Standards or their designee shall first consult with the DPS General Counsel's Office and with DPS Human Resources.

- Upon conclusion of the investigation, the complainant shall be notified that the investigation has been completed.

Responsibility and Rights of Employees Under Investigation

- Employees under investigation for possible violations of the Patrol Rules of Personal Conduct, Grossly Inefficient Job Performance, or Job Performance shall truthfully and fully answer all questions asked of them by investigator(s) concerning the incident being investigated.

- When a supervisor or investigator reasonably suspects that an employee has violated the Rules of Personal Conduct, Grossly Inefficient Job Performance, or Job Performance, the supervisor or investigator may require the employee to submit to tests such as medical, ballistics, or chemical analysis or agree to participate in a lineup or be photographed. The employee may also be requested to furnish financial disclosure statements in connection with the case under investigation, after approval of the Commander's Office.

- When an employee is to be investigated for a non-criminal violation of the Patrol Rules of Personal Conduct, Grossly Inefficient Job Performance, or Job Performance, the employee shall be notified that the investigation is to take place unless such notification would jeopardize the investigation.

- Any employee who is the subject of an internal investigation may be ordered by the assigned investigator(s) to cooperate in the investigation and to appear before investigator(s) at a reasonable time and place to submit to questioning or other investigative procedures.

- Investigations conducted pursuant to this directive are for non-criminal violations or for violations that may be criminal but for which the purpose of the investigation is purely administrative in nature. Accordingly, the employee may be ordered to respond to questions which are narrowly and directly

related to the matter under investigation. The employee shall not be permitted to have an attorney present during the questioning.

- Highway Patrol property may be searched at any time even if assigned to and used exclusively by an individual employee. An employee's personal property found on State-owned property or within a State-owned vehicle may be searched at any time. All other personal property of an employee shall not be subjected to search and seizure except in accordance with law.

- An employee shall provide the investigator with any evidence and the names of witnesses who may have information about the matter under investigation.

IX. INVESTIGATION BY OFFICE OF SPECIAL INVESTIGATIONS (OSI)

Notwithstanding any other provision contained herein, the Secretary of the Department of Public Safety may direct that the responsibility for conducting an internal investigation be assumed by the Office of Special Investigations.

X. EMPLOYEE UNDER ARREST / INVESTIGATION NOTIFICATION PROCEDURES

- Each employee shall immediately notify a supervisor if he/she is arrested, charged with a criminal offense, or is the subject of any investigation by an outside law enforcement agency involving allegations that, if true, could constitute a felony or misdemeanor.

- Each member shall immediately notify the North Carolina Criminal Justice Standards Division (Standards Division) in writing at the address below, if the member is arrested or charged with, or pleads no contest to, or pleads guilty to any criminal offense other than a minor traffic offense. Such notification shall comply with the requirements of the North Carolina Administrative Code (12 NCAC 09B.0101) (http://reports.oah.state.nc.us/ncac.asp) and a copy of the written notification shall be forwarded by the member to the Commander's Office.

North Carolina Criminal Justice Standards Division
North Carolina Department of Justice
Mailing Address: P. O. Drawer 149, Raleigh, NC 27602
Physical Address: 1700 Tryon Park Drive, Raleigh, NC 27610
Phone: 919-661-5980
Fax: 919-779-8210

- All certified members and applicants shall notify the Standards Division and the Commander's Office in writing of all criminal offenses for which the member is arrested or charged. This notice requirement, which must be given within 30 days, applies to all felony and misdemeanor offenses and includes

traffic offenses if identified in the Class B Misdemeanor Manual. It also includes the offense of driving under the influence (DUI) or driving while impaired (DWI);

- All certified members and applicants shall, within 30 days, notify the Standards Division and the Commander's Office in writing of all criminal offenses for which the member pleads no contest to, pleads guilty to, or of which the member is found guilty.

Domestic Violence Protective Orders and Civil No Contact Orders

All certified members and applicants shall, within thirty days of service, notify the Standards Division of all Domestic Violence Protective Order (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are issued by a judicial official against the member.

Obligations of the Commander's Office*

- Within thirty days of the date the case was disposed of in court, the Commander's Office or designee, provided the Office has knowledge of the member's arrests or criminal charges and final dispositions, shall also notify the Standards Division of arrests or criminal charges and final disposition;

- Within thirty days of the issuance of all Domestic Violence Protective Orders (G.S.50B) and Civil No Contact Orders (G.S.50C), the Commander's Office or designee, provided the Office has knowledge of the order, shall also notify the Standards Division of these orders.

- *This obligation shall not apply if the member has made the required notification(s) to the Standard's Division. Duplicate notifications are not required.

Content of Written Notification

All required notifications must be in writing. Additionally, the notification must:

1. Specify the nature of the offense or order, the court in which the case was handled, the date of the arrest, criminal charge, or service of the order, and the final disposition; and
2. The notification shall include a certified copy of the order or court documentation and final disposition from the Clerk of Court in the county of adjudication.

- Any member who charges or arrests a Highway Patrol employee with any felony or misdemeanor violation of law shall immediately notify an on-duty/ on-call supervisor, who shall be responsible for notifying the Unit Commander of Internal Affairs of the incident.

- Each employee is required to immediately report any conviction, finding of guilt, or plea of no contest, or determination of responsibility involving the violation of any law or ordinance other than a parking ordinance to a supervisor.

- Each employee, sworn and non-sworn, shall immediately notify a supervisor if his/her driving privilege is suspended or revoked.

- The immediate supervisor must ensure the Unit Commander of Internal Affairs is immediately notified, via the chain-of-command, in any case where an employee (sworn or non-sworn) is arrested, charged, or the subject of an investigation involving any felony violation or any misdemeanor.

- In any case where a Division of Criminal Information (DCI) certified employee is arrested, charged, or being investigated for a felony or any misdemeanor not related to a traffic offense, the Unit Commander of Internal Affairs must notify the Executive Officer of Technical Services within **twenty (20) hours** of the arrest. The Executive Officer of Technical Services will ensure the State Bureau of Investigation, Criminal Information and Identification is notified in writing within **twenty-four (24) hours** of the arrest and the DCI user is disabled by the Patrol's Senior Terminal Coordinator.

- In any case where a sworn member is arrested for or charged with, pleads no contest to, pleads guilty to, or is found guilty of a criminal offense, the Unit Commander of Internal Affairs shall consult with the Patrol's Legal Staff to determine whether notification must be made to the Standards Division pursuant to 12 NCAC 9B .0101 (8).

XI. FINAL DISPOSITION

- When an internal investigation involves a complaint alleging a personal conduct violation, grossly inefficient job performance violation, or a job performance violation, one of the following findings will be made:

    - Unfounded: When it is determined that no factual basis exists for the complaint

    - Exonerated: When it is determined that the alleged conduct did in fact occur, but it is excused or justified by the circumstances

    - Not Sustained: When it is determined that there are insufficient facts found to prove or disprove the allegation.

    - Sustained: When it is determined that the facts support the allegation of the complaint.

Gifts, Favors, and Donations

Directive H.03

Applicable to: Employees
CALEA Chapter 26

Revised 9/27/2011
Effective 2/17/2000

I. POLICY

This policy establishes guidelines for employees of the Patrol governing the solicitation and acceptance of gifts, favors, special accommodations, and donations. **(CALEA 26.1.1)**

Employees shall neither solicit nor accept from any person, business, or organization any gift, favor, special accommodations, or donation for the benefit of the employee, his/her family or the Patrol if the person, business or organization giving the gift (1) seeks to influence action of an official nature, or (2) seeks to affect the performance or non-performance of an official duty, or (3) has an interest which may be substantially affected, either directly or indirectly, by the performance or non-performance of an official duty.

The solicitation or acceptance of gifts, favors, special accommodations or donations from or on behalf of attorneys, wrecker companies, companies who are in the direct business of the transportation of persons or property in commerce, or persons or entities who anticipate partial treatment by any employee of the Highway Patrol or the Division of the State Highway Patrol or contractors, subcontractors or suppliers of the Department of Crime Control and Public Safety are strictly prohibited.

Employees shall not use their official position to solicit for themselves or others special privileges, such as free admission to places of amusement, discounts on purchases, or other favors.

II. EXCEPTIONS

Notwithstanding the general prohibition of this policy, employees may accept gifts, favors, or special accommodations as follows:

- Promotional or souvenir items of nominal value that are widely distributed by the provider
- Any discount offered to the general public or to all State Employees
- Admission to races, football games, and other special events if the employee has been assigned to work traffic related to that event
- Meals furnished as part of a pre-planned agenda during conferences, seminars, meetings, or banquets sponsored by professional organizations and associations so long as such meals are generally offered to all participants

- Refreshments offered to all participants in vendor-sponsored training seminars, trade association meetings, and other gatherings meeting the standard described in Section I (Policy) above

- Gifts of nominal value from persons or entities not described in the third paragraph of the above stated policy provision may be received so long as their acceptance will not influence or appear to influence the discharge of the employee's official duties. A gift has a nominal value if valued at $30 or less. Receipt in one or more related transactions of items individually valued at less than $30 but whose total value is greater than $100 per year is considered a gift of significant value. Accordingly, employees may accept an occasional free cup of coffee or discount on a meal without violating this policy. The total value of the discount in a one-year period may not exceed $100 from or on behalf of any one person or establishment.

- Customary gifts, favors, and special accommodations between an employee (or his/her immediate family) and relatives or friends when it is clear that the employee's status within the Patrol does not motivate the gift or favor.

Employees may participate in safety related meetings or seminars, product information seminars, training sessions, or technology conferences that contribute to highway safety, staff development, introduction to new technology, or maintenance of existing technology, so long as the event is not offered in exchange for favored treatment, and there is no reasonable appearance of impropriety. Otherwise, the individual employee or the Patrol, rather than a vendor, must bear the employee's costs of transportation, lodging, and subsistence for participating in such events. If the Patrol pays expenses, all reimbursements must be in accordance with established policy.

Solicitation and Acceptance of Donations

- Employees may solicit or accept donations from individuals, private profit or not-for-profit entities, or other entities only if the following restrictions are met:

    - The potential donor is not an attorney, wrecker company, companies who are in the direct business of the transportation of persons or property in commerce, or person or entity acting on behalf of an attorney or Wrecker Company, or companies who are in the direct business of the transportation of persons or property in commerce or a contractor, subcontractor or supplier of the Department of Crime Control and Public Safety.

    - The potential donor submits written correspondence confirming the donation neither implies nor creates any expectation of receiving partial treatment from any employee of the Patrol or the Division of The State Highway Patrol.

    - Acceptance of the donation is approved by the Commander's Office

- Donations that may be solicited or accepted, in accordance with this directive include donations for professional associations and organizations to defray meeting expenses when Patrol employees are members of those organizations.

III. PROCEDURES

Initiatives to solicit donations and donations offered by any individual, private for profit or not-for-profit entity, or other entity shall be authorized and approved as follows:

- Donations of $1,000.00 or less may be authorized and approved by the Commander's Office

- Donations exceeding $1,000.00 shall be reviewed and approved by the Secretary of Crime Control and Public Safety or his/her designee

IV. DISCLOSURE

If, after all reasonable efforts are made to refuse any gift, favor, or donation, an employee still receives any gift, favor, or donation contrary to the restrictions set out in this directive, the employee shall report that receipt in writing to the Commander's Office via chain-of-command.

V. CONSULTATION WITH LEGAL STAFF

Employees are urged to consult with departmental general counsel or members of the Attorney General's staff when an ethical question arises under this policy. These attorneys are subject to Canon IV of the North Carolina Annotated Rules of Professional Conduct. This rule requires that the lawyer preserve the confidence of his/her client. It is the policy of the Department that this attorney/client relationship be preserved. Such consultation is intended to generate full and frank disclosure of facts for proper initial representation of the client and advice on seeking further legal assistance.

VI. APPLICATION OF POLICY / SANCTIONS

Employees shall adhere to all provisions of this policy. Failure to do so shall be considered a serious personal conduct violation as defined by Directive H.04 (Highway Patrol Disciplinary System) and shall subject the employee to disciplinary action up to and including dismissal.

Highway Patrol Disciplinary System

Directive H.04

Applicable to: Employees

Revised 9/17/2021
Effective 1/1/2015

I. POLICY

This policy sets standards to govern the disciplinary system of employees of the Highway Patrol.

II. DISCIPLINARY AUTHORITY

The disciplinary actions described in this section are authorized for violations of the Patrol Code of Conduct by employees of the Highway Patrol.

Disciplinary actions to be imposed against employees shall be determined by the type of violation of the Code of Conduct. Violations may be designated as Personal Conduct, Grossly Inefficient Job Performance, or Job Performance. Disciplinary actions for the respective types of violations and the supervising authority eligible to recommend or impose the appropriate disciplinary actions shall be as set forth in this directive.

III. NON-DISCIPLINARY ACTIONS

Work deficiencies can sometimes be corrected through counseling and/or training. These corrective actions are not to be considered disciplinary in nature. Nonetheless, investigations of job performance and conduct deficiencies sometimes indicate a need for training and/or counseling. In such cases, training and/or counseling, although not a form of disciplinary action may be imposed in conjunction with or in lieu of disciplinary action.

Documented Counseling Session (DCS) is held to:

- Discuss ways to improve the member/employee's performance and/or values-based behavior,
- Seek input from the member/employee about whether the performance issue can be corrected through a process change or to determine if member/employee needs to receive additional training on the current procedure/processes,
- Outline the steps to be taken to improve performance, including the specific timeframe for improvement,
- Identify the consequences, including progressive disciplinary action, of failure to improve, and
- Establish a follow-up date(s).

- For some values-based behaviors and performance concerns, immediate improvement may be necessary (e.g. safety concerns, etc.)

A DCS is recorded using the Form, HR-562. Navigate to the following link for the Documented Counseling Session (HR-562) form:

- https://weare.ncdps.gov/emp/HR/HR562%20DCS_Revised%20by%20PHH%2020190403_LC%20Rights.pdf.

Once a DCS is completed, it shall be attached to a NCVIP entry in the Performance Management system.

Although the issuance of a HR-562 form is not considered a disciplinary action, it is considered by DPS Human Resources Department, and the Office of State Human Resources, to be a final action. As a result of these new guidelines, the NCSHP is required to revise the protocols under which the HR-562 is used. Therefore, the following procedures are in effect immediately:

- For any incident that **will** be referred to one of the NCSHP Boards (PVCIC, Post Chase, Use of Force) or **may** be referred to the Internal Affairs Unit, the NCVIP and HR-562 may be completed by Supervisory Members but **shall not be served**. The **unserved** NCVIP and HR-562s shall be sent to the relevant Board (or to the Unit Commander of Internal Affairs) via Blue Team. It will be determined by the Internal Affairs personnel on the pertinent Board or the Internal Affairs Unit when the documents can be served. These forms shall not be served until authorization is received from the applicable Board or the Internal Affairs Unit.

- For any incident that WILL NOT be referred to one of the NCSHP Boards or the Internal Affairs Unit for further investigation, the NCVIP and HR-562 may be completed and served by supervisory members.

Ordinarily, a DCS shall be conducted prior to beginning disciplinary actions for performance issues. **The DCS will remain active on a member's record for 18 months, even if performance or conduct issues have been resolved.** Any disciplinary action issued for unsatisfactory job performance without a prior DCS must first be approved by the agency Human Resources Director or his/her designee.

IV. TYPES OF DISCIPLINARY ACTIONS

When an internal investigation is found to be sustained, there are four specific types of disciplinary actions authorized by state law and this directive. These disciplinary actions are as follows:

Authorized Disciplinary Actions for Personnel subject to the Fair Labor Standards Act (FLSA) Provisions (Certain Civilian Employees or Members ranked Sergeant or below):

- Written warning
- Disciplinary suspension without pay for not less than one work day, and not more than two work weeks
- Demotion. Disciplinary demotions may be accomplished in three ways:
  - The employee may be demoted to a lower pay grade with a reduction in salary as long as the new salary rate does not exceed the maximum of the salary schedule for the new lower pay grade.
  - The employee may be demoted to a lower pay grade without a reduction in salary as long as the new salary rate does not exceed the maximum of the new lower pay grade.
  - The employee may be demoted with a reduction in salary rate while retaining the same pay grade. In no event shall an employee's salary rate be reduced to less than the minimum salary rate for the applicable pay grade or the special entry rate, if in effect.
- Dismissal

Authorized Disciplinary Actions for Personnel Exempt from Certain Provisions of the Fair Labor Standards Act (FLSA) (Certain Civilian Employees and Members ranked First Sergeant or higher):

- Written Warning
- Disciplinary suspension for not less than one week and not more than two weeks
- Demotion as defined above
- Dismissal

V. SIGNIFICANCE OF TYPE OF VIOLATION

Personal Conduct discipline is intended to be imposed for those actions for which no reasonable person could or should, expect to receive prior warnings, or as otherwise defined in State law. Employees may be disciplined, as a result of unacceptable personal conduct, up to and including dismissal without any prior warning or disciplinary action. Authorized disciplinary actions for Personal Conduct violations are listed in Section VI of this directive.

Grossly Inefficient Job Performance disciplinary actions are intended to be used in addressing unsatisfactory performance that results in the creation of the potential for death or serious bodily injury to Patrol employee(s), to members of the public, or to person(s) over whom the employee has responsibility; or the loss of or damage to State property or funds that result in a serious impact on the State and/or the Patrol. Authorized disciplinary actions for Grossly Inefficient Job Performance are the same as specified for Personal Conduct violations above. Employees may be dismissed on the basis of Grossly Inefficient Job Performance without any prior warning or disciplinary action.

Unsatisfactory Job Performance disciplinary actions are intended to promote improved employee performance. When a Documented Counseling Session (DCS) fails to correct employee performance, the manager/supervisor may address the matter by issuing a formal disciplinary action, the first level of which is a written warning. Other authorized disciplinary actions for Job Performance violations are the same as specified by Personal Conduct violations in Section VI of this directive except that a suspension or demotion must be preceded by at least one prior disciplinary action; dismissal must be preceded by one or more written warnings followed by another written warning or other form of disciplinary action.

The above sections are not mutually exclusive since certain actions may fall into all three categories depending upon the facts of each case. Pursuant to State law and this directive, no disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.

VI. PERSONAL CONDUCT VIOLATIONS

The Unit Commander of Internal Affairs shall classify every complaint or allegation as a Job Performance, Grossly Inefficient Job Performance, or Personal Conduct type violation. If classified as a Personal Conduct violation, the Unit Commander of Internal Affairs shall then determine whether the allegation relates to a serious or less serious violation.

Personal Conduct Violations Deemed Serious

- Only the Commander's Office may impose disciplinary action for Personal Conduct violations classified as serious by the Unit Commander of Internal Affairs. He/She shall impose one of the following disciplinary actions for a serious Personal Conduct violation:
  - Written warning
  - Disciplinary suspension without pay
  - Demotion
  - Dismissal

- The Commander's Office may, at its discretion, impose a written warning, rather than a more serious form of discipline for a personal conduct violation when all of the surrounding circumstances and the past work record of an employee being disciplined appears to warrant such a reduction in the level of disciplinary action and one or more of the following mitigating factors is present:

  - The property damage was minor

  - The physical injury was negligible

  - No disciplinary action has been taken against the employee in the past

  - There are other mitigating circumstances which the Commander's Office considers to be significant in the individual case at hand

- If the Commander's Office imposes a written warning pursuant to this provision, the reasons shall be stated in the written warning itself or in a memorandum to be filed in the employee's personnel file.

Personal Conduct Violations Deemed Less Serious

- Personal Conduct violations classified by the Unit Commander of Internal Affairs as "less serious" may be handled by the Troop/Unit Commander. The exception to this rule is when the investigation was conducted by Internal Affairs, in which case the Commander's Office shall impose the appropriate disciplinary action.

- Troop/Unit Commanders may impose the following types of disciplinary action for less serious personal conduct violations:

  - Written Warning; or

  - Disciplinary suspension without pay for 1, 2, or 3 days

- Prior to placing a career status employee on disciplinary suspension without pay, the Troop/Unit Commander shall conduct a pre-disciplinary conference with the employee in accordance with this directive. An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights.

VII. GROSSLY INEFFICIENT JOB PERFORMANCE VIOLATIONS

Grossly Inefficient Job Performance violations shall not be classified for the purpose of determining levels of disciplinary action. Disciplinary action imposed shall be the same as for serious personal conduct violations as set out in Section

VI of this directive. Disciplinary action for Grossly Inefficient Job Performance may be imposed by the Commander's Office.

VIII. JOB PERFORMANCE VIOLATIONS

When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee shall receive. A DCS shall be issued prior to beginning disciplinary actions for most performance issues. Any disciplinary action issued for unsatisfactory job performance without a prior DCS must first be approved by the agency HR Director or designee. After the first written warning, a supervisor may give additional written warnings or a higher level of disciplinary action.

Job Performance violations shall not be classified for the purpose of determining levels of disciplinary action. Disciplinary actions for violations of rules pertaining to Job Performance shall be the same as set out in this directive.

The Troop/Unit Commander and District First Sergeant are responsible for ensuring the satisfactory performance of work assignments. Accordingly, unless the Internal Affairs Unit conducts the investigation, or the employee has an active disciplinary action; disciplinary actions for Job Performance violations will ordinarily be imposed by the Troop/Unit Commander or District First Sergeant. Unless the employee has a prior active disciplinary action, the only disciplinary action that may be imposed for Unsatisfactory Job Performance is a written warning. Troop/Unit Commanders or District First Sergeants may impose written warnings. Disciplinary suspension without pay for 1, 2, or 3 days shall be imposed by the Troop/Unit Commander.

The Commander's Office may impose the following levels of disciplinary action for a Job Performance violation:

- Written warning
- Disciplinary suspension without pay for not less than 1 day and not more than two (2) work weeks (after receipt of at least one prior active disciplinary action)
- Demotion (after receipt of at least one prior active disciplinary action)
- Dismissal (after receipt of at least one active written warning followed by one other active disciplinary action)

IX. INACTIVE DISCIPLINARY ACTIONS

A disciplinary action is deemed inactive for the purpose of this section in the event that:

- Eighteen (18) months have passed since the warning or disciplinary action; the employee does not have another active warning or disciplinary action which occurred within the last eighteen (18) months

X. REPEAT VIOLATIONS

Prior Job Performance and Personal Conduct violations which are active may be considered in deciding on the level of disciplinary action to be imposed for a subsequent Job Performance violation.

Previous Personal Conduct, Grossly Inefficient Job Performance, and Job Performance violations, whether active or inactive, may be considered in deciding the level of disciplinary action being imposed for Personal Conduct and Grossly Inefficient Job Performance violation(s). Employees may be disciplined for Personal Conduct and Grossly Inefficient Job Performance violations, up to and including dismissal, without prior warning or disciplinary action.

In those cases where an employee has an active disciplinary action of any type, the Commander's Office shall impose the disciplinary action unless he/she delegates such responsibility to the Troop/Unit Commander. In such cases, the Troop/Unit Commander may impose disciplinary action as set out in this directive.

The date the disciplinary action was imposed as documented on the Personnel Charge Sheet (HP-343), will be the beginning date for purposes of determining the expiration of the time periods set forth above. The date the subsequent violation occurred shall be the date used to determine whether the subsequent violation occurred within the active time limits of a previous disciplinary action.

XI. PROCEDURE FOR TAKING DISCIPLINARY ACTION

Investigation

- Upon learning that an employee under his/her supervision may be in violation of Patrol rules, the First Sergeant or appropriate supervisor after consultation with his/her Troop/Unit Commander shall immediately forward a Personnel Complaint via BlueTeam to the Unit Commander of Internal Affairs for determination of the type violation involved in accordance with this directive.

    - If the violation is determined to be a less serious Personal Conduct violation or a Job Performance violation, the Unit Commander of Internal Affairs shall arrange for an investigation as provided by this policy, either by the Internal Affairs Unit or by a designated Troop/Unit or district supervisor.

    - If the violation is determined to be a serious Personal Conduct or Grossly Inefficient Job Performance violation, the investigation shall be conducted by the Internal Affairs Unit.

- The investigation shall be recorded on a Report of Investigation (HP-721) and submitted to the Unit Commander of Internal Affairs.

- Whenever an investigation reveals that what first appeared to be a less serious Personal Conduct or Job Performance violation is in reality a serious Conduct or Grossly Inefficient Job Performance violation, the investigator shall confer with the Unit Commander of Internal Affairs and, if requested, forward the pending investigation file to the Unit Commander of Internal Affairs, who shall be responsible for overseeing the completion of the investigation.

Determining Level of Disciplinary Action to be Taken

- Field Investigations - Troop/Unit Commanders and Other Supervisors

  - When a Troop/Unit Commander or other supervisor authorized to impose disciplinary action determines, as a result of an investigation the allegation(s) is sustained, the Troop/Unit Commander or other supervisor authorized to impose disciplinary action shall confer with the Unit Commander of Internal Affairs, via the chain-of-command, and administer disciplinary action within the options authorized.

  - If a Troop/Unit Commander or other supervisor authorized to impose disciplinary action determines that the disposition of an investigation of a subordinate employee is unfounded, exonerated, or not sustained , the Troop/Unit Commander or other supervisor authorized to impose disciplinary action shall confer with the Unit Commander of Internal Affairs, via the chain-of-command, and prepare a memorandum or investigation report specifying why the disposition is unfounded or exonerated or why the investigation is not sustained.

  - If the Troop/Unit Commander determines the disposition of the investigation is unfounded, exonerated, or not sustained, he/she shall so notify the employee and place a copy of the notification in the employee's personnel file

- Internal Affairs Investigations

  - Upon receipt of a Personnel Complaint from the Troop/Unit Commander or other supervisor, the Unit Commander of Internal Affairs shall supervise the investigation of the case and shall prepare for the Director of Professional Standards an investigation file, setting forth the facts of the case.

  - The Director of Professional Standards shall review the file and may order additional investigation if deemed necessary. After the investigation is complete, he/she shall forward the investigation file, and his/her recommendation for disciplinary action, if any, to the Commander's Office.

- If the recommendation of the Director of Professional Standards is a written warning, the Director of Professional Standards or their designee may first consult with DPS Human Resources. If the recommendation of the Director of Professional Standards is any form of disciplinary action for which a pre-disciplinary conference is required, the Director of Professional Standards or their designee shall consult with the DPS General Counsel's Office and with DPS Human Resources prior to making the recommendation to the Commander's Office.

- The Commander's Office shall review the file and determine the type of violation and/or level of disciplinary action to be taken. He/She shall notify the Director of Professional Standards or appropriate supervisor of his/her decision. The Director of Professional Standards shall forward the file to the Unit Commander of Internal Affairs for the purpose of taking the appropriate action.

- If the Commander's Office determines that the employee should be placed on disciplinary suspension without pay, demoted or dismissed, no such action shall be imposed prior to notifying the affected employee of a pre-disciplinary conference consistent with DPS Human Resources policy. Any employee, who fails to attend the Pre-Disciplinary Conference without prior notification to the Commander's Office, shall forfeit their rights to a Pre-Disciplinary Conference. The Commander's Office will proceed with the decision for disciplinary action.

- If the Commander's Office determines the disposition of the investigation is unfounded, exonerated, or not sustained, he/she shall so notify the employee and place a copy of the notification in the employee's personnel file.

Procedural Requirements

- Written Warning

  - To issue a written warning to a subordinate employee, a supervisor authorized to conduct disciplinary action must conduct a disciplinary conference with the subordinate employee during which he/she is told:

    - That he/she is being administered a written warning

    - The specific issues that are the basis for the warning

    - What specific improvements must be made

    - The time frame allowed for making the required improvements and/or corrections. Absent a specified time frame in the warning, 60 days is the time frame allowed for unsatisfactory job performance and immediate correction is required for Grossly Inefficient Job Performance or Unacceptable Personal Conduct

- The consequences of failing to make the required improvements/ corrections

- The employee shall be given a copy of the written warning memorandum and Personnel Charge Sheet/Disposition (HP-343). The action shall take effect immediately

- First Sergeants and other supervisors shall forward a copy of the written warning memorandum and Personnel Charge Sheet/Disposition (HP-343) to the Unit Commander of Internal Affairs

- Written warnings cannot be appealed unless a violation of N.C.G.S. § 126-16 or 126-25[1] is alleged.

- Disciplinary Suspension Without Pay

  - To place a subordinate employee on disciplinary suspension without pay, the Director of Professional Standards or Troop/Unit Commander (or designee) imposing the disciplinary action must comply with the following procedural requirements:

    - In matters of unsatisfactory job performance, ensure that the subordinate employee has received at least one prior disciplinary action. In matters of Grossly Inefficient Job Performance or Unacceptable Personal Conduct there are no pre-conditions.

    - The Director of Professional Standards or their designee shall schedule and conduct a pre-disciplinary conference. Advance oral or written notice of the pre-disciplinary conference must be given to the employee of the time, location, and the reason for which the demotion, suspension or dismissal has been recommended.

    - The notice must inform the employee of the type of disciplinary action being considered and that a lesser disciplinary action is possible and the specific acts or omissions that are the reasons for the recommendation.

    - The employee shall be given written notice of the conference at least twenty-four (24) hours in advance.

    - Furnish the subordinate employee a statement written setting forth the specific acts or omissions that are the reasons for the suspension.

    - Limit attendance to the subordinate employee, the supervisory employee summarizing the conference, and the person conducting the conference. The purpose of the pre-disciplinary conference is to review

[1] https://ncleg.gov/Laws/GeneralStatuteSections/Chapter126

the reason for suspension with the affected employee and to listen to and to consider any information put forth by the employee in order to ensure that a suspension decision is sound and not based on misinformation or mistake. Other personnel may be present when, in the discretion of the person conducting the conference, a need for security exists. No attorneys representing either side may attend the conference. Additionally, audio recording devices, video recording devices, and transmission devices are not permitted during the conference.

- The employee shall have an opportunity to respond to the proposed suspension, refute information supporting the recommended suspension action, and offer information or arguments in support of the employee's position. This opportunity does not include the right to present witnesses.

- Copies of the written document imposing the suspension and the Personnel Charge Sheet/Disposition (HP-343) shall be forwarded to the Unit Commander of Internal Affairs

- If the proposed disciplinary suspension is to be imposed by the Commander's Office or Troop/Unit Commander, the procedures set out in this directive shall apply. Additionally, at the conclusion of the conference, the Director of Professional Standards or Troop/Unit Commander designee shall brief the Commander's Office or Troop/Unit Commander who shall review and consider the response of the employee and reach a final decision.

- To allow time following the conference for the Commander's Office or Troop/Unit Commander to review all necessary information, the final decision to impose suspension should not be communicated to the employee prior to the beginning of the next business day or after the end of the second business day following the conclusion of the pre-disciplinary conference.

- If the Commander's Office or Troop/Unit Commander decides to carry out the suspension, written notification shall be provided to the employee. The written notice shall contain the employee's appeal rights.

- If the disciplinary suspension is carried out, the affected employee may be asked to surrender his/her issued Patrol vehicle, firearms, uniform badges, and/or identification credentials. The supervisor imposing the suspension shall ensure the equipment is collected and transported to a location designated by the appropriate /Troop/Unit Commander for storage, required maintenance, or re-issuance. The safekeeping of property provision of Directive J.01 shall apply to any equipment stored in an evidence locker. Upon being cleared for duty, the surrendered

equipment or a replacement shall be returned to the affected employee.

- Demotion

  - To demote an employee, the following procedural requirements shall be followed:

    - In matters of unsatisfactory job performance, the Unit Commander of Internal Affairs shall ensure that the employee has received at least one active prior disciplinary action

    - In matters of Grossly Inefficient Job Performance or Unacceptable Personal Conduct, there is no requirement for previous disciplinary action; an employee may be demoted for a current incident of Grossly Inefficient Job Performance or Unacceptable Personal Conduct without any prior disciplinary action

    - The Director of Professional Standards or designee shall schedule and conduct a pre-disciplinary conference. Advance oral or written notice of the pre-disciplinary conference must be given to the employee of the time, location, and the conduct or reason for which demotion has been recommended.

    - The notice must inform the employee of the type of disciplinary action being considered and that a lesser disciplinary action is possible and the specific acts or omissions that are the reasons for the recommendation.

    - The employee shall be given written notice of the conference at least twenty-four (24) hours in advance

    - The Director of Professional Standards or designee shall limit attendance to the subordinate employee, the supervisory employee summarizing the conference, and the person conducting the conference. The purpose of the pre-disciplinary conference is to review the reason for the demotion with the affected employee and listen to and consider any information put forth by the employee in order to ensure that a demotion decision is sound and not based on misinformation or mistake. Other personnel may be present when, in the discretion of the person conducting the conference, a need for security exists. No attorneys representing either side may attend the conference. Additionally, audio recording devices, video recording devices, and transmission devices are not permitted during the conference.

    - The procedures set out in this directive, to the extent applicable, shall apply. Additionally, at the conclusion of the pre-disciplinary conference, the Director of Professional Standards or designee shall brief the

Commander's Office who shall review and consider the response of the employee and reach a decision whether or not to order that the demotion be carried out.

- To allow time following the conference for the Commander's Office to review all necessary information, the final decision to impose demotion should not be communicated to the employee prior to the beginning of the next business day or after the end of the second business day following the conclusion of the pre-disciplinary conference.

- The employee must be advised in the notice of how and to what extent the demotion will affect the employee's compensation rate or classification title, and the employee must also be advised of any applicable appeal rights in the document effecting the demotion

- Dismissal

  - To dismiss an employee the following procedural requirements shall be followed:

    - The Director of Professional Standards or designee shall schedule and conduct a pre-disciplinary conference with the affected employee

    - Advance written notice of the pre-disciplinary conference must be given to the employee of the time, location, and the reason(s) for which dismissal has been recommended.

    - The notice must inform the employee of the type of disciplinary action being considered and that a lesser disciplinary action is possible and the specific acts or omissions that are the reasons for the recommendation.

    - The employee shall be given written notice of the conference at least twenty-four (24) hours in advance

    - The Director of Professional Standards or designee shall limit attendance to the employee, the supervisory employee summarizing the conference, and the person conducting the conference. The purpose of the pre-disciplinary conference is to review the recommendation for dismissal with the affected employee and to listen to and to consider any information put forth by the employee to ensure that a dismissal decision is sound and not based on misinformation or mistake. Other personnel may be present, when the person conducting the conference determines a need for security exists. No attorneys representing either side may attend the conference. Additionally, audio recording devices, video recording devices, and transmission devices are not permitted during the conference.

- In the conference, the Director of Professional Standards or designee shall give the employee oral or written notice of the recommendation for dismissal including specific reasons for the proposed dismissal and a summary of the information supporting that recommendation. The employee shall have an opportunity to respond to the proposed dismissal, refute information supporting the recommended dismissal action, and offer information or arguments in support of the employee's position. Every effort shall be made by the Director of Professional Standards or designee to ensure that the employee has had a full opportunity to set forth any available information in opposition to the recommendation to dismiss prior to the end of the conference. This opportunity does not include the right to present witnesses.

- At the conclusion of the pre-disciplinary conference, the Director of Professional Standards or designee shall brief the Commander's Office, who shall review and consider the response of the employee and reach a decision on the specific reasons for dismissal.

- To allow time following the conference for the Commander's Office to review all necessary information, the decision to dismiss should not be communicated to the employee prior to the beginning of the next business day following the conclusion of the pre-disciplinary conference or after the end of the second business day.

- The effective date of a dismissal for **Unsatisfactory Job Performance** shall be determined by the Commander's Office. A status employee who is dismissed for unsatisfactory job performance may be given up to two weeks working notice of his/her dismissal, at the discretion of the Commander's Office. Instead of providing up to two weeks working notice an employee may be given up to two weeks' pay in lieu of the working notice, at the discretion of the Commander's Office. Such working notice or pay in lieu of notice is applicable only to dismissals for Unsatisfactory Job Performance. The effective date of the dismissal shall not be earlier than the letter of dismissal nor more than **14 calendar days** after the notice of dismissal.

XII. DISCIPLINARY ACTION LETTER

If management decides to demote, suspend or dismiss the employee, then the employee shall receive a written disciplinary action letter either in person or by certified mail (or equivalent) with return receipt requested.

- The written disciplinary action letter must include:

  - The basis for the disciplinary action;
  - The effective date of the disciplinary action;
  - The specific acts or omissions that are the reason(s) for the disciplinary action;
  - The employee's right to appeal and a copy of the grievance policy.

XIII. UNIFORMS AND EQUIPMENT COLLECTION

Any employee, who is dismissed, resigns in lieu of being dismissed, or resigns prior to the completion of an internal investigation shall surrender all issued uniforms, equipment, and badges to include all previous ranking badges, and Highway Patrol identification credentials that are in the possession of the affected employee. It shall be the responsibility of the appropriate Troop/Unit Commander to ensure that all items mentioned above are collected, inventoried, and forwarded to the Logistics Unit. If, during the course of the inventory, it is discovered that any item was not surrendered, a memorandum shall be prepared by the supervisor conducting the inventory, and forwarded to the Director of Support Services, via the chain-of-command, for proper action.

XIV. APPEAL PROCESS FOR DISCIPLINARY ACTION

See Directive E.08 of the North Carolina State Highway Patrol Policy Manual for the appeal process.

Military Courtesy

Applicable to: Members

Directive H.05
Revised 05/22/2017
Effective 5/1/1994

I. POLICY

This policy establishes standards in reference to military courtesy within the ranks of the North Carolina State Highway Patrol.

II. CUSTOMS OF THE SERVICE

The Highway Patrol is a Para-military organization. A member's demeanor and bearing must exemplify training, discipline, integrity, ability and courage through the observance of certain military courtesies.

III. THE HAND SALUTE

An important military courtesy is the hand salute, which is a greeting that conveys respect from both the subordinate and person of higher rank. The salute will be rendered to cabinet level appointed officials in the chain of command and commissioned officers by commissioned officers of lower rank, non-commissioned officers, Troopers, and all sworn officers.

Salute Properly

- A properly executed salute indicates pride in oneself and reflects esprit de corps of the organization.

How to Execute the Hand Salute

- The proper salute is rendered by raising the right hand smartly until the tip of the forefinger touches the headgear just above and slightly to the right of the right eye. The fingers are lined tightly together and the thumb lies snugly along the side of the hand. The hand and wrist are straight so that they form a straight line from the fingertips to the elbow. The upper arm (elbow to shoulder) should be horizontal. In rendering the salute, your head and body should be facing toward the person being saluted. The hand is brought to the correct position in one motion without any preparatory movement. The salute is held until the officer or person being saluted returns the salute and drops his/her hand. The hand is then brought directly down to its natural position, without slapping the leg. Any flourish in the salute is improper.

IV. WHOM TO SALUTE

- President of the United States
- Governor of North Carolina
- Secretary of Department of Public Safety

- Commissioned Officers of the Patrol

- All senior commissioned officers of the Armed Forces and the National Guard (having the rank equivalent to a Major of the Highway Patrol) when Patrol members meet them on formal occasions or during the course of a visit to a military installation

V. WHEN TO SALUTE

The hand salute shall be given:

- When a member meets, anyone entitled a salute, and the member is wearing headgear, indoors or out.

- Out-of-doors by members who are not in formation when the National Colors pass or when the National Anthem is played.

- Out-of-doors by the member in charge of a formation when the National Colors pass or when the National Anthem is played. Other members of the formation shall not salute unless directed by the member in charge of the formation.

- Indoors by a member who is wearing headgear when the National Colors pass or when the National Anthem is played.

VI. GENERAL RULES REGARDING SALUTES

Members shall:

- Salute persons entitled to a salute when they are approximately six paces away and hold the salute until the salute is returned, an appropriate greeting rendered, or the person has passed six paces beyond the member.

- Salute on the first note of the National Anthem and hold the salute until the music ends. Members shall face the colors when saluting.

- If the National Colors are not present, face the direction of the music.

- Salute the National Colors when they are approximately six paces away and end the salute when they have passed six paces beyond where the member is standing.

- Salute and greet with "Good morning, Sir/Ma'am," or other appropriate greeting.

- Hold the salute during a flag raising or lowering ceremony until the order to terminate the salute is given by the flag detail leader.

- Salute while "Taps" is played at a Patrol or military funeral.

- If not wearing headgear, and under arms, stand at attention when the national anthem is played or the National Colors are presented. This is the appropriate courtesy in lieu of a salute.

Members shall not:

- Salute while not wearing headgear.

- Smoke while saluting.

- Salute with one hand while the other is in pocket.

- Sit while giving the salute.

- Salute with any object in one’s right hand.

Political Activities

Applicable to: Employees
CALEA Chapter 22

Directive H.06
Revised 9/27/2011
Effective 9/26/1995

I. POLICY

This policy governs employees of the Highway Patrol in regard to participation in political activities.

II. STATE EMPLOYEES

State employees are subject to the provisions of N.C.G.S. § 126-13, N.C.G.S. § 126-14, and to the disciplinary action set out in N.C.G.S. § 126-15 which provides for possible dismissal or removal from office for violations of Chapter 126.

III. EMPLOYEES AS INDIVIDUALS

As an individual, each employee retains all the rights and obligations of citizenship provided in the Constitution and laws of the State of North Carolina and the Constitution and laws of the United States of America. In keeping with these rights, employees are encouraged to register to vote and to vote. Employees may also contribute financially to political campaigns.

IV. MEMBERS AS STATE LAW ENFORCEMENT OFFICERS

Members as State law enforcement officers and as full-time representatives of the State of North Carolina shall not:

- Take any active part in managing a campaign, campaign for political office, or otherwise engage in political activity while on duty or within any period of time during which he/she is expected to perform services for which he/she receives compensation from the State.

- Otherwise use the authority of his/her position or utilize State funds, supplies or vehicles to secure support for or oppose any candidate, party, or issue in an election involving candidates for office or party nominations, or affect the results thereof.

V. ENGAGING IN POLITICAL ACTIVITY WHILE OFF DUTY (CALEA 22.3.3)

The policy of the Patrol is not to interfere with the right of an employee to engage in political activity during non-duty hours. For this purpose, "duty hours" means regularly scheduled working hours or at other times when an employee is actually performing duties for the Patrol.

VI. CANDIDACY FOR OFFICE (CALEA 22.3.3)

The good of the entire organization must take precedence over an employee's personal desire to serve the public as an elected official. Any employee who decides to seek political office must inform the Commander's Office via chain-of-command. The Commander's Office will not interfere with the employee's right to seek election.

Any candidacy of an employee for election to a public office requiring full-time service is presumed to create a conflict of time which interferes with the performance of responsibilities owed to the Patrol and requires the employee to obtain a leave of absence or resign from the Patrol. Prior to filing, if the employee is able to establish to the satisfaction of the Commander's Office that, contrary to the presumption, such candidacy in fact will not create a conflict of time which interferes with Patrol employment, a leave or resignation will not be required. The employee seeking such an exception to this policy must file a written request with the Commander's Office via chain-of-command, setting forth any information the employee believes verifies that the candidacy will not create such a conflict. The Commander's Office will review the request and make a decision about any exemption.

The Commander's Office will grant any employee seeking election to a full-time public office a leave of absence without pay when an employee has insufficient vacation or compensatory time. Any leave of absence must begin at the time that candidacy is formally announced or at the time of filing with the Board of Elections, whichever occurs first, and shall last until the member completes the election process.

Personal Use of Social Networking Websites

Directive H.07

Applicable to: All Employees
CALEA: N/A

New
Effective 4/17/2012

I. POLICY

This policy is necessary to ensure that all employees understand and use appropriate discretion in their personal use of social media outlets, both on and off duty. All employees have the right to use social media outlets as deemed reasonable; however, all employees shall conduct themselves, both on and off duty, in a manner which will not in any way reflect negatively upon the professional image of the Patrol or of any of its employees.

Terms that may be referred to or implied throughout this directive include, but are not limited to: blog, page, profile, social media outlets (i.e. Facebook, MySpace, Twitter, Nixle, Flickr, YouTube, Digg, Reddit, etc.), social networks, Web 2.0, and wiki.

II. PERSONAL USE – PRECAUTIONS AND PROHIBITIONS

Patrol employees are cautioned that speech on or off duty made pursuant to their official duties is not protected speech under the First Amendment and may form the basis for discipline if deemed detrimental to the Patrol. Patrol employees shall abide by the following guidelines when using social media outlets:

- Patrol employees are free to express themselves as private citizens on social media sites to the degree that their speech does not:
    - Impair working relationships of the Patrol for which loyalty and confidentiality are important
    - Impede the performance of duties
    - Impair discipline and harmony among coworkers and the community
    - Negatively affect the public perception of the Patrol
- Patrol employees shall not post, transmit, or otherwise disseminate any information to which they have access as a result of their employment without written permission from the Commander's Office or designee.
- Employees shall not display Patrol logos, uniforms, or similar identifying items on personal web pages for political gain.
- For safety and security reasons, Patrol employees are cautioned not to disclose their employment with the Patrol. Additionally, Patrol employees shall not:

- Post information pertaining to any other employee of the Patrol without his/her permission

- Display Patrol logos, uniforms, or similar identifying items on personal web pages

- Post personal photographs or provide similar means of personal recognition that may cause them to be identified as a Patrol employee.

- When using social media, Patrol employees should be mindful that their speech becomes part of the **worldwide** electronic domain. Therefore, adherence to the Patrol's Code of Conduct is required in the personal use of social media. In particular, Patrol employees are prohibited from:

  - Speech containing obscene or sexually explicit language, images, or acts

  - Statements or other forms of speech that ridicule, malign, disparage, or otherwise express bias against any race, any religion, or any protected class of individuals

  - Speech involving themselves or other Patrol employees reflecting behavior that would reasonably be considered reckless or irresponsible

- Engaging in prohibited speech may provide grounds for undermining or impeaching an employee's testimony in civil or criminal proceedings. Patrol employees thus sanctioned are subject to discipline up to and including termination.

- Patrol employees may not divulge information gained by reason of their authority; make any statements, speeches, appearances, and endorsements; or publish materials that could reasonably be considered to represent the views or positions of the Highway Patrol without express authorization.

- Patrol employees should be aware that they may be subject to civil litigation for:

  - Publishing or posting false information that harms the reputation of another person, group, or organization (defamation)

  - Publishing or posting private facts and personal information about someone without that person's permission that has not been previously revealed to the public, is not of legitimate public concern, and would be offensive to a reasonable person

  - Using someone else's name, likeness, or other personal attributes without that person's permission for an exploitative purpose

  - Publishing the creative work of another, trademarks, or certain confidential business information without the permission of the owner

- Employees should expect that any information created, transmitted, downloaded, exchanged, or discussed in a public online forum may be accessed by the Patrol at any time without prior notice.

- Employees should be aware that privacy settings and social media sites are constantly changing, and it should never be assumed that personal information posted on such sites is protected.

- Any employee becoming aware of or having knowledge of a posting or of any website or web page in violation of the provision of this policy shall notify his or her supervisor immediately for follow-up action.

I. POLICY

This policy sets forth guidelines for arrest and citation procedures.

II. ARREST AUTHORITY

Troopers have jurisdiction to arrest anywhere in the state of North Carolina except for such property that may be designated as exclusive federal jurisdiction. Members are expected to be familiar with any territorial jurisdictional issues that may exist within their assigned area of responsibility. The subject matter jurisdiction for Troopers is set out in Articles 3 and 17 of Chapter 20 of the General Statutes. All members are expected to be knowledgeable of their statutory authority contained in these statutes.

Authority to Arrest or Detain While Out of Uniform

- It is the general policy of the Patrol that enforcement action should not be taken by members while out of uniform but rather reports of any suspected or observed criminal activities should be made immediately to on-duty authorities.

- However, members who are not in uniform may arrest or detain violators in compliance with this subsection:

  - When off duty and within the legal boundaries of this State, a member may make an arrest or detain a person only when:

    - A violent crime has been committed in his/her presence; and

    - Perpetrator will not be apprehended unless immediately arrested or detained or may cause physical injury to himself/herself or others unless immediately arrested or detained; and

    - Member identifies himself/herself as a law enforcement officer and possesses his/her badge and identification as a member of the Patrol; and

    - Member complies with Patrol directives governing arrest

  - A member who makes an arrest or detains a person pursuant to the provisions listed above shall immediately contact appropriate on-duty law enforcement officials and must surrender the person detained to such law enforcement officials unless such contact or surrender is impractical.

- Under no circumstances shall a member attempt to stop or engage in the chase of a vehicle unless operating an authorized Patrol vehicle.

III. ENFORCEMENT POLICY

Charging Policy

- Members shall issue a North Carolina Uniform Citation or arrest for all definite, clear-cut and substantial violations. Members shall not issue citations or make arrests for frivolous, technical, or borderline violations. Factors such as race, sex, economic standards, familial, political or fraternal affiliation shall not influence a member in any manner whatsoever. Every arrest made or citation issued shall be in accordance with North Carolina law and Patrol policy. Members who violate the law or Patrol directives may be subject to discipline by the Patrol.

Warning Tickets

- Warning tickets may be issued by members for the following reasons:

  - Upon discovery of a mechanical defect in a vehicle that needs correction, but which does not amount to a definite, clear-cut, substantial violation of the Motor Vehicle Laws

  - For conduct constituting a potential hazard to the motoring public which does not amount to a definite, clear-cut, substantial violation of the Motor Vehicle Laws

  - To require a driver to produce his/her driver's license or motor vehicle registration card at a later time

IV. EXERCISING POWER OF ARREST

Infractions

- A member may not arrest but may issue a citation to any person he/she has probable cause to believe has committed an infraction (N.C.G.S. § 15A-1113).

  - A member who has probable cause to believe a person has committed an infraction may detain the person for a reasonable period of time in order to complete and serve the citation. An infraction and a misdemeanor may be charged on the same citation.

  - Reasonable force may be used to stop and detain a person for the purpose of issuing a citation. A person who resists, obstructs, or delays a law enforcement officer in the issuance of a citation for an infraction or in bonding for an infraction may be charged with obstructing or delaying an

officer in the performance of his/her duties (N.C.G.S. § 14-223) and be arrested for that offense.

- If the person who is charged with an infraction is a nonresident from a state that is not a member of the nonresident violator compact, a member shall take the person before a magistrate for bonding. The Administrative Office of the Courts is now printing a list of states in the North Carolina Uniform Citation book which are not members of the compact.

Misdemeanors

- A member may arrest, as opposed to issuing a citation to, a person for committing a misdemeanor only when the requirements of N.C.G.S. Chapter 15A have been met and;

  - The misdemeanor charged is a violation of the Motor Vehicle Act which, upon conviction, will result in the suspension or revocation of a person's license under the laws of North Carolina, and the suspect is from a state which is a member of the Nonresident Violator Compact; or (CALEA 61.1.5)

  - The misdemeanor charged is **any** violation of the Motor Vehicle Act and the suspect is a nonresident from a state which is not a member of the *Nonresident Violator Compact*, provided that members may cite a nonresident who has substantial, consistent and recurring contacts with the State of North Carolina (e.g. a commuter); or

  - The misdemeanor charged is a violation of the Motor Vehicle Act and would result in the suspension or revocation of a person's license under the laws of North Carolina and the person is a resident of North Carolina, provided that if a resident appears to be capable of operating the vehicle in a safe and lawful manner and the member has reasonable grounds to believe the offender will appear as cited, a citation should be issued instead of arresting the individual; or

  - The suspect is a resident of North Carolina, and the member has reasonable grounds to believe the suspect will not submit to the jurisdiction of the court; or

  - The misdemeanor charge is not a violation of the Motor Vehicle Act and the suspect is **not** a resident of North Carolina; or

  - The misdemeanor is one involving violence and arrest reasonably appears necessary in order to prevent violence or damage to property; or

  - The person charged seems to be dangerous to himself/herself, others or property

Felonies

- A member who charges a person with committing a felony shall always arrest the suspect when the requirements of N.C.G.S. Chapter 15A have been met.

V. FINGERPRINTING PROCEDURES

Duties of the Arresting Member

- Pursuant to N.C.G.S. § 15A-502, members who arrest a suspect for commission of a felony shall fingerprint the suspect and forward the fingerprints to the State Bureau of Investigation.

- Members shall fingerprint and photograph any arrestee who cannot be identified by a valid form of identification, if the arrestee is charged with:

  - An offense involving impaired driving, as defined in N.C.G.S. § 20-4.01(24a), or

  - Driving while license revoked if the revocation is for an Impaired Driving License Revocation as defined in N.C.G.S. § 20-28.2.

- Members shall not take photographs or fingerprints of a suspect when the only offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes. An exception to this prohibition exists when a suspect operates a motor vehicle on a street or highway, the person is cited for a motor vehicle moving violation, and the person does not produce a valid drivers license upon the request or the member has a reasonable suspicion concerning the true identity of the person.

VI. DEOXYRIBONUCLEIC ACID (DNA) COLLECTION PROCEDURES

Duties of the Arresting Member

- N.C.G.S. § 15A-266.3A and 15A-502A require the collection of a DNA sample for DNA analysis upon arrest for certain criminal offenses an exception to this requirement exists if the member determines that a DNA sample has previously been obtained and is stored in the State DNA Database

- DNA required to be obtained shall be obtained by the arresting member at the time of arrest or when fingerprinted unless the member makes a warrantless arrest, in which case the DNA sample shall not be obtained until the magistrate makes a determination that probable cause exists pursuant to N.C.G.S. § 15A-511

- A new DNA collection kit shall be used for each individual from whom a DNA sample must be collected

- Universal precautions are to be used when handling the DNA Collection Kit in accordance with Directive B.06 (Bloodborne Pathogens)

- Juvenile offenders N.C.G.S. § 7B-2201 (see Directive I.06)

VII. PROCEDURES FOLLOWING ENFORCEMENT ACTIONS

N.C.U.C. Citations

- When a member cites an offender to appear in court, he/she should cooperate with the offender in giving appropriate directions to the appropriate court and shall not accept any money, bail bond, bail bond card, securities, or other articles of value from the offender when cited for a felony, misdemeanor, or infraction violation; however, those members trained to enforce the laws pertaining to the transportation of commerce in and through the state may collect money for civil penalties issued for violations of North Carolina law.

- The member shall sign the citation and request the offender to sign in the appropriate block on the original and deliver a copy of the citation to the offender. If the offender refuses to sign the citation, the member shall indicate such refusal by writing “refused to sign” in the defendant’s signature block.

    - If the offender is issued an e-citation it is not necessary to request the offender to sign the e-citation

- Members shall deliver the N.C.U.C. to a judicial official of the General Court of Justice, for filing within five calendar days of issuance, or prior to the designated court date, whichever should come first

    - All e-citations shall be transmitted electronically to AOC by the issuing member by the end of his/her assigned shift

Members shall inform every accused person of the specific law he/she is charged to have violated. If facts are subsequently discovered which require additional charges to be filed, the offender shall be informed of the additional charges prior to trial.

Any member who cites or arrests any person shall comply with all of the requirements and procedures of N.C.G.S. Chapter 15A and any other applicable law, including.

- When a member arrests a person, he/she shall, without unreasonable delay, take the offender before a judicial official of the General Court of Justice as defined in N.C.G.S. Chapter 15A and as provided in this manual
- Upon arrest, the member shall, without unnecessary delay, advise the offender of his/her right to communicate with counsel, family and friends, and must allow him/her reasonable time and opportunity to do so

If facts discovered at a later date indicate additional definite, clear-cut and substantial violations, additional citations or other criminal process (criminal summons or warrant for arrest) shall be obtained and issued to the violator.

Implied Consent Summary Report (HP-327)

Any member who cites or arrests any person for an Implied Consent violation (N.C.G.S. Chapter 20-16.2) shall prepare an Implied Consent Summary Report (HP-327). The HP-327 will be submitted to the member's supervisor with their weekly paperwork. The district first sergeant or their designee shall ensure the HP-327 is delivered to the appropriate district attorney's office before the defendant's first court date.

If In-Car video of the stop exists **and** the District Attorney's office completes the request for video on page 2 of the HP-327, the district first sergeant, or their designee, shall ensure a video copy of the stop is completed. The copy should be delivered to the district attorney's office within 30 days of the returned request.

Under no circumstances should an original DVD be removed from the district office or should a copy be given to a defense attorney. All requests from defense attorneys should be redirected to the district attorney's office.

Juvenile Information: Refer to Directive I.06.

VIII. NONRESIDENT VIOLATOR COMPACT (NRVC)

North Carolina has joined with other states in a Nonresident Violator Compact (NRVC). The NRVC provides a driver from a Compact State is not to be bonded for motor vehicle violations, but issued a citation. The home state of the driver will revoke the driver's license if the driver fails to appear in court or pay the citation in a timely manner. The driver from a jurisdiction which is a member of the NRVC should not be arrested and bonded except for the following offenses:

- Felonies involving the use of a motor vehicle
- Death by vehicle (N.C.G.S. § 20-141.4)
- Driving while subject to an impairing substance (N.C.G.S. § 20-138.1)
- Driving a commercial vehicle while subject to an impairing substance (N.C.G.S. § 20-138.2)
- Driving by a person under 21 while drinking or after having consumed alcohol or controlled substance (N.C.G.S. § 20-138.3)
- Driving with open container after drinking (N.C.G.S. § 20-138.7A)

- Operating a commercial vehicle after consuming alcohol (N.C.G.S. § 20-138.2A)

- Operating a school bus, school activity bus, or child care vehicle after consuming alcohol (N.C.G.S. § 20-138.2B)

- Impaired Instruction (N.C.G.S. § 20-12.1)

- No operator's license (N.C.G.S. § 20-7)

- Possess fictitious, canceled, revoked, suspended or altered license, or counterfeit, sell, lend, or permit use of license by another or any other violation of N.C.G.S. § 20-30.

- Driving while (license) suspended, revoked or disqualified, or permitting an owned vehicle to be so operated. (N.C.G.S. § 20-28; N.C.G.S. § 20-34)

- Driving a commercial motor vehicle without being licensed to do so, or driving a commercial motor vehicle while license suspended, or subject to a disqualification or out of service order (N.C.G.S. § 20-37.12)

- Violations concerning the transportation of hazardous materials

- Violations of the fuel tax law

A driver from a state that is a member of the NRVC may under unusual circumstances be arrested and bonded for any other offense for which a mandatory court appearance is required by the Conference of Chief District Court Judges.

A member who charges a motorist from a reciprocating state with a violation of the Motor Vehicle Code covered by the NRVC shall issue the violator a citation and request the violator to sign the reciprocal agreement contained on the citation. A violator who agrees to comply with the citation but refuses to sign the citation is not required to be bonded. The member may write **refused to sign** in the signature block and give a copy of the citation to violator. Violators who refuse to agree to the reciprocal agreement, or who have committed an offense, for which the NRVC does not apply, shall be taken to a magistrate for bonding.

IX. ARREST OF DEAF PERSONS

In dealing with deaf or hearing-impaired persons, members must recognize impairment through the observation of their actions. Careful attention should be made of the person's hands and movement. He/She may be reaching for a pen and pad in clothing or glove compartment as a means of communication, instead of reaching for a weapon. Clues that a person is deaf or has a hearing impairment are as follows:

- Appears alert but fails to respond to any sounds

- Points to the ears, or to the ear and mouth, perhaps while shaking the head

- Speaks with a flat or harsh, unintelligible monotone

The individual may initiate one of the following types of communication. If not, the member may try each to determine the most reliable by asking one question at a time that requires a short answer.

- **Sign Language.** Whenever possible, secure a qualified interpreter. (It may be necessary to use a family member or friend temporarily, in an emergency situation.)

- **Writing Notes.** Writing notes requires patience because of poor handwriting skills or shorthand used by some deaf persons.

- **Lip Reading.** The least reliable method, understanding only 30% of what is said under ideal lighting conditions.

In accident investigation situations, listen to both sides, being careful not to exclude the person who is deaf. Face the deaf person when speaking and communicate by writing notes.

The arrest of a deaf person requires the procurement of an interpreter under N.C.G.S. § 8B-2(d).

Procedure for procuring an interpreter for arrested deaf persons in interrogation, warning, notification of rights, arraignment, bail hearing or other preliminary proceeding:

- The Department of Human Resources provides a listing of qualified interpreters for the hearing impaired to the Clerk of Superior Court of each county. The appointment of an interpreter must be made by a judicial official of the appropriate court; therefore a local Magistrate is the first judicial official available on a 24-hour basis.

- The member arresting a deaf person must take the arrestee before a judicial authority (Magistrate) for appointment of an interpreter. If arrested for an offense for which a chemical analysis is to be given, an interpreter or waiver must be obtained before the test is given. No answer, statement or admission taken from a deaf person without a qualified interpreter present and functioning is admissible in court for any purpose.

- The deaf person entitled to the services of an interpreter may waive these services through a waiver approved in writing by the person's attorney. If the person does not have an attorney, the waiver approval must be made in writing by the appointing authority.

Manual Communications Guide for Field Officers

- The Communications Guide contains graphic communication illustrations for situations involving law enforcement officers and deaf persons. It contains basic communication signs and signals to enable a law enforcement officer to establish communications prior to the arrival of an interpreter.

- The Communications Guide is to be supplied to each member and shall be retained in the Patrol vehicle for use should the need arise.

X. OPERATOR'S LICENSE TO REMAIN IN DRIVER'S POSSESSION

When an arrested person is allowed to drive his/her vehicle to a judicial official's office, he/she should have in his/her possession both his/her operator's license and the registration card for the vehicle he/she is operating. At no time shall the member escorting an arrested person keep these items in his/her possession while allowing an arrested person to drive his/her vehicle to the judicial official's office.

XI. ADDITIONAL PROCEDURES CONCERNING THE CARRYING OF CONCEALED HANDGUNS BY PERMIT HOLDERS AND QUALIFIED LAW ENFORCEMENT AND RETIRED LAW ENFORCEMENT OFFICERS

Due to the potential that persons contacted during the course of our duties may be lawfully armed with some type of handgun, the following procedure shall be followed:

- If a member is confronted with a person lawfully carrying a concealed handgun, the member should courteously and professionally seek information concerning the location of the handgun. Other instructions cautioning the person against making movements in the direction of the handgun may also be appropriate at this time.

Absent suspicious circumstances, the person shall not be disarmed. In rare instances when suspicious circumstances, based on sound articulable reasons, exist or develop to a degree to cause a member to perceive a threat to his/her or another person’s safety, the person may be disarmed. When the decision to disarm the person is made, the member shall clearly and professionally communicate his/her intentions to the person and shall give clear and concise instructions. He/She shall attempt to explain that the handgun will be secured temporarily and will be returned upon the completion of the contact. After the contact is concluded, and if circumstances permit, a brief explanation to the person as to why he/she was disarmed may be appropriate.

- Upon disarming the person, the handgun shall be unloaded if it can be done safely. In all cases, the handgun shall be secured. The handgun shall not be placed back into a vehicle occupied with other passengers but shall be placed in the Patrol vehicle or in the trunk of the violator’s vehicle.

- After the member has completed all business with the person whom he/she has disarmed and no custodial arrest is to be made, and there is no violation of the concealed handgun statute, the member, just prior to leaving the scene, shall return the handgun and ammunition. Members shall not return a loaded handgun, but shall place it in the vehicle, trunk, or other location where the member feels secure.

If the handgun owner is to be placed under arrest for any reason and the handgun is not seized for evidence, the following procedures shall be followed:

- If the vehicle is to be towed, it is permissible, with the consent of the handgun's owner on a **signed** Consent to Tow, Remove, or Store Vehicle or Leave Vehicle at the Scene (HP-305), to leave the handgun secured in the trunk of the vehicle.

- If the vehicle is to be left at the scene, the member shall take possession of the handgun, complete a Seized Property Report (HP-52), with a copy to the owner, and secure the handgun in the evidence locker at the appropriate Highway Patrol District Office until such time as the lawful owner of the weapon may retrieve the handgun. Should the subject be released from custody by lawful authority before the handgun can be secured in the evidence locker, the member shall return the handgun to the lawful owner upon release from custody or, if appropriate, to a sober responsible adult designated by the owner after the owner signs Form HP-52.

- If a sober, responsible adult takes possession of the vehicle, the member may, at the request of the handgun owner leave the handgun in the trunk or other locked compartment of the vehicle.

If the handgun owner is to be placed under arrest for any reason and the handgun is seized for evidence, the member shall complete a HP-52 and secure the handgun in the evidence locker at the appropriate Highway Patrol District Office.

If the handgun owner has a concealed carry permit, the charging officer shall ensure the Sheriff's Department or other governmental agency (for out of state permit holders) which issued the permit to carry a concealed handgun is notified through the Division of Criminal Information Computer System (DCI) for any violation of the permit. If the handgun owner is a qualified law enforcement officer or qualified retired law enforcement officer, the charging officer shall ensure the law enforcement agency where the officer is employed or from which he or she retired is notified through DCI of any violation that may affect on the officer's or retiree's continued eligibility to carry a concealed firearm.
At any time when a seized weapon is returned, the owner shall be required to sign the HP-52.

Leaving Assigned Duty Station While on Duty

Directive I.02

Applicable to: Members
CALEA

Revised 07/10/2017
Effective 9/1/1995

I. POLICY

Uniformed members of the Patrol shall be governed by the provisions of this policy when leaving their assigned duty stations.

II. LEAVING DISTRICT OR TROOP AREA

Members on duty shall not leave their assigned Patrol district without authorization from their supervisor.

III. LEAVING THE STATE

Members shall not leave the State while on duty except when authorized by the Troop Commander or his/her designee, or for the purposes of collision investigation and the member has obtained permission from their district supervisor.

When an emergency situation or collision requires members to travel into another State, members shall not remain in the other State longer than is absolutely necessary.

Members required to leave the State for emergency purposes shall be governed by the following:

- Members shall notify the nearest Communications Center of their call number, destination, mission, and estimated time of return to the State.

- Members shall notify the Communications Center immediately upon their return to the State, and the information shall be entered on the communications log.

- Emergency travel authorization reports shall be filed with the First Sergeant as soon as possible after returning to the State. A single copy of the report will be filed for record purposes only at district office.

Speed Enforcement

Applicable to: Members
CALEA Chapter 61

Directive I.03
Revised 10/24/2007
Effective 9/1995

I. POLICY

A member shall be governed by North Carolina Criminal Justice Education and Training Standards Commission Manuals entitled Radar Operator Training Course and Time-Distance Operators' Training, prepared and distributed by the North Carolina Justice Academy according to statutory requirements. For the purpose of this directive, those documents will be referred to as Training Manuals. **(CALEA 61.1.5; 61.1.9)**

II. ENFORCEMENT VOLUME (CALEA 61.1.5; 61.1.9)

The enforcement of speed and other motor vehicle laws by the Patrol for the sole purpose of building an activity record shall be prohibited, and such action shall not be permitted or tacitly condoned by any supervisor at any level.

Each member shall diligently enforce the speed law, according to North Carolina State Law and North Carolina State Highway Patrol policy, for the ultimate purpose of reducing the volume and severity of traffic collisions resulting from excessive speed.

III. ENFORCEMENT QUALITY (CALEA 61.1.5; 61.1.9)

The quality of speed enforcement shall be considered equally as important as the amount of enforcement. Each member shall strictly adhere to the Patrol's speed enforcement policy, which is to issue citations or make arrests only for definite, clear-cut and substantial violations. Motorists shall receive the benefit of any doubt. In no case shall a citation be issued or an arrest made for a frivolous, technical or borderline violation.

IV. SPEED MEASURING INSTRUMENTS (CALEA 61.1.5; 61.1.9)

Speed measuring instruments shall be used by members as assigned by supervisory personnel. Supervisory personnel in Field Operations shall determine the distribution of available speed measuring instruments, tuning forks, and stop watches throughout the State according to need.

Section Directors/Troop Commanders shall be responsible for ensuring that members under their command are properly trained and certified to operate speed-measuring instruments.

Section Directors/Troop Commanders shall have the responsibility to ensure that all speed measuring instruments, tuning forks, and stop watches assigned to their respective troops are tested for accuracy by a qualified technician, in accordance with N.C.G.S. § 8-50.2, 12 NCAC 9C, .0602, .0603, and .0604. Section Directors/Troop Commanders shall further ensure that such tests are

conducted when a Time Distance Instrument is installed in a vehicle and on each unit that undergoes an internal repair by a Radio Engineer. The results of the above test shall be recorded on forms provided by the Criminal Justice Education and Training Standards Commission and distributed according to Patrol policy. **(CALEA 61.1.9)**

V. OPERATION OF SPEED MEASURING INSTRUMENTS (CALEA 61.1.5; 61.1.9)

Speed measuring instruments shall be tested for accuracy and operated in conformance with the requirements of N.C.G.S. § 8-50.2; § 17C-6; Title 12, Chapter 9 of the North Carolina Administrative Code, the Manufacturer's Operational Manual, and Training Manuals.

No speed measuring instrument shall be operated for enforcement purposes by a member who has not been certified to operate such instrument by the Criminal Justice Education and Training Standards Commission.

A member shall not operate speed measuring instruments not owned by the North Carolina State Highway Patrol.

VI. SPEEDOMETER ACCURACY TESTS (CALEA 61.1.5; 61.1.9)

Members shall deny all requests from motorists to check the accuracy of motorists' vehicle speedometers with Patrol speed measuring devices or by any other means.

I. POLICY

This policy establishes guidelines to be followed during field interviews and interrogations of persons in custody. This directive in no way alters or amends N.C.G.S. Chapter 15A dealing with criminal procedure. Members shall, at all times, afford every person in custody or under investigation his/her full citizenship rights as secured by the Constitution and laws of the United States and the state of North Carolina. Under no circumstances shall a member conduct an investigation or interrogation in a manner, which he/she knows or should know, is in violation of the constitutional rights of any individual.

Information obtained from field interviews could assist in the prevention of crimes or may help with the identification and apprehension of criminals. Information gathered that is not within the Highway Patrol's scope of duty shall be provided to other law enforcement agencies for investigative purposes.

II. GENERAL LAW AND PROCEDURE

General Custodial interrogation, statements, and confessions are vitally important in the preparation of a criminal case. A suspect's statements, freely and voluntarily given, are normally admissible into evidence. However, statements made by a suspect while in custody, in response to one or a series of questions, are admissible only when given pursuant to the procedural guidelines established by **Miranda v. Arizona** and similar cases. North Carolina appellate court decisions clearly place the burden on the State to prove a confession was made freely and voluntarily, after a suspect was apprised of his/her rights and executed a valid waiver thereof. Many criminal cases are decided on the basis of the admissibility of a statement or confession. The following directive shall apply to all custodial interrogations made, and statements or confessions taken, by State Highway Patrol personnel:

Miranda Warnings – When Required

- Any member who wishes to use a suspect's custodial response to his/her questions in court must:
    - Advise the suspect of his/her Miranda rights, and
    - Obtain a valid waiver of those rights
- This rule is equally applicable to felony and misdemeanor suspects. Several conditions affect the necessity of Miranda rights:
    - **Miranda** warnings apply only to custodial interrogations. A person is in "custody" under the **Miranda** Rule when officers have (1) formally arrested

the person or (2) restrained the person's movement to a degree associated with a formal arrest. A person in jail is in custody even if the person is being questioned about a crime unrelated to the crime that is the basis of the incarceration. “Custody” is not the same as "seizure" and a member need not give Miranda warnings during an investigative stop or while issuing a motorist a ticket unless the member's actions indicate to the motorist that he/she will be arrested. A member's unarticulated intention to arrest the person is irrelevant to determining “custody”.

- A member may engage in general on-the-scene questioning at a crime scene or a scene of a motor vehicle collision without giving **Miranda** warnings

- Members gathering information for motor vehicle collision reports while having the motorist in the vehicle need **not** give **Miranda** rights until the member indicates to the motorist that he/she will be arrested

- A suspect who has been handcuffed should always be considered to be “in custody” for Miranda purposes. This is true even though he or she may have been told that he or she is not under arrest or that he or she is being handcuffed solely for officer safety or a part of an investigative detention.

- **Miranda** affects only the courtroom admissibility of the suspect's answers to interrogation. If the suspect volunteers information without any questioning or prompting, **Miranda** is not applicable.

Form of Warning and Waiver

- Normally, oral **Miranda** warnings followed by oral waivers of **Miranda** rights are sufficient. A written acknowledgment of **Miranda** warnings and waivers of **Miranda** rights should be obtained in all felony and serious misdemeanor cases. Members must be particularly careful to secure a written **Miranda** waiver in misdemeanor investigations which could later result in felony charges such as, a left of center accident investigation which could lead to a death by motor vehicle or manslaughter charge. In any event, the form and content of the warning and waiver must follow Patrol procedure.

Juvenile **Miranda** rights are to be given to those people under 18 years of age unless they are married, emancipated or are members of the armed forces.

III. MANDATORY POLICIES

Members shall advise a suspect of his/her constitutional rights prior to any custodial interrogation.

Members shall read the **Miranda** card word for word to the suspect. Free-lancing, recitation from memory, or paraphrasing is not approved. Strict adherence to this policy enables an officer to testify in court to precisely what

he/she told the suspect. This removes any doubt as to the suspect's knowledge and waiver of his/her constitutional rights. When testifying in court, members should read the card word for word precisely as they did to the suspect.

Members shall obtain affirmative waivers of the right to remain silent, as well as the right to an attorney. A simple "I understand my rights" does not constitute a waiver. The suspect must affirmatively waive these rights. An oral waiver is sufficient for most misdemeanors. A written waiver is necessary where the facts and circumstances indicate that the misdemeanor is of a serious nature, or that felony charges could be pending. All suspects charged with felonies should be asked to complete written waivers.

The arrest of a deaf person requires the procurement of an interpreter in interrogation, warnings, notification of rights, arraignment, bail hearing, or other preliminary proceedings. Members shall be governed by Directive I.01, Section VII (Arrest of Deaf Persons) prior to the interrogation of a deaf person.

Care should be taken to ensure non-English or limited-English speaking suspects understand their rights and that an interpreter be used in appropriate cases. Members have a Constitutional and ethical responsibility to ensure that non-English and limited-English speaking suspects are afforded the same equal protection of the law as English-speaking suspects.

IV. WRITTEN WAIVERS AND STATEMENTS

Miranda Rights

Adult Miranda Warnings (HP-306) should be completed in all cases requiring a **written** waiver of rights.

- Orally advise the suspect of his/her rights BY READING THE MIRANDA CARD

- Ask him/her to read and sign HP-306

- If the suspect cannot read, have someone read the form to him/her and enter the following below the waiver of rights:

  The above statement of my rights has been read and explained to me by _____. I understand my rights and freely and voluntarily waive them.

  Signed _____ Date _____
  Witness _____ Time _____

  If the accused cannot write, allow him/her to make his/her mark in the place for his/her signature, and be certain to have the document witnessed.

- The waiver of rights (HP-306) should be completed as above

- When the confession is reduced to writing, it should begin immediately after the waiver and on the same page. The pages of a confession should end in the middle of a sentence so that a portion of the sentence is carried over to the next page. The pages should be numbered, and all pages, except the first and last, should be signed or initialed by the subject in the margin. Errors should be stricken with a single line only, the correction inserted, and the markings initialed by the subject.

- If the person making the confession cannot read, the following statement should be added at the bottom of the confession:

  The above statement consisting of _____ pages has been read to me by _____ and it is true of my own knowledge and is the statement made by me to _____ on the _____ day of _____, 20_____.

  Signed _____
  Witnessed _____
  Date _____
  Time _____

  If the suspect cannot write, he/she should make his/her mark in the appropriate place for his/her signature. The mark should be witnessed.

V. JUVENILE INTERROGATION PROCEDURE N.C.G.S. § 7B-2101

When interviewing or interrogating a juvenile, refer to Directive I.06, Section IX (Interrogation/Interview of a Juvenile) and also, G. S. § 15A-211, Electronic Recording of Interrogations.

VI. SHOW-UP IDENTIFICATIONS

- A “show-up” identification is a one-on-one viewing between a suspect and the witness(es). Show-up identifications may be used within a short time after the commission of an offense and may be conducted at or near the location of the offense. Show-up identifications may be used to rule out suspects and to inform police if further investigation is necessary.

VII. SHOW-UP IDENTIFICATION PROCEDURE

- An investigator conducting an investigatory detention of a suspect may conduct a show-up identification with a witness to the offense. In the event the suspect and the witness are at different locations immediately following the suspect’s apprehension, if practical, the witness should be moved to the location of the suspect for the show-up to occur. If it is not practical for the

witness to be moved, the suspect may be moved a short distance for the show-up to occur.

- If necessary for officer safety, a suspect may be handcuffed during the show-up. In situations involving a show-up identification where there are multiple witnesses, the suspect shall be viewed by only one witness at a time. Witnesses shall not be allowed to speak to one another until all have completed their viewing.

- During a show-up identification, the witness shall receive no communicated instructions from the investigator, or any other law enforcement personnel present, other than being told to look at the suspect and to state whether they recognize the suspect. Should the witness recognize the suspect, the investigator shall inquire as to the circumstances of the recognition.

- Without commenting upon or communicating his opinion as to the validity of the witness's identification, the investigator shall document both the fact of identification and the level of confidence in the identification exhibited by the witness in a written report

VIII. FIELD INTERVIEWS

Members are to remain alert for possible suspicious activities and other information during the course of their normal duties that may assist the Patrol or other law enforcement agencies in identifying and apprehending criminals. Such activity should be documented on the Field Interview Report (HP-326).

District First Sergeants are responsible for contacting local law enforcement agencies within their districts to coordinate the distribution of completed field interview forms.

Members should be aware that Miranda may or may not apply during field interviews.

IX. DOCUMENTING FIELD INTERVIEWS

The HP-326 shall be used to document field interviews made by members when an arrest is not made.

- The full identity of the person interviewed should be determined and documented on the form

- The narrative portion should contain sufficient information to explain why the individual(s) was questioned and should include details of suspected criminal activity, statements, or actions observed by the member

The interviewee(s) should be questioned when there is a reasonable suspicion; however, he/she cannot be forced to answer any questions, and should be

permitted to leave if evidence of criminal activity is not corroborated within a reasonable period of time.

X. GANG VALIDATION CRITERIA / FIELD INTERVIEWS

Members are to remain alert for possible gang activities and other information during the course of their normal duties that may assist the Patrol or other law enforcement agencies in identifying and apprehending criminals. Such activity should be documented on the Gang Validation Criteria / Field Interview Report (HP-325).

Members are responsible for contacting the Field Liaison Officer Coordinator within their Troop to coordinate the distribution of completed Gang Criteria Validation / field interview forms.

Members should be aware that Miranda may or may not apply during field interviews.

XI. DOCUMENTING GANG VALIDATION CRITERIA / FIELD INTERVIEWS

The HP-325 shall be used to document Gang Validation Criteria / Field interviews made by members whether an arrest is not made or not.

- The full identity of the person interviewed should be determined and documented on the form.

- The narrative portion should contain sufficient information to explain why the individual(s) was questioned and should include details of suspected gang activity, statements, or actions observed by the member.

The interviewee(s) should be questioned when there is a reasonable suspicion; however, he/she cannot be forced to answer any questions, and should be permitted to leave if evidence of gang activity is not corroborated within a reasonable period of time.

XII. INTERVIEW AND INTERROGATION GUIDELINES

Patrol members shall adhere to the following guidelines in regards to interview and interrogation:

- Troop Commanders shall designate approved interviews and interrogations rooms

- All duty weapons should be secured prior to conducting an official interview or interrogation to reduce potential officer safety concerns in the event a person becomes combative. Weapons should be secured in the officer's holster(s) being worn, attached to the issued Sam Browne (if applicable), or secured in a designated gun locker as determined by the troop commander. Temporary storage lockers may be designated as approved weapons storage as long as

the district has designated one of the compartments as weapons storage and the key is available to the interviewing member.

- Ensure, for employee safety and occasional check-up purposes, that facility personnel (e.g., dispatch, supervision, etc.) are aware of the location and potential duration of the interview. Visual observations or raised voice tones may signal a need for interruption. If the interviewer needs assistance, the officer shall verbally or physically request assistance from facility personnel or summon assistance using assigned portable radio.

- The interview shall be conducted in private, generally with only the officer and one other person present. Special circumstances may require a parent, guardian or legal representative to be present for interviews.

- The interview room or area shall have only those items necessary (i.e., table, chairs, documentation resources, etc.) to conduct the interview and to provide for the safety and/or comfort of both the officer(s) and the person(s) being interviewed

- A ten minute break must be offered each 50 minutes unless the interview is at a critical stage or other circumstances make taking the break impractical; in either case, a break is to be offered at the first opportunity. The duration of the interview should be predicated upon the totality of circumstances, including the type of investigation, cooperativeness of interviewee, factors external to the interview, etc. All individuals shall be afforded an opportunity to address personal needs during an interview. Individuals requesting to use the facilities (restroom, water, etc.) may be escorted by the officer at all times during the interview or detention process.

- The location should be familiar to the officer and free from telephones and other distractions. Open squad rooms in district offices do not qualify as approved locations for the purpose of conducting interviews/interrogations.

XIII. ELECTRONIC RECORDING OF INTERROGATIONS

Custodial Interrogations conducted at any place of detention shall be recorded in its entirety if it involves a criminal investigation of a juvenile or if the investigation is related to any of the following crimes: Class A, B1, or B2 felony, and any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury. Please refer to NC General Statute § 15A-211.
NOTE: This does not apply to interviews or interrogations that take place in a patrol vehicle.

Arrest of Foreign Nationals

Directive I.05

Applicable to: Members
CALEA Chapters 1; 61

Revised 11/10/2004
Effective 9/1994

I. POLICY

This policy establishes guidelines for the treatment of foreign nationals. **(CALEA 1.1.4; 61.1.3)**

II. TREATY PROVISIONS (CALEA 1.1.4; 61.1.3)

The U.S. Department of State is obligated under international treaties and customary international law to notify foreign authorities when foreign nationals are arrested or otherwise detained in the United States. The legal requirements are as follows:

- Whenever a member arrests, imprisons, or otherwise detains a foreign national such member must promptly inform the detainee of his/her right to have his/her government informed of such event. **(CALEA 1.1.4)**

- If the detainee asks to exercise this right, the detaining member should initiate the notification of the appropriate foreign consulate or embassy without delay and make a written record of such notification.

- Subject to local laws and regulations regarding access to detained persons, consular officers have the right to visit their nationals who are in prison, custody, or detention to converse and correspond with them and to arrange for their legal representation. A foreign consular officer should not take action on behalf of such a person if the person being held expressly opposes such action.

- While the above requirements are universally applicable, members must be aware that treaties exist with certain countries, which require **mandatory** notification when these nationals are confined or detained. In these cases, the foreign national has no choice regarding the notification.

III. PROCEDURES (CALEA 1.1.4; 61.1.3)

A foreign national who is given a citation or posts bond and is allowed to proceed does not require consular officials to be notified.

If an arrested or detained person identifies himself/herself as a foreign national or a citizen of a "treaty country," the following procedures should be followed:

- He/She should be informed of his/her right to contact his/her consular official and encouraged to do so. If he/she requests that such notification be made, it should be done immediately through proper channels.

- If the arrested person is from a **treaty country** that requires mandatory notification of consular officials, such notification must be done without delay.

- The member making the arrest or detaining foreign nationals shall in all cases notify the Section Director/Troop Commander through proper channels. The Section Director/Troop Commander, if necessary, will direct the appropriate Patrol Communications Center to notify the appropriate embassy in Washington, D.C.

- In every case the arresting member should prepare and forward to the Commander's Office, through proper channels, a full report of the incident as it relates to the arrest or detention and any notice given to consular officials.

- Because of language barrier problems, members should be exceptionally careful to extend all usual and customary courtesies to the person arrested or detained.

IV. TREATY COUNTRIES (CALEA 1.1.4; 61.1.3)

These countries require notification of the nearest consulate or embassy **regardless of whether** the arrestee/detainee so wishes, and must be made without delay:

Mandatory Notification Countries and Jurisdictions	
Algeria	Malta
Antigua and Barbuda	Mauritius
Armenia	Moldova
Azerbaijan	Mongolia
Bahamas, The	Nigeria
Barbados	Philippines
Belarus	Poland (non-permanent residents only)
Belize	Romania
Brunei	Russia
Bulgaria	Saint Kitts and Nevis
China[1]	Saint Lucia
Costa Rica	Saint Vincent and the Grenadines
Cyprus	Seychelles
Czech Republic	Sierra Leone
Dominica	Singapore
Fiji	Slovakia
Gambia, The	Tajikistan
Georgia	Tanzania
Ghana	Tonga
Grenada	Trinidad and Tobago
Guyana	Tunisia
Hong Kong[2]	Turkmenistan
Hungary	Tuvalu
Jamaica	Ukraine

Mandatory Notification Countries and Jurisdictions	
Kazakhstan	United Kingdom[3]
Kiribati	U.S.S.R.[4]
Kuwait	Uzbekistan
Kyrgyzstan	Zambia
Malaysia	Zimbabwe

[1] Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office ("TECRO"), the unofficial entity representing Taiwan's interests in the United States, can be notified at their request.

[2] Hong Kong reverted to Chinese sovereignty on July 1, 1997, and is now officially referred to as the Hong Kong Special Administrative Region, or "SAR". Under paragraph 3(f)(2) of the March 25, 1997, U.S.-China Agreement on the Maintenance of the U.S. Consulate General in the Hong Kong Special Administrative Region, U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as is required for bearers of Chinese passports – i.e. immediately, and in any event within four days of the arrest or detention.

[3] British dependencies also covered by this agreement are Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

[4] Although the U.S.S.R. no longer exists, some nationals of its successor states may still be traveling on its passports. Mandatory notification should be given to consular officers for all nationals of such states, including those traveling on old U.S.S.R. passports. The successor states are listed separately above.

Notification Procedures (CALEA 1.1.4; 61.1.3)

- The telephone numbers for consular offices are provided and entered in each Patrol Communications Center computers for access by Communications personnel.

- Members who arrest or detain a foreign national shall, if requested or required, notify the Section Director/Troop Commander and request that the consular office of the foreign national be notified. If the Section Director/Troop Commander approves the request, he/she shall direct the Communications Center to make such notification and provide documentation of pertinent information to support a written report of the incident.

- The Telecommunicator, upon instructions from the Section Director/Troop Commander, shall make the necessary contact with the consular office as outlined in Directive 9 of the *Telecommunications Manual* without delay. Documentation of the date, time, and any other pertinent information shall be

provided to the Section Director/Troop Commander and arresting member to support a written report of the incident.

V. ARREST OF NATO MILITARY PERSONNEL (CALEA 1.1.4; 61.1.3)

NATO military personnel on official visits to this country are governed by a treaty agreement between the United States and other NATO countries.

If NATO military personnel are arrested, the arresting member shall immediately notify Patrol Headquarters or Troop "B" Headquarters. A member of Troop "B" or Patrol Headquarters will notify the Provost Marshal's Office, Fort Bragg, NC, of such arrest and provide procedural instructions as to jurisdiction and disposition.

VI. FOREIGN DIPLOMATIC AND CONSULAR PERSONNEL (CALEA 1.1.4; 61.1.3)

It is important that members of the Patrol treat foreign diplomatic and consular personnel with respect and due regard for the privileges and immunities to which they are entitled under international law. Members should not, however, allow themselves to adopt a "hands off" attitude in connection with traffic or criminal law enforcement actions involving diplomats. Foreign diplomats who violate traffic laws should be cited and allegations of serious crimes should be fully investigated and promptly reported to the U.S. Department of State.

Diplomatic Immunity (CALEA 1.1.4; 61.1.3)

- Diplomatic agents, which include ambassadors and other diplomatic officers, members of their administrative and technical staff and their families forming the immediate household, enjoy immunity from criminal arrest and civil suit.

    - Persons who enjoy any degree of privileges and immunities possess a diplomatic passport issued by their country with a "diplomatic" ("A" or "G") visa entered by U.S. authorities. The Department of State has also issued distinctive license plates and operator's permits to persons entitled to privileges and/or immunities in the United States. **The diplomatic passport, distinctive registration plates, and operator's license should not be relied upon as conclusive indications of the status or immunity of the bearer, but the possession of these documents are an indication that the bearer might be entitled to these privileges and immunities.**

    - If the persons state that they have diplomatic immunity, members should courteously request further identification. Temporary duty visitors and/or persons who have just joined the diplomatic mission may not yet have received the appropriate U.S. identity documents; therefore, members should confirm the status of these individuals through the U.S. Department of State (telephonic information/verification procedures are provided in this directive).

Identification (CALEA 1.1.4; 61.1.3)

- The forms of identification noted above provide an indication of possible immunity of a person possessing them. The only authoritative identity document is the identity card issued by the U.S. Department of State, Protocol Office.

- There are three types of cards – Diplomatic (blue border for diplomats), Official (green border for employees), and Consular (red border for consular personnel). The three and three-quarters inch by two and one-half inch identification card (3" x 2") will contain the bearer's photograph, name, title, mission, city and state, date of birth, identification number, expiration date, and an U.S. Department of State seal on the front of the card. A brief statement of the bearer's immunity will be printed on the reverse side.

- As noted above, newly arrived members of diplomatic and consular staffs may not yet have these official identity documents, therefore, members should be prepared to contact the U.S. Department of State, Protocol Office for verification if confronted with such situations.

Traffic Enforcement (CALEA 1.1.4; 61.1.3)

- Citations

    - Stopping of diplomatic or consular officers and issuing a traffic citation does not constitute an arrest or detention and is permissible, although the signature of the person on the citation may not be required. A member should follow normal procedures and intervene in a traffic violation that he/she observes, even if immunity bars further action at the scene. The member should always stop persons committing moving violations, issue a citation if appropriate, and forward a full written report through the proper channels to the Commander’s Office.

- Impaired Driving

    - Sobriety tests may be offered, but may not be required or compelled. If the member judges the individual to be intoxicated, the member should not (even in case of diplomatic agents) permit the individual to continue to drive. The member's primary concern is the safety of the community and the intoxicated individual. The member has the following options in this situation:

        - With the individual's permission, take the individual to the nearest law enforcement facility or other location where he/she may recover sufficiently to drive

        - Summon or allow an individual to summon a friend or relative to drive

        - Call a taxi for the individual

- Provide the individual with transportation

- Members should fully document the facts of the incident and prepare a written report to be forwarded to the U.S. Department of State from Patrol Headquarters via chain-of-command (it is the policy of the U.S. Department of State to suspend the operator's license of foreign mission personnel not considered to be responsible drivers).

- Vehicles or Property **(CALEA 61.1.3)**

  - The property of a person enjoying full immunity, including his/her vehicle, may not be searched or seized. Such vehicles may not be impounded, but may be towed the distance necessary to remove them from obstructing traffic or endangering public safety. If the vehicle is suspected of being stolen or used in the commission of a crime, occupants of the vehicle may be required to present vehicle documentation to permit members to verify the vehicle's status through standard access to NLETS. Should the vehicle prove to have been stolen or used by unauthorized persons in the commission of a crime, the immunity to which the vehicle would normally be entitled must be considered temporarily suspended, and normal search of the vehicle and, if appropriate, its detention, are permissible.

Telephonic Information / Verification (CALEA 1.1.4; 61.1.3)

- Members who encounter individuals who claim immunity and cannot present satisfactory identification or believe that invalid identification is being presented should initiate an inquiry to the U.S. Department of State to verify the individual's status. Such an inquiry shall be made through the Section Director/Troop Commander and Patrol Communications Center. The Communications Center shall make necessary inquiries as outlined in Directive 9 of the *Telecommunications Manual*.

I. POLICY

The North Carolina State Highway Patrol will manage each juvenile case in a manner that ensures appropriate enforcement action to best meet the needs of the juvenile and to protect the public. Chapter 20 violations involving 16 and 17-year-old offenders shall be processed in the same manner as adult offenders, subject to juvenile Miranda, electronic recording and parental and/or school principal notification when applicable. All members and agency components will be responsible for actions relating to juvenile cases and will coordinate efforts, as appropriate, with other agencies including their county local Human Services and the Section of Juvenile Justice of the North Carolina Department of Public Safety.

The State Highway Patrol, consistent with its mission of reducing crime in our communities, affirms the importance of addressing juvenile crime issues in a reasonable and prudent manner. Through educational programs and proper handling of juvenile offenders, the Patrol will attempt to reduce juvenile crimes and recidivism rates.

II. CRIME PREVENTION, SAFETY, AND EDUCATION PROGRAMS

Written documentation (HP-51) regarding school visits and other crime prevention or safety presentations in which juveniles are specifically targeted shall be submitted to the District First Sergeant on a weekly basis. The District First Sergeant shall ensure that all documentation related to school visits and juvenile safety presentations are entered into the Patrol's intranet Traffic Safety Information (TSI) reporting page.

III. INTERAGENCY RELATIONS

The Department will share policies and procedures with other elements of the juvenile justice system. Review and comment from other agencies and organizations involved in juvenile justice will be solicited by direct request.

IV. OPTIONS FOR HANDLING JUVENILES

Members taking juveniles into temporary custody shall use the most appropriate course of action for each situation while considering the needs of the juvenile, and the protection of the public safety. The member may:

- Release the juvenile, with or without first counseling the juvenile
- Release the juvenile to the juvenile's parent, guardian, or custodian
- Refer the juvenile to community resources

- Seek a petition; or

- Seek a petition and request a custody order

Members must seek a petition and request a custody order for the following Non-Divertible Offenses (N.C.G.S. § 7B-1701):

- Murder

- First or second-degree rape

- First or second-degree sexual offense

- Arson

- Chapter 90 felony drug offense

- First-degree burglary

- Crime against nature

- A felony involving infliction of serious injury or committed with a deadly weapon

V. FINGERPRINTING AND DEOXYRIBONUCLEIC ACID (DNA) COLLECTION PROCEDURES

Fingerprinting – Duties of the Member

- Under N.C.G.S. 15A-502, members are not authorized to take photographs or fingerprints of a juvenile alleged to be delinquent except under Article 21 of Chapter 7B of the General Statutes.

Deoxyribonucleic Acid (DNA) Collection Procedures – Duties of the Member

- When jurisdiction over a juvenile is transferred to the superior court, a DNA sample shall be taken from the juvenile if any of the offenses for which a juvenile is transferred are included in the list of offenses included in N.C.G.S. §15A-266.3A.

- Universal precautions are to be used when handling the DNA Collection Kit in accordance with Directive B.06 (Blood borne Pathogens).

- A new kit must be used for each individual from whom a DNA sample must be collected.

VI. REFERRING TO AN INTAKE COUNSELOR

At a minimum, a juvenile who commits an offense in the following categories will be referred to an intake counselor:

- Delinquent acts that would be felonious if committed by an adult
- Delinquent acts involving weapons
- Serious gang-related delinquent acts
- Delinquent acts involving aggravated assaults
- Delinquent acts committed by juveniles under probation or by those with a case pending; and
- Repeated delinquent acts within a twelve (12) month period

Other situations that may require referral to an intake counselor are:

- Cases in which it has been determined that parental supervision is not effective; and
- Cases in which juveniles are alleged undisciplined, such as runaways and truants. In these cases, the member will instruct the parent, guardian, or social worker to file the undisciplined petition. Filing of the petition from anyone other than the parent or social worker will not be accepted.

VII. ABSCONDER

A member who takes a juvenile into custody as an absconder will immediately confirm the order for secure custody immediately as listed in National Crime Information Center (NCIC) and ensure medical attention if needed. The member will contact the administrators of the youth development center or detention center from which the juvenile absconded and arrange for immediate transportation back to the appropriate authorities if so ordered by the existing court order or provide transportation to the nearest approved facility providing secure custody. A court counselor shall be contacted for paper work and/or procedures.

VIII. ABUSED, NEGLECTED, OR DEPENDENT JUVENILE

A member may take physical custody of a juvenile if they believe the juvenile is abused, neglected, or dependent. Members will immediately contact the appropriate local law enforcement agency to initiate temporary custody procedures in accordance with the current Department of Social Services procedures and Chapter 7B, “Juvenile Codes”, of the NC General Statutes. A member who releases a juvenile to another agency shall complete and forward

Form HP-326B (Member's Statement) to the investigating agency with the pertinent information relating to suspected abuse or neglect.

IX. INTERROGATION AND/OR INTERVIEW OF A JUVENILE

Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into custody and advise the custodian of their rights to be present with the juvenile until a determination is made as to the need for secure custody or parental release.

The officer(s) conducting the interrogation or interview will explain departmental and juvenile justice system requirements to the juvenile and parent/guardian/custodian being interrogated or interviewed by reading their rights prior to questioning and having them sign a HP-306A (Rights of a Juvenile).

Any juvenile in custody must be advised:

- That the juvenile has the right to remain silent;
- That any statement the juvenile makes can be and may be used against them;
- That the juvenile has the right to have a parent, guardian, or custodian present during questioning; and
- That the juvenile has a right to consult with an attorney and that one will be appointed for them if the juvenile is not represented and wants representation.

When the juvenile is less than 16, no in-custody admission or confession resulting from interrogation or interview may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If no attorney is present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights set out above. However, a parent, guardian or custodian may not waive any right on behalf of the juvenile.

If the juvenile indicates in any manner and at any stage of questioning in an interrogation or interview that they desire to have an attorney present, the member shall cease questioning immediately and not initiate any further questioning until an attorney has been provided and is present.

If the juvenile indicates in any manner and at any stage of questioning in an interrogation or interview that they desire to have a parent, guardian, or custodian present, the member shall cease questioning immediately and not initiate any further questioning until the parent, guardian or custodian has been provided and is present.

If the juvenile indicates in any manner and at any stage of questioning in an interrogation or interview that they do not wish to continue, the member shall cease questioning.

A statement resulting from custodial interrogation or interview will only be admissible if the court finds that the above-described procedure was followed and that the juvenile aged 16 or 17 knowingly, willingly, and understandingly waived their rights.

No more than two (2) officers should normally engage in the interview or interrogation of a juvenile. The duration of interview or interrogation involving juveniles should normally be limited to no more than two (2) hours at any one session.

Juvenile Miranda warnings are not required if the juvenile is not in custody for Miranda purposes.

ELECTRONIC RECORDING OF INTERROGATIONS PURSUANT TO N.C.G.S. § 15A-211

A member conducting a custodial interrogation of juvenile, at any place of detention, **must record the interrogation in its entirety**. For purposes of this requirement, a "place of detention" is defined as: "A jail, police or sheriff's station, correctional or detention facility, holding facility for prisoners, or other facility where persons are held in custody in connection with criminal charges." Interrogations that take place in the member's patrol vehicle are not subject to this requirement.

The electronic recording required by this provision is defined as: "An audio recording that is an authentic, accurate, unaltered record; or a visual recording that is an authentic, accurate, unaltered record." A visual and audio recording shall be simultaneously produced whenever reasonably feasible.

If an interrogation is recorded pursuant to this requirement and the juvenile is subsequently convicted of an offense related to the interrogation, the recording shall be retained for not less than one (1) year after the completion of all appeals of the conviction.

The electronic recording requirements of N.C.G.S. 15A-211 and this section are not applicable to juveniles who are not in custody for Miranda purposes.

X. ISSUING CITATION

The manner in which parental notification is made is to be recorded on the citation.

Juveniles Aged 16 or 17

- A juvenile who is 16 or 17 years of age and charged with a G.S. Chapter 20 motor vehicle offense may be issued a citation and processed as an adult.

- Unless the juvenile qualifies under the once an adult, always an adult doctrine, in any non-motor vehicle case where a juvenile is 16 or 17 years of age, **NO citation shall be issued to the juvenile,** but a copy may be given to the intake counselor and to the parent, guardian, or custodian if not objected to by the intake counselor or magistrate.

- In addition to any other applicable notification requirements, a member who issues a citation to a juvenile who is 16 or 17 years of age must notify the minor's parent, guardian, or custodian as soon as practicable, in person or by telephone if the minor is cited for any of the following motor vehicle offenses:

  - Passing a stopped school bus N.C.G.S. § 20-217
  - Reckless driving N.C.G.S. § 20-140
  - Hit and run, property damage only N.C.G.S. § 20-166(b)
  - Following too closely N.C.G.S. § 20-152(a)
  - Driving on the wrong side of road N.C.G.S. § 20-146
  - Illegal passing N.C.G.S. § 20-150; and
  - Driving while impaired N.C.G.S. § 20-138.1

Juveniles under 16 years

- Unless the juvenile qualifies under the once an adult, always an adult doctrine, in any case where a juvenile has not reached their 16th birthday (delinquent or undisciplined), **NO citation shall be issued to the juvenile**, but a copy may be given to the intake counselor and to the parent, guardian, or custodian if not objected to by the intake counselor or magistrate.

Juveniles Who Are Considered Once an Adult, Always an Adult

- A juvenile shall be processed as an adult for any criminal offense the juvenile commits after a district or superior court conviction if either of the following applies:

  - The juvenile has previously been transferred to and convicted in superior court.
  - The juvenile has previously been convicted in either district or superior court for a felony or a misdemeanor. Violations of the motor vehicle laws punishable as a misdemeanor or infraction shall not be considered a conviction for the purposes of this subsection unless the conviction is for an offense involving impaired driving as defined by G.S. 20-4.01(24a)

XI. TAKING A JUVENILE INTO TEMPORARY CUSTODY

Criteria

- In accordance with N.C.G.S. § 7B-1900, a juvenile may be taken into temporary custody by a law enforcement officer without a court order in the following circumstances:

    - If grounds exist for the arrest of an adult in identical circumstances under N.C.G.S. § 15A-401(b);

    - If there are reasonable grounds to believe that the juvenile is an undisciplined juvenile; or

    - If there are reasonable grounds to believe the juvenile is an absconder from any residential facility operated by the Division or from an approved detention facility or from an out-of-state juvenile facility confirmed by NCIC.

XII. DURATION

A juvenile taken into temporary custody shall not be held for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or legal holiday, unless a petition or motion for review has been filed and an order for secure or non-secure custody has been entered.

XIII. SEARCH PROCEDURES

Search procedures for juveniles are the same as for adults.

XIV. PARENTAL NOTIFICATION

A member who takes a juvenile into temporary custody for any crime must, as soon as possible, notify the minor's parent, legal guardian or custodian as soon as possible. If the minor's parent, guardian, or custodian cannot be located in person or by telephone, the member shall follow up in writing by mailing within 24 hours a "Notice of Arrest" (Form HP-200E) to the minor's parent, guardian, or custodian. If the parent, guardian, or custodian cannot be located, a next-of-kin of the minor shall be notified as soon as practical. If the member meets the parent, guardian, or custodian in person, the HP-200E may be given to them at that time.

Members must notify the juvenile's school principal for any non-motor vehicle felony (i.e. felonious drug violation) (N.C.G.S. § 15A-505).

The manner in which notification is made to the juvenile's parent, guardian, custodian, and school principal shall to be recorded on the citation.

Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into custody and advise that custodian of their rights to be present with the juvenile until a determination is made as to the need for secure custody or parental release. **For the purpose of this section, the term "custodian" is inclusive of the term parent or guardian, as it relates to the right to be present with the juvenile.**

XV. NON-TESTIMONIAL IDENTIFICATION ORDER

Non-testimonial identification procedures shall not be conducted on any juvenile without a court order issued pursuant to N.C.G.S. § 7B-2103 through N.C.G.S. § 7B-2109 unless the juvenile has been charged as an adult or transferred to Superior Court for trial as an adult, in which case the procedures for an adult shall apply. Only a prosecutor may request a non-testimonial identification order.

Non-testimonial identification means identification by **fingerprints**, palm prints, footprints, measurements, **blood specimens**, urine specimens, saliva samples, hair samples or other reasonable physical examination, handwriting samples, voice samples, **photographs**, and lineups or other similar identification procedures.

Chemical analysis procedures do not require a non-testimonial identification order.

XVI. FINGERPRINTS AND PHOTOGRAPHS

A law enforcement officer shall fingerprint and photograph a juvenile who was 10 years of age or older at the time the juvenile allegedly committed a non-divertible offense as listed under the options of handling a juvenile's non-divertible offense, when a complaint has been prepared for filing as a petition and the juvenile is in physical custody of law enforcement. A non-testimonial identification order is not required under these circumstances.

The fingerprints and/or photographs shall be maintained in the juvenile offender's file until the case has been disposed of by the court system. If the juvenile was adjudicated delinquent, the photograph and/or fingerprints shall be forward as required to the State Bureau of Investigations (SBI). If the juvenile was found not-guilty, or if the intake counselor did not file a petition, then the photographs and/or fingerprints shall be destroyed.

Any evidence obtained by a non-testimonial order is not public record.

If the intake counselor did not seek a petition and fingerprints and/or photographs were taken, they must be destroyed. If the case went to trial and the juvenile was adjudicated delinquent, then the fingerprints and/or photograph shall be forwarded to the SBI.

XVII. ALCO-SENSOR / INTOXILYZER ADMINISTRATION

A member has no authority to force or require a juvenile under the age of 18 to submit to an alco-sensor test or a chemical analysis without a court order; however, just as with adults, a juvenile may be requested to submit to an alco-sensor test. Also, a member who has reasonable grounds to believe that a juvenile has committed an implied consent offense may take a juvenile into custody and request that the juvenile submit to an Intoxilyzer test. Failure of the juvenile under the age of 16 to submit to the test shall not result in a revocation by the Division of Motor Vehicles (DMV) and no report shall be sent to DMV. Likewise, the 30-day pretrial revocation N.C.G.S. § 20-16.5 does not apply to a juvenile under the age of 16. The Juvenile Rights form (HP-306A) should be used when requesting a juvenile to submit to an Intoxilyzer test.

Juveniles that have reached their 16th birthday are treated as adults for purposes of chemical analysis and driver's license revocations.

XVIII. JUVENILE RECORDS

Unless jurisdiction of the juvenile has been transferred to superior court, **all law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults** and shall be withheld from public inspection. The following persons may examine and obtain copies of law enforcement records and files concerning a juvenile without an order of the court in accordance with G.S. 7B-3001:

- Juvenile;
- Juvenile's parent, guardian, custodian, or the authorized representative thereof;
- District Attorney or Prosecutor;
- Court counselors; and
- Law enforcement officers sworn in this state.

XIX. RECORD KEEPING FOR CITATIONS / JUVENILE RECORDS

The court disposition of cases involving juveniles is not a matter of public record. Charges brought against juveniles will be prepared on the North Carolina Uniform Citation (N.C.U.C.), and a petition will be filed by juvenile court officials when warranted.

Any time a citation is written to any juvenile age 16 or 17 for a non-motor vehicle offense or under the age of 16 for any offense, the citation must be maintained separately from any adult pending or adjudicated citations.

A member who issues a citation to any juvenile age 16 or 17 for a non-motor vehicle offense or under the age of 16 for any offense, shall submit all copies of the N.C.U.C., any evidence, and notes to the First Sergeant with their weekly reports, **except** the original N.C.U.C. which may be given to the Juvenile Court Counselor to aid in the preparation of the petition. The citation and disposition information will be entered in the Information Management System (IMS) by the First Sergeant and should appear on the member's next Citations Adjudicated Report. The citation number will be flagged on the adjudicated list by the pound (#) sign for record keeping.

The First Sergeant will maintain all juvenile files in a secured file cabinet and record the citation number as the case number. The Trooper will track only those cases in which that evidence (i.e. fingerprints and photographs) was collected. If evidence was collected, the member will notify the First Sergeant when the case is completed in juvenile court. The case can be disposed of either by the intake counselor not seeking a petition or by going to trial. If evidence was collected and the intake counselor did not seek a petition or the juvenile was found not guilty, then the evidence must be destroyed. If the juvenile was adjudicated delinquent, then the photographs and fingerprints will be forwarded to the SBI. The citation will remain in the file for the two (2) years as required for the retention schedule for citations.

XX. ACCIDENT, USE OF FORCE, AND POST CHASE REPORTS

Juveniles' names and addresses may be recorded on a Crash Report (Form DMV-349), Use of Force Reports, and the Post Chase Report in the same manner as an adult's information is recorded. However, charges may not be reflected on any of these reports.

XXI. MEDIA RELATIONS

Information from an investigation that **shall not** be released concerning a traffic collision, incident, or crime without prior approval of the Section Director/Troop Commander/designee or higher authority includes:

- Specific information, which, if disclosed, could jeopardize an investigation, the apprehension of a suspect, or the prosecution of an offender;
- Evidence that is part of an ongoing criminal investigation shall not be released without prior authorization by the District Attorney;
- The name, photographs, and address of any juvenile (under age 18) who is a suspect or defendant in a case subject to a juvenile court jurisdiction;
- The identity of any critically injured or deceased person prior to notification of the next of kin;
- The results of any investigative procedure such as lineups, polygraph examinations, fingerprint comparisons, ballistic tests, or similar procedures.

The fact that these tests have been performed may be revealed without further comment; and

- The specific cause of death unless officially determined by a medical examiner.

Evidence / Property Collection, Analysis, and Disposal

Directive J.01
Revised 08/05/2019
Effective 10/1/2015

Applicable to: Members

I. POLICY

This policy establishes comprehensive guidelines for the proper collection, preservation, and control of evidence/property for which the Patrol is responsible, and to assure that physical evidence relevant in a criminal trial can be admitted as evidence after analysis. In order for physical evidence to be admitted at trial, a chain of custody must be proven. The evidence must be kept in such condition that its integrity and characteristics are not compromised between the time of collection and the time of technical examination.

It is the policy of the Patrol that all members properly collect, process, control, and care for any evidence/property that may come into their possession.

II. HANDLING SEIZED PROPERTY

Seized property shall be handled in accordance with established Patrol directives and procedures set forth in the North Carolina State Bureau of Investigation Evidence Guide.

Members shall not convert to their own use, alter, destroy, remove, or tamper with any seized property or other material found in connection with an investigation or other Patrol action.

ALL SEIZED PROPERTY SHALL BE DEPOSITED IN A TEMPORARY STORAGE FACILITY OR TURNED OVER TO A PROPERTY SUPERVISOR BEFORE THE COLLECTING MEMBER ENDS HIS/HER TOUR OF DUTY.)

Seized property shall not be stored in personal desks, lockers, vehicles, homes, or other places that are not secure or would compromise the chain of custody.

Sensitive items (e.g. cash, jewelry, or other small valuable properties) estimated to be worth $1,000 or more shall be delivered in person to a property supervisor for storage in a permanent storage facility and not deposited in a temporary storage facility.

III. RESPONSIBILITY FOR EVIDENCE

Members will normally concern themselves with the investigation of highway-related criminal incidents. The investigation of other criminal incidents will be turned over to other appropriate law enforcement authorities unless otherwise directed by a Section Director/Troop Commander or higher authority. If another

agency assumes investigative responsibility, the Patrol then becomes an assisting agency.

The first member on the scene of a collision/crime shall be responsible for the protection and security of the scene and shall be designated as the primary investigating officer unless otherwise relieved by a higher authority. The primary investigating officer shall be responsible for processing the scene unless a supervisor determines the Collision Reconstruction Unit (CRU) should be contacted or as directed in Directive L.03. CRU will be responsible for processing scenes for trace evidence. Should the situation dictate capabilities beyond the CRU investigator, the CRU immediate supervisor shall contact the State Bureau of Investigation (SBI) or other appropriate agency with processing capabilities. If the SBI is needed during regular business hours, the local SBI office should be contacted. If assistance is needed after regular business hours, the SBI may be contacted at (800) 334-3000.

At the scene of a collision/crime one member should be designated responsible for collecting, processing, and preserving all evidence. Other members, as needed, shall assist the officer in charge of locating evidence. Only the officer in charge shall handle or mark for identification any evidence found at the scene unless absolutely necessary for another member to do so. Materials and substances should be collected from a known source, whenever available, and submitted to the proper SBI Laboratory for comparison with evidence collected.
To maintain a short chain of custody, no more persons than necessary shall be involved in handling evidence. A chain of custody shall be documented on the Seized Property Report (HP-52) and maintained detailing the transfer of evidence.

Members shall utilize Patrol video recorders and cameras to record essential evidentiary information. The use of Patrol video recorders and cameras will be governed by Directive J.05 (Use of Patrol Video Recording Devices, 35MM Cameras, and Digital Cameras).

To ensure a smooth flow of information and timely closure, dyed diesel investigations shall be assigned to individual North Carolina Department of Revenue (NCDOR) investigators. The NCDOR investigator will have the responsibility to inspect, audit, and assess the violator. The NCDOR investigator will keep a case file and ensure all needed steps are completed prior to closure. Diesel Compliance Officers are responsible for the collections of dyed fuel samples as referenced and authorized in N.C.G.S. § 105-269.3.

Evidence seized, found, or held for safekeeping shall be stored in a secured evidence locker, located in the State Highway Patrol District where the evidence was obtained by the member. This procedure shall also apply to evidence obtained by Motor Carrier Enforcement (MCE) Troopers. The only exception to this procedure is, evidence obtained by members of the Criminal Interdiction Unit, and MCE Troopers during assigned shift(s) at a weigh station. A MCE Trooper

that seizes evidence or collects motor fuel samples while actually working an assigned shift at a weigh station shall secure all seized evidence in the temporary storage facility located at the weigh station, if one is available. CIU members shall continue to store evidence seized, found, or held for safekeeping at the location designated by the Commander of Troop I.

IV. TECHNICAL EXAMINATION OF PHYSICAL EVIDENCE

Proper evidence submission procedures are essential for analysts to evaluate evidence, maintain the chain of custody, and maintain the physical integrity and evidentiary value of submitted items.

Evidence submitted for examination must be in a sealed package. Members are responsible for completing a Request for Examination of Physical Evidence (SBI-5) and placing the original and first copy in a sealed envelope attached to the outside of the evidence package. The third copy shall be attached to the HP-52.

All evidence, with the exception of blood kits, shall be submitted via U.S. Mail, or delivered in-person if practical. Blood kits may be submitted via the courier system; however, they shall only be placed in an outdoor courier box when the courier is scheduled to run (i.e. blood kits should not be placed in outdoor courier boxes during holidays and weekends). When evidence is submitted via the U.S. Mail, the property supervisor mailing the evidence shall pay the postage. Reimbursement shall be filed on the Department of Public Safety Reimbursement of Travel and other Expenses Incurred (CNTR-003). If evidence is personally delivered all copies of the SBI-5 must accompany the evidence. One copy will be returned to the member as a receipt and shall be attached to the original HP-52. Results of the analysis will be sent to the submitting member in writing.

The evidence package shall be marked "Attention: Evidence Control." Do not indicate drugs, firearms, or victim/witness names on the outside of the package. Evidence from only one case should be mailed in each package. Evidence shall be submitted to the appropriate State Crime Laboratory.

Location	Address	Phone Number
North Carolina SBI	Post Office Box 2000 Garner, North Carolina 27529	(919) 662-4500 Ext. 501
North Carolina Western Crime Lab	300 Saint Pauls Road Hendersonville, NC 28792 Courier# 06-90-01	(828) 654-0525
North Carolina Triad Crime Lab	2306 West Meadowview Road Greensboro, NC 27407 Courier # 02-18-57	(336) 315-4900

Note: The North Carolina Triad Crime Lab applies to toxicology cases only and does not affect any other discipline. Regular drug submissions from applicable counties shall continue to be submitted to the Raleigh or Western Crime Laboratories.

For Commercial Deliveries Only:	For Commercial Deliveries Only:
121 East Tryon Road Raleigh, North Carolina 27603	9B Walden Ridge Drive Asheville, North Carolina 28803

Note: The North Carolina Western Crime Lab accepts only drugs, arson, and latent evidence.

V. TYPES OF EVIDENCE

Blood / Blood Stained Items

- Universal precautions must be taken for all seized property that has or may have which have blood or other body fluids on them, these items must be handled carefully due to blood borne pathogens. **If there is an exposure, Directive B.06 shall be followed.**

- Blood stained items should be allowed to air dry before packaging in a paper container. **Never use plastic to package blood or blood stained items.**

- Normally, blood is not returned to the submitting member after being analyzed. The HP-52 shall be completed for all blood submitted. All blood submitted for analysis shall be packaged in accordance with Section IV of this directive.

- Blood submission procedures set forth in Directive J.02 (Chemical Analysis for Alcohol) shall be followed

- Members shall request that the appropriate county medical examiner take blood alcohol samples from all deceased traffic collision victims. The blood sample of a deceased person shall be mailed to: Office of the Chief Medical Examiner, Attention: Toxicology Laboratory, Room 1001 Brinkhous-Bullitt Building, University Of North Carolina, Chapel Hill, NC 27599-7580 (919-966-2253).

Hypodermic Syringes

- Syringe handling is one of the greatest dangers regarding infectious diseases. Never touch the exterior of a syringe without gloves (which do not prevent needle sticks). There is potential for contamination by bodily fluids, chemicals, or drugs. Upon finding a syringe, the member shall place it in the

issued sharps container for transport, processing, or disposal. **If there is an exposure, Directive B.06 (Blood borne Pathogens) shall be followed.** If the content is to be submitted for analysis, the guidelines outlined in the North Carolina State Bureau of Investigation Evidence Guide shall be followed.

Computer Seizures

- When computer equipment is seized for evidence, the member shall refer to the SBI Evidence Manual, Computer Evidence Section, for proper handling procedures. If the computer equipment is to be stored as evidence in a permanent or temporary storage facility, it shall be logged and stored in the same manner as all other evidence outlined in this Directive.

Cell Phone / Electronic Device Seizures

- When electronic devices are seized for evidence, the member shall contact the Collision Reconstruction Unit (CRU), for proper handling procedures. If the electronic device is to be stored as evidence in a permanent or temporary storage facility, it shall be logged and stored in the same manner as all other evidence outlined in this Directive. CRU trained examiners and specialized equipment will be used to analyze evidence found in electronic devices when authorized by search warrant or exigent circumstances.

Controlled Substances

- A controlled substance submitted for analysis shall be packaged separately from other evidence. General packaging and sealing guidelines shall be followed.

Firearms

- Firearms shall be deposited in an unloaded condition

- Firearms shall be handled carefully to avoid accidental discharge. Firearms are to be unloaded and secured with a nylon cable tie. For semi-automatics, a nylon cable tie is placed through the magazine well and out the ejector port. For revolvers, a nylon cable tie is placed through the cylinder. Ammunition shall be stored with the firearm in a separate sealed clear evidence bag. The envelope shall be sealed with tamper evident tape with an Evidence Identification Tag (HP-52B) attached to the outside of the bag. Rifles or shotguns obtained shall be unloaded and secured by a nylon cable tie if possible. The HP-52B shall be attached to a wire tie tag using the supplied wire.

Currency

- General Guidelines

  - Currency shall be handled carefully. Whenever currency is discovered on a defendant or in the area being searched or inventoried, the finding member shall summons another member immediately to avoid accusations of theft and maintain integrity.

  - If the amount of money can be easily counted, the finding member in addition to another member being utilized as a witness shall count the money. Each member shall count the money independently to ensure accuracy. Financial institutions (i.e. banks or credit unions) should be utilized to obtain an official count.

  - If it is not possible to use another member as a witness, the member should secure another credible witness (e.g. officer from another agency, paramedics, etc.).

  - The name of the witness shall be indicated in the Remarks section on the HP-52.

  - Currency shall be properly packaged, sealed with tamper evident tape, and initialed by the member and witness.

  - Currency subject to seizure must be packaged separately from other property.

  - Currency totals of $1,000 or more shall be hand delivered to a property supervisor for storage in a permanent storage facility. Currency totals less than $1,000 may be deposited in a temporary storage facility.

  - Do not take currency without probable cause to believe it is evidence of a crime or subject to seizure and/or forfeiture; or the person(s) in control of the vehicle denies ownership of the currency. The member has no right to take currency from an individual based on social status, race, religion, age, gender, demeanor, clothing, etc.; however, the member is obligated to secure the currency for safekeeping if the owner has been separated from it.

  - At no time should currency be returned to an individual(s) without determining they are entitled to it. Upon the return of any currency, the section entitled Final Disposition of Seized Property on the original HP-52 shall be signed by the owner or claimant and utilized for documentation and receipt.

- Seizures Involving U.S. Currency

  - Seizures of currency may be accomplished in different ways. It may be seized by the North Carolina Department of Revenue, Tax Enforcement Division as payment on non-tax paid and controlled substances. The Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), Homeland Security and other federal law enforcement agencies may also seize currency. It is important to first determine the threshold amount your respective DEA resident office will adopt. These preset limits vary from $1,000 – $5,000 with an arrest and $10,000 without an arrest.

  - Factors considered by DEA are:

    - Probable cause to believe the currency was proceeds from the sale of drugs

    - Reports of investigation and search affidavits

    - Statements made by suspects and witnesses

    - Prior criminal history of suspects

    - Prior drug intelligence of suspects (obtained primarily through EPIC check)

    - Employment or means of support or income of suspects

    - Supporting evidence such as: documentary, video/audio tape recordings, records seized during the execution of searches (i.e. currency transaction reports, bank deposit slips, bank withdrawal slips), denominations of currency, bundling and amount of currency, tally sheets, drug distribution paraphernalia, safe deposit box keys, drugs present, written disclaimers, canine reaction and alert to seized currency and location around where the currency was seized

- Currency Seizure without Arrest

  - The aforementioned factors should be considered during each vehicle stop that leads to the discovery of currency. When no arrest is made and the amount of currency meets or exceeds the threshold limit set by your DEA resident office, the Duty Agent should be contacted to determine if the currency may be seized. Be prepared to provide the circumstances surrounding the stop.

- If the seizure of currency is adopted, members shall provide the individual(s) with an HP-52 in reference to this directive noting that an undetermined amount of U.S. currency was seized. Regardless of whether the property becomes evidence, safekeeping, found, or an asset seized, the package will always be sealed with tamper evident tape and appropriately initialed. A bank will officially count the currency and a cashier's check will be issued to the U.S. Marshal's Service remitted by the North Carolina State Highway Patrol. Upon issuance of the cashier's check, the Seized Property Currency Denomination Sheet (HP-52E) shall be completed.

- The completed seizure packet must be delivered to the adopting agency within ten (10) calendar days. The cashier's check and completed U.S. Department of Justice form (DAG-71) must be delivered to the adopting agency within sixty (60) days following the seizure.

- Currency Seizure with Arrest

  - When a vehicle stop is made that leads to the discovery of currency and subsequent arrest pursuant to a drug violation, the aforementioned factors should also be considered.

  - The member has the option to contact DEA and present facts surrounding the case. DEA will make the determination if the currency associated with the arrest meets the adoptable limit. If they determine the currency may be seized then the seizure process will be completed in the same manner as outlined above. Generally, the only difference between federal seizures, with or without arrest is the threshold currency amounts. Both require probable cause and documentation supporting the association of the currency with the illegal drug trade.

  - The member's second option involving currency with a drug arrest is to contact the North Carolina Department of Revenue, Tax Enforcement Division. Information concerning the threshold amount of drugs is listed on the back of the Report of Arrest and/or Seizure Involving Nontax Paid (unstamped) Controlled Substances and Counterfeit Controlled Substances (BD-4).

Alcohol

- Alcoholic beverages are to be treated the same as other evidence collected. Alcoholic beverages should only be entered into the evidence system if used in the prosecution of an arrest. Alcoholic beverage containers should be sealed in an attempt to preserve the liquid and/or odor.

- Tamper evident tape should be used to mark the top level of contents on partially filled containers. This should be noted on the HP-52.

- Do not take alcoholic beverages for safekeeping.

- Under no circumstances shall a member take possession of confiscated or found alcoholic beverages for their personal use, or for the personal use of any third party.

Forfeited Vehicles / Storage of Large Items

- Any member who has occasion to take custody of a vehicle under the provisions of N.C.G.S. § 18B-504 (transporting liquor or materials) or any similar provision shall make every effort to have such vehicle assigned to the Department by the court as provided by statute. Vehicles seized pursuant to N.C.G.S. § 20-141.3 (unlawful racing) must be delivered to the Sheriff of the county in which the offense is committed, or placed under said Sheriff's constructive possession if delivery of actual possession is impractical.

- In every instance where a member has occasion to take custody of a vehicle under the provisions of N.C.G.S. § 90-112 (forfeiture of vehicle used in connection with controlled substances), N.C.G.S. § 14-86.1 (transporting stolen property or used in a larceny), or any similar provision; such vehicle shall be removed from the scene, and retained by the Patrol under the terms of these statutes or the equivalent. If the vehicle is thereafter forfeited, it will be transferred to the Department for further disposition as provided by law. Vehicles seized under N.C.G.S. § 20-28.3 (seizure, impoundment, and forfeiture of vehicles for offenses involving impaired driving while license revoked) shall be governed by this statute.

- Any vehicle seized for evidence as a part of a motor vehicle collision shall be documented on HP-52 indicating the reason for seizure and location of the seized vehicle

Intake of Dyed Diesel Violation Reports from NCSHP

- Dyed diesel violations initiated by North Carolina State Highway Patrol Diesel Compliance Officers (DCO) shall conform to sampling requirements and evidence collection procedures that are consistent with policy and procedure. DCO shall ensure that samples of motor fuel are properly collected, labeled, and forwarded for analysis to the appropriate testing facility. **The collecting member shall not complete form HP-52 for collection of sampling of motor fuels.**

    o Collection of Motor Fuel Samples by DCO

- Motor fuel sample collection shall be consistent with the sampling techniques demonstrated in the Internal Revenue Federal Compliance Officer (FCO) Manual. An Internal Revenue Service Dyed Diesel Fuel Inspection Notice form (IRS-916) must be presented prior to sampling any vehicle from which a federal sample is obtained.

- The materials necessary for the collection of motor fuel will be provided by the North Carolina Department of Revenue (NCDOR) or the Internal Revenue Service

- Two samples (one federal, one state) shall be collected and labeled using the IRS Sample Bottle Sealing and Identification label (Form 9667)

- The two small labels are to be placed in a cross pattern on the sealed bottle cap. The bottle label shall be affixed around the bottle in a manner to cover the ends of the crossed labels. The labels shall include the date the sample was taken, DCO name and the registration plate number of the vehicle from which the sample was removed. The collecting DCO shall initial the label.

- A Receipt of Sample and Dyed Fuel Information Sheet provided by the NC Department of Revenue shall be completed by the DCO and routed with the sample. The original copy of the Internal Revenue Service Dyed Fuel Chain of Custody Form (IRS-12013) and the Dyed Fuel Information Sheet Form (HP-601) shall accompany each sample (two collection bottles are one sample).

- Evidence Handling and Disposition of motor fuel samples

  - The DCO shall be responsible for notifying a NCDOR Motor Fuel Investigator upon collection of dyed fuel. The investigator shall advise the DCO when a pick-up of the motor fuel samples may be made.

  - If the Motor Fuel Investigator can arrange for pick-up of the two samples prior to end of the duty day, the fuel samples may be turned over with the original copy of the IRS-12013 and HP-601 for routing and disposition

  - Samples not disposed of by the end of the duty day shall be delivered to a temporary storage facility consistent with this directive. **The storing of motor fuel in a Temporary Storage Facility does not pose a health/safety hazard, and does not violate OSHA rules as long as the total amount stored in the temporary locker is less than one (1) gallon and copies of Material Safety Data Sheets (MSDS) for "Motor Fuel" are properly maintained in the MSDS Booklet located in the affected office.**

- The NCSHP Property Supervisor shall follow-up with the collecting DCO to ensure that an NCDOR representative has been contacted on any dyed fuel that has been stored in a temporary NCSHP storage facility. The MCE Property Supervisor shall be responsible for this function when dyed fuel is placed in a weigh station temporary storage facility, when a motor fuel sample is collected by a DCO during his/her assigned shift at a weigh station.

- The NCDOR Investigations Supervisor shall make arrangements to have a motor fuels investigator or representative pick-up the samples as appropriate

- The Motor Fuels Tax Division shall accept responsibility to maintain the custody and control of both samples. The federal sample shall be forwarded to an IRS FCO as appropriate.

- A reference copy or photocopy of the IRS-12013 and HP-601 shall be forwarded by the NCDOR to the appropriate NCSHP Property Supervisor

- Dyed diesel violation reports forwarded to the NCDOR Investigations Supervisor by NCSHP shall be assigned for investigation and follow-up by NCDOR. If a NCDOR Investigator initiates or receives a dyed diesel violation report directly from a DCO, a copy of the information sheet must be forwarded to the NCDOR Investigation Supervisor for case assignment.

- It shall be the policy of the NCDOR Investigations Unit, upon identifying a dyed diesel violation, to immediately inspect the fuel supply tanks of any additional vehicles owned or leased by the violator. If the DCO contacts the investigator directly, the investigator should determine if an immediate inspection of the violator's additional diesel vehicles is necessary. This decision should be reached by considering the number of vehicles that may need inspection and distances involved. The determination may be made upon the information obtained from the violator or DMV records.

- The purpose of an immediate inspection is to determine if the violator has additional vehicles in which dyed diesel is being used. The potential revenue collection must be weighed against the cost when making this decision. The investigator shall have the discretion to postpone the immediate inspection and conduct the follow-up inspection at an appropriate time and place.

VI. TEMPORARY STORAGE FACILITY AND PERMANENT STORAGE FACILITY LOCATIONS

Each district office, sub-station, and weigh station should house a drop box, which will serve as a temporary storage facility. Once the seized property has been deposited and locked in a temporary storage facility, it cannot be accessed by anyone other than an authorized property supervisor.

Each district shall have only one permanent storage facility site. The permanent storage facility shall be placed in an area accessible only to authorized property supervisors.

VII. RESPONSIBILITIES OF THE DISTRICT FIRST SERGEANT

- The District First Sergeant has the ultimate responsibility and is accountable for all seized property obtained within his/her respective district, this includes evidence obtained by MCE Troopers. The District First Sergeant shall be responsible to ensure that MCE Troopers have access to the evidence storage facilities located in the NCSHP District Office, or sub-office under his/her supervision. The District First Sergeant shall designate two Sergeants as property supervisors, one primary and one secondary. In the event two Sergeants are not available, the District First Sergeant shall assume the role of either primary or secondary property supervisor. The Troop MCE Lieutenant shall designate at least two MCE sergeants as property supervisors for each weigh station in their assigned Troop.

- The District First Sergeant shall be responsible for maintaining the Forensic Advantage district distribution list, including administrator and user rights.

- In the event of a delayed fatality involving blood evidence, the District First Sergeant shall ensure that Forensic Advantage is notified via email that the case involves a fatality.

VIII. RESPONSIBILITIES OF THE PROPERTY SUPERVISOR

Only a property supervisor and District First Sergeant shall have access to the temporary storage facility and the permanent storage facility within their district(s). Each supervisor that has access to the permanent storage facility shall document every entry on form HP-52H, “Evidence Control Log for Permanent Storage Facility.”

The MCE Property Supervisors shall have the responsibility of transferring evidence from the temporary storage facility at assigned weigh stations, to a permanent storage facility located at the appropriate Highway Patrol District Office. The MCE Property Supervisor shall contact the Patrol Property

Supervisor assigned to that district where the evidence is to be secured, and make arrangements for such transfers.

A Property Supervisor shall:

- Transfer seized property from a temporary storage facility to a permanent storage facility upon notification that seized property has been deposited. Seized property shall not remain in temporary storage due to errors on completed forms by the members. The original HP-52 with errors shall be placed in the HP-52 log book and a copy submitted to the member for corrections. Once the corrections have been made to the HP-52 by the member, place the corrected copy in the HP-52 log book.

- Maintain all seized property records to include the HP-52J (Backup Evidence Log)

- Ensure proper handling procedures are followed

- Submit evidence to the appropriate laboratory

- Conduct quarterly seized property inspections/inventories in accordance with this directive

For convictions of any implied consent offense for which a Class B2-E felony punishment is imposed, the evidence must be preserved during the period of incarceration and mandatory supervised release, except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for the earlier of three (3) years from the date of conviction or until released. Class B-2 through E felonies include the following implied consent offenses: Second degree murder, Repeat Felony Death by Vehicle, Aggravated Felony Death by Vehicle, and Felony Death by Vehicle.

- Transfer seized property to member(s) for court

- Dispose of seized property that has been adjudicated upon receipt of proper court orders, which includes but is not limited to found contraband

- Turn over found property to the Sheriff of the county from which it was seized if the owners or claimants cannot be found

- Release evidence or found property to authorized persons

- Answer any questions pertaining to evidence handling procedures

- Contact the appropriate Motor Carrier Supervisor when an issue arises as a result of evidence stored by a MCE Officer.

- Ensure that a copy of the Internal Revenue Service Dyed Fuel Chain of Custody Form (IRS-12013) and the Dyed Fuel Information Sheet Form (HP-601) is made and placed in the evidence file for all motor fuel samples stored in a temporary storage facility.

IX. RESPONSIBILITIES OF THE SEIZING MEMBER

The member seizing property is required to provide safekeeping and maintain a minimal chain of custody of seized property.

A member seizing property shall:

- Complete the HP-52 and any other applicable forms (i.e. SBI-5, DAG-71, HP-52E, BD-4, IRS-12013, HP-601 completed for seized motor fuel samples, etc.)

- Follow procedures established in this directive

- Obtain a sequence number from the appropriate Communications Center if property is found or held for safekeeping, record that number on the HP-52B, and place the HP-52B on the outside of the packaged property

- Deposit seized property in a temporary storage facility or deliver it to a property supervisor

- Notify a property supervisor as soon as practical that seized property has been placed in a temporary storage facility. Notification can be accomplished by:

    - Personal notification (verbally, in writing or email)

    - Via Patrol radio

    - Via CAD, through the appropriate Patrol Communications Center, if no property supervisor is working

- Notify the prosecutor of the seized property and take it to court when needed

- Be cognizant of cases involving evidence for the purpose of timely disposals

- Obtain court ordered evidence dispositions for disposal to include implied consent offenses involving blood

X. CITATION / SEQUENCE NUMBER

The citation number will be used to track the evidence through the court system. If multiple citations are issued, the citation with the charge relating to the evidence shall be used. In cases involving found property or property held for safekeeping, the member shall contact the appropriate Patrol Communications Center requesting a sequence (slip log) number. A sequence (slip log) number will provide accountability for the seized property. Evidence tracking log numbers assigned by property supervisors will provide an additional internal accountability for seized property.

XI. SEIZED PROPERTY REPORT (HP-52)

The collecting member, prior to depositing or storing seized property including blood and vehicles, shall prepare a Seized Property Report (HP-52). (Note: when submitting blood, a separate HP-52 should be used.)

Normally only one defendant is listed on each HP-52; however, if contraband is seized from two or more suspects and no one claims possession, the co-defendants charged shall be listed in the areas provided. If different items are seized from different defendants out of the same occurrence, the HP-52 shall be completed for each defendant.

The HP-52 should be used as an inventory receipt in lieu of the Inventory of Seized Property (AOC-CR-206) in all cases except when evidence is seized pursuant to a search warrant.

Items seized pursuant to a search warrant shall be listed on the AOC-CR-206. The seizing member must follow the procedure outlined in N.C.G.S. 15A-254 “List of Seized Items”.

Items seized as the result of a search based on consent or any other warrant-less search shall be recorded on the HP-52 and a copy delivered to the person from whom the property was seized, if known, or the person in apparent control of the property. A copy of the HP-52 may be delivered in person or by first class mail. However, if the individual from whom the property was seized is cited and released or arrested and charged with a misdemeanor and the description of the property is included in the charging language of the offense, then the charging document shall be a sufficient inventory.

Guidelines

- Check only one block for the type of seized property on the report. If there is more than one type of property (evidence, safekeeping, found, asset seizure), an additional HP-52 shall be used.

- The asset seizure block is checked only if the items seized are subject to forfeiture through the State's Judicial System or if they have been adopted for federal forfeiture

- It is appropriate to initially check the evidence block on seizures, as the collecting member will not normally know if the item can be seized until conferring with a state or federal law enforcement agency

- Each item obtained and its description shall be documented in the Type of Container/Description of Seized Property section.

- Item numbers are to be listed in sequential order (e.g. 01, 02, 03, etc.). Up to eight items may be entered on the HP-52. If the case has more than eight items, additional HP-52's are to be used. Each additional HP-52 will require a new tracking number.

- Consolidation of like items, especially for safekeeping and found property, should be listed under one item in the Type of Container/Description of Seized Property section (e.g. one wallet: list contents – money, credit cards, etc.; clothing: list articles of clothing – shirt, trousers, shoes, etc.)

- If it is anticipated that an item will be transferred from a storage facility to another location (i.e. a crime laboratory) the item should not be consolidated, but should have its own item number on the HP-52.

- Transfer of seized property shall be documented in the Chain of Custody on the original HP-52

- If an item has a serial number, it should be checked through NCIC

- How the seized property came into possession must be addressed in the Brief Description of How Seized Property was Obtained section

XII. GENERAL PACKAGING AND SEALING

Packaging material will be available at each temporary storage facility and permanent storage facility. These materials shall consist of assorted sizes of paper bags, manila envelopes, sharps containers, tamper evident tape, permanent markers, wire, labels, nylon cable ties, and tags.

All seized property shall be identified with an HP-52B.

Only tamper evident tape shall be used to seal all packages.

Seized property shall be packaged according to the following guidelines:

- All seized property entering the evidence system shall be sealed and labeled

- All seams of the evidence package must be sealed with tamper evident tape. This sealing includes all manufactured seams on envelopes and paper bags (including the sides and bottom of the bag). Glued flaps on envelopes do not constitute proper seals. Evidence/Property tamper bags only have to be taped across the manufacturers opening. **STAPLES SHOULD NEVER BE USED.**

- **The collecting member must initial and date the tape across all taped seams so that part of the writing is on the tape and the package**

- Purses and wallets should be placed inside a paper bag or envelope and sealed

- For evidence too large or bulky to seal in a package, attach an HP-52B to a wire tie tag using the supplied wire. Place a piece of tamper evident tape across any opening (e.g. suitcase, briefcase, etc.).

- Bottles, jars, and cans must be capped tightly to avoid leakage and sealed with tamper evident tape. The tape must extend across the top of the lid and down both sides of the body of the container. Initials and date shall be applied once sealed.

- Scrapings, paint chips, glass chips, human hair, and fibers shall be placed in clean, unused receptacles with no probability of leakage or contamination

XIII. OPENING AND RESEALING EVIDENCE

Under normal circumstances, once sealed, evidence shall not be opened except for analysis or introduction into court. When sealed evidence must be opened, the following procedures shall be complied with:

- Sealed evidence shall be opened in the presence of a witness

- The evidence package shall be opened in a manner that will preserve the information on the tamper evident tape. Do not break the old seal. A slit/cut in another area of the package will preserve the seal.

- All parts of the old package shall be placed in a new package for resealing. The new package must be sealed with tamper evident tape on all seams with initials of the witness and person that opened the package, along with the date.

XIV. HANDLING EVIDENCE WITH THE COURTS

Procedures for obtaining evidence for court are as follows:

- The member notifies the property supervisor
- The property supervisor delivers the seized property to the member
- The *Chain of Custody* on the original HP-52 shall be completed
- The property supervisor furnishes a copy of the original HP-52 to the member after completing the *Chain of Custody*
- Member takes the seized property to court along with the copied HP-52
- If the court takes possession of the seized property or orders it returned to the owner/claimant, the member shall obtain a receipt from the court which shall be filed with the original HP-52. The member is responsible for returning the seized property to the property supervisor if not utilized during court. The member may deliver the seized property to the property supervisor or deposit it in the temporary storage facility. If deposited in the temporary storage facility, the member shall notify the property supervisor that seized property has been deposited. The copied HP-52 shall accompany the seized property in either case.
- The property supervisor collects the seized property
- The *Chain of Custody* on the original HP-52 shall be completed. The property supervisor furnishes a copy of the original HP-52 to the member after completing the *Chain of Custody*.

XV. FOUND PROPERTY

When property is found, the HP-52 shall be completed. It will be necessary to obtain a sequence number for the report. Every attempt to locate the legal owner of found property shall be conducted by a property supervisor and/or the obtaining member. Information on the HP-52 (i.e. telephone number, address, etc.) may be utilized with other information secured by the collecting member. All attempts to contact the owner(s)/claimant shall be documented on the HP-52 in the *Remarks* section. A member who finds or acquires any property while acting within the course of his/her employment may not claim possession. Upon verification and return of the property to the legal owner or claimant, proper documentation must be made in the section *Final Disposition of Seized Property*. **Found property, if unclaimed, shall be retained for at least 180 days from date of receipt.** At the expiration of 180 days, a property supervisor shall turn the property over to the Sheriff of the county in which it was seized, for sale

pursuant to N.C.G.S. § 15-12. A court order for the destruction of found contraband shall be obtained if the Sheriff of the county in which it was seized will not accept it. If the found property is a firearm, it will be disposed of in accordance with N.C.G.S. 15-11.2, as outlined below in section XVII. DISPOSAL PROCEDURES FOR FIREARMS.

XVI. EVIDENCE RECORDS / DISPOSITIONS

All seized property obtained shall be documented on the HP-52. Each report shall be maintained and completed according to directions set forth in the *Highway Patrol Forms and Reports System*. Seized property report files shall be set up and maintained by a property supervisor.

District files shall be set up in the following manner and maintained by the property supervisor.

- Two main seized property files shall be set up: one titled *Seized Property Pending* and one titled *Seized Property Adjudicated*.

- The two main files shall have four sub files consisting of the following:

    - Evidence

    - Asset seized

    - Safekeeping

    - Found Property

- A **copy** of the HP-52 shall be maintained in the district files

- The original HP-52 is to be filed in a notebook and maintained in a secured area, separate and apart from all seized property stored in a Permanent storage facility. Any other documentation (e.g. SBI-5) shall be filed with the original HP-52. The notebook shall be organized in the following manner:

    - When a property supervisor receives evidence that must be placed into permanent storage he/she shall enter a tracking log number on the HP-52I (Evidence Tracking Log). The Tracking Log shall be kept in the front of the evidence notebook, and must be **handwritten**.

    - Write the tracking number on the HP-52 in the designated space

    - Place the HP-52 in the front of the evidence notebook, behind the HP-52I. The first HP-52 in the notebook must reflect the most recent evidence placed into permanent storage.

- An HP-52 completed and submitted to the SBI for blood analysis shall **not** be assigned a tracking number. No entry of the HP-52 shall be made on the HP-52I or the HP-52J (Backup Evidence Log). An HP-52 completed for blood shall be maintained in the evidence notebook (in a separate section), or maintained in a separate notebook.

- Complete the HP-52J and enter the tracking number in the appropriate location

- The property supervisor must then write, with a permanent black marker, the tracking log number on the top right corner of the HP-52B that was placed on the evidence package

- A copy of the HP-52 signed by the property supervisor indicating the date the seized property was deposited in permanent storage shall be furnished to the member submitting the seized property as receipt

- The transfer of seized property between individuals and final disposition shall be documented on the original HP-52

- A property supervisor transferring seized property shall complete the *Chain of Custody* section on the original HP-52. A copy of the HP-52, showing the transfer, shall be furnished to the member receiving the seized property as receipt.

- Upon disposal, the original HP-52 shall be filed in the district files, in the adjudicated section, and retained as directed in the *North Carolina Highway Patrol Forms and Reports System*. The copy may then be discarded.

- All seized property shall be disposed of in accordance with State Law. A court order from the appropriate judicial official must be signed and turned over to a property supervisor prior to the disposal of any seized property. If seized property is turned over to the court for any reason, a receipt shall be obtained by the member from the clerk of court and delivered to a property supervisor showing disposition. North Carolina State Highway Patrol Order for Disposition (HP-52F) shall be utilized for the disposition of all evidence.

- Incinerators should be utilized for disposing large amounts of drugs. BFI in Burlington, (919) 558-8900, is one such agency with an incinerator, which may be utilized.

- The member collecting seized property is responsible for obtaining court ordered dispositions. It is his/her responsibility to deliver the court-ordered dispositions to the property supervisor within five (5) working days after the appropriate judicial official has signed the court order(s). Upon receiving a

court ordered disposition, the property supervisor shall, after verifying that the time for filing an appeal has expired and that no notice of appeal has been filed, comply with the disposition order. Unless notice of appeal is given, the property supervisor shall dispose of the property within 120 days of receipt of the disposition order. If an appeal is filed, the property supervisor shall notify the member who seized the property who shall then be responsible for contacting the court to have the order rescinded.

- **All Evidence, <u>other than blood</u>, shall be disposed of within 120 days after the final court dispositions, unless the evidence is to be maintained per court order if needed in conjunction with another law enforcement agency's case, or if needed for any civil proceedings. Documentation concerning the extended evidence possession shall be maintained with the original HP-52. Found property shall be disposed of pursuant to this directive. <u>Blood evidence shall be disposed of pursuant to Section XVIII.</u>**

- **Court cases entered as "Dismissed with Leave" (VL) are cases that can be called for trial at any time by the courts, and therefore, any evidence related to the case should be properly secured until a final court disposition has been entered, or written documentation from the District Attorney (DA) indicating the evidence in question is no longer needed. Written documentation from the DA should be attached to the HP-52. A disposition order, signed by a judge, is required prior to disposing of evidence in these cases.**

- When evidence is permanently removed from permanent storage, all references to that evidence shall be immediately removed from the HP-52J by the property supervisor

XVII. DISPOSAL PROCEDURES FOR FIREARMS

Firearms in the custody of the Patrol will fall into one of the following categories:

1.) Firearms seized as evidence and there was a conviction under N.C.G.S. 14-269, 14-269.7, or any other offense involving the use of a deadly weapon.

The disposition of firearms meeting this criteria are governed by N.C.G.S. 14-269.1. To dispose of a firearm which falls into this category, the Property Supervisor or his/her designee should:

- Determine if the firearm meets any of the disqualifying criteria listed below which would prohibit it from being transferred to the Patrol for official use or sale.
- If the firearm possess any of the disqualifying characteristics, the Property Supervisor or his/her designee should request the court to

order the firearm be turned over to the Sheriff of that county to be destroyed, in accordance with general statute.

- If the firearm does not have any of the disqualifying characteristics, the Property Supervisor or his/her designee should request the court to order the firearm be turned over to the Patrol for either official use or sale, in accordance with general statute.
- The Property Supervisor or his/her designee should complete the template memorandum, on behalf of the appropriate Troop or Unit Commander, requesting in writing that the firearm be turned over to the agency for official use or sale.
- The courts findings and order for disposition of the firearm will be documented on AOC-CR-218, side 2, PETITION AND ORDER DISPOSING OF DEADLY WEAPON UPON CONVICTION, which will be signed by the proper court official(s). The AOC-CR-218 will replace the HP-52F, so as the Patrol will not request unnecessary duplication of the judicial order.

2.) Firearms seized as evidence and there was not a conviction.

The disposition of firearms meeting this criteria are governed by N.C.G.S. 15-11.1. To dispose of a firearm which falls into this category, the Property Supervisor or his/her designee should:

- Determine if the firearm meets any of the disqualifying criteria listed below which would prohibit it from being transferred to the Patrol for official use or sale.
- If the firearm possess any of the disqualifying characteristics, the Property Supervisor or his/her designee should request the court to order the firearm be turned over to the Sheriff of that county to be destroyed, in accordance with general statute.
- If the firearm does not have any of the disqualifying characteristics, the Property Supervisor or his/her designee should request the court to order the firearm be turned over to the Patrol for either official use or sale, in accordance with general statute. A request in writing is not required for firearms within this category.
- The courts findings and order for disposition of the firearm will be documented on AOC-CR-218, side 1, PETITION AND ORDER DISPOSING OF FIREARM UPON PROSECUTER'S PETITION, which will be signed by the proper court official(s). The AOC-CR-218 will replace the HP-52F, so as the Patrol will not request unnecessary duplication of the judicial order.

3.) Firearms that are being held which were not seized as evidence (i.e. safekeeping or found property).

The disposition of firearms meeting this criteria are governed by N.C.G.S. 15-11.2. To dispose of a firearm which falls into this category, the Property Supervisor or his/her designee should:

- Ensure the unclaimed firearm shall be retained for at least 180 days from the date of receipt.
- After the expiration of 180 day period, the firearm is eligible to be transferred to the Patrol Armory.

Firearms that meet any of the following criteria shall not be transferred to the Patrol for official use or sale:

- Firearms which have had the manufacturer's serial number removed (partially or fully), altered, defaced, or destroyed.
- Firearms which are deemed unsafe for use due to wear, damage, age, or modification.
- Firearms that meet the definition of a "weapon of mass death and destruction", as defined under N.C.G.S. 14-288.8.

Magazines affiliated with semi-automatic firearms are considered a part of the firearm. Items such as slings, optics/scopes, and other accessories attached to the firearm are also considered part of the firearm. The AOC-CR-218 will cover disposition of the firearm itself and any magazine(s) and/or attached accessories. Other property which may have been seized in conjunction with the firearm (such as holsters and ammunition) are not covered by the AOC-CR-218. Judicial order for these types of items should be documented on the HP-52F. The Property Supervisor or his/her designee should list these types of seized property under the fields on the HP-52F pertaining to disposition pursuant to N.C.G.S. 15-11.1. The description section within the HP-52F should include the following language, "Retained by the N.C. State Highway Patrol to be utilized for training purposes or destruction."

Once one of the following has occurred, the District Property Supervisor shall make an appointment with the Patrol Armorer or his/her designee for delivery of the property to the Patrol Armory:

- Judicial order has been issued directing the firearm to be turned over to the Patrol for official use or sale, for firearms which were seized as evidence.

- After the expiration of the 180 holding period, for unclaimed firearms, not seized as evidence.

- Judicial order has been issued directing the other property which may have been seized in conjunction with the firearm (such as holsters and ammunition) to be retained by the N.C. State Highway Patrol to be utilized for training purposes or destruction.

Upon delivery to the Patrol Armorer or his/her designee, a review of the firearm, the AOC-CR-218 and/or the HP-52F will be conducted. The review will include compliance with general statute and established protocols. Seized firearms and property seized in conjunction with the firearm which is not in compliance will not be accepted by the Patrol Armory and will remain in the custody of the District Property Supervisor.

When the Patrol Armorer or his/her designee accepts the firearm and/or property seized in conjunction with the firearm, he/she will complete the appropriate areas of the HP-52. This will document the transfer of the property from the District Property Supervisor to the Patrol Armory. The original HP-52, AOC-CR-218, HP-52F, and any other supporting documentation will accompany the property. Copies of all documents will be provided to the District Property Supervisor.

The Patrol Armory shall maintain a record and inventory of all firearms received, as well as the disposition of the firearm, including any funds received from a sale of a firearm or any firearms or other property received in exchange or trade of a firearm, in accordance with N.C.G.S. 14-269.1, 15-11.1, and 15-11.2.

XVIII. DISPOSAL PROCEDURES FOR IMPLIED CONSENT OFFENSES INVOLVING BLOOD

- The North Carolina State Crime Laboratory Report (DHHS-3176) **containing blood alcohol results** shall be attached to the original HP-52. These HP-52s shall be maintained until the cases have been disposed of through the judicial system. Upon adjudication, the original HP-52 must have a copy of the email from Forensic Advantage attached stating that the blood evidence has been destroyed. The original HP-52 and attached email shall be filed in the district files in the adjudicated section and retained as directed in the HP-52 form instructions prior to the next quarterly inspection. The pending file copy may then be discarded.

- Each county District Attorney's office will be responsible for notifying the North Carolina State Crime Lab of the disposition or preservation of blood evidence.

XIX. INSPECTIONS

An inventory of all seized property shall be conducted each time a different supervisor is assigned as either the primary or secondary property supervisor and at each time a new District First Sergeant reports for duty. The purpose of this inventory is to ensure that records are correct and properly annotated, and to ensure the continuity of custody and the integrity of the seized property system.

When a new District First Sergeant reports for duty, the inventory shall be conducted jointly by the newly assigned District First Sergeant and a Troop Lieutenant within thirty (30) days of the reporting date. When either a new primary or secondary property supervisor is appointed the inventory shall be conducted jointly by the newly assigned property supervisor and the District First Sergeant. Findings shall be submitted to the appropriate Section Director/Troop Commander in memorandum form by the Lieutenant or First Sergeant conducting the inventory and filed at the troop and district level.

- Upon completion of the evidence inventory inspection with the newly promoted District First Sergeants, it shall be the responsibility of the appropriate Troop Lieutenant to notify the appropriate personnel assigned to Patrol's Technical Services Unit (TSU), to ensure that the new District First Sergeant has been granted access to the district's evidence folder located on the PvtGShares Network Drive. The Troop Lieutenant will ensure that the Forensic Advantage administrator list is revised appropriately.

- When the District First Sergeant appoints a new property supervisor; the First Sergeant shall notify the appropriate personnel with the NCSHP Technical Services Unit (TSU). The First Sergeant will ensure that the new property supervisor has been granted access to the district evidence folder located on the PvtGShares Network Drive. The District First Sergeant will ensure that the Forensic Advantage administrator list is revised appropriately.

Quarterly inspections by a property supervisor shall only be conducted within the first thirty (30) days following the end of the quarter to determine adherence to procedures used for the control of property. The inspection shall determine that a permanent storage facility is being maintained in a clean and orderly fashion, the integrity of the seized property is being maintained, seized property is being protected from damage or deterioration, proper accountability procedures are being maintained, and seized property having no further evidentiary value is being disposed of promptly. Any discrepancy shall be addressed immediately. **Findings of the inspections/inventories and corrective action taken, if applicable, shall be submitted in memorandum form to the District First Sergeant. The current HP-52J shall be attached to the memorandum when submitted. Memorandums along with the HP-52J shall be filed and maintained by the District First Sergeant for a period of one year.**

During each quarterly inspection, the property supervisor shall access the Administrative Office of the Courts' (AOC) and Forensic Advantage files to determine the case status (pending/adjudicated) of all seized property. These findings shall be documented on the HP-52.

Unannounced inspections of all property storage areas shall be conducted by the Troop Commander or Troop Lieutenant at least once a year. During this unannounced inspection, each property storage area shall be inspected for

cleanliness and order. At least five (5) items of evidence shall be audited to ensure the chain of custody is properly recorded. A written memorandum documenting this inspection shall then be filed and maintained by the district First Sergeant along with the attached HP-52J.

XX. DISPOSITION OF EVIDENCE WHEN A MEMBER TRANSFERS

When a member transfers from one NCSHP Section, Troop, or District to another NCSHP Section, Troop, or District all evidence of the transferring member shall remain in the NCSHP District where the evidence was seized.

Chemical Analysis for Alcohol

Directive J.02
Revised 08/05/2019
Effective 3/15/2000

I. POLICY

This policy governs a member's conduct in the enforcement and administration of the Patrol's chemical analysis program for alcohol. One of a member's most important functions is the detection and apprehension of persons driving while impaired (DWI). It is Patrol policy to afford each person suspected of DWI the opportunity to submit to a chemical analysis. It is also Patrol policy to obtain a blood, breath, or urine sample to determine the presence of an impairing substance from any person who is believed to be impaired and to have caused a crash resulting in serious injury or death to another or who is a habitual impaired driver, even if the person refuses to submit to a chemical analysis under the implied consent statute. This directive describes a member's duties and responsibilities in carrying out this policy.

II. ALCOHOL SCREENING TEST DEVICES (ALCO-SENSOR)

A member may request the driver of a vehicle to submit to an alcohol screening test within a relevant time after driving if the member has:

- Reasonable grounds to believe the driver has consumed alcohol and has:
  - Committed a moving traffic violation
  - Was involved in an accident or collision
- A reasonable and articulable suspicion that the driver has committed an implied consent offense and the driver has been lawfully stopped for a driver's license check or lawfully encountered by the officer in the performance of his/her duties.

Alcohol Screening Test Procedures

- The member shall determine that the driver has removed all food, drink, tobacco products, chewing gum, and other substances and objects from the mouth. Dental devices and oral jewelry need not be removed.
- Unless information is volunteered that the driver has consumed an alcoholic beverage within the previous fifteen (15) minutes, a member may administer a screening test immediately. If a test made without observing a waiting period results in an alcohol concentration reading of 0.08 or more, the officer shall wait five (5) minutes and administer an additional test. If the results of the additional test show an alcohol concentration reading more than 0.02 under the first reading, the member shall disregard the first reading.

- If a member has any questions concerning any screening test results, the driver may be requested to submit to one or more additional screening tests and if appropriate.

- In administering any screening test, a member shall use only an approved Patrol-issued alcohol-screening device and in accordance with the operational instructions supplied with or listed on the device. However, the waiting periods set out in this policy supersede any waiting period specified by the manufacturer of the device.

Calibration – Alcohol Screening Devices

- Calibration of alcohol screening test devices shall be verified at least once every thirty (30) days by employment of a control sample from an ethanol gas canister. The results shall be recorded on the ethanol gas canister log for alcohol screening test devices.

- Pre-typed logs shall not be used. Calibration dates **shall** be chronologically listed. Members shall not white-out entries, skip lines, or otherwise compromise the integrity of the ethanol gas canister log. If an error is made, the member making the error shall make a single pen-strike through said error and place his/her initials immediately adjacent to the error. If the error is substantial, a new entry shall be made on the next available line.

Placing Alcohol Screening Devices Out of Service

- Alcohol screening devices shall be placed out of service when the member assigned the device is or will be absent from normal duties for a period of thirty (30) or more consecutive days. A supervisor shall calibrate and briefly document the reason for out of service on the ethanol gas canister log (i.e. injury / administrative leave, special assignment, training, or repair) and shall also document the name of the member who is assigned the device on the ethanol gas canister log (i.e. assigned to Trooper John Smith). If a member chooses not to place the device out of service, they are responsible for calibration of the device as required by policy. Out of service screening devices shall be maintained at the District, Unit, or Section office in the custody of the supervisor.

  The device shall not be utilized again until a supervisor calibrates the unit back into service on the ethanol gas canister log. Before a supervisor allows a member to use the screening device, the supervisor shall calibrate the device and record the results on the ethanol gas canister log. The supervisor shall note the name of the member who is assigned the device (i.e. assigned to Trooper John Smith).

- In the event that a supervisor wishes to temporarily assign a member the supervisor's alcohol screening device, the supervisor shall calibrate the supervisor's assigned device and record the results on the ethanol gas canister log. The supervisor shall note the name of the member who is being temporarily assigned the device (i.e. assigned to Trooper John Smith) and the reason for the temporary assignment. Upon returning the device to the supervisor, the supervisor shall calibrate the supervisor's assigned device and record the results on the ethanol gas canister log. The supervisor shall note the name of the member who is being temporarily assigned the device (i.e. assigned to Trooper John Smith) and the reason the member is returning the screening device back to the supervisor.

- Spare or unassigned alcohol screening devices **shall not** be maintained at the District or Unit level. Unassigned or spare screening devices may be maintained at the Troop or Section level.

- Out of service calibration entries made on the ethanol gas canister log shall be made chronologically and in sequence with all other entries. Supervisors verifying calibration on an alcohol screening test device shall complete all applicable blanks for each canister test conducted.

Use of Screening Test Results or Refusals

- The fact that a driver showed a positive or negative Alco-Sensor result or a driver's refusal to submit to an Alco-Sensor test, may be used by the member in determining whether there is probable cause to believe:

  - That the driver has committed an implied-consent offense under N.C.G.S. § 20-16.2; and

  - That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration.

- Members may, for the purpose of establishing probable cause, testify in court that a driver showed a positive result on an Alco-Sensor test. Members may not, however, testify as to the actual alcohol concentration revealed by the Alco-Sensor test.

- Negative or low results on the Alco-Sensor test may be used in factually appropriate cases by the member, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol.

III. PRE-CHARGE CHEMICAL ANALYSIS

A person stopped for or questioned concerning the commission of an implied consent offense may request a chemical breath analysis pursuant to N.C.G.S. § 20-16.2(i). A member must honor this request only when made to the member before the member charges the suspect with an implied consent offense and only when chemical analysis of the breath is available. If a chemical analysis of the breath is available, a member may not charge the suspect with an implied consent offense until after the pre-charge chemical breath analysis is administered. A member may, however, continue the investigation and charge the driver with any other offense(s) the member has probable cause to believe the driver has committed, other than an implied consent offense. Once the investigation is completed, if the member has reasonable grounds to believe the driver has committed an implied consent offense, the member shall not charge the driver with the implied consent offense, but shall proceed in accordance with this directive. If the member does not have reasonable grounds to believe the driver has committed an implied consent offense, the driver shall be informed that the pre-charge test will not be available, since the driver is not subject to being charged with an implied consent offense.

When members have reasonable grounds to believe that the person stopped has committed an implied consent offense and the person has requested a pre-charge chemical analysis, the members must complete the Request for Pre-Charge Chemical Analysis (DMV-S784) and request the suspect to sign the form prior to transporting the suspect to a chemical analysis site. If the suspect refuses to sign the DMV-S784, the member may immediately charge the person with the implied consent offense and process the suspect as if the request for the pre-charge test had never been made. A member shall not transport any person who has requested a pre-charge breath analysis to a chemical analysis site unless:

- The suspect has signed DMV-S784
- The suspect has refused to sign the DMV-S784 and the member has charged the suspect with an implied consent offense

After the suspect signs the DMV-S784, the member shall secure the suspect's vehicle in compliance with Patrol policy and transport the suspect in the Patrol vehicle to the analysis site. If the member has reasonable suspicion to believe that the suspect may be armed, the member may frisk the suspect. The suspect must be handcuffed in accordance with Patrol policy but must be told he/she is not under arrest. A suspect who refuses to peaceably accompany the member to the analysis site shall be immediately charged with an implied consent offense, if probable cause exists. A member shall then proceed as in any implied consent charge.

A member shall administer the pre-charge chemical analysis under the same terms, conditions, and procedures as any other implied consent chemical analysis, except that the chemical analyst must advise the suspect of his/her pre-charge chemical analysis rights pursuant to Form DMV-S784A (Rights of Person Who Requests a Pre-Charge Chemical Analysis) and obtain the suspect's signature on the form.

The chemical analyst must perform the pre-charge chemical analysis according to the procedures established for all other chemical analyses of the breath. The chemical analyst must, prior to trial, furnish the suspect with a copy of the appropriate form showing the time the breath sample was taken and the results of the analysis. The results of the pre-charge chemical analysis may be used in the pre-trial civil revocation proceeding and the trial of any implied consent offense with which the member charges the suspect.

If the suspect refuses to sign the DMV-S784A or if the suspect refuses to submit to analysis, the analyst shall make the appropriate notation on the DMV-S784A and record the time. If probable cause still exists, the member who detained the suspect shall thereupon charge the suspect with the appropriate implied consent offense. The charging member must then request the suspect to submit to a chemical analysis pursuant to N.C.G.S. § 20-16.2, proceeding as in all other cases of a person charged with an implied consent offense and who had not requested a pre-charge chemical analysis. The suspect's refusal to submit to a pre-charge chemical analysis pursuant to the suspect's request under N.C.G.S. § 20-16.2(i) does not constitute a willful refusal for license revocation purposes. The person must be charged, informed of the driver’s chemical analysis rights and requested to submit to the test. If the person still refuses, then this second refusal amounts to a willful refusal for purposes of the pre-trial civil revocation and the one-year revocation by DMV.

After the suspect submits to a pre-charge chemical analysis and the member completes the pre-charge chemical analysis, the member may charge the suspect with an implied consent offense if probable cause still exists. The member shall complete all required paperwork and may utilize the results of the pre-charge chemical analysis in any civil or criminal proceedings. If the results of the pre-charge chemical analysis are 0.08 or more the results of the pre-charge test shall be used as a basis for a pre-trial civil revocation as provided in N.C.G.S. § 20-16.5.

IV. DUTIES OF A CHARGING OFFICER

Members shall, at the scene of a stop for DWI or other implied consent offense:

- Carefully note the suspect's mental and physical appearance and other relevant evidence to be used as sworn testimony at trial; the member may

engage in investigative techniques to determine the suspect's level of impairment

- Seize physical evidence of impairment such as alcohol and drug containers

- Charge a suspect who the member has probable cause to believe has committed an implied consent offense [for purposes of implied consent the term “charge” means that a person is arrested or that criminal process for the offense has been issued. N.C.G.S. § 20-16.2(a1)]

- Record the time of the observation, and enter the time of charge on the citation (members shall not use the time of booking)

- Secure a charged person's vehicle consistent with Patrol policy

- Not transport a suspect unless the suspect is charged or has properly requested a pre-charge chemical analysis as described herein or is in need of immediate medical assistance

A member shall, while en route to the analysis location:

- Observe the charged person. A member shall carefully note any signs of illness or injury. Charged persons shall not be permitted to consume any tobacco, food, or drink while en route to the analysis site. A member shall immediately report to the chemical analyst any sign of illness or injury detected, or any food, tobacco, or drink consumed.

- Take the most direct route possible to the analysis site

- Question an arrestee only after informing suspect of Miranda Rights and obtaining a valid waiver thereof. A member shall conduct all questioning in full compliance with Directive I.04.

Designation of Type of Chemical Analysis

- Any charging officer who has reasonable grounds to believe that a person charged has committed an implied-consent offense shall obtain a chemical analysis of the person. The charging officer or chemical analyst shall designate the type of test or tests to be given, and may request the person charged to submit to the type of chemical analysis designated. Breath, blood, urine or other bodily substance or a combination of these tests are authorized. The willful refusal to submit to any such test shall be treated as a willful refusal and reported in accordance with this directive. Patrol policy is to designate the evidential breath alcohol instrument provided for by 10A NCAC 41B and maintained by the Forensic Tests for Alcohol Branch (henceforth shall be referred to as “the approved instrument” within this

Directive) for drivers who are not hospitalized and who appear to be impaired by alcohol. If the results are negative or low and inconsistent with the observation of the charging officer, then an additional blood test may be requested and obtained. If a subsequent chemical analysis is requested, the driver shall again be advised of the implied-consent rights in accordance with N.C.G.S. § 20-16.2.

- For drivers who are hospitalized or if impairment is believed to be based upon drugs other than alcohol, a blood test may be designated. When a driver causes a crash resulting in death or serious injury to another or is believed to be a habitual impaired driver pursuant to N.C.G.S. § 20-138.5 and the driver refuses a breath or blood test, the charging officer shall whenever practicable obtain a search warrant and obtain blood or urine samples from the driver. Nothing in this directive shall be construed as a limitation on the authority of a charging officer to use any lawful means to obtain samples of a driver's breath, blood, urine, or other bodily substances for analysis to determine the presence of an impairing substance(s), however, absent articulable exigent circumstances or consent, a charging officer must obtain a search warrant prior to the withdrawal of blood or urine. When a blood or urine test is specified as the type of chemical analysis, a physician, registered nurse, EMT, or other qualified person shall withdraw the blood or obtain the urine sample. For the purpose of this policy, members of the State Highway Patrol who are certified as an EMT shall be prohibited from personally withdrawing blood, urine, or other bodily substances for the purpose of analysis to determine the presence of an impairing substance(s).

At the Chemical Analysis Site

- The charging officer must, upon arrival at the chemical analysis site, inform the chemical analyst of the charged person's name, the charge against him/her, and the time of charge (a member who is the charging officer may also be the chemical analyst if the member holds a current permit from the Department of Health and Human Services (DHHS) for the approved instrument and the chemical analysis is performed on the approved instrument).

- After the chemical analyst advises the charged person of the implied consent rights, the charging officer shall:

    - Allow the charged person to telephone an attorney for advice/or to contact witnesses to view the testing procedures if the person so desires. If witnesses are requested, the charging officer shall determine if a witness has arrived prior to the test being administered.

- In the presence of the chemical analyst, request the charged person to submit to a chemical analysis. The manner and tone of this request is important and often influences whether the charged person submits to an analysis.

- During the chemical analysis of the breath, the charging officer shall remain with the charged person at all times.

- A member shall, if at all possible, complete a Driving While Impaired Report (DHHS-4064) for every charged person. Prior to any questioning, a member must inform a charged person of his/her constitutional rights as required by the **Miranda** decision and obtain a valid verbal waiver or signed form HP-306 thereof.

Results of 0.08 or More

- When a chemical analysis reveals a charged person has an alcohol blood concentration of 0.08 or more, the charging officer shall complete form AOC-CVR-1/DHHS 3907 and DHHS-4064. (A separate AOC-CVR-1/DHHS-3907 must be obtained from the chemical analyst if the charging officer is not the chemical analyst.)

Refusals

- When a charged person willfully refuses to submit to any chemical analysis, the charging officer shall complete Forms AOC-CVR-1/DHHS-3907 and DHHS-4064 (A separate AOC-CVR-1/DHHS-3907 must be obtained from the chemical analyst if the charging officer is not the chemical analyst). No implied consent chemical analysis shall be given, but the member may obtain a court order to, compel the person to provide blood or urine samples for analysis. The member may compel the person to provide blood or urine samples without first obtaining a search warrant only under circumstances where articulable exigent circumstances exist.

V. DUTIES AND RESPONSIBILITIES OF THE CHEMICAL ANALYST

Qualifications and Statutory Procedures

- Members administering a chemical analysis of the breath must possess a valid permit from the Department of Health and Human Services (DHHS).

- All chemical analyses shall be administered in full compliance with North Carolina General Statutes and the rules and regulations of the DHHS. Members are charged with knowledge of current statutory law and regulations.

- When administering a chemical analysis of the breath using the approved instrument, all chemical analysts shall conduct breath analyses using the operational procedures set forth on the DHHS-4079.

Administration of Chemical Breath Analyses

- Members shall not administer a chemical analysis in motor vehicles unless specifically authorized by their supervisor or higher authority, or unless extremely unusual circumstances exist (such as handicapped or violent person).

- The chemical analyst who may be the charging officer shall be present with the charged person in the chemical analysis room.

- The chemical analyst shall orally and in writing inform the charged person of his/her implied consent rights using form DHHS-4081.

- The chemical analysts shall follow the operational procedures for the approved instrument as set forth on form DHHS-4079 and follow the applicable DHHS Rules and Regulations governing chemical analysis.

- A charging officer who is not also the chemical analyst shall, in the chemical analyst's presence, request the charged person to submit to a chemical analysis.

- In cases where a charged person agrees to submit to the chemical analysis, the chemical analyst shall, after the appropriate waiting period, administer the chemical analysis.

- Members shall not mark or alter the analysis results in any way. A copy of the results (DHHS-4082) shall be attached to the AOC-CVR-1/DHHS-3907. A signed copy of this DHHS-4082 shall be furnished to the person charged.

- The charged person or his/her attorney shall be furnished a copy of the results of the chemical analysis results.

VI. ADDITIONAL PROCEDURES

When results of two chemical analyses indicate an alcohol concentration of **0.36** or more, the charged person shall be given medical attention as soon as possible.

If the charged person has an attorney or witness present during any waiting period prior to administering the chemical analysis of the breath and the attorney or witness interferes in any way, the attorney or witness should be asked to leave the analysis room. Such a request should not be made until the attorney has had

a reasonable opportunity to confer with the charged person. The accused should not be interrogated after the attorney leaves the room.

Members requesting a chemical analyst from another agency to administer a chemical analysis shall conform to the terms, rules, procedures and regulations of that agency.

Members who administer chemical analyses for other law enforcement agencies shall do so only under the rules and regulations of the DHHS and Patrol policy.

VII. OBTAINING AND ANAYLYZING BLOOD SAMPLES UNDER THE IMPLIED CONSENT STATUTE

Whenever a breath or blood test is designated, the charging officer who possesses a current permit from DHHS authorizing him/her to administer chemical analysis of the breath may advise the charged person of his/her implied consent rights using the DHHS-4081.

If a person is unconscious or otherwise incapable of refusing the test, and there are reasonable grounds to believe the person has committed an implied consent offense, a member shall obtain a Search Warrant (AOC-CR-155) for Blood or Urine prior to obtaining the sample, whether roadside or at a medical facility. Notification of implied consent rights is not necessary under these circumstances. Members may obtain blood or urine evidence without a search warrant only when sufficient articulable exigent circumstances exist.

When a suspected alcohol-impaired operator of a vehicle is injured to the extent that the chemical analysis must be given at the site of a medical facility, the charging officer shall designate a blood test in lieu of the breath analysis.

The member must comply with the provisions of the implied consent statute prior to obtaining the blood sample. The driver must be charged with an implied consent offense, e.g. the citation completed and signed. The driver's copy of the citation need not be served if the driver is undergoing treatment or is unconscious, but can be left with the driver's personal effects. The driver, unless unconscious, must be read the implied consent rights and allowed to consult with an attorney or have a witness view the testing procedures as long as this procedure is not delayed for more than 30 minutes from the completion of the reading of the rights.

When a person qualified to take a blood sample requests written confirmation of the member's request for the sample, a member shall complete form HP-332B or make a written notation in the hospital record prior to withdrawal of the blood.

An unexpired blood alcohol Vacutainer blood collection kit, such as Vacutainer or Venoject, which contains a preservative and an anticoagulant (gray top test

tubes), shall be made available to a physician, registered nurse, EMT, or other qualified person to obtain the blood sample. The charging officer shall record the name of the qualified person who withdraws the blood and the person's title. Whenever practicable and authorized by medical personnel, the member shall observe the withdrawal of the blood and take the blood sample from the person withdrawing the blood to reduce the number of persons needed to prove a chain of custody.

A sample of 20-ml of blood in two 10-ml test tubes shall be obtained, when possible. Upon receipt of the blood samples, the member shall check the kit to determine if the samples are present and that there is not a needle or other unnecessary items in the kit.

Blood samples need not be refrigerated, but should be protected from the heat. A blood sample should not be left more than an hour in the Patrol vehicle or trunk or in the Courier box during hot weather.

The blood sample shall be forwarded to the State Crime Lab as provided in Directive J.01 (Evidence/Property Collection, Analysis, and Disposal) through the Forensic Advantage web portal. If the District Attorney requests, the blood sample may be sent to a private laboratory. The costs of such an analysis will not be paid by the Patrol but must be authorized by the Court to be paid by AOC.

The State Crime Lab will only analyze the blood for the presence of alcohol and not other drugs unless the member makes a special request. Under current SBI policy, an analysis for drugs, other than alcohol will only be performed when:

- Alcohol concentration is less than 0.08 and the case involves a death or serious injury

- A request is made by the elected District Attorney or a certified Drug Recognition Expert (DRE) has evaluated the case, in which case the member shall note that fact in the remarks section of the SBI-5 submission form.

The State Crime Lab will perform a drug screen for the following categories of drugs:

- Cocaine

- Marijuana and THC

- Opitates

- Benzendiazapines

- Barbiturates

If a charging officer suspects the presence of another type of drug, the officer must list the drug on the analysis request form so that the State Crime Lab can screen for it.

Upon receipt of the results of the chemical analysis of the blood which reveals an alcohol concentration of 0.08 or more, the charging officer shall take the affidavits of the charging officer and chemical analyst(s) to the clerk of superior court of the county in which the offense occurred and request that the pre-trial civil revocation proceeding be commenced.

VIII. CHEMICAL ANALYSIS FOR FATALITIES, SERIOUS INJURIES, AND FELONY IMPAIRED DRIVERS

Patrol policy is that breath, blood, and/or urine samples shall be obtained from drivers who are believed to be impaired and to have caused a crash involving the death of or serious injury to another or who are believed to be a habitual impaired driver. When a member has reasonable grounds to believe a driver is impaired and has caused a crash resulting in death or serious injury to another or is suspected of being a habitual impaired driver pursuant to N.C.G.S. § 20-138.5, the member shall offer the driver a chemical analysis pursuant to the implied consent statute, N.C.G.S. § 20-16.2. If there is evidence of drug use other than alcohol, the charging officer shall designate a blood test, in place of or in addition to a breath test. If the driver refuses to provide the requested sample(s), the member shall obtain a search warrant for the driver's blood and urine for purpose of analysis to determine the presence of alcohol and/or drugs. If a search warrant is impracticable, the member is not required to obtain one but must explain in the crash file the reason that the search warrant was not obtained.

The search warrant form for blood or urine in DWI Cases (AOC-CR-155) should be used.

When a search warrant for blood is being served a doctor, nurse, EMT or other qualified person should draw the blood in the presence of the charging officer. The person withdrawing the blood should be told that the blood is for the purpose of determining the presence of alcohol or other drugs.

If a driver physically resists providing a blood sample reasonable force can be used to restrain the driver and the blood withdrawn over his/her objection. Hospital procedures used to restrain unruly patients can be used. If the driver physically resists or refuses to provide a urine sample, none shall be obtained without consulting with the District Attorney. A driver who resists providing a blood or urine sample may be charged with resisting, obstructing or delaying a public officer in violation of N.C.G.S. § 14-223.

Urine will show previous drug use and not current drug use. It can be used to corroborate a blood test, but is primarily of value when the driver has fled the scene and is not arrested until several hours later. Urine may show the presence of drugs, when the blood does not. When a urine sample is obtained, the sample must be obtained in accordance with the medical facilities policy to assure reliability of the sample and the privacy of the driver. Urine samples must be refrigerated. The charging officer must determine from the facility how to preserve the sample for later analysis. The SBI laboratory can analyze urine, but it is time consuming and expensive and should only be requested after consultation with the District Attorney's Office.

Search warrants must be served and returned to the court in accordance with Chapter 15A of the General Statues and an inventory of seized property (AOC-CR-206) must be completed when blood or urine is seized.

IX. DRIVERS TREATED AT OUT OF STATE HOSPITALS

A driver in the border counties may be taken for treatment at medical facilities located outside the State of North Carolina. For the purposes of collision investigation, members may proceed out of state after obtaining permission from a district supervisor. Members shall use the North Carolina implied consent procedures to obtain a blood sample from the driver. The member shall not arrest the driver, but shall charge him/her by issuing and signing the citation. If the driver refuses to submit to the implied consent test, the member shall follow the procedure for the pre-trial civil revocation and the DMV revocation. Search warrants issued in North Carolina are **not** valid outside the State of North Carolina. Blood and/or urine samples, other than under implied consent, should only be obtained after consultation with the District Attorney of the county in which the charges are to be filed.

A driver who is located out of state shall not be arrested but may be cited to appear in court. If the driver has committed a felony, the charging officer must obtain arrest warrants and have them entered into the Division of Criminal Information (DCI). The driver must then be arrested by an officer from the state in which the driver is located. The driver must then be extradited back to North Carolina. Extradition must be handled by the District Attorney's Office. Drivers charged with a misdemeanor may also be extradited using the same procedure.

Hospital records from out of state hospitals should be obtained through the District Attorney for the county in which the charges are filed.

X. HOSPITAL RECORDS AND OTHER EVIDENCE OF IMPAIRMENT

Pursuant to N.C.G.S. § 90-21.20B, if a person is involved in a vehicle crash, any health care provider who is providing medical treatment, is required to provide the investigating member with the person's name, current location, and disclose

whether the person appears to be impaired by alcohol, drugs, or another substance. An investigating member is also entitled to access to visit and interview the person upon request, except when the health care provider requests temporary privacy for medical reasons. A member who receives identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.

Hospitals may take blood samples for analysis for alcohol or other drugs to be used in the treatment of the driver. The results of such analyses are confidential and cannot be obtained without the consent of the patient or a court order. When a driver has received treatment which will likely to have had a blood sample taken for analysis, it is Patrol policy for the investigating member to contact the District Attorney's Office in the county in which the charges are pending to seek a court order to obtain the results of any blood test. Even if the driver has submitted to an implied consent test, the District Attorney's Office must be contacted and informed of the hospital test so that the District Attorney can decide whether to seek these records.

Emergency medical services who take a driver to a medical facility may make written observations of both the level of impairment of the driver and statements about consumption of impairing substances. These records are confidential, the same as hospital records, and can only be obtained by court order. The District Attorney is to be informed of the existence of these records.

Pharmacy records may demonstrate the amount of drugs a driver is prescribed and the recommended dosage. The pharmacy records can be obtained by a subpoena which can be issued by the District Attorney. If a particular prescribed drug is found, the manufacturer may issue warnings about drinking and/or driving after taking this drug. These drug warnings can be obtained from any pharmacy which dispenses this type of drug. Such warnings are not confidential and the charging officer can obtain them.

XI. CONTROLLED DRINKING PROGRAM

All controlled drinking programs which the Patrol sanctions or participates in must have prior approval of the appropriate Section Director/Troop Commander or higher authority.

Members conducting the analysis shall possess a valid permit to perform chemical analyses issued by the DHHS.

Controlled drinking programs will be limited to civic, military, school, college, and media groups.

Controlled drinking programs shall be conducted according to the following guidelines:

- All requests for controlled drinking demonstrations from court or judicial officials shall be referred to the Forensic Test for Alcohol Branch in Raleigh.

- Programs shall be conducted under closely controlled conditions in a proper scientific environment.

    - All chemical analyses shall be administered under the same standard operating procedures as are actual chemical analysis used for court purposes. The operational checklist shall be used.

    - The breath of each drinking subject shall be analyzed before drinking begins.

    - The number of drinking persons should be kept to a minimum.

    - Drinking persons shall be supervised and escorted by a non-drinking participant at all times.

    - Alcohol concentration should not be allowed to exceed 0.12.

    - All alcohol concentrations shall be recorded in the lowest hundredth, the same as if the reading were for court purposes.

    - Only one breath-testing instrument shall be used at a given demonstration. Under no circumstances shall more than one instrument be used to test the same subject for comparison purposes.

    - Arrangements shall be made for the supervision of drinking persons after the demonstration ends.

    - 15A NCAC 19B .0400 – .0407 of the Rules of the DHHS, Commission for Health Services governing controlled drinking programs shall be strictly adhered to during all such programs.

I. POLICY

This policy sets forth guidelines in reference to court attendance and demeanor.

II. ATTENDING COURT

Employees shall attend court at times required and be prepared to testify. If unforeseen circumstances prevent an employee's prompt attendance in court, the employee shall notify the appropriate court officials by the quickest means and request a delay of the case. Employees shall ensure persons cited to court are notified as to any continuance. This rule shall also apply when an employee is placed on special assignment; however in this situation, the employee's supervisor should assist with the notification.

Employees shall respond to a subpoena from a federal or a state court as a first priority and shall notify a supervisor if given an order which conflicts with the subpoena.

Employees shall respond to the first subpoena served when ordered to report to two (2) courts at the same time; however, employees shall respond to a subpoena from a federal court or a superior court in preference to a conflicting subpoena from a lower court, even if the latter is served first. In all cases, employees shall promptly notify the second court of the subpoena served from the higher court.

Employees shall notify their supervisor when they are to attend court outside of their assigned section/district. Patrol uniforms shall be worn, and Patrol cars shall be driven unless otherwise authorized by the Section Director/Troop Commander.

Employees assigned Limited or Administrative Duties shall follow the provisions set forth in Directive E.01, Section VI (Limited Duty) and Directive B.01, Section V (Administrative Leave and Review) when he/she is required to attend court.

Employees shall request and obtain a leave of absence when they are requested or subpoenaed to appear in any court proceeding, whether administrative, civil, or criminal, which does not involve appearing in their official capacity. The approved leave of absence shall be charged to annual leave for the employee. Civilian clothing and private or commercial travel shall be used. Employees shall be prohibited from carrying any firearm into any court proceeding while attending in an off-duty or non-official capacity.

All requests to appear or attend any work-related court proceeding out-of-state shall be made via chain-of-command for approval or disapproval to the Commander’s Office.

III. PERSONAL APPEARANCE, COURTROOM DEMEANOR, AND INTERFERENCE WITH CASES

Interference with Cases, Reduction of Charges, Plea Bargaining

- Employees shall not interfere with cases assigned to other employees for investigation except by order of a superior officer. Employees shall not interfere with any arrest, prosecution, or administrative proceeding brought by other employees of the Patrol or by any other agency or person. If employees have knowledge that an arrest or prosecution would bring about a manifest injustice, they shall report the matter to their supervisor.

- Employees shall not attempt to influence another employee concerning a case assigned to him/her. Employees shall not intercede on behalf of any person in any case assigned to another employee or any other law enforcement officer.

- Employees shall not undertake any investigation or other official action not part of their regular duties without obtaining permission from their superior officer unless circumstances require immediate action.

- Employees shall not engage in plea bargaining with defendants or defense counsel. All inquiries made to employees concerning reduction of charges shall be courteously referred by the employee to the District Attorney or assistant district attorney.

- Employees shall not reduce charges on their own volition. Employees shall bring charges in every case commensurate with available evidence. Employees shall not alter charges once they are written based solely upon the attitude of the violator.

- Employees shall be neat in their personal appearance and conduct themselves with dignity in the courtroom.

- Employees shall not wear issued BDUs, Jumpsuits, Class B Uniforms or Flight Suits to court. If an employee is advised his/her presence is needed for a court case, the employee shall request to have the case postponed to allow him/her time to change into a uniform that is appropriate for court. If the employee's request is not granted, the employee shall contact his/her supervisor of the failed attempt to have the case postponed, and he/she shall proceed to court without further delay.

- Employees shall avoid any action that would indicate a special interest in securing a conviction and shall not give an outward appearance of dissatisfaction with decisions.

IV. ACTING AS BAILER, ACCEPTING BAIL

Employees shall not act as bailers, sureties, or otherwise agree to be responsible for any confined person other than for employees of their immediate families. Employees shall not receive or accept money to be turned in as a fine or bail for persons charged, cited, or convicted of violations.

V. CIVIL CASES

Except when they are parties to a legal action, employees shall not participate in the proceedings of civil sessions of court and shall not testify in civil actions unless legally summoned.

Employees instituting a civil action arising out of their official duties shall notify the Commander's Office prior to taking such action. Employees shall not use their official positions as a means of forcing or intimidating persons with whom they are engaged in a civil action to settle the action in their favor.

Employees who are named as a defendant in a civil action arising out of their official duties shall personally notify the Patrol's Legal Section immediately upon receipt of the Complaint and Summons, by telephone. The Patrol's Legal Section shall be responsible for notifying the Commander's Office of the Complaint and Summons.

VI. SERVICES OF SUBPOENA / FEES DERIVED FROM CIVIL AND CRIMINAL COURTS

Employees shall serve subpoenas only when ordered to do so by a judge or magistrate, or when subpoenas are connected with operations of the Patrol. Employees shall courteously decline to serve subpoenas under any other circumstances, as this is a function of the Sheriff's Office.

When employees attend criminal or civil courts whether in-state or out-of-state in connection with or growing out of official duties performed, all compensation or fees received as a witness shall be immediately remitted with a report to Patrol Headquarters through channels. Civil lawsuit court attendance growing out of matters officially investigated, processed, or coming to the official attention of employees is considered as official court attendance.

Employees may keep fees received from court attendance in private lawsuits.

Employees who are called upon to attend court as grand or petit jurors will be granted permission to attend court without loss of pay or leave. They will be entitled to keep their juror's pay plus their regular salary, but cannot charge expenses to the State.

No employee shall authorize or knowingly permit any person to sign a return on any warrant for the purpose of collecting a financial fee.

Wrecker Service Vehicle Towing / Notification / Inventory

Directive J.04
Revised 9/17/2021
Effective 12/10/2015

Applicable to: Employees

I. POLICY

This policy sets guidelines for the towing, notification, storage, and inventory of vehicles. It shall also set forth guidelines for the management of wrecker services.

It is the policy of the Highway Patrol to remove all vehicles parked, disabled, or left standing on the roadway or main-traveled portion of the highway and vehicles left on the highway right-of-way that present a hazard or potential hazard as authorized by State law. If the towing, storage, or removal of a vehicle is necessary, every effort should be made to ascertain the owner, operator, or legal possessor's preference with regard to towing. The last registered owner of a vehicle towed and/or stored shall be provided with the towing notification information required by State law.

II. VEHICLE REMOVAL PROCEDURES

Vehicles on the Paved or Main-Traveled Portion of the Highway

- A member who encounters a vehicle parked, disabled from a collision or otherwise left standing on the paved or main-traveled portion of the highway shall:
    - Remove the vehicle to a position off the roadway
    - With consent from the owner, operator, or legal possessor, transport and store the vehicle
    - Without consent from the owner, operator, or legal possessor, transport and store the vehicle if the vehicle presents a hazard, a potential hazard or otherwise as authorized by State law
- A member shall permit an objecting owner, operator, or legal possessor to remove a vehicle to a safe position off the roadway, if the driver is competent and licensed to drive the vehicle. A member may transport and store a vehicle, which cannot be safely parked off the roadway as authorized in this directive.

Vehicles off the Paved or Main-Traveled Portion of the Highway

- A member investigating an accident or collision in which a disabled vehicle is located off the paved or main-traveled portion of the highway may transport and store the vehicle. If the owner, operator, or legal possessor objects, a

member shall not transport and store a vehicle unless, as standing, the vehicle creates a hazard.

- A member who observes a vehicle unlawfully parked or disabled on the right-of-way, but not on the main-traveled portion of the highway may remove and store the vehicle only if the vehicle interferes with the regular flow of traffic or otherwise constitutes a hazard.

- A member shall not transport and store a vehicle unlawfully parked on the highway right-of-way, which does not interfere with the regular flow of traffic or otherwise constitutes a hazard until the vehicle remains on the highway right-of-way for a period of twenty-four (24) hours or more, has been vandalized, or is otherwise abandoned. A member shall tag such vehicle with an Unattended Vehicle Tag (HP-303) prior to transportation and storage.

- A member who is checking vehicles for occupants during extreme weather events and the use of the HP-303 (Unattended Vehicle Tag) is impractical, shall affix an approximately three (3) feet in length piece of crime scene tape to the exterior door mirror of the vehicle closest to roadway. Members checking abandoned vehicles during extreme weather events that do not have exterior mirrors shall notify the appropriate Communication Center of the vehicle's description and location. The tape will serve as a universal statewide practice by allied emergency service agencies to indicate whether a vehicle has been checked for occupants and eliminate the duplication of search efforts for stranded motorists.

III. SECURING VEHICLES WHEN OPERATOR IS ARRESTED

Upon arresting or placing a vehicle operator in custody a member shall:

- With consent of owner, operator, or legal possessor, allow another licensed, competent individual to drive or move the vehicle to a position off the roadway

- If no licensed, competent operator is present, or if the owner, operator, or legal possessor will not consent to such removal:

    - Move the vehicle, if necessary, to a position off the roadway, lock the vehicle, and return the key to the owner, operator, or legal possessor, except that, in any case where the operator of the vehicle is arrested for DWI, a member shall either turn the keys over to the magistrate/jailer or to a sober, responsible person; or

    - With or without consent of the owner, operator, or legal possessor, transport and store vehicle in accordance with Section IV of this directive

Vehicles Subject to Seizure

- Vehicles, which are authorized by law to be seized, or which may be evidence in a criminal proceeding may be towed or stored

IV. VEHICLES TRANSPORTED AND STORED OVER OBJECTION OF OWNER

A member may transport and store a vehicle over the objection or without consent of the owner, operator, or legal possessor when:

- The vehicle cannot be lawfully parked off the roadway
- The vehicle is lawfully parked off the roadway but creates a hazard
- The owner, operator, or legal possessor refuses or is unable to remove the vehicle from the roadway
- The vehicle is subject to seizure pursuant to N.C.G.S. § 20-28.3 or other lawful authority

V. PARKING VEHICLES OFF THE ROADWAY

A member who removes or allows a vehicle to be removed to a position off the roadway shall:

- Lawfully park the vehicle in an apparently safe and secure location off the main-traveled portion of the highway
- Place the vehicle in a position that creates no apparent hazard or other interference with the regular flow of traffic

A member shall take reasonable precautions to secure the vehicle and its contents against theft, vandalism, and other damage by locking the vehicle (if possible) and returning the keys to the owner, operator, or legal possessor. In any case where the operator of the vehicle is arrested for driving while impaired (DWI), a member shall either turn the keys over to the magistrate/jailer or, when appropriate, to a sober, responsible person.

VI. TRANSPORTING AND STORING VEHICLES

Members shall arrange transportation and safe storage of vehicle(s). A member who authorizes the transportation and storage of a vehicle shall, immediately notify the appropriate Communications Center and request a wrecker service. The authorizing member shall furnish information necessary to complete a Signal 4 (Report of Vehicle Stored or Recovered). In situations where the registration information, or the registration plate does not correspond with the vehicle registration information, and the vehicle identification (VIN) cannot immediately be established, the storing member shall notify a DMV Inspector, and request assistance in locating the VIN in order to notify the last known registered owner.

Once this information has been obtained, the member shall notify the Telecommunications Center, and initiate a Signal 4.

If the vehicle is being stored as a result of a collision involving serious personal injury or fatality, the authorizing member shall ensure a next-of-kin has been notified as to the location of the vehicle, **prior to completing the Signal 4**.

A member shall notify the Communications Center and complete a Signal 4 whenever he/she transports or stores a vehicle if the operator/legal possessor is either not present or is present but is not the registered owner of the vehicle. If the vehicle is towed, stored, or removed to the shoulder of the road or left at the scene at the request of or with the consent of the registered owner, a Signal 4 is not required. The member shall complete and mark the applicable entries on a Vehicle Towing Authorization/Inventory (HP-305) and obtain the signature of the registered owner.

Refusal to sign the HP-305 shall be deemed a withdrawal of the consent or request to tow. In such a situation, members shall be governed by Section IV of this directive.

A member shall, when notified by a magistrate of a hearing regarding payment of towing or storage fees, appear in person at the hearing or file a Towed/Stored Vehicle Affidavit (HP-305.1) with the magistrate prior to the hearing.

When necessary for accident reconstruction or a criminal investigation in which multiple vehicles are involved in an incident a single storage location shall be designated. The storage facility of the first wrecker service dispatched shall be used unless otherwise designated by a supervisor.

When necessary for an accident reconstruction or a criminal investigation, a member shall designate at which indoor or other storage facility a vehicle shall be stored to ensure preservation of the evidence. The storage facility shall be the first wrecker service dispatched unless otherwise designated by a supervisor.

DWI seized vehicles shall be towed and stored in accordance with instructions from the state or regional contractor.

VII. NOTIFICATION

Unless exempted by vehicle seizure law, the Troop Communications Center must notify the registered owner when a vehicle is towed and stored. In order to accomplish this, the authorizing member shall immediately notify the appropriate Troop Communications Center of the following:

- Description of the vehicle
- Place where the vehicle is stored
- Procedure the owner must follow to have the vehicle returned to him

- Procedure the owner must follow to request a probable cause hearing on the towing

Upon notification by the member who authorized the towing or storage of a vehicle in the absence of the registered owner, the Troop Communications Center shall, as soon as practicable, attempt to notify the owner of such towing and/or storage. The Troop Communications Center shall attempt to contact the owner by telephone and provide the owner with the location of the vehicle. At least three (3) attempts must be made for vehicles registered in North Carolina and one (1) attempt for vehicles registered out-of-state. The Telecommunicator must record the person contacted or the attempts made. Whether or not the owner is reached by telephone, a copy of the Vehicle Towing/Notification (HPC-305.2), which is computer-generated at the Troop Communications Center, shall be mailed to the last registered owner by the Troop Communications Center.

In the absence of an HP-305 signed by the registered owner, Form HPC-305.2 shall be mailed to the owner within 24 hours. A duplicate copy of the HPC-305.2, which is also computer-generated, will print automatically in the district office of the member.

Whenever a vehicle with neither a valid registration plate nor registration is towed, in the absence of an HP-305 signed by the registered owner, the authorizing member shall attempt, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and provide the information to the Troop Communications Center and they shall attempt to make the notification as described herein.

Whenever a vehicle is seized pursuant to N.C.G.S. § 20-28.3, (DWI Seizure), the charging member shall, immediately notify the appropriate Communications Center and request the wrecker service designated as the county DWI seizure contractor to transport and store said vehicle. The authorizing member shall furnish information necessary to complete a Signal 4 (Report of Vehicle Stored or Recovered) and indicate it as a DWI seizure.

VIII. RELEASE OF VEHICLES

If no legal justification to hold the vehicle exists, a member shall immediately authorize the release of a stored vehicle to the owner upon proof of ownership.

IX. VEHICLE INVENTORY

A member who authorizes the transportation and storage of a vehicle in the absence of an HP-305 signed by the owner, operator, or legal possessor shall take precautions to protect all property in and on the vehicle prior to removal from the scene.

An HP-305 signed by the owner, operator, or legal possessor is documentation that the vehicle was not removed from the possession of such person; therefore, the completion of a vehicle inventory is not required.

The storage and security of the vehicle and its contents become the responsibility of the towing company when the vehicle is towed from the scene and stored at the wrecker service storage facility. If the vehicle is to be stored at a Patrol facility, the storing member shall conduct an inventory itemizing all property contained in the vehicle.

All vehicles, which are inventoried pursuant to these rules, shall be inventoried at the time of storage unless an emergency situation dictates otherwise.

- The inventory must be complete, listing all items that are toxic, explosive, flammable, or of monetary value.

- Unless locked or securely wrapped, all containers in the vehicle (whether opened or closed) shall be opened to determine contents unless evidence is discovered to indicate that opening the container may subject the member to exposure of toxic, flammable, or explosive substances. Locked or securely wrapped luggage, packages, and containers shall not be opened except as otherwise authorized by law or by owner consent, but shall be indicated on the inventory list as locked or securely wrapped items.

- Any evidence found in plain view is admissible. Locked or securely wrapped containers (luggage, attaché cases, etc.) are considered as units of inventory and shall not be searched without obtaining consent or a search warrant unless there is evident danger to the member or public.

- The member shall seek to obtain a search warrant when there is probable cause for a search of the vehicle or its contents when time and conditions permit.

X. REIMBURSEMENT OF WRECKER OPERATORS

A member shall promptly obtain a statement of transportation and storage fees from the wrecker operator involved when the court orders the release of any vehicle without payment of transportation and storage costs. The member shall promptly transmit to the Director of Field Operations via chain-of-command the statement and a copy of the HP-305.1 in addition to any other relevant information.

The Director of Field Operations, in consultation with the Commander's Office, shall determine whether to appeal the action of the magistrate.

The Patrol shall compensate the wrecker operator for reasonable transportation and storage fees in cases where no appeal is taken. When an appeal is taken, the Patrol shall not compensate wrecker operators until all appeals are exhausted.

XI. FINANCIAL INTEREST

No employee of the Patrol shall hold any financial interest or any form of ownership interest in any wrecker service. No member may be employed by a wrecker service, nor shall any member be assigned to a county where any relative of the member has any financial interest in, or is employed by a wrecker service. For the purpose of this rule a “relative” includes, spouse, father, mother, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included in the term “relative” are the step-, half-, and in-law relationships.

XII. IMPARTIAL USE OF SERVICES

In order to perform its traffic safety functions, the Patrol is required to use wrecker services to tow disabled, seized, wrecked, and abandoned vehicles. Members of the Patrol shall assure the impartial use of wrecker services through strict compliance with these rules. In no event shall any Patrol member recommend any wrecker service, motor club, or automobile membership service to the owner or driver of a wrecked or disabled vehicle, nor shall any member recommend the services of a particular wrecker service, motor club, or automobile membership service in the performance of his/her duties. Members shall, whenever possible and practicable, dispatch the wrecker service requested by the motorist requiring such services.

XIII. ROTATION, ZONE, CONTRACT, AND DEVIATION FROM SYSTEM

The Troop Commander shall arrange for the Communications Center to maintain a rotation wrecker system within each district of the troop (If the wrecker system is administered by a local law enforcement agency, this shall not apply), which shall include the following:

- Separate computerized small and large rotation wrecker lists and manual rotation lists for the entire district whereby wrecker services are called in the order they appear on a list
- A zone system within the district with a rotation wrecker list being maintained in each rotation wrecker zone
- A zone, contract, or other system operated in conjunction with one or more local agencies
- A combination of any such system

The Highway Patrol shall use the wrecker service requested by the vehicle owner or person in apparent control of the motor vehicle to be towed. Patrol members shall not attempt to influence the person's choice of wrecker services, but may answer questions and provide factual information. If no such request is made,

the Patrol system in place in the rotation wrecker zone will be used, absent an emergency.

The Troop Commander, in his/her discretion, may deviate from any of these rules in emergency situations if there are insufficient wrecker services of the type needed within a district to meet the needs of the Patrol.

The Telecommunicator shall enter in the computerized list the name of the wrecker service contacted and the response by the service to the request. The date and time of the call is automatically recorded in the computerized list as well as the identification number of the Telecommunicator making the entry.

In the event the computerized rotation list is not in service (CAD is down); the member requesting wrecker service shall be notified by the appropriate Telecommunications Center and a wrecker from the manual rotation wrecker list shall be utilized. The Telecommunicator shall refer to the manual list that is maintained by the Telecommunicator Center Supervisor at each communication center. The wrecker service name shall be entered on the slip log; the slip log shall indicate CAD down.

XIV. REMOVAL OF VEHICLES FROM ROADWAY "QUICK CLEARANCE"

Pursuant to N.C.G.S. § 20-161(f), whenever a portion of the state highway system is closed or partially blocked by a wrecked, abandoned, disabled, unattended, burned, or partially dismantled vehicle, cargo, or other personal property interfering with the regular flow of traffic, the priority shall be to clear the roadway as soon as possible.

Investigating member(s) are authorized to request the closest available zone rotation wrecker service and/or available Department of Transportation (DOT) resource for the purpose of removing the obstruction from the roadway only after first obtaining concurrence from the on-call DOT representative via the appropriate Telecommunications Center. Members shall ensure that the requested wrecker service is capable of responding without delay, and is properly staffed and equipped to handle the request for service. All requests for assistance from DOT shall be made through the appropriate Telecommunications Center, where a list of on-duty/recall DOT personnel with the authority to concur with the decision to implement Quick Clearance shall be maintained.

It shall be the responsibility of Troop Commanders to work in cooperation with DOT personnel to ensure that an on-duty/recall list of personnel is available and up-to-date at the Communications Center assigned to his/her Troop.

XV. WRECKER SERVICE REGULATIONS (14B NCAC 07A.0116)

The Troop Commander shall include on the Patrol Rotation Wrecker List only those wrecker services which agree in writing to adhere to the following provisions:

- A wrecker service desiring to be included on the Highway Patrol Rotation Wrecker List shall, complete and submit to the District First Sergeant, form HP-304A (Application / Re-Application for Wrecker Rotation Inclusion) form.

- In order to be listed on a rotation wrecker list within a zone, a wrecker service shall have a full-time business office within that Rotation Wrecker Zone that is staffed and open during the normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and must have a storage facility. The Wrecker service shall have someone available to accept telephone calls from the Patrol, and to allow access to towed vehicles, or to retrieve towed vehicles by the registered owner, operator, or legal possessor during business hours. The business office may not be the same physical address as the owner's residence unless zoned for commercial purposes and advertised as a business property. A representative from the wrecker service is required to be available on call on a 24-hour basis for emergencies. The wrecker service shall allow vehicles to be retrieved between the hours of 8:00 a.m. to 5:00 p.m., seven days a week, excluding holidays. An individual (registered owner, legal possessor, or operator) shall not be charged a storage fee for days that he/she could not retrieve his/her vehicle as a result of an action or omission on the part of the wrecker service (such as where the wrecker service was not open, did not answer the telephone, or a representative was not available to release the vehicle).

- Wrecker service facilities and equipment, including vehicles, office, telephone lines, office equipment, and storage facilities shall not be shared with or otherwise located on the property of another wrecker service and shall be independently insured.

- The wrecker service must also have a secure storage facility capable of storing any vehicle towed as a result of a Highway Patrol rotation wrecker call. Storage facilities **may not be shared**, and vehicles towed at the request of the Patrol **must be placed in the approved storage facility**. A storage facility for a small wrecker shall be located within the assigned zone. For wrecker services with large wreckers, the storage facility for vehicles towed with the large wrecker may be located anywhere within the county. To be listed on the large rotation wrecker list, a wrecker service shall have at least one large wrecker located within the county and designated for the sole use in that county. To be listed on the small rotation wrecker list, a wrecker service shall have at least one small wrecker located within the assigned zone and designated for the sole use in that assigned zone. A wrecker shall not be on more than one rotation wrecker list. In any case where husband and wife or other family members are engaged in the business of towing vehicles and desire to list each business separately on the wrecker rotation list, the wrecker service shall establish that it is a separate legal entity for every purpose, including federal and state tax purposes. Nothing in this Rule precludes a wrecker service from responding to private calls outside the assigned zone or county.

- Each wrecker shall be equipped with legally required lighting and other safety equipment to protect the public, and such equipment must be in good working order.

- Each wrecker on the Patrol Rotation Wrecker List shall be equipped with the equipment required on the HP-304B (Rotation Wrecker Inspection Form), which is located in FuelTaCS, and such equipment must, at all times, be operating properly.

- The wrecker service operator must remove all debris, other than hazardous materials (those amounts required to be handled by local Hazardous Materials Teams) from the highway and the right-of-way prior to leaving the incident/collision scene. Hazardous materials consist of those materials and amounts that are required by law to be handled by local Hazardous Materials Teams. This service must be completed as part of the required rotation service and shall not be charged as an extra service provided. Hazardous materials or road clean-up other than debris may be billed in quarter-hour increments after the first hour on scene.

- The wrecker service shall be available to the Patrol for rotation service on a 24-hour per day basis and accept collect calls (if applicable) from the Patrol. Calls for service shall not go unanswered for any reason; unless the wrecker company has notified the Patrol it cannot respond as set forth in the rules, failure to respond to calls for service may result in removal from the rotation wrecker list.

- The wrecker service shall respond, under normal conditions, in a timely manner. Failure to respond in a timely manner may result in a second rotation wrecker being requested. If the second wrecker is requested before the arrival of the first rotation wrecker, the initial requested wrecker shall forfeit the call and shall immediately leave the collision/incident scene.

- For Patrol-involved incidents, the wrecker service shall respond only upon request from Patrol authority or at the request of the person in apparent control of the vehicle to be towed.

- The wrecker service shall **charge reasonable charges** for work performed and present one bill to the owner or operator of any towed vehicle. Towing, storage, and related fees charged **in relation to a Patrol Rotation call may not be greater than fees normally charged for the same services, labor and conditions as non-rotation calls.** Wrecker services may secure assistance from another rotation wrecker service when necessary, but only one bill shall be presented to the owner or operator of the vehicle for the work performed and this service may be in addition to, but not in place of, units of the original service contacted. A price list for recovery, towing, and storage for all small wreckers shall be established and furnished in writing to the appropriate District First Sergeant on an HP-304C (Small Wrecker/Rollback Rotation Price List) by the wrecker service. Upon approval by the District First Sergeant, the wrecker service shall maintain a copy of

the approved price list on file at the place of business. The District First Sergeant shall cause this price list to be filed under the appropriate wrecker service file located in the district office for review as necessary. Prices indicated on this form shall be the maximum amount that will be charged for a particular service; however, this does not prevent charges of a lesser amount for said service. The District First Sergeant shall approve all price lists submitted within their respective District **if** they are determined to be reasonable, consistent with fees charged by other Highway Patrol rotation wrecker services within the District and do not exceed the wrecker service's charges for non-rotation service calls that provide the same service, labor, and conditions. The wrecker service shall notify the District First Sergeant in writing **prior to any price change** actively going into effect. Storage fees shall not begin to accrue until the next calendar day following the initial towing of the vehicle. Wrecker service towing fees for recovery and transport of vehicles after 5:00 p.m. and on weekends may not exceed the towing fees for recovery and transport of vehicles charged during regular "Business Hours" by more than 10 percent. A mileage fee may only be charged if the customer requests the vehicle to be towed to a location outside of the assigned wrecker zone or county. If a mileage fee is warranted, the wrecker driver shall inform the owner, operator or legal possessor of the vehicle of any additional charge for mileage prior to towing.

- Each Troop Commander shall designate a Troop Lieutenant to serve as a Rotation Wrecker Liaison for his/her respective Troop

- The individual price list for each respective wrecker service shall be maintained within each small wrecker and shall be given to the owner, operator or legal possessor of a vehicle being towed as a result of a Highway Patrol rotation wrecker call upon request

- All wrecker operators shall have a valid driver's license for the type of vehicles driven; a limited driving privilege shall not be allowed

- Wrecker owners/operators/employees shall not be abusive, disrespectful, or use profane language when dealing with the public or any member of the Patrol and **shall cooperate at all times with members of the Patrol**

- The wrecker service shall adhere to all Federal and State laws and local ordinances and regulations related to registration and operation of wrecker service vehicles and have insurance as required by N.C.G.S. § 20-309(a)

- The wrecker service shall employ only wrecker operators who demonstrate the ability to perform required services in a safe, timely, efficient, and courteous manner and who satisfy all of the requirements of wrecker drivers established or referenced herein. The wrecker service shall not take any passengers who have been convicted, pled guilty to, or received a prayer for judgment continued (PJC) for any of the offenses listed in Subparagraph (a)(21) of this Rule, with the exception of a Chapter 20 violation to the incident/collision site, when responding to calls.

- The wrecker service must immediately notify the District First Sergeant of any insurance lapse or change. The wrecker service shall also ensure the NC Highway Patrol is listed as "Certificate Holder" on the Certificate of Liability Insurance, in c/o the District First Sergeant, complete with the current mailing address for the Highway Patrol District Office tasked with the responsibility for ensuring compliance with Highway Patrol policy regarding the respective wrecker service.

- The wrecker service shall notify the Patrol without delay whenever the wrecker service is unable to respond to calls

- Notification of rotation wrecker calls shall be made to the owner/operator or employee of the wrecker service. Notification shall not be made to any answering service, pager, or answering machine.

- Pursuant to N.C.G.S. § 20-101 (d) Wrecker service vehicles shall be marked on each side with the name and address of the registered owner of the vehicle, and the name and address of the wrecker service if different printed on the side of the vehicle with letters not less than three inches in height. This shall not apply to motor vehicles subject to 49 C.F.R. Part 390. No magnetic or stick-on signs shall be used; however, decals are permissible. The wrecker service operator shall provide a business card to the investigating officer or person in apparent control of the vehicle before leaving the scene.

- Each wrecker service vehicle must be registered with the Division of Motor Vehicles in the name of the wrecker service and must be insured by the wrecker service. Dealer tags shall not be displayed on wreckers that respond to rotation calls.

- Secure all personal property at the scene of a collision to the extent possible, and preserve personal property in a vehicle which is about to be towed

- Upon application to the Patrol Rotation Wrecker List, the owner shall ensure that he/she and each wrecker driver has not been convicted of, pled guilty to, or received a prayer for judgment continued (PJC):

    - Within the last five (5) years of the following offenses:

        - A first offense under N.C.G.S. § 20-138.1, 20-138.2, 20-138.2A, or 20-138.2B

        - Any misdemeanor involving an assault, an affray, disorderly conduct, being drunk and disruptive, larceny, or fraud

        - Misdemeanor Speeding to Elude Arrest or

        - A violation of N.C.G.S. § 14-223, Resist, Obstruct, Delay

- Within the last ten years of:
  - Two or more offenses in violation of N.C.G.S. § 20-138.1, 20-138.2, 20-138.2A, or 20-138.2B
  - Felony speeding to elude arrest or
  - Any Class F, G, H, or I felony involving sexual assault, an assault, affray, disorderly conduct, being drunk and disruptive, fraud, larceny, misappropriation of property, or embezzlement.
- At any time of:
  - Class A, B1, B2, C, D, or E felonies
  - Any violation of N.C.G.S. § 14-34.2, Assault with deadly weapon on a government officer or employee, 14-34.5, Assault with firearm on a law enforcement officer; or 14-34.7, Assault on law enforcement officer inflicting injury
  - Any violation of N.C.G.S. § 20-138.5, Habitual DWI; or
  - Three (3) felony offenses in any federal or state court or combination thereof. The commission of a felony is not considered to be a second or subsequent felony unless it is committed after the conviction of or guilty plea to the previous felony.
  - For convictions occurring in federal court, another state or country, or for North Carolina convictions for felonies which were not assigned a class at the time of conviction, the North Carolina offense which is substantially similar to the federal or out of state conviction, or the class of felony which is substantially similar to the North Carolina felony shall be used to determine whether the owner or driver is eligible. Any question concerning a criminal record shall be discussed with the First Sergeant or his/her designee.

- Immediately upon employment or upon the request of the District First Sergeant, the owner of the wrecker service shall supply the Patrol with the full name, current address, date of birth, last four digits of social security number, and a black and white photocopy of driver's license, and when applicable, a black and white copy of a valid work VISA or other INS documentation for all wrecker drivers and owner(s) in order for the Patrol to obtain criminal history information. The Wrecker Service shall also provide a certified copy of the driving record for the owner and each driver authorized to drive on rotation upon initial application and upon the hiring of a driver if hired after initial application. Following this initial request the Wrecker Service shall provide a certified copy of the driving record for the owner and each rotation wrecker driver under their employment at the time of periodic wrecker inspections. The wrecker service shall inform the

District First Sergeant immediately if the owner or a driver is charged with, convicted of, enters a plea of guilty or no contest to, or receives a prayer for judgment continued (PJC) for any of the crimes listed above after a wrecker service is placed on the rotation list it is the responsibility of the wrecker service to inform the patrol immediately.

- Upon request or demand, the rotation wrecker service shall return personal property stored in or with a vehicle, whether or not the towing, repair, or storage fee on the vehicle has been or will be paid. **Personal property, for purposes of this provision, includes any goods, wares, freight, or any other property having any value whatsoever other than the functioning vehicle itself.**

- The wrecker service shall tow disabled vehicles to any destination requested by the vehicle owner or other person with apparent authority, after financial obligations have been finalized

- Unless the vehicle is being preserved by the Patrol as evidence, the wrecker service shall allow insurance adjusters access to and allow inspection of the vehicle at any time during normal working hours

- Being called by the Patrol, to tow a vehicle, does not create a contract with or obligation on the part of the Patrol or Patrol personnel to pay any fee or towing charge except when towing a vehicle owned by the Patrol, a vehicle that is later forfeited to the Patrol, or if a court determines that the Patrol wrongfully authorized the tow and orders the Patrol to pay transportation and storage fees

- Being placed on the Patrol Rotation Wrecker List does not guarantee a particular number or quantity of calls, does not guarantee an equivalent number of calls to every wrecker service on the rotation wrecker list, nor entitle any wrecker service to any compensation as a consequence for not being called in accordance with the list or when removed from the rotation wrecker list

- Failure to respond to any call by the Patrol shall result in the wrecker service being placed at the bottom of any rotation wrecker list

- Rotation wrecker services and facilities are subject to inspection by the District First Sergeant or designee at any time

- Rotation wrecker services shall be completely inspected on three year intervals beginning in 2016

- Annually, during non-inspection years, the District First Sergeant shall review and have on file, valid insurance policies for each company and criminal/driver histories of each company owner and driver listed. The District First Sergeant or their designee shall update FuelTaCS with the updated insurance policy date as well as add or delete drivers and/or

vehicles, if needed. The HP-304B shall be re-printed, signed by the District First Sergeant and placed in the file in the district office.

- A rotation wrecker service, upon accepting a call for service from the Patrol, must use its own wrecker. Wrecker companies shall not refer a call to another wrecker company or substitute for each other.

- If a rotation wrecker service moves its business location or has a change of address, the owner of the wrecker service shall notify the District First Sergeant of the new address or location. Notification shall be made in writing no later than ten days prior to the projected move.

- A wrecker service may dispatch either a wrecker or a car carrier "rollback" in response to a Patrol rotation wrecker call, except where the wrecker service is advised by the Patrol that a particular type of recovery vehicle is needed due to existing circumstances

- A rotation wrecker driver or employee shall not respond to a Patrol related incident with the odor of alcohol on his/her breath or while under the influence of alcohol, drugs, or any impairing substance

- A wrecker service shall have in effect a valid hook or cargo insurance policy issued by a company authorized to do business in the State of North Carolina in the amount of not less than $50,000 for each small wrecker and $150,000 for each large wrecker. In addition, each wrecker service shall have a garage keeper's insurance policy from an insurance company authorized to do business in the State of North Carolina covering towed vehicles in the amount of not less than $100,000.

    - The District First Sergeant shall conduct an investigation of each wrecker service desiring to be placed on the Patrol Rotation Wrecker List and determine if the wrecker service meets the requirements set forth in this policy. If the District First Sergeant determines that a wrecker service fails to satisfy one or more of the requirements set forth in this policy, the First Sergeant shall notify the wrecker service owner of the reason(s) for refusing to place it on the rotation wrecker list. Any wrecker service that fails to comply with the requirements of this policy shall be removed from the rotation wrecker list.

    - The Troop Commander or designee shall ensure that a wrecker service will only be included once on each rotation wrecker list. Exceptions to this requirement may be made for specialized or large capacity wreckers when none are available for a county or zone.

    - If the Troop Commander or designee chooses to use a contract, zone, or other system administered by a local agency, the local agency rules govern the system

- o If a wrecker service responds to a call, it shall be placed at the bottom of the rotation wrecker list unless the wrecker service, through no fault of its own, is not used or is not entitled to receive compensation for the call. In that event, it shall be placed back at the top of the rotation list.

XVI. SANCTIONS FOR NOTIFICATION

If a District First Sergeant determines that a violation of these rules has occurred, the First Sergeant may:

- Issue a written warning and request for compliance

- Remove the wrecker service from the rotation wrecker list until corrective measures have been taken to bring the wrecker service into compliance with these rules and verification of such compliance has been demonstrated; or

- If the violation is major or in the case of repeat violations, in consultation with the Troop Commander, remove the wrecker service from the rotation wrecker list for a specific period of time not to exceed one year

The severity of the sanction imposed shall be commensurate with the nature of the violation and prior record of the wrecker service.

If a wrecker service owner commits, is convicted of, pleads guilty to, or receives a prayer for judgment continued for any of the offenses specified in Section XV (Wrecker Service Regulations) of this directive, the wrecker service shall be removed from the rotation wrecker list for the designated period of time as set out in that section.

A wrecker service shall not employ or continue to employ, as a driver, any person who commits, is convicted of, pleads guilty to, or receives a prayer for judgment continued (PJC) for any of the offenses specified in Section XV (Wrecker Service Regulations) of this directive. This prohibition is for the designated period of time as set out in that section. A wrecker service that willfully violates this provision shall be removed from the rotation wrecker list for one year.

A wrecker service driver or owner who responds to a Patrol related incident with an odor of alcohol on his/her breath shall immediately be removed from the rotation wrecker list for one year. If the owner was not the driver and had no knowledge that the driver had been drinking, the wrecker service shall not be removed if the driver is prohibited from responding to Patrol calls for one year. This period of removal is in addition to any removal that may result from any violation of Section XV (Wrecker Service Regulations) of this directive.

A rotation wrecker service driver, owner, or employee shall not respond to a Patrol related incident with an odor of alcohol on his/her breath or while under the influence of alcohol, drugs or any impairing substance.

A willful misrepresentation of any material fact may result in removal from the rotation wrecker list.

For any violation of these rules for which no specific period of removal or disqualification is established, a wrecker service shall be removed, at a minimum, until the violation is corrected.

A wrecker service which is removed from the rotation wrecker list does not become eligible for reinstatement merely because ownership has been transferred to a family member.

A wrecker service, which is removed from the rotation list, must demonstrate compliance with all rules in order to be reinstated.

At the conclusion of any suspension, the owner of the affected wrecker service shall reapply for inclusion on the Highway Patrol rotation wrecker list.

XVII. RECORDING WRECKER REQUESTS

Members investigating collisions shall enter on the Collision Report form the authorization for removal of vehicles from the scene.

Members shall submit written verification of wrecker requests on Patrol Form HP-305.

Members observing any violations of the rotation wrecker rules shall notify the District First Sergeant.

Complaints concerning any wrecker service on the rotation wrecker list, whether instituted by the public or by a member, shall be investigated by the District First Sergeant or designee.

XVIII. HEARING PROCEDURES

If the District First Sergeant refuses to include a wrecker service on the rotation wrecker list, the wrecker service may appeal the First Sergeant's decision, in writing, to the Troop Commander or designee within 20 calendar days of receipt of the decision. The Troop Commander or designee may, conduct a hearing or review the record. In either event, the Troop Commander or designee shall render a decision, in writing, within 10 calendar days of receipt of the appeal. The Troop Commander or designee's decision, if unfavorable, may be appealed to the Office of Administrative Hearings (OAH), pursuant to the provisions of Chapter 150B of the North Carolina General Statutes.

If a District First Sergeant issues a written warning to a wrecker service for a violation of any of the Rules, the wrecker service may, within twenty (20) calendar days of receipt of the warning, submit a written response to the First Sergeant in mitigation, explanation, or rebuttal. After considering the mitigation,

explanation, or rebuttal, the First Sergeant may reconsider and remove the written warning.

If a District First Sergeant determines that a violation of these rules has occurred and removal from the rotation wrecker list is warranted, the District First Sergeant shall notify the affected wrecker service, in writing, of this determination and afford the wrecker service an opportunity to be heard. The hearing shall take place within ten (10) calendar days of actual notice. If notice is sent by mail, it shall be sent via certified mail (Return Receipt Requested) and the hearing shall take place within thirteen (13) calendar days of the date the notice is placed in the mail. The hearing shall take place within ten (10) calendar days of the request for hearing and not less than three (3) calendar days written notice. If a District First Sergeant removes a wrecker service from the rotation wrecker list, the wrecker service may appeal the removal to the Troop Commander or his/her designee, in writing, within twenty (20) calendar days of receipt of the notice. The Troop Commander, in his/her discretion, may conduct a hearing or review the record. If the Troop Commander decides to conduct a hearing, he/she will give the wrecker service not less than ten (10) calendar days notice. He/She shall render a decision, in writing, within ten (10) calendar days of receipt of the appeal or date of the hearing, whichever occurs last. The Troop Commander's decision, if unfavorable, may be appealed to the Office of Administrative Hearings (OAH) pursuant to the provisions of Chapter 150B of the North Carolina General Statutes.

Hearings conducted by District First Sergeants and/or Troop Commanders or their designee's shall be informal and no party shall be represented by legal counsel.

A wrecker service that is removed from the rotation wrecker list and subsequently placed back on the list, for any reason, shall not be entitled to additional calls, priority listing, or any other form of compensation.

Ordinarily, a wrecker service may remain on the rotation wrecker list pending a final decision of the Troop Commander or designee. A District First Sergeant, with the concurrence of the Troop Commander or designee, may, however, summarily remove a wrecker service from the rotation wrecker list in those cases where there exists reasonable grounds to believe a violation enumerated in Section XV (Wrecker Service Regulations) or any other violation relating to the safe and proper operation of the business or which may jeopardize the public's health, safety, or welfare.

Use of Patrol Video Recording Devices and Still Photography Cameras

Directive J.05
Revised 9/17/2021
Effective 7/15/2015

Applicable to: Members

I. POLICY

This policy establishes guidelines for the use and operation of video recording devices, still photography cameras, and the maintenance and storage of video and still recordings.

II. GENERAL USE AND OPERATION GUIDELINES FOR VIDEO RECORDING DEVICES

No video recording device shall be installed in any State Highway Patrol vehicle unless owned and installed at the direction of the Patrol.

A member shall not contact any vendor for technical support. All correspondence and requests for service shall be routed through the chain-of-command to the Technical Services Unit (TSU) or Logistics Radio and shall include the Troop Radio Engineer.

Members operating Patrol vehicles equipped with recording devices shall have the recording devices and body microphones up and ready for operation at all times and shall ensure that camera angles and views are not obstructed in any way to prevent recordings from being viewed. Members shall record all traffic stops and chases. Members shall record crash scenes which may pose any special concerns determined by the member and any crash involving serious personal injury or fatality; therefore, recording media (DVD) shall be kept in the recorder at all times. The recorder (both audio and video) shall be turned on when the member first suspects a driver of committing a violation and turned off when the driver is arrested or released. At the time the recorder is activated, the commercial radio in the Patrol car shall be turned off or the volume decreased significantly. Members shall also record (both audio and video) **all events when a patrol vehicle is in motion while lights and/or sirens are activated,** other significant events, situations, and circumstances including but not limited to, armed encounters, acts of physical violence, verbal confrontations with or from the violator, and felonious activity.

- The recorder draws voltage from the battery at a high rate and must not be left on except when recording an event that requires to be recorded

- The vehicle engine will be running while the recorder is activated so as to prevent battery drainage

Whenever a recorded incident or traffic stop results in the requirement for a Use of Force/Assault Report or a Chase Report, the member shall remove the recorded media from the recorder after processing the subject. Members

equipped with digital video recorders shall immediately finalize the digital video disc of the incident and remove it from the recorder. The member shall attach the upper portion of the HP-52B **OR** an HP-52D on the disc envelope, sleeve or hard case containing the digital video disc, and the lower portion to the citation. No adhesive labels shall be used on the digital video disc. The recorded digital video disc (DVD) shall be placed in the temporary evidence locker or delivered to the member's immediate supervisor. Duplication of the recorded incident or traffic stop shall be made according to the Use of Force/Assault and Chase Report guidelines.

If a video depicts the stop or arrest of a driver for: (1) an Implied Consent Offense, (2) a collision resulting in death or serious injury, (3) or any other criminal case involving an incident of major significance, (e.g. Drug Seizure, Arrest of Wanted Felon), the video when full, the member shall attach the upper portion of the HP-52B **OR** an HP-52D on the video disc envelope, sleeve or hard case containing the digital video disc, and the lower portion to the citation. No adhesive labels can be used on the digital video disc. The appropriate HP-60 series form shall be completed, and the evidence block checked.

Members assigned a WatchGuard 4RE Camera shall manually select the appropriate category of the stop from the list on the control panel at the conclusion of each stop. If a video depicts the stop or arrest of a driver for: (1) an Implied Consent Offense, (2) a collision resulting in death or serious injury, (3) or any other criminal case involving an incident of major significance, (e.g. Drug Seizure, Arrest of Wanted Felon), the member shall manually click on the **"retention"** button on the in-car screen of the WatchGuard 4RE Camera. The retention button will change from green to red which will prevent the video from purging after 90 days. It is the responsibility of the member to notify their immediate supervisor if they did not complete this step so the settings can be adjusted manually once the video is downloaded to the WatchGuard 4RE Server. In cases of immediate need to retrieve video footage of an incident it shall be the responsibility of the member's supervisor to retrieve the USB Drive from within the locked panel on the WatchGuard 4RE hard drive case.

It shall be the responsibility of the member who produced the video to contact the District Attorney (D.A.) prior to the court date, and make him/her aware that a video recording is available, and present the video for viewing by the D.A. upon his/her request. If the D.A. decides the video recording should be used as evidence in the case, the supervisor shall copy the stop to a DVD+R to prevent any altercation or modification to the video needed for court purposes.

All videos shall be stored in a secure video storage facility **(accessible only to the district first sergeant or designee)** at the SHP District Office until the recorded media is no longer needed, or all court proceedings have been adjudicated or on the WatchGuard 4RE Server. The provisions set-forth in Section III of this Directive, "Identification and Storage of Videos," shall be followed as a result of any recording involving injury to any person.

In addition to the time and date, which will be automatically displayed, the member shall verbally give the following information into the wireless microphone if circumstances permit:

- Location of incident
- Description of vehicle, if applicable
- Number of occupants in the vehicle or persons involved in the incident, including race and sex, if known
- Vehicle license plate number and state of issue

If asked, the member recording an event shall inform the person that recording equipment is in use.

No member shall cease recording an event solely because a person makes such a demand except upon the order of a supervisor.

The digital video recording speed shall be set for optimal resolution and to maximize video disc usage.

III. IDENTIFICATION AND STORAGE OF VIDEOS

Issue and Storage of Blank Digital Video Discs

- All blank digital video discs shall be sequentially numbered on the actual DVD with a CD or DVD marker (not a Sharpie or ink pen) before being issued by a supervisor. Under no circumstances should members be allowed to issue disc to themselves. All discs shall be labeled and issued by a supervisor. The numbering format shall be as follows: member's call number, current year, video number. Example: (B640-15-04)
- Each disc shall be stored in a disc envelope, sleeve or hard case and sequentially numbered. The receiving members will be required to sign for all blank digital video discs on the appropriate video log.
- Blank digital video discs shall be stored in a climate controlled, secure area
- Members shall carry only the number of digital video discs that will be needed during the members scheduled shift

When the full digital video disc memory warning light indicates the disc is approaching its capacity, members shall finalize the digital video disc and download the video recordings according to instructions and as prompted by the video display monitor. When completed, members shall place the digital video

disc inside a disc envelope, sleeve or hard case and write the following information on the envelope:

- Name (First two initials and last name) of member responsible for generating the recording. Example (C. A. White)

- The video number. Example (B640-15-04)

- First and last date the disc was used

- If the disc includes the recording of an event, which is the subject of an incident, crash report, or potential evidence in court, document the date and approximate time of the event and attach an HP-52B **OR** an HP-52D to the disc envelope, sleeve or hard case.

Adhesive labels can be used only on the DVD envelope, sleeve, or hard case.

If any person is injured during a recorded incident, the video shall be maintained for at least three (3) years and one (1) month from the date of the recording.

If a fatality is recorded, the video shall be maintained for five (5) years from the date of the recording.

Evidentiary videos shall be placed in a secure area until no longer needed for court purposes. A video containing a recorded incident or traffic stop that results in the requirement of an Use of Force Report or Chase Report shall be maintained in a secured location until no longer needed for court purposes, but not less than three (3) years and one month. All other videos must be stored for a minimum of ninety (90) days.

In-car video from cameras that utilize a wireless or thumb drive transfer to a server should refer to the WatchGuard 4RE Standard Operating Procedures (SOP) on the Patrol's Intranet. Members shall follow the operating procedures set forth in this SOP.

WatchGuard 4RE Storage

It shall be the responsibility of the assigned member at the beginning of his/her shift to ensure the USB and Hard Drive Storage is displaying correctly on the WatchGuard 4RE Display Screen. Members shall allow time within their work shifts to allow the download of video evidence to the WatchGuard 4RE Server.

IV. OWNERSHIP, CUSTODY, CONTROL, DISPLAY, AND COPYING OF RECORDINGS

All recordings generated by members of the North Carolina Highway Patrol are the property of the Patrol. Recorded digital video discs used as evidence that are potentially subjected to continuing judicial review (appeals, etc.) shall

continue to be governed by the joint control of the Patrol and the affected prosecuting authority.

- No video shall be duplicated for a member's personal use without authorization from his/her Section Director/Troop Commander or higher authority

- Duplication of non-evidentiary videos for release to the public can be authorized only by the Section Director/Troop Commander or higher authority, who will designate the location for duplication

V. DISCLOSURE AND RELEASE OF DASH CAM VIDEO

The disclosure (viewing) and release of dashboard video recordings shall be governed in accordance with N.C.G.S. 132-1.4A. Without a Court Order, Troop Commanders may only disclose a recording to a district attorney, assistant district attorney, another law enforcement agency or one of the following persons:

1. A person whose image or voice is in the recording; or
2. A "personal representative" of a person whose image or voice is in the recording. A "personal representative" can be a parent, guardian, spouse, attorney or court-appointed guardian of the estate of a deceased person.

Process for Requesting Disclosure

- A person requesting disclosure of a recording is required to submit a ***written*** request to the "head of the custodial law enforcement agency." In the case of the Highway Patrol, the authority to disclose recordings in the field has been delegated by the Patrol Commander to Troop Commanders. Accordingly, Troop Commanders are authorized to disclose recordings consistent with the provisions of N.C.G.S. 132-1.4 and this directive.

- Upon receipt of a written request for disclosure, Troop Commanders must, ***as promptly as possible***, either disclose the portion of the recording relevant to the person's request or notify the requestor of the agency's decision not to disclose the recording to the requestor.

- Troop Commanders, in cases where the incident resulted in an arrest or a use of force that resulted in physical injury or complaint of physical injury to any person that was captured on the recording for which disclosure is requested, are directed to consult with the North Carolina Highway Patrol's legal section prior to any disclosure and/or release.

Time Limitation on Responding to Requests for Disclosure

N.C.G.S. 132-1.4A provides that if a law enforcement agency denies disclosure ***or*** fails to provide disclosure more than three business days after the request for disclosure, the person may apply to superior court in any county where any portion of the recording was made for a review of the denial. Accordingly, Troop Commanders shall make every effort to communicate a decision ***within three (3) business days of the written request.***

Process for Approving Requests for Disclosure

- Recordings in the custody of the Highway Patrol may only be disclosed as authorized by N.C.G.S. 132-1.4A.

- The recording shall be made available for viewing or listening to by the person requesting disclosure, at a time and location chosen at the discretion of the Troop Commander.

- A person who receives disclosure may not record or copy the recording.

Denial of Requests for Disclosure

If the Highway Patrol denies a request for disclosure or fails to provide disclosure more than three (3) business days after a request for disclosure is made, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure by filing a *PETITION FOR REVIEW OF DENIAL OR DELAY OF DISCLOSURE OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING (AOC-CV-272)*.

Notice of and an opportunity to be heard must be given (by the Petitioner) to:

1. The head of the custodial law enforcement agency;
2. Any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency; and
3. The district attorney.

Release of Recording to a Person Entitled to Disclosure

Release is significantly different than disclosure and there are two (2) different rules that apply, depending on who is seeking release of the recording.

Expedited Release Process

Any person authorized to receive disclosure or the custodial law enforcement agency may petition the superior court in any county where any portion of the recording was made for an order releasing the recording to a person authorized to receive disclosure.

The form used to petition for release is captioned: *PETITION FOR RELEASE OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING (AOC-CV-270)*.

If the petitioner is a person authorized to receive disclosure, notice and an opportunity to be heard must be given to the Troop Commander.

Non-Expedited Release Process

Persons not entitled to disclosure may also petition the court for an order releasing the recording using the same AOC Form as described above. However, petitioners who are not entitled to "disclosure" are required to pay the Civil Superior Court filing fee.

The following persons must be notified of the hearing and those persons, or their designated representative, must be given an opportunity to be heard at any proceeding:

1. The head of the custodial law enforcement agency;
2. Any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency; and
3. The district attorney.

Public Records Requests

Recordings are not public records as defined by G.S. 132-1. However, in any case where a person who is entitled to "disclosure" submits a public records request, it should be considered as a request for disclosure and processed accordingly. All other public records requests for dash camera recordings should be referred to the Public Information Officer or to legal for an appropriate response.

Mandatory Release of Recordings to District Attorney

The Highway Patrol is required by law to disclose or release recordings without a court order to a district attorney or assistant district attorney:

1. For review of potential criminal charges;
2. In order to comply with discovery requirements in a criminal prosecution; or
3. For use in criminal proceedings in district court or for any other law enforcement purpose.

Subpoenas

This Directive is not intended to change the way in which the Highway Patrol responds to subpoenas. Subpoenas (other than for members to appear and testify) should be forwarded to the General Counsel's office without delay.

Digital Video Recording Transfer and Archive Procedures

- In order to preserve and maintain the original recording integrity and chain of custody of digital video recordings, all captured digital recordings shall be finalized and archived as soon as practical

- Digital video recordings shall be transferred by the member from the video recorder directly to a new, Read-Only media format (DVD+R). The file name for the DVD+R shall match that of the SHP case or incident number. This disc shall be considered an Archived Digital Video Recording of the case and shall be secured and stored in accordance with the provisions set-forth in Section III of this Directive, "Identification and Storage of Videos."

- The Archived Digital Video footage disc, and disc envelope, sleeve or hard case shall be labeled to reflect the following information

    - Patrol case file number

    - Date the video were taken

    - Location of the scene and

    - Name of the member recording video footage

- Additionally the Patrol Case File Number shall be written on the DVD with a CD or DVD marker (not a Sharpie or ink pen). Adhesive labels can only be used on the DVD envelopes, sleeves or hard cases.

    - When an additional copy of the video is needed it shall be copied to a new "Read-Only" media format, DVD+R by a District Supervisor. This DVD+R will be labeled as a "Copy" and shall reflect the same information on the disc as the original Archived Digital Recording. A copy of the original DVD+R can be sent to TSU for printing. Any additional copies of the Archived DVD should be labeled as copies. These subsequent copies would be at the request of a defense attorney, prosecutor, or by any other party under the public records law.

    - Members shall not make enhancements to any Archived Digital Video Recordings. TSU will be responsible for any digital enhancements and will ensure a copy of the original Digital Recording is preserved along with the *enhanced or modified* recording.

Developed and printed film or digital recordings from archived video footage (DVD+R) sent to TSU will be returned to the appropriate supervisor. If an individual requests photographs which have not been processed as outlined above, the appropriate supervisor shall pay for processing and be governed by Directive D.03. Reimbursement may be filed on the Department of Public Safety Reimbursement of Travel and Other Expenses Incurred (CNTR003).

Members transferring to new duty stations shall not take evidentiary videos, photographic film, or digital recordings with them to their new duty station.

Display of evidentiary videos prior to adjudication of the crime or infraction shall be limited to Patrol employees, law enforcement officials, and those persons specifically designated by the affected District Attorney.

VI. USE OF RECORDINGS FOR TRAINING PURPOSES

The Section Director/Troop Commander or his/her designee shall view any video believed to be of value for training purposes.

If a video is determined to be of value for training purposes and will not be required as evidence, the First Sergeant shall forward the original tape or digital video disc directly to the Technical Services Unit (TSU) video production staff for duplication. If a video is needed as evidence, it shall be forwarded to the TSU video production staff after the criminal procedure has been completed.

All videos which are not the subject of criminal proceedings, which contain unusual events, shall be forwarded by the First Sergeant to the TSU staff for duplication. Unusual events requiring a Report of Investigation Personnel Complaints/Incident Reports (HP-721), which should be recorded, include but are not limited to: Patrol car collisions, hazardous materials incidents, school bus collisions, multiple-fatality collisions, and natural disasters.

Recorded videos which contain footage depicting non-criminal events, including collisions which may be utilized for civil proceedings, shall be forwarded directly to the TSU staff for possible use as training aids.

The TSU video production staff and designated Training Academy staff will review and evaluate a video to determine its training value for reproduction as needed.

The original digital video disc will be returned to the district office from where it originated.

VII. NOTICES OR CHALLENGES TO THE EVIDENTIARY VALUE OF RECORDINGS

Successful court challenges to the use or propriety of recorded evidence shall be detailed in writing and forwarded via chain-of-command to Field Operations.

The outline of successful court challenges should include the circumstances or conduct questions and a summary of the courts ruling as well as a notation and discussion of any restriction or sanction levied pursuant to the court ruling.

VIII. INSPECTION, MAINTENANCE, AND REPAIR

Assigned video recording devices must be inspected by the member prior to each work shift to evaluate and ensure the equipment is functional. Members shall confirm that their name and call numbers are displayed on the in-car screen of a WatchGuard 4RE Camera if assigned.

Equipment failure of video recording equipment shall be reported to the member's supervisorand arrangements made for repairs at the earliest possible time. The member shall notify the communications center that their camera is out of service for accountability purposes. Unless otherwise instructed, the equipment should remain in the assigned vehicle and not be removed. All equipment failures and repairs related to the video recording devices shall be documented by Troop Radio Shop Personnel on a CL-29 for documentation purposes. The CL-29 shall be forwarded with BlueTeam entries if the video equipment was inoperable at the time of an reportable occurrence.

Routine maintenance on the equipment must be performed in accordance with the manufacturer's instructions contained with the equipment.

IX. SUPERVISOR PROTOCOL

Whenever a recorded incident or traffic stop results in the requirement for a Use of Force/Assault Report, Chase Report, Patrol Car Collision, or Complaint, the supervisor shall log the video on the appropriate video log and store the recorded media in a secured location or ensure the video is properly labeled on the WatchGuard 4RE Server and the retention period is correct.

- District supervisors shall randomly review recorded traffic stops on DVDs and the WatchGuard 4RE Server to ensure that policies and procedures are followed. Upon review of a video the applicable supervisor shall document the review on the HP-60 for a DVD System. If the supervisor is reviewing a recording on the WatchGuard 4RE Server the applicable supervisor after the review shall click on Event Details, Edit Details, and under the Secondary Event Tags SHP Number add the following text: Reviewed by [list rank and name] and date of review (ex. Reviewed by Sgt. J. A. Doe, 02/01/2021) and click save changes. This Secondary Event Tag will create a searchable feature under the Secondary Tags Tab using the keyword "Reviewed". This review shall always be completed and documented on events such as Use of Force, Chases, Patrol Car Collisions and Complaints.

Recorded DVDs shall only be erased by a District Supervisor. The standard retention of a recording on the WatchGuard 4RE Server is 90 days before the event will self purge. District Supervisors shall randomly review recorded DVDs and Watchguard 4RE recordings prior to erasure/destruction to ensure compliance with policies and procedures.

X. SPECIAL PROVISIONS

Upon request, a supervisor shall arrange to have the video recording equipment demonstrated to interested judicial personnel and others reasonably affected by its use.

All requests for exhibit, display, and demonstration of equipment by interested parties shall be directed to the Section Director, Troop/Unit Commander or his/her designee.

Except as authorized by this policy, all copying, reproduction, or display of a recorded media or any segment thereof generated by the Patrol must be authorized by the Commander's Office or his/her designee.

XI. GENERAL USE AND OPERATION GUIDELINES FOR STILL PHOTOGRAPHY CAMERAS

Members may utilize still photography cameras for the following:

- Collisions resulting in death or injuries requiring hospitalization
- Patrol car collisions
- Any incident in which a member is assaulted or uses force which results in observable injuries to the member or another person
- At the request of another law enforcement agency
- Any other incident, investigation, manmade, or natural disaster where the member determines that photographs will be helpful to establish facts or circumstances in civil or criminal actions or for any other legitimate purpose
- **ALL** photographic equipment is property of the North Carolina State Highway Patrol and is intended for use in documenting evidence and other activities deemed appropriate by a Patrol Supervisor
- Members shall be responsible for submitting exposed film or digital camera storage media to a district supervisor

Digital Recordings

- A member who is issued a digital still camera will receive one (1) flash/memory card and have access to a SHP computer for downloading the recordings to a "Read-Only" media format (CD-R or DVD-R). Members issued digital cameras shall not have photo-editing software including but not limited to Nikon View, Adobe PhotoShop, etc. on their computer. The only exception to this requirement is members of the Accident Reconstruction Unit

may be allowed to have access to approved photo-editing software on their computers with the approval of a Reconstruction Unit Supervisor.

- When a member utilizes digital recordings, the following guidelines shall be adhered to in order to ensure the integrity of the digital recordings:

  - A flash/memory card shall only contain digital recordings from one SHP case

  - The recording quality setting on the camera must be set to "normal" and the recording resolution to "large." Check with TSU Photo Staff for settings specific to particular brands and models.

  - Digital cameras will be set to sequentially number each recording. The sequential numbers will continue, regardless of whether or not the previous recordings have been downloaded, deleted, or copied to storage media (compact flash card). Upon reaching the maximum capable number of recordings in a sequence, the camera will be zeroed (example: 0001 through 0025 are captured, downloaded and deleted; the next recording will be 0026).

  - No recordings shall be deleted during the crime scene photography process. A Trooper or supervisor may review the captured digital recordings via the camera's monitor prior to leaving the crime scene to ensure that all necessary photographs have been obtained. No device or software shall be connected to the digital camera which could allow for alteration of the recordings stored within the camera's flash/memory card.

  - Digital recordings should only be deleted from the flash/memory card(s) after the recordings have been downloaded and saved to an inalterable state in a Read-Only media format (CD-R or DVD-R)

  - Under **no** circumstances will a "Re-Writeable" disc format be utilized for digital recordings

Digital Recording Transfer and Archive Procedures

- In order to preserve and maintain the original recording integrity and chain of custody of digital recordings, all captured digital recordings shall be archived as soon as practical

- Recordings shall be transferred directly to a new, Read-Only media format (CD-R or DVD-R). The file name for the CD-R or DVD-R shall match that of the SHP case number. This disc shall be considered the Archived Digital Recordings (ADR) or Negatives of the case and shall be secured and stored in a secure manner by the First Sergeant.

- The Archive Digital Recordings **disc case or sleeve** shall be labeled to reflect the following information

  - Film numbering code (example: 16-08-01 where 16 represents the year 2016, 08 represents the month of August, and 01 represents the first roll of film for the month of August)

  - Date the photographs were taken

  - Location of the scene/address, and

  - Name and initials of the member taking the photographs

- The Archived Digital Recording disc themselves shall be labeled with the Film numbering code only (example: 16-08-01)

- Labels shall be written on the CD-R or DVD-R with a CD marker (not a Sharpie or ink pen). Adhesive labels can be used only on the CD case or sleeve.

  - A second transfer of all digital recordings shall be made to a new, "Read-Only" media format, CD-R or DVD-R. This disc will be labeled as a Working Digital Recording (WDR) disc to be retained by the Member/Scene Investigator. The WDR shall reflect the same information on the disc and the disc case/sleeve as the ADR. Only the WDR can be sent to TSU for printing. Any additional copies of the digital recordings should be labeled as WDR. These would be copies requested by defense or prosecutor or by any other party under the public records law.

  - The member shall review both the ADR and the WDR discs with the digital recordings, prior to formatting (erasing) the flash/memory card

  - Members shall not make any enhancements to any Archived Digital Recordings (ADR). If digital enhancements are needed, the WDR disc shall be submitted to the Accident Reconstruction Unit or to TSU Photo staff.

- Developed and printed film or digital recordings from WDR discs sent to TSU will be returned to the appropriate supervisor. If an individual requests photographs which have not been processed as outlined above, the First Sergeant or appropriate supervisor shall pay for processing and be governed by Directive D.03. Reimbursement may be filed on the Department of Public Safety Reimbursement of Travel and Other Expenses Incurred (CNTR-003).

- First Sergeants shall preserve any processed film, unprocessed film, and/or digital camera storage media (ADR disc) that may contain evidentiary matters in a secure manner. First Sergeants shall maintain a 35mm Film/Digital Media Log (HP-60A).

- All processed film, unprocessed film, and/or digital camera storage media (ADR) that may contain evidentiary matters shall be maintained until all civil and criminal litigation is concluded or for three (3) years and one (1) month, whichever is longer. All media related to fatalities shall be maintained until all civil and criminal litigation is concluded or for five (5) years, whichever is longer. At the end of the applicable period, the First Sergeant or appropriate supervisor shall give all film, prints, negatives, or digital camera storage media to the investigating officer, who shall be allowed to dispose of the items, save them, or develop any unprocessed film at his/her expense.

- Transfer of digital camera recordings over the Highway Patrol Intranet or via e-mail and/or downloading digital camera recordings to devices not owned by the State Highway Patrol is prohibited without prior approval from a Section Director/Troop Commander or higher authority. Under no circumstances should digital camera recordings be transferred via the mobile data network. These restrictions will not apply to Technical Services Unit staff members when in the process of testing and/or evaluating new technologies, nor to the Commander's Office or his/her designee in extreme cases when it is determined the need for the recording(s) outweighs the risk to the wireless network.

Traffic Safety and Community Involvement

Directive J.06

Applicable to: Employees

Revised 01/2015
Effective 3/14/2000

I. POLICY

It is the policy of the Patrol to maintain close community relations. This will allow the Patrol to meet the needs of the citizens of North Carolina as well as its visitors and develop public confidence.

II. OBJECTIVES

To minimize traffic collisions and the resulting fatalities through educational programs and safety awareness campaigns

To provide the public with a clear image of the Patrol by publicizing objectives, concerns and successes in serving the public

III. RESPONSIBILITIES

Each employee of the Patrol shall be responsible for the overall achievement of this policy. The public's image of the Patrol is often determined by the day-to-day contacts its employees have with the public; therefore, each employee shall exhibit professionalism and maintain objectivity in their dealings with the public.

District First Sergeants shall be responsible for initiating and overseeing all community relations functions within their respective districts.

District First Sergeants shall assist with the establishment of community groups which have purposes consistent with the mission of the Patrol.

District First Sergeants or their designee shall maintain a liaison with active community groups in their area. Ideally, the community groups should represent a cross section of the area population.

District First Sergeants or their designee will coordinate community relations programs in their respective districts.

Employees are encouraged to participate in community activities while off duty that may foster cooperative efforts in resolving community issues.

IV. PROCEDURES

Safety Education Programs and Safety Awareness Campaigns

Safety education programs and safety awareness campaigns shall be used to promote highway safety, reduce the number and severity of traffic collisions, and reduce criminal acts committed on the highways

- Programs and campaigns shall be developed to identify specific groups of people (children, senior citizens, teens, and motorcyclists, etc.) by the Public Information Officer

- Statewide initiatives and campaigns shall be coordinated through Field Operations

- Due to the diverse demographics of the State of North Carolina, employees are encouraged to develop programs that identify groups that may be unique to their area

Partnerships

- Troop Commanders shall ensure that community relation programs are being established and will add additional programs as needed.

- The District First Sergeant or their designee shall maintain a liaison with traffic safety units of local enforcement agencies. They shall assist the local agencies in traffic collision reduction programs dealing with fatalities and other collisions on the highways.

I. POLICY

The Executive Protection Detail provides protection to the Governor and performs such duties and services deemed necessary by the Governor as directed by N.C.G.S. § 20-189. This policy establishes guidelines for the preparation of operational plans for the members of the Executive Protection Detail and field members who may be assigned to assist with an executive protection detail.

II. RESPONSIBILITIES (CALEA 46.2.6)

The member in charge of the Executive Protection Unit or his/her designee shall designate a member who is responsible for the following:

- Coordinating, planning, and surveying travel routes and activities involving a protectee's travel into other areas of the state or nation, and coordinate activities involving a protectee's security with any outside agencies to include the United States Secret Service
- Making an advance inspection of all sites and facilities to be visited by a protectee
- Identifying the appropriate emergency first aid, ambulance, and medical facilities during advance preparations
- Maintaining an intelligence file on those persons considered to be a threat to the safety of the Governor, First Family, or other protectees
- Coordinating any crisis situation involving a protectee with other Patrol members and agencies

III. REQUIREMENTS AND EQUIPMENT (CALEA 46.2.6)

Members assigned to the Executive Protection Detail must have completed a 40-hour training course in Executive Protection.

Field members assisting with an executive protection detail must have completed a 40-hour training course in Executive Protection.

The Executive Protection Training Course shall include but is not limited to the use of:

- Special communications equipment to include high and low band radios, special walkie-talkies with ear pieces, pagers, and cellular telephone equipment

- Any authorized special weapons
- Unmarked patrol vehicles used by the Executive Protection Detail
- Advance procedures and threat responses
- Special motorcade driving techniques

Special issued items shall include but are not limited to the following:

- A distinctive lapel pin to be used as identification
- Body armor to be worn at their discretion
- Special weapons
- An unmarked car with confidential license plates
- Special walkie-talkies with ear pieces for communication, high and low band radios, pagers, and cellular telephone equipment

Victim / Witness Assistance

Directive J.8
Revised 01/30/2020
Effective 03/14/00

I. POLICY

It is the policy of the Patrol that victims and witnesses of crimes be treated with dignity and compassion. Specific provisions of this policy are established to enact the requirements of the North Carolina State Constitution, the Fair Treatment for Victims and Witnesses (Chapter 15A, Article 45) and the Crime Victims' Rights Act (Chapter 15A, Article 46). Nothing in this policy prevents or prohibits employees from providing assistance to victims or witnesses who would not otherwise be eligible for assistance as provided in the Fair Treatment for Victims and Witnesses (Chapter 15A, Article 45) and the Crime Victims' Rights Act (Chapter 15A, Article 46). Reasonable assistance in coping with crimes and any related criminal proceeding shall be given.

II. RESPONSIBILITIES

Members shall be governed by Section 37 of Article I of the North Carolina State Constitution, the Fair Treatment for Victims and Witnesses (Chapter 15A, Article 45) and the Crime Victims' Rights Act (Chapter 15A, Article 46).

Victim assistance information (i.e. brochures and cards) shall be maintained at each Patrol facility and accessible to all employees for dissemination to qualifying victims.

Members shall provide assistance to victims/witnesses as may be reasonably necessary, which may include referrals to other agencies (i.e. Office of the District Attorney: Victim/Witness Coordinator, Sheriff's Department, or local Police Department).

Members shall maintain or have access to all forms pertaining to the Crime Victims' Rights Act such as the Crime Victims' Rights Act Victim Information Sheet (Law Enforcement) (AOC-CR-180B) and the Crime Victim Rights Form.

Each District First Sergeant shall consult with their District Attorney's office to determine the preferred method for receiving Crime Victims' Rights Act forms, Crime Victims' Rights Act Victim Information Sheet (Law Enforcement) (AOC-CR-180B), and any other preferences related to victim notification.

Each district First Sergeant shall designate an individual within their district office to serve as a point of contact for the notification requirements established under the Crime Victims' Rights Act (Chapter 15A, Article 46) and to be responsible for tracking each step of this process using a complete HP-20C-Victim Notification Tracking Log.

It is the responsibility of victims/witnesses to request assistance, if desired, after the available services are made known to them and the required forms are provided.

Patrol Telecommunicators shall have access to victim assistance resources enabling them to provide assistance to qualifying victims, 24 hours a day, seven (7) days a week. Patrol Telecommunicators shall have the ability of accessing victim/witness referral resources from a web link on the Patrol's intranet. Upon notification by a qualifying victim of a crime, the Telecommunicator shall notify the law enforcement agency with primary responsibility for investigating the crime. They shall provide the victim with the toll-free telephone number for the appropriate victim/witness service, or the telephone number to the Victim Services Division (1-800-826-6200). In the event of a computer systems failure, at least one victim assistance brochure or card shall be posted in a location that is accessible to all Telecommunicators.

Members shall ensure the confidentiality of victims/witnesses and their role in case development.

Members shall also ensure the prompt return of any seized property from victims/witnesses not needed for prosecution (except for contraband, disputed property, and weapons used in the course of a crime).

III. VICTIM NOTIFICATION PROCEDURES

N.C.G.S. § 15A-830(a)(6a) provides that felony property crimes and offenses against the person trigger the victim notification requirements of N.C.G.S. § 15A-831:

- Felony property crimes-includes a felony violation of one of the following:
  - Subchapter IV of Chapter 14 (N.C.G.S § 14-51 through 14-69.3);
  - Subchapter V of Chapter 14 (N.C.G.S § 14-70 through 14-125).

- Offenses against the person-includes a violation of one of the following:
  - Chapter 20 offenses, only if an element of the offense involves impairment of the defendant, **or** injury **or** death to the victim. (*Note: The offense must involve some personal injury or complaint of personal injury to some person in order to be an offense against the person.*);
  - Subchapter III of Chapter 14 (N.C.G.S § 14-17 through 14-50.43);
  - Subchapter VII of Chapter 14 (N.C.G.S § 14-177 through 14-208.45);
  - Article 39 of Chapter 14 (N.C.G.S § 14-313 through 14-321.2);
  - A valid protective order under N.C.G.S § 50B-4.1, including, but not limited to N.C.G.S § 14-143.3 and 14-269.8;
  - Article 35 of Chapter 14 (N.C.G.S § 14-269 through 14-277.5), if the elements of the offense involve communicating a threat **or** stalking;

- o An offense that triggers the enumerated victim's rights, as required by the North Carolina Constitution.

Once an investigating officer identifies a victim of a felony property crime or an offense against the person, as outlined above, the member is required to provide the victim with the Crime Victim Rights Form within 72 hours.

In situations where the victim is deceased, N.C.G.S. § 15A-830(b) provides that a victim's family member, as defined in N.C.G.S. § 15A-830(a)(3a), is entitled to the rights provided by the Crime Victims' Rights Act (Chapter 15A, Article 46) and shall be provided a Crime Victim Rights Form, within 72 hours of identifying the victim.

If the victim is a minor or is legally incapacitated, a parent, guardian, or legal custodian, is entitled to exercise the victim's rights provided by the Crime Victims' Rights Act (Chapter 15A, Article 46).

For victims of delinquent acts by a juvenile as defined by N.C.G.S. § 7B-2051, resulting in a petition being filed by an Intake Counselor, the District Attorney's office shall be responsible for victim notification.

Once the Crime Victim Rights Form has been provided to the victim, it is their responsibility to return it to the district office's designated point of contact, within 10 business days of receipt. Upon receiving a completed form, the designated point of contact shall promptly provide the completed form to the prosecuting District Attorney's office. Should the victim fail to return the form within 10 business days of receipt, or refuse to take receipt of the form from the member in the first place, there are no further member requirements concerning the Crime Victim Rights Form.

In addition to the Crime Victim Rights Form, a Crime Victims' Rights Act Victim Information Sheet (Law Enforcement) (AOC-CR-180B) must also be completed and returned to the District Attorney's office as part of the notification process. In most cases, the investigating officer and the arresting officer will be the same person and the same agency. If the investigating member is also the arresting member, the Crime Victims' Rights Act Victim Information Sheet (Law Enforcement) (AOC-CR-180B) shall be completed and provided to the designated point of contact following the identification of a victim of a qualifying offense and the arrest of the suspect. This form shall be provided to the District Attorney's office by the designated point of contact within 72 hours of the arrest. This form must be provided to the District Attorney's office in the manner described regardless of whether the identified victim has returned the Crime Victim Rights Form to the district office's designated point of contact.

However, when the suspect(s) is not arrested at the time of the crime and an arrest warrant is issued, with the possibility of someone other than the investigating agency making the arrest, the following procedures shall be followed:

- The Crime Victims' Rights Act Victim Information Sheet (Law Enforcement) (AOC-CR-180B) shall be completed by the investigating member. The investigating member retains the original form if an arrest has not been made. (The District Attorney's office does not get a copy until there is an arrest).

- When the suspect is arrested, the investigating officer shall provide the Crime Victims' Rights Act Victim Information Sheet (Law Enforcement) (AOC-CR-180B) to the designated point of contact. The designated point of contact shall then forward a copy to the District Attorney's office that will be responsible for prosecuting the case. This must be completed within 72 hours of receiving notice of the suspect's arrest.

If a defendant has been released on bail pending the outcome of an appeal, the agency that has custody of the defendant shall notify the investigating law enforcement agency as soon as practical. After receiving notice from the custodial institution, the investigating agency must notify the victim, within 72 hours, by utilizing a completed Post Trial Release Notification (HP-20B).

Protection of Victims / Witnesses

- N.C.G.S. § 14-226 *states if any person shall by threats, menaces or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a witness in any of the courts of this State, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such court, shall be guilty of a Class H felony.*

- When a member is made aware of any attempts to tamper with or retaliate against a victim/witness, regarding a Patrol case, the victim/witness shall be referred to the District Attorney's office, prosecuting the case, for assistance in obtaining applicable warrants or voluntary protective custody as provided in N.C.G.S. § 15A-804.

IV. ASSISTANCE PROVIDED DURING FOLLOW-UP INVESTIGATIONS

Scheduling of line-ups, interviews, and other required appearances should be done at the convenience of the victims/witnesses.

Following the arrest of an individual believed to have committed a qualifying crime, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest within 72 hours. In the event another agency arrests an individual on outstanding warrants for a felony property crime or an offense against the person where the Patrol is serving as the investigating agency, identified victims shall be notified of the arrest by the designated point of contact, by any reasonable method, within 72 hours of receiving notice of the arrest.

Procedures involved in the prosecution of their cases shall be explained.

Victims/Witnesses should be contacted periodically during the follow-up investigation to ensure needed assistance is being received for an updated report on the status of the investigation.

Under the Crime Victims' Rights Act, a crime victim may enforce the rights guaranteed under the Act. If a victim believes that a law enforcement agency has not acted in accordance with the Act, the victim may file a motion with the court to have the matter judicially reviewed. Pursuant to N.C.G.S. § 15A-834.5(c1), before a victim can file this motion, they are required to first file a written complaint with that agency, to afford the agency an opportunity to resolve the issue stated in the written complaint in a timely manner. If the designated point of contact receives a written complaint from someone seeking to enforce victim's right under the Act, they shall report the matter to the district First Sergeant. The district First Sergeant shall consult with the prosecuting District Attorney's office to determine whether the individual qualifies as a victim under the Act. If the individual qualifies as a victim, they shall be provided a Crime Victim Rights Form, and the Crime Victims' Rights Act Victim Information Sheet (Law Enforcement) (AOC-CR-180B) shall be completed by the designated point of contact and submitted to the District Attorney's office in the same manner as described above. If, after consulting with the District Attorney's office, it is determined that the person does not qualify as a victim under the Act, the district First Sergeant shall respond to the individual in writing informing him or her that the written complaint has been reviewed and the Patrol has determined that no further action is required under the Act.

V. COOPERATION WITH OTHER AGENCIES

Members shall assist and cooperate with other agencies providing victim/witness assistance to the extent possible and in keeping with the mission of the Patrol.

As stated above, if a member arrests an individual on outstanding warrants for a crime covered under the Crime Victims' Rights Act (Chapter 15A, Article 46), and that crime is being investigated by another agency, the arresting member shall inform the investigating law enforcement agency of the arrest, by any reasonable method, within 72 hours.

Patrol members should not unnecessarily duplicate services provided by other agencies.

Members should inform the public and media of services provided by NC DPS Victim Services.

VI. VICTIM ASSISTANCE SERVICES

SAVAN (Statewide Automated Victim Assistance and Notification)
1-877-627-2826

Department of Public Safety, Victim Services
1-800-826-6200

Conference of District Attorneys, Victim Service Coordinator
1-919-733-3484

North Carolina Attorney General's Office, Citizens' Rights Section
1-919-716-6780

North Carolina Victims' Compensation Program
1-800-826-6200

North Carolina Victim Assistance Network
1-800-348-5068

North Carolina Coalition Against Domestic Violence
1-919-956-9124

North Carolina Coalition Against Sexual Assault
1-919-676-7611

Mothers Against Drunk Driving
1-800-248-6233

National Victim Center
1-800-394-2255

Media Relations

Applicable to: Members

Directive J.09
Revised 03/2014
Effective 11/3/1999

I. POLICY

This policy establishes guidelines for the release and dissemination of public information concerning Departmental activities to the media and general public.

II. COOPERATION WITH THE MEDIA

Members shall cooperate fully with all reporters and news media representatives. The presence of media representatives at an accident, crime or disaster scene, the taking of photographs, audio or videotape at the scene, and the asking of questions relative to the incident shall not constitute unlawful interference with the members' duties. Members may restrict or exclude media representatives from public areas under the following circumstances:

- When any representative of the news media attempts to resist, obstruct, or oppose a member in the execution of a lawful duty;

- When a member deems it essential to restrict access to a scene in order to preserve important evidence (members should explain the reasons for the restriction and lift the restriction at the earliest time to permit access by the media); and

- When another person would be placed in immediate danger or the risk of harm to other persons or property would substantially increase.

The Highway Patrol recognizes authorized identifications from all local, national, and international news organizations. Failure of media personnel to present authorized identification may be grounds for restricting access to incident scenes.

Members shall return calls to the media representatives as promptly as practical. Public information will be released to the media as promptly as circumstances allow in an objective, factual, and impartial manner. Public information may be provided to media representatives via fax, e-mail, telephone, or in person. When information must be denied to a media representative, the basis for denial will be fully and courteously explained.

Reporters may ride along with Members provided they have signed a Rider Agreement (HP-3), and have received authorization from either the Section Director/Troop Commander or his/her designee. If the ride along is approved, the appropriate Section Director/Troop Commander or designee shall notify the PIO that is on call. Members **may** take enforcement action while reporters are in their vehicle. Members are reminded that they must consider the safety of themselves and the reporter while taking enforcement actions. Members shall **not** engage in a chase while a reporter is present in the patrol vehicle.

Members may release information and statements to the media on matters such as routine arrests, traffic collision investigations, and other general activities.

Members shall refer all requests by the media for information on internal investigations, resignations, dismissals, serious patrol car incidents, injuries inflicted on others by members or serious injuries inflicted on members of the Patrol to the affected Section Director/Troop Commander, Highway Patrol PIO, and/or DPS Communications Officer

Upon receipt of information about events or activities that may have media interest, the Communications Center shall notify the Troop Officer of the Day (OD) as soon as possible.

The affected Section Director/Troop Commander shall be responsible for ensuring that the State OD is informed of events that may have media interest and for notifying the DPS Communications Officer or State Highway Patrol PIO.

A member investigating any of the following incidents shall notify the State Highway Patrol PIO and/or DPS Communications Officer as soon as possible. These incidents can attract a usual amount of media attention.

- Crashes involving more than 3 fatalities
- Crashes or events that will block a major interstate or multi-lane highway for an extended period of time
- Crashes that involve a significant hazardous materials spill or airborne contamination
- Crashes involving or the arrest of a prominent person (i.e. elected officials, celebrities, and other law enforcement officers) especially for DWI
- Chases that end in a crash involving injury or a violent confrontation with the suspect, or that go on for an extended period of time
- Discharge of a firearm at or by a member, except when a member is putting a wounded animal out of its misery
- Death or serious injury of a member
- Patrol crashes involving injury
- Death or serious injury of a suspect while in custody
- Any major drug arrest or seizure
- Any natural or manmade disaster, which the State Highway Patrol has responded to

- Any unusual use of State Highway Patrol assets (i.e. using the helicopter in a chase or to apprehend a suspect on foot, the successful use of a defibrillator, the apprehension of a suspect by a canine)

- Any hostage situation or plane crash to which Highway Patrol personnel have responded

- Any other event that has or may attract more than the usual amount of media interest

III. INVESTIGATIVE INFORMATION

From the initial stage of a criminal investigation (i.e. Hit and Run PD, PI, F) information that shall be released upon request:

- Type or nature of the traffic collision, incident, or crime being investigated

- Location, date and time, injuries sustained, damages, and a general description of how a traffic collision, incident, or crime occurred including legal alcohol concentration (AC) as reported on the Intoxilyzer Test Record Ticket or the SBI Lab Report or the fact of a willful refusal

- Requests for aid in locating evidence, witnesses, suspects, or information beneficial to the investigation

- Identity of any critically injured or deceased person or persons after the next of kin has been notified

Information from an investigation that **shall not** be released concerning a traffic collision, incident, or crime without prior approval of the Section Director/Troop Commander or his/her designee or higher authority includes:

- Specific information which if disclosed could jeopardize an investigation, the apprehension of a suspect, or the prosecution of an offender

- Evidence that is part of an ongoing criminal investigation shall not be released without prior authorization by the appropriate District Attorney

- Name, photograph, and address or photograph of any juvenile (under age 16) who is a suspect or defendant in a case subject to a juvenile court jurisdiction

- Identity of any critically injured or deceased person prior to notification of the next of kin

- Results of any investigative procedure such as line-ups, polygraph examinations, fingerprint comparisons, ballistic tests, or similar procedures.

(The fact that these tests have been performed may be revealed without further comment).

- Specific cause of death unless officially determined by a medical examiner.

IV. ARREST / SUMMONS INFORMATION

Following an arrest, issuance of an arrest warrant, summons or indictment, the following shall be released if requested:

- Alleged offense(s), and the name, age, address, and occupation of the defendant

- Time and place of arrest/offense, whether pursuit or resistance was encountered, whether weapons were used, the charges against the suspect, and a description of contraband or other evidence seized

- Identity of the arresting officer and the duration of the investigation

- Amount of bond, scheduled court dates, and place of the suspect's detention

V. ACCESS TO PRIVATE PROPERTY

A member shall not escort the media onto private property or authorize the media to enter onto private property. It is the media's responsibility to obtain permission of the property owner to enter onto or remain on private property. No member shall interfere with media's photographing, filming, or videotape recording of private property while the media remains on public property. The member shall not act as intermediary between the property owner and the media.

VI. SPECIAL CONSIDERATION – CRIMINAL MATTERS

Personnel shall extend every reasonable courtesy to news media representatives at crime scenes. This may include allowing closer access of media personnel and equipment than is available to the general public but only to the degree that it does not interfere with the investigation of the Patrol.

The news media shall not be allowed access to any area or scene of an incident or crime where there is a possibility that evidence may be damaged, altered, or destroyed. Once evidence has been processed, removed, and secured by the agency in charge, the media may be allowed to enter by permission of the officer in charge at the scene.

Suspects or accused persons in custody shall not be posed, and members should not make arrangements for photographs, telecasts, or interviews of suspects nor shall personnel pose with suspects or accused persons in custody.

VII. SPECIAL CONSIDERATION – NON-CRIMINAL MATTERS

At the scene of significant traffic collisions, aircraft crashes, manmade or natural catastrophes, the principles of media cooperation shall be maintained to the degree that they do not directly interfere with the mission of the Highway Patrol, fire, medical, or other emergency relief workers.

Information from a personnel file shall not be released without the express permission of the member, or the Secretary, or his/her designee.

When multiple agencies are involved in the investigation at the scene of a traffic collision, major fire, natural disaster, or other catastrophic event or crime scene, the agency having primary jurisdiction should be responsible for releasing or coordinating the release of media information.

The home address, social security number, and telephone number of any active or former member of the Patrol; the home address, social security numbers, telephone numbers, and places of employment of any such member's spouse or children; and the names and location of any schools and day care facilities attended by children of such members are not public record and will not be released to members of the media.

VIII. CHANGES IN MEDIA POLICIES AND PROCEDURES

When developing changes in policies and procedures relating to the public information function, every effort should be made to contact statewide or local media representatives, to seek their participation and input regarding the changes. Media participation in such changes can lead to a more effective working relationship with members of the media on a statewide and local basis.

IX. DPS COMMUNICATIONS OFFICE CONTACT INFORMATION

The DPS Communication Officers rotate on-call duty weekly. The on-call Communication Officer should be paged through Communications at (919) 733-3861, or as listed on the DPS Emergency Duty Roster.

Assignment, Use, and Disposition of North Carolina Uniform Citations and eCitations; CVSA Decals; CMV Replacement Seals; CMV Out-of-Service Decals

Directive J.10
Revised 08/27/2020
Effective 02/2011

Applicable to: Members / New Entrant Auditors

I. POLICY

This policy sets the standard in citation maintenance and accountability issues.

II. ACCOUNTABILITY

North Carolina Uniform Citations (N.C.U.C.) are supplied to Patrol Headquarters by the Administrative Office of the Courts. Each citation is numbered and the Patrol is accountable for the use and disposition of each citation. The Administrative Assistant to the Director of Field Operations manages and controls the supply and accountability for North Carolina Uniform Citations used by the Patrol. The troop Administrative Lieutenant and each First Sergeant shall sign a receipt (HP-200B) for citation books issued to their units and/or members. Citations are to be stored in a secure area by the First Sergeant or Lieutenant who maintains custody. Each member shall sign a receipt (HP-200B) for citation books received from the First Sergeant and shall be accountable for the issuance and disposition of each citation. Citation receipts (HP-200B) shall be completed and retained as required by the Patrol *Forms and Reports Manual*.
Electronic North Carolina Uniform Citations (eCitations) are assigned sequentially in blocks of 25 citations by the Administrative Office of the Courts (AOC). Each member directly downloads eCitations to their Mobile Data Computer (MDC) via the Criminal Justice Information Network (CJIN) and the Mobile Data Network (MDN).

Members shall issue citations in a numerical sequence and record the number of citations issued or voided each week on the Weekly Report of Daily Activity (HP-201). Members shall not issue citations to persons from citation books issued to another member. When necessary, a complete or partial citation book may be transferred from one member to another through the Information Management System (IMS) function of un-assigning from the member currently assigned a book of citations and reassigning it to the receiving member. A member shall notify their supervisor prior to such transfer, who may approve the transfer and shall, if approved, make the appropriate changes in the IMS.

Upon the assignment of citations to a member, the First Sergeant is responsible for the immediate entry of the assignment in the IMS. If this is not practical, the assigning supervisor shall ensure that the assigned date utilized in the IMS conforms to the actual date of receipt by the receiving member and shall be noted on a (HP-200B).

III. CITATION MAINTENANCE

Each enforcement member, if applicable, will receive the following three (3) reports for citation maintenance:

- Assigned and Missing Citations (HPC-200), accountability of citations issued to Patrol members listing the citations issued to a member which have been assigned, but are without issue or disposition information. This report will be available for printing on the 15th day of January, April, July, and October.

- Adjudicated Citations (HPC-200.2), containing a listing of citations in the IMS with a status of "D" (issued and disposed) or "J" (administratively adjudicated). This report will be available for printing on the 15th day of May and the 15th day of November.

- Exception Citations Worksheet (HPC 200.3) is provided to each affected Patrol member for correction of errors and/or omissions of required information from completed citations. This report will be available for printing on the 15th of every month.

IV. DUTIES AND RESPONSIBILITIES

HPC-200 (Assigned and Missing Citations)

- An Assigned and Missing Report, (HPC-200) will be available for printing on the 15th day of January, April, July, and October. When a citation(s) appears on the report two (2) consecutive quarters the First Sergeant shall inquire to determine if the assigned member has the citation in their possession. If it is determined that the assigned member does not have the citation(s) in their possession, the First Sergeant shall conduct a report of investigation on Form HP-721. The results of the investigation shall be forwarded to the appropriate Section Director/Troop Commander. Following review by appropriate member, the HPC-200 shall be signed and dated by the member and their supervisor. The HPC-200 shall be maintained in accordance with the NCSHP Filing Guide.

HPC-200.2 (Adjudicated Citations)

- The adjudicated citations are to be purged from the member's N.C.U.C. books or pending files when they appear on the Citations Adjudicated Report (HPC-200.2).

- Affected members may either destroy or retain these citations for their records as they deem appropriate. In the event a Patrol member decides not to retain these citations, they must be thoroughly destroyed by shredding in order to protect the confidential information provided by the violator at the time of charge.

- Adjudicated eCitations are kept on the member's MDC and will not show up on the adjudicated citation report (HPC-200.2). The citations are kept online in the IMS for a period of twenty-four (24) months after they have been adjudicated.

- Under no circumstances will a supervisor administratively adjudicate any citation (with the exception of Juveniles, Long Warrants, and Citations with no existing court record).

HPC-200.3 (Exception Citations)

An Exception Citations Worksheet, (HPC-200.3) will be automatically transmitted to each affected district on or about the 15th of each month. This is a citation error report and will list citations, by serial number, for each member where an error has been detected. Each affected member shall receive a copy of the report and shall correct any indicated error. The report will be returned to the First Sergeant, who shall be responsible for updating corrected citation errors as instructed in the IMS Manual.

IV. MEMBER'S PATROL SERVICE TERMINATED

Members shall retain and be responsible for the proper maintenance of all citations issued by them until their employment as a uniformed member of the Patrol is terminated.

When a member's service with the Patrol terminates, they shall submit all pending and unused citations to their First Sergeant. The unused citations shall be *unassigned* in IMS **within 48 hours of termination of service** and may be *reassigned* to another member using the HP-200B. For eCitations, the First Sergeant should "Void Unused Citations" and transmit from the member's MDC all unused eCitations to AOC.

The First Sergeant shall become the custodian of all pending citations of the terminated member.

V. FIRST SERGEANT TRANSFERRED

When a First Sergeant is transferred, pending citations assigned to him/her as a result of a terminated member are automatically assigned by IMS to the newly assigned First Sergeant.

VI. CASES INVOLVING JUVENILES

The court disposition of cases involving juveniles is not a matter of public record. Charges brought against juveniles will be prepared on the N.C.U.C., and a petition will be filed by juvenile court officials when warranted.

A member who issues a citation to any juvenile age 16 or 17 for a non-motor vehicle offense or under the age of 16 for any offense, shall submit all copies of

the N.C.U.C. to the First Sergeant with his/her weekly reports, **except** the original N.C.U.C., which shall be given to the Juvenile Court Counselor to aid in the preparation of the petition. The citation issuance and disposition information will be entered in the IMS by the First Sergeant and should appear on the member's next Citations Adjudicated Report.

VII. VOIDED CITATIONS

If a member makes an error in the preparation of a citation, he/she shall print in bold lettering across the face of the citation the word **VOID** and insert his/her name and registry number in the appropriate places. A detailed explanation shall be entered in the *Member's Notes* section of the citation.

All copies of voided citations, including eCitations, will be submitted to the First Sergeant attached to the HP-201 at the end of the week. The officer's copy of the eCitation shows when and why the eCitation was voided.

The First Sergeant shall be responsible for voiding citations as instructed in the *IMS Manual* and shall file all voided citations with the member's adjudicated citations.

An N.C.U.C. shall not be voided without sound reason. The voided citation must contain detailed notes as to the reason it was voided. The First Sergeant shall review all voided citations and, when questionable or used excessively, may require an explanation for each citation voided.

The Voided Citations Report (HPC-200.4) and the Issue and Disposition Entry (HPC-200.5), (Report of Citation Issue or Disposition Entries made by Highway Patrol Personnel), will be automatically transmitted by IMS to the troop headquarters of the affected member for printing and review. The report will identify and list citations entered through any IMS terminal not identified as a data terminal of the **Administrative Office of the Courts**. The Section Director/Troop Commander may initiate an investigation of questionable entry circumstances during troop staff inspections. A semi-annual summary of these reports will be automatically transmitted to Field Operations for review.

VIII. LONG WARRANTS

Any member causing the issuance of a long warrant shall attach a completed **original court copy** of the N.C.U.C. to the warrant prior to submitting it to a judicial official unless the charge was made through NCAWARE. If the charge is made through NCAWARE, the member shall enter the Tracking Number on the HP-201B and a N. C. U. C. does not need to be completed.

If a N. C. U. C. is completed the words **Long Form Warrant Issued** shall be printed in bold print on the face of the N.C.U.C. in the space immediately below the File No. space and above the form title "North Carolina Uniform Citation". The remaining copies of the citation shall be submitted with the current weekly

HP-201B. Members should track the disposition of the case and ensure that correct information has been accurately entered.

IX. COMMERCIAL VEHICLE SAFETY ALLIANCE DECALS

The Commercial Vehicle Safety Alliance supplies Commercial Vehicle Safety Alliance (CVSA) Decals to the SHP MCEA Section. The MCEA Section manages and controls the supply and accountability for CVSA decals. The MCEA Section sends a memorandum to the applicable Troop/Section and issues a sequentially numbered block of decals for distribution. The MCE Lieutenant issues the decals, using a HP-200B, to their assigned MCE Sergeants for distribution to their CVSA certified personnel. Each MCE Sergeant is responsible for issuing the decals to individual CVSA certified members on the HP-200B. Each member signs and acknowledges receipt of the decals received and is accountable for the disposition of each decal. The HP-200B is completed and retained as required by the Patrol Forms Instructions and Filing Guide. Any excess decals should be stored in a secured location by the appointed supervisor. When necessary, decals may be transferred from one member to another using the HP-200B through the appointed supervisor.

Members shall issue decals to a motor carrier in a numerical sequence and record the number on the Driver/Vehicle Examination Report (ENF-500). At all times, members shall issue decals to motor carriers' vehicles that undergo and successfully pass a Level I or Level V North American Standard Inspection. Decals shall be issued if the violations are not one of the thirteen critical items listed in the CVSA Inspection Manual.

Supervisors shall utilize the following process when dealing with expired/unused CVSA decals:

- Expired/unused CVSA decals shall be collected from each member at the end of each quarter utilizing form HP-200B.

- Supervisor shall then locate the decals under the member's forms maintenance account in the FuelTaCS program.

- Once located and highlighted, select the CHANGE STATUS button at the bottom of the page and choose "Unused."

- Upon changing the status, supervisor shall destroy all decals, rendering them unusable via shredding or cutting, and enter "CVSA Decals destroyed by (Supervisor's Name)" into the Notes section prior to saving changes.

X. COMMERCIAL MOTOR VEHICLE REPLACEMENT SEALS

The MCEA Section manages and controls the supply and accountability for Replacement Seals. The MCEA Section sends a memorandum (upon request for replacement seals) to the applicable Troop/Section and issues a sequentially numbered block of seals for distribution. The MCE Lieutenant issues the seals,

using a HP-200B, to their assigned MCE Sergeants for distribution to their CVSA certified personnel. Each MCE Sergeant is responsible for issuing the seals to individual CVSA certified members on the HP-200B. Each member signs and acknowledges receipt of the replacement seals received and is accountable for the disposition of each seal. The HP-200B is completed and retained as required by the Patrol Forms Instructions and Filing Guide. Any excess seals should be stored in a secured location by the appointed supervisor. When necessary, seals may be transferred from one member to another using the HP-200B through the appointed supervisor.

Members shall issue replacement seals to motor carriers in a numerical sequence and record the number of the seals removed and the number of the seals replaced along with the member's signature on the Driver/Vehicle Examination Report (ENF-500). At all times, members shall issue replacement seals to motor carriers, whereby a commodity inspection has occurred to check the commodity for load securement and or hazardous materials. The old seal(s) shall be attached by some means to the bill of lading so the carrier has proof of the chain of custody. Motor Carriers that undergo a North American Standard Inspection, Level One, Level Two, Level Four, Level Five, or Level Six inspection, are subject to a commodity inspection. Statue authority to conduct commodity inspections is located under N.C.G.S. § 20-381 (a) (3). **NOTE:** The only time a member shall conduct a commodity inspection and remove a carrier/shippers seal, is in conjunction with one of the above listed level of inspections. **Members shall not use this authority to conduct searches for any other reason than load securement and hazardous material commodity checks.**

These seals do not have an expiration date and shall remain with the member until separation from the Patrol. In this instance, the seals shall be returned to the member's supervisor, unassigned, and stored in a secured location by the appointed supervisor until reassigned using the HP-200B.

XI. COMMERCIAL MOTOR VEHICLE OUT-OF-SERVICE DECALS

The MCEA Section manages and controls the supply and accountability for Out-of-Service decals. The MCEA Section sends a memorandum (upon request for Out-of-Service decals) to the applicable Troop/Section and issues a sequentially numbered block of decals for distribution. The MCE Lieutenant issues the decals, using a HP-200B, to their assigned MCE Sergeants for distribution to their CVSA certified personnel. Each MCE Sergeant is responsible for issuing the decals to individual CVSA certified members on the HP-200B. Each member signs and acknowledges receipt of the decals received and is accountable for the disposition of each decal. The HP-200B is completed and retained as required by the Patrol Forms Instructions and Filing Guide. Any excess decals should be stored in a secured location by the appointed supervisor. When necessary, decals may be transferred from one member to another using the HP-200B through the appointed supervisor.

Members shall issue the Out-of-Service decals to motor carriers vehicles in a numerical sequence and record the number on the Driver/Vehicle Examination Report (ENF-500). At all times, members shall issue Out-of-Service decals to motor carriers in accordance with 49 CFR Part 396.9 of the Federal Motor Carrier Safety Regulations. Motor Carriers that undergo a North American Standard Inspection, Level One, Level Two, Level Four, Level Five, or Level Six inspection shall have affixed an Out-of-Service decal to each unit which is in violation of the North American Standard Out-of-Service Criteria. **NOTE:** Out-of-Service decals are not issued for driver violations listed in the North American Standard Out-of-Service Criteria. They are only issued for equipment violations.

These decals do not expire and will remain with the member until separated from the Patrol. In this instance the decals shall be returned to the member's supervisor, unassigned, and stored in a secured location by the appointed supervisor until reassigned using the HP-200B.

Service and Completion of Process Orders and NCAWARE System

Directive J.11
Revised 01/2016
Effective 9/27/2011

I. POLICY

This policy establishes a standardized process to secure, by use of a legal order issued by the Clerk of Court's Office, a North Carolina Driver's License that has been suspended or revoked for an Implied-Consent Offense. This policy also establishes a standardized process for the web-based NCAWARE System.

II. REVOCATIONS

Administrative Office of the Court (AOC) Civil Revocation 4 (CVR-4): An official Driver's License Pick-Up Order issued by the Clerk of Court's Office, by authority of N.C.G.S. § 20-29, N.C.G.S. § 20-16.5(e) and N.C.G.S. § 20-16.5(f).

III. DISTRIBUTION OF CIVIL REVOCATION ORDERS

The Clerk of Court will issue an AOC CVR-4 Pick-Up Order(s) (Civil Revocation Order) on drivers who are charged with an Implied-Consent Offense, and who fail to surrender their Driver's License within the time prescribed in the statute. These Orders will be issued to the Highway Patrol to be served only when the charging officer is a state law enforcement officer or when charging officer was a local law enforcement officer, but the person does not reside in the local agency's territorial jurisdiction.

Upon receipt of the civil revocation order(s), the District Supervisor shall log the order on form HP-47A.

The District Supervisor shall assign the civil revocation order to a member, utilizing form HP-47.

The member shall have forty-five (45) days to serve the order (or return the order unserved) starting with the date that the order is obtained from the Clerk of Court's Office.

The disposition of all orders shall be recorded on the HP-47A and HP-47.

The HP-47 shall be filed by the District Supervisor in accordance to the HP-47 form instructions. The civil revocation orders shall then be returned to the Clerk of Court's Office in the county where the pick-up order was generated within three (3) working days of service of the order or expiration of forty-five (45) days of issuance by the Clerk, whichever shall first occur.

Upon receipt of a civil revocation order from the Clerk of Court, the District Supervisor shall, prior to assigning the order to be served, verify that:

- The charging officer was a member of the Patrol or other state agency or,

- If the charging officer was an employee of a local law enforcement agency, the person resides outside the agency's jurisdiction.

If the member is unable to locate the defendant after a diligent and reasonable effort, the order shall be returned as **"Unable to Locate." Under no circumstance** shall the assigned member return any civil revocation order marked "Unable to Locate" unless the address has been physically checked by the member and all reasonable attempts to locate the violator's whereabouts have failed.

Upon completing service of a civil revocation order, the member shall fill out the **"Return for Service"** section on the AOC CVR-4 form. This includes date received, date served, date returned, the member's signature, the member's registry number, and agency.

There are three specific blocks located on the AOC CVR-4 form that the member will check, when action is taken.

The three blocks include the following:

- By personally serving the person named above and picking up the attached driver's license.

- The person named above demonstrated that he/she is not currently licensed.

- The person named above was not served for the reasons listed below

The member shall physically write the explanation under the third block of why the civil revocation order was not served, and list any new address that they may have obtained. If the defendant has moved to another county within the state, then the member shall forward the AOC CVR-4 with an attached HP-47 to the Troop/District Supervisor in the county in which the defendant currently resides via courier mail.

All civil revocation orders served by the member or marked "Unable to Locate" must be documented utilizing the HP-47A (Warrant/Process Log) and the HP-47 (Request for Service of Warrant/Process Order).

Members who are assigned to serve civil revocations shall indicate the number of orders served in the "Process Served" block located in the recorded performance section on the HP-201. All time that is accrued shall be indicated in the "Court" block in the activity section of the HP-201.

IV. SERVICE OF DRIVER'S LICENSE PICK-UP ORDERS

When a member receives notification, via Mobile Data Computer (MDC), Communications Center and/or other means, that indicates a driver's license is revoked, suspended, or inactive, and the North Carolina Department of Motor Vehicles (NCDMV) has issued a pick-up order for the driver's license the member shall retrieve the driver's license. In addition, the member shall perform the following:

- Issue a traffic citation and/or affect an arrest for DWLR and, where appropriate, a violation of N.C.G.S. § 20-30(1)
- Complete an "Acknowledgement and/or Receipt for Surrender of NC License/Registration Plate" form (DL-53A)
- Provide the violator with the pink copy of the DL-53A
- The member retains the white copy of the DL-53A for record and/or court disposition
- The member shall submit the yellow copy of the DL-53A, with the seized driver's license stapled thereto, without undue delay to his/her supervisor for forwarding to NCDMV

V. SERVICE OF REGISTRATION NUMBER PLATE PICK-UP ORDERS

When a member receives notification, via MDC, Communications Center and/or other means that indicates the NCDMV has issued a pick-up order for a registration number plate, the member shall retrieve the registration number plate. In addition, the member shall:

- Issue a traffic citation and/or affect an arrest for N.C.G.S. § 20-111 and/or other appropriate violation(s)
- Complete an "Acknowledgement and/or Receipt for Surrender of NC License/Registration Plate" form (DL-53A)
- Provide the violator with the pink copy of the DL-53A
- Retain the white copy of the DL-53A for record and/or court disposition
- Submit the yellow copy of the DL-53A taped to the backside of the seized registration plate without undue delay to his/her supervisor for forwarding to NCDMV

VI. NORTH CAROLINA WARRANT REPOSITORY (NCAWARE) SYSTEM

The North Carolina Warrant Repository (NCAWARE) system is a web-based statewide program administered by the Administrative Office of the Courts (AOC) to electronically process and serve warrants.

The District Supervisor or designee shall:

- Check NCAWARE for warrants once every thirty (30) days.

- Issue warrants to members within seven (7) days

- Print a DRAFT copy of the warrant to be used for **informational purposes only** and distributed to the member for attempted service. **A DRAFT copy shall not be utilized for actual warrant service.** The assigned member shall keep this DRAFT copy in a secure location to prevent any confidentiality conflicts. An ORIGINAL copy of a warrant shall be printed only when the process is ready for service or is being forwarded to an "inactive" district. An ORIGINAL printed copy of the warrant shall be valid for twenty-four (24) hours at which time it will expire and must be destroyed (i.e. shredded).

- Within forty-five (45) days of a warrant assignment by a District Supervisor, a member shall make a minimum of four (4) attempts to serve the warrant and shall log each attempt at service into NCAWARE. If a member discovers a fictitious address was previously given or other extenuating circumstances making the service of the warrant impossible, it is not necessary to make four (4) attempts to serve the warrant; however, the member shall log this information into NCAWARE.

- After twelve (12) months, the unserved warrant shall be returned to the Clerk of Court's office.

- Cross-reference any printed warrant via NCAWARE to verify that the warrant has not already been entered into the system.

VII. NCAWARE (WARRANT PROCESS) – ATTEMPTED SERVICE FROM LIVE DISTRICT TO LIVE DISTRICT

Districts live in the NCAWARE system shall not be required to complete forms HP-47 and HP-47A.

Prior to service of warrant, member shall reaffirm that the warrant is still active in the NCAWARE system to avoid legal issues.

- A member providing service must update Warrant disposition within NCAWARE as soon as feasible after service; however, updates shall be performed absolutely no later than the end of his/her assigned shift. This will prevent the attempted service or service of a previously executed warrant.

- A member attempting service must update Warrant disposition within NCAWARE immediately after each attempted service. This provides statewide real-time status information on all warrants.

VIII. NCAWARE (WARRANT PROCESS) – ATTEMPTED SERVICE FROM LIVE DISTRICT TO INACTIVE DISTRICT

The District First Sergeant or designee shall assign the warrant in NCAWARE to the Inactive District for service prior to printing (this will alleviate the twenty-four (24) hour service requirement).

The District First Sergeant or designee shall print the hardcopy and submit the warrant in the traditional manor with the HP-47 attached.

Served

- Member from inactive District providing service must notify originating District or Communications Center from an inactive district with the warrant's current disposition immediately after service. Communications Center shall be notified only after normal business hours or if District OD is unavailable.

- The originating District or Communications Center shall be responsible for entering the warrant service information into NCAWARE.

- HP-47 shall be returned via traditional manner within forty-five (45) days.

Non-Served

- Member attempting service shall return form HP-47 to the originating District immediately after four (4) attempts of service.

- The originating District or Communications Center shall be responsible for entering the warrant service information into NCAWARE.

- HP-47 shall be returned via traditional manner within forty-five (45) days.

- Originating District or Communications Center shall immediately update NCAWARE with each attempted service. Communications Center shall be notified only after normal business hours or if District OD is unavailable.

- HP-47 shall be retained in accordance with Standardized Inspection Guidelines (SIGs).

IX. SERVICE OF WARRANTS / PROCESSES

Any member assigned any warrant/process shall make every effort to serve that warrant/process without undue delay within the time allotted. Members shall follow the instructions set-forth by form HP-47 for documenting all dispositions

related to that warrant/process and return that warrant/process to his/her supervisor.

A supervisor who receives a warrant/process returned **"Unable"** to locate shall personally ensure that the member assigned to serve the warrant/process in accordance with this directive has made every effort to locate the person named on the warrant/process. The affected supervisor shall also ensure that all dispositions relating to the warrant/process are accurately documented on Forms HP-47 and HP-47A.

X. WARRANT PROCESS – ATTEMPTED SERVICE FROM INACTIVE DISTRICT TO INACTIVE DISTRICT / INACTIVE DISTRICT TO LIVE DISTRICT

Warrant process shall be handled in traditional manner per forms HP-47 / HP-47A instructions.

Selective Traffic Enforcement

Directive K.01
Revised 02/12/2021
Effective 09/1994

I. POLICY

This policy defines responsibilities for selective enforcement.

II. GENERAL

The ultimate goal of selective traffic enforcement is the protection of life and property through the reduction of traffic collisions. The management of vehicular and pedestrian traffic requires an effective selective traffic enforcement program as well as the best practical response to demands for service. An effective selective traffic enforcement program requires uniform, sustained enforcement operations in locations and at times, which have proven to be most hazardous to highway users.

District First Sergeants shall be responsible for developing and maintaining effective selective enforcement programs within their respective districts. District supervisors should consider the application of techniques that utilize the assignment of personnel and equipment in locations and at times that target specific, unlawful, and hazardous driving behavior. These techniques should be based on available statistical data and other information including but not limited to the following:

- Calls for service
- Traffic volume
- Traffic and road conditions
- Seasonal variations in traffic volume and/or collisions
- Citation Summary Reports
- NC Vision Zero Reports

III. PERSONNEL ASSIGNMENT

First Sergeants shall selectively assign available personnel and equipment with enforcement priorities directed at the types of violations of highest traffic collision potential in rural areas. Assignment shall be based upon the analysis of date, time, location, violations, and other causative factors in vehicle collisions. The Section Director/Troop Commander may approve deviation of this assignment method if practical limitations such as geographical make up, traffic volume, or personnel availability render it impractical to conform.

Each member is responsible for using all available on-duty time for traffic collision preventive patrol. The assignment on a selective basis by the First Sergeant shall not relieve the member of this responsibility.

Each First Sergeant shall evaluate the District Selective Enforcement programs to ascertain its effectiveness on a continuing basis. A more frequent evaluation should be conducted as traffic density and collision rates increase.

Patrol Methodology and Traffic Supervision

Directive K.02

Applicable to: Members

Revised 8/19/2021
Effective 1/1994

I. POLICY

This policy defines and sets forth standards for Patrol methodology and traffic supervision.

II. TRAFFIC SUPERVISION

A member's ultimate duty is to protect the public. To accomplish this goal, the member is responsible for the supervision of the State's highway transportation system, which consists of vehicles, highways, and highway users. Traffic supervision duties include law enforcement, traffic direction and control, collision investigation, and performing services for the motoring public.

Members shall take enforcement action (verbal or written warnings, citations to court, or physical arrest) consistent with law and Patrol policy.

Members are to prioritize all calls for service according to their severity and respond accordingly.

III. PREVENTIVE PATROL

Members shall devote all duty time not specifically required for other official functions to preventive patrol in their assigned area(s) or specific roadways where such patrol is needed. The most current NC Vision Zero data analytics reports, and any other data driven reports shall assist the district First Sergeant in determining the high collision roadways within a district.

Patrol movement should be planned and constantly changing so as to create a climate of Patrol visibility throughout the area. Wolf-packing techniques should be utilized to give the appearance of having an elevated number of enforcement members.

Stationary patrols may be used at high traffic volume or high collision experience locations but should normally not be maintained for more than thirty minutes at one time.

Special attention shall be given to pedestrians and bicyclists, and enforcement action should be taken as necessary.

Members will generally be governed by existing circumstances while on preventive patrol; however, they shall routinely:

- Provide information, aid, and courtesy services to highway users

- Members shall make every reasonable effort to locate and provide assistance to stranded motorists by obtaining the necessary mechanical assistance, wreckers, service vehicles, or relaying messages as a method to seek assistance. Members should use good officer safety techniques in an effort to provide protection for themselves and stranded motorists while rendering assistance. When extenuating circumstances prevent stopping to assist, the member shall report the circumstances and the location to the appropriate Communications Center.

- If information is received at a Communications Center of a stranded motorist and no Patrol member is readily available, the Telecommunicator may notify the appropriate district supervisor. If the district supervisor is notified, he/she shall ensure that the appropriate service is rendered. The Telecommunicator is permitted to call for specific assistance (i.e. wrecker, road assistance, IMAP Unit, etc.) if necessary to render the appropriate assistance.

- Ensure roadways are kept free of debris. If a member is able to remove the debris without assistance, he/she shall do so. If not, he/she shall contact the Communications Center to call the appropriate Department of Transportation District Highway Engineer. If the debris creates a traffic hazard, the member shall remain on the scene in order to direct traffic until the debris is removed. Debris located off the roadway but on the state right-of-way that does not create an immediate hazard must be reported to the Department of Transportation District Highway Engineer. A Highway Condition Report (HP-320) shall be completed and submitted to the district First Sergeant for all debris, which must be removed by the Department of Transportation. The district First Sergeant will ensure the HP-320 is promptly entered into the Department of Transportation's Citizens Action Request System (CARS).

- Report all highway defects (i.e. potholes, missing and/or broken traffic barriers) and inoperative traffic control devices or down traffic control signs to proper authorities. When the highway defect or inoperable or down traffic control device or sign creates a hazard to the public, a member shall request the communication center to contact the appropriate Department of Transportation Highway Engineer or local official to correct the problem. The member shall remain on the scene in order to direct traffic until the defect or traffic control device is repaired or until no hazard to the public remains. A HP-320 shall be completed for all highway defects and traffic control device and traffic sign problems, including when the communication center was notified and submitted to the district First Sergeant. The district First Sergeant will ensure the HP-320 is promptly entered into CARS.

- Check vehicles that reasonably appear to be abandoned or disabled for occupants and have all abandoned vehicles removed from the highway consistent with state law and Patrol policy as outlined in Directive J.04. Abandoned vehicles shall be marked with a HP-303 (Abandoned Vehicle Tag) indicating the vehicle has been inspected by a Patrol member and is subject to removal from the roadway after twenty-four (24) hours.

- Notify communications immediately to contact the proper agency to assist in fire suppression and emergency medical treatment. Members may have to provide immediate first aid to individuals who are in apparent medical distress or unconscious, or use their fire extinguisher until assistance arrives.

- Members should be alert for behaviors and actions of individuals that could constitute a threat of terrorism to our national security. Such behaviors should be documented, and the proper state or federal authorities should be notified.

IV. STOPPING VEHICLES

Members shall use all reasonable precautions to assure their safety and that of others when making enforcement contacts and performing other traffic supervision functions. Patrol car warning lights shall be activated during enforcement contacts and during other stops, which could create potentially hazardous situations or conditions.

When performing traffic supervision functions, members shall stop a vehicle or pedestrian only when they have reasonable suspicion that the vehicle is being operated in violation of the law, or the driver or other occupants of the vehicle or the pedestrian has committed or is committing a violation of the law. **Members must be able to state the facts on which they based their decisions to stop the vehicle or pedestrian.** (Stopping vehicles without reasonable suspicion such as at a checking station or roadblock is governed by other policy.)

When operating unmarked Patrol vehicles, members shall make every reasonable effort to ensure that drivers or pedestrians being stopped or checked are able to identify them as Patrol members. Such efforts include but are not limited to the following: wearing Patrol hats, turning on dome lights, identifying themselves by means of their public address system, and, if possible and practical, stopping vehicles at night in a lighted area. In addition, members shall, activate their blue lights and use their sirens, in accordance with N.C.G.S. § 20-190.1.

Members shall be constantly alert to possible assault during enforcement contacts and take reasonable steps to protect themselves at all times.

Unless officer safety issues or other circumstances necessitate otherwise, members shall immediately advise persons stopped for enforcement purposes the reason they were stopped and the action to be taken (citation, physical arrest, warning, etc.). Conversation by the member shall be courteous and as brief as circumstances permit. Unnecessary statements, which are likely to provoke anger or lead to arguments, shall not be made by any member.

When a motorist has been stopped, the Patrol vehicle should be parked to the rear of the motorist's vehicle and positioned so as to afford the greatest degree of protection to the member and motorist.

- At night, when the Patrol vehicle is equipped with *take-down* lights and is properly positioned to the rear of a stopped motorist's vehicle, the *take-down* lights shall be used to illuminate the motorist's vehicle and its occupants

- The *take-down* lights shall be activated only when the Patrol vehicle is stopped and is positioned so as not to cause the lights to project directly into the face of oncoming traffic

- Members should use the passenger side approach to a stopped vehicle when a normal driver side approach is deemed too dangerous, or to gain an advantage on a suspicious person(s)

Citations may be written at the location best suited to existing circumstances, but **no** citation shall be written or a motorist questioned while the member or motorist is standing between the Patrol vehicle and the stopped vehicle.

When conducting violator interviews or when checking the status of a violator's driver's license and/or vehicle registration, members shall comply with the provisions found in Directive B.04, Section V; "Detention" of this manual.

V. BIAS BASED PROFILING OF INDIVIDUALS PROHIBITED

Members shall take no enforcement actions, including but not limited to stops, field contacts, arrests, searches, or seizures of persons, property, or forfeitures based solely upon race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable groups.

Members shall report vehicle stop information as required by N.C.G.S. § 143B-903 and Patrol policy.

The Commander's Office shall conduct random organizational reviews of traffic stop data collected in the web application found on the State Bureau of Investigation (SBI) web page.

- The Commander's Office shall determine the report configuration that will be reviewed. The eight basic report configurations are:

    - Drivers and Passengers Search by Sex, Race, and Ethnicity

    - Enforcement Action Taken by Driver's Age

    - Enforcement Action Taken by Driver's Sex, Race, and Ethnicity

    - Initial Purpose of Traffic Stop by Driver's Sex, Race, and Ethnicity

    - Initial Purpose of Traffic Stop by Enforcement Action Taken

    - Initial Purpose of Traffic Stop by Physical Resistance Encountered

- Initial Purpose of Traffic Stop by Driver's Age
- Type of Search by Basis of Search

- In the event the Commander's Office or the Director of Professional Standards wishes to review more specific information such as troop, district, stop data, or any other data pertaining to an individual, he/she shall submit the officer's confidential identification number to the Division of Criminal Information (DCI). DCI will run the report based on the specific criteria and deliver it to the Commander's Office or the Director of Professional Standards in printed format.

- Random organizational reviews conducted by the Commander's Office shall be documented via a memorandum and maintained on file for a period of three (3) years

- Disclosure of traffic stop data is governed by General Statute and allows the Commander's Office to review individual internal specific data. Any external disclosure of individual specific data requires a court order.

- During the first quarter of each calendar year, the Commander's Office and senior staff members shall conduct an annual administrative review of agency practices including citizen concerns. The Commander's Office and his/her command staff shall ensure that information concerning profile related training in the areas of field contacts, traffic stops, search issues, asset seizure and forfeiture, interview techniques, cultural diversity, and discrimination are scheduled to be completed annually. Additionally, the Patrol's Public Safety Information Officer shall provide a summary of reported citizen and community concerns. This information will be used to determine if the Patrol needs to develop public information forums or programs to address identified concerns.

VI. RADIO MESSAGES

While performing routine duties, members shall be especially alert for radio messages relating to stolen vehicles, wanted felons, escaped prisoners, reports of violent crimes, missing persons, missing/runaway/abandoned/abducted children, or other matters which require extraordinary vigilance on the part of the member.

Members shall immediately answer all radio messages specifically directed to them.

Traffic Direction at Public Gathering for Private Purposes

Directive K.03
Revised 11/10/2004
Effective 5/1994

Applicable to: Members
CALEA

I. POLICY

This policy sets a standard for traffic direction at private functions.

II. GATHERINGS FOR PRIVATE PURPOSES

Members shall not direct traffic as a result of public gatherings for private purposes unless there is a threat to public safety. If traffic at private events presents a safety hazard, members shall notify a District Supervisor.

An investigation of all continuing traffic hazards created by public gatherings for private purposes shall be conducted by the First Sergeant to determine whether action should be taken by the Patrol.

III. REQUESTS FOR ASSISTANCE

Members shall not direct the parking of cars at any public or private gathering unless directed to do so by the commissioned or noncommissioned officer in charge of the traffic detail.

Any request for assistance from a commercial source for Patrol services shall be referred to the appropriate Section Director/Troop Commander for approval or disapproval.

Checking Stations

Applicable to: Members

Directive K.04
Revised 4/2015
Effective 5/1998

I. POLICY

This policy establishes procedures for conducting suspicionless seizures of vehicles at fixed checkpoints and Special Operations checking stations.

II. STANDARDS FOR ALL CHECKING STATIONS

The site for every checking station shall be selected with due regard for the safety of motorists and the members operating the checking station. Sufficient distance must be provided to allow a motorist traveling at the speed limit to stop his/her vehicle in a normal manner under the existing conditions. No checking station shall be conducted without at least two uniformed members present and at least one marked Patrol vehicle.

All checking stations shall be marked by signs and/or activated emergency lights, marked Patrol vehicles parked in conspicuous locations, or other ways to ensure motorists are aware that an authorized checking station is being conducted. Blue lights, on at least one Patrol vehicle shall be operated at all times.

With the exception of Special Operations checking stations, all checking stations shall provide for the stopping of every vehicle. Individual members shall not vary from this policy, except that the member in charge of the checking station may allow variance from this requirement if the traffic congestion or other factors are creating a hazard. The member in charge may then authorize all vehicles to pass through the checking station until there is no longer a hazard.

Checking stations shall be operated so as to avoid unnecessary traffic congestion and delay to motorists.

Adequate area must be available off the traveled portion of the highway to allow for the safety of motorists when enforcement action is taken.

Patrol vehicles must be parked to allow access to the highway for pursuit in any direction.

Members must maintain radio contact with the Communications Center.

III. STANDARD CHECKING STATION

Members may conduct checking stations to determine compliance with motor vehicle laws. Examples for which this type of checking station may be used, includes, verification of drivers' licenses, vehicle registration checks, insurance checks, seat belt compliance checks and driving while impaired. <u>At a minimum, however, members conducting a standard checking station shall check for a valid driver's license and for evidence of impairment.</u>

All checking stations, day or night, shall be approved by a district supervisor or higher authority. The supervisor shall designate the purpose, location and approximate time of operation of the checking station. The placement of checkpoints should be random or statistically indicated, and, unless statistically indicated, supervisors shall avoid placing checking stations repeatedly in the same location or proximity. Supervisors shall use Form HP-14 (Checking Station Authorization) for this purpose.

A supervisor who authorizes establishment of a checking station shall specify, on Form HP-14 (Checking Station Authorization Form), whether drivers shall be asked to produce, proof of registration or insurance information or any combination thereof in addition to producing a valid driver's license. The driver of every vehicle stopped shall, at a minimum, be asked to produce his or her driver's license and to state his or her name and address. Members shall visually examine the driver's license and compare the information thereon with the physical characteristics of and information provided by the driver. Additionally, every driver shall be observed for signs of impairment. Accordingly, every driver shall be instructed to roll his or her window down and members shall be observant for an odor of alcohol or drugs, bloodshot eyes, slurred speech or open containers. Members working the checking station shall have no discretion to deviate from this pattern If a member determines there is a reasonable suspicion to believe that a driver or other vehicle occupant has violated a provision of Chapter 20 or any other provision of law, the member may detain the driver or occupant for a reasonable period of time in order to investigate further.

Regardless of the designated purpose of the checking station, the operator of any vehicle stopped at the checking station may be requested to submit to an alcohol screening test under N.C.G.S. § 20-16.3 if during the stop the member determines the driver had previously consumed or has an open container of alcoholic beverage in the vehicle. Members may consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further. A driver shall not be charged with resisting, obstructing or delaying a public officer solely for refusing to submit to an alcohol screening test.

Specific written directions may be provided for a particular checking station. When issued by a supervisor or higher authority, these written directions shall be considered additional policy.

Standard Checking Stations shall comply with the United States and North Carolina Constitutions and shall be conducted in accordance with the provisions of N.C.G.S. § . 20-16.3A and 20-29.

IV. INFORMATIONAL CHECKING STATION

Members may conduct informational checking stations for the purpose of seeking motorists' assistance in solving a crime. This type of checking station may be appropriate in cases involving death or serious injury and where motorists may be able to provide pertinent information to help identify the offender or otherwise provide pertinent information related to the death or injury.

Informational checking stations should, whenever feasible, be approved, by a district supervisor. The authorizing supervisor shall designate the purpose, location and approximate time of operation of the checking station on Form HP-14.

Because an informational checking station is not designed to determine whether a vehicle's occupants are violating a provision of the motor vehicle law, drivers shall not be asked to produce a drivers' license or any other documentation. If, however, during the course of the stop, a member determines there is a reasonable suspicion to believe that a driver or other vehicle occupant has violated a provision of Chapter 20 or any other provision of law, the member may detain the driver or occupant for a reasonable period of time in order to investigate further and the operator of any vehicle may be requested to submit to an alcohol screening test under N.C.G.S. § 20-16.3 if during the stop the member determines the driver had previously consumed or has an open container of alcoholic beverage in the vehicle.

V. SPECIAL OPERATIONS CHECKING STATION

The First Sergeant or higher authority must determine that a Special Operations checking station is necessary because it may likely result in the apprehension of a suspect who poses a danger to life and property or the rescue of a hostage or abducted person.

The location, equipment, time, and operation of the checking station must be in accordance with policy.

When the suspect sought to be apprehended by the checking station has a hostage or abducted person in the vehicle or the member reasonably believes a hostage or abducted person is in the vehicle, the priority shifts from apprehending the suspect to preserving the life of the hostage or abducted person. The member is governed by the Highway Patrol Unusual Occurrence Manual Section 9, Crisis Situations.

Members operating the checking station shall position themselves and their Patrol vehicles in a manner that will provide a tactical advantage and maximize officer safety.

Members shall wear their body armor at all times while operating the checking station.

Supervisors should periodically check the checking station for the purposes of insuring officer safety and updating information.

VI. MULTI-AGENCY CHECKING STATION

Checking stations involving other agencies or law enforcement officers must be approved by the District First Sergeant or higher authority and conducted pursuant to the provisions of this Directive. Exceptions to this provision may only be granted by the Director of Field Operations.

Automated License Plate Recognition

Directive K.05

Applicable to: Members

Revised 03/01/2016
Effective 03/2014

I. POLICY

This policy establishes procedures for using Automated License Plate Recognition (ALPR) systems to identify vehicles that have a specific interest to law enforcement.

II. DEFINITION

An ALPR system consists of cameras connected to a computer processing unit that converts images of license plates into computer-readable data. These cameras can be mounted to a patrol vehicle or set up in a stationary location. The license plate data is compared against a database of license plates associated with stolen vehicles and plates, wanted and missing persons, and other databases designed to enforce laws or further criminal investigations. The images and associated data, such as date, time and GPS coordinates, are then stored in accordance with laws and departmental policy.

III. USE OF ALPR SYSTEMS

Prior to utilizing ALPRs members shall be trained in the proper operation and use of the technology.

Each member assigned to operate an ALPR shall ensure that a diagnostic check is performed and that the unit is properly functioning.

It shall be the responsibility of each ALPR operator to ensure the download of the most recent hotlist occurs on the mobile computer prior to deployment of the system.

Use of ALPR systems mounted to patrol vehicles shall be used only for legitimate law enforcement purposes. These purposes include identification of registration plates which are stolen, canceled, revoked, have insurance stops or pickup orders. It also includes plates assigned to Commercial Vehicles that have been placed out of service, or owe delinquent fines or penalties to NCDOT. Members using ALPRs shall not operate an ALPR in areas or in a manner that is designed to harass or intimidate citizens.

The Motor Carrier Enforcement Administration Section Director or his/her designee shall complete an annual report for The Commanders Office detailing the effectiveness of the Automatic License Plate Reader Program. This report should be submitted no later than the 15th day of January for the preceding year.

IV. PROCEDURE WHEN THE ALPR SYSTEM ALERTS ON A VEHICLE

The ALPRs can sometimes misread a plate and does not recognize the state of origin. Additionally, the data against which the plates are compared are not updated in real time. Therefore, when the ALPR alerts on a plate, members shall follow these procedures:

- **MEMBERS SHALL NOT TAKE ANY ENFORCEMENT ACTION BASED SOLELY ON THE ALPR ALERT**

- ALPR alerts must first be confirmed through DCI/NCIC prior to taking any enforcement action

- When the ALPR system alerts on a plate, members shall:

  1. Confirm the characters and state displayed on the vehicle registration was not misread and match the alert.

  2. After confirming the characters and state, members shall run the plate through DCI or other appropriate official database to confirm the reason for the alert.

V. DATA RECORDED BY THE ALPR SYSTEMS

Data obtained and/or stored through use of ALPRs shall not be disseminated outside the Department. However, data obtained and stored through use of ALPRs may be shared with other law enforcement agencies that request access for a legitimate law enforcement purpose upon approval by the Unit Commander of the Technical Services Unit in consultation with the Commander's Office. All LPR-generated data will be purged after a 90 day retention period unless a longer retention period has been identified for court or investigative purposes consistent with the requirements set forth in G. S. 20-183.24. Access to the ALPR database is limited to official law enforcement purposes only.

Patrol Relays and Escorts

Directive K.06

Applicable to: Members
CALEA Chapter 61

Revised 10/24/2007
Effective 9/1994

I. POLICY

This policy establishes rules governing relays and escorts by Highway Patrol personnel. **(CALEA 61.3.3)**

II. AUTHORIZATION / CLASSIFICATION

Patrol relays of personnel, papers, or equipment shall be kept to an absolute minimum and must be authorized by a Troop Officer of the Day (OD), Section Director/Troop Commander, or higher authority. A relay may be authorized by the Section Director/Troop Commander or Troop OD at the originating point of the relay or by the Section Director/Troop Commander or Troop OD at the destination point of the relay.

Ordinary relays shall be designated **10-5**. When it is necessary to relay persons, equipment, papers, or blood to a given point under a time limit **(Rush)**, the signal shall be designated **10-5R**. When it is necessary to arrange an emergency relay involving human life, the signal shall be designated **10-5E**.

Members shall arrange for the safe transportation of stranded motorists or accident victims when requested. Members may arrange such transportation within their assigned area of responsibility under their own authority. Members requested to transport persons outside their area of responsibility must obtain authorization from their district supervisor.

III. PROCEDURE

Upon receiving signal **10-5**, members shall proceed at an ordinary rate of speed and shall execute all Patrol duties, as they carry out the **10-5**.

When members receive a signal **10-5R**, they shall proceed without loss of time, at a speed not in excess of the speed limit. They shall give reasonable attention to normal duties, as required by law.

Upon receiving a signal **10-5E**, members shall travel at a speed, which is reasonable and prudent under the conditions then existing. While actively engaged in the **10-5E**, the blue lights and siren shall be in use. In no instance shall unnecessary risk be taken.

When a member transports a stranded motorist or accident victim within his/her area of responsibility, he/she shall advise the appropriate Communications Center of the origin, destination, and reason for the relay. When transporting persons of the opposite sex, members shall also provide the Communications Center with his/her beginning and ending odometer reading. A member shall consider the safety of himself/herself and that of the passenger(s) when deciding

upon the transportation of authorized passengers in a Patrol vehicle. If transportation outside the area of responsibility is approved by the district supervisor, the same procedures shall be followed.

IV. HUMAN PARTS / MEDICINE

Section Directors/Troop Commanders shall periodically analyze the number and types of requests by hospital authorities for Highway Patrol relays of blood, human parts, or medicine. These items will not be relayed by the Patrol except under conditions involving imminent danger to life or serious injury, and then only when no other logical means of transportation is available.

Section Directors/Troop Commanders shall seek and maintain a cooperative relationship with hospital administrators regarding all matters of mutual concern. Care will be taken to allow hospital authorities to use the Highway Patrol for relays only when absolutely necessary.

V. ESCORTING EMERGENCY VEHICLES (CALEA 61.3.3)

Members shall not escort ambulances or other emergency vehicles unless special circumstances require. Exceptions may be made when a driver of an emergency vehicle cannot reach a hospital or other destination without assistance.

VI. ESCORTING PRIVATE VEHICLES (CALEA 61.3.3)

Members shall not escort private vehicles making emergency runs unless special circumstances exist.

VII. ESCORTING FUNERAL PROCESSIONS (CALEA 61.3.3)

Members shall not escort funeral processions without authorization from a supervisor.

VIII. ESCORTING GROUPS (CALEA 61.3.3)

Members shall not provide a Patrol escort for any organization or group without prior authorization from a Section Director/Troop Commander or higher authority.

IX. MOTOR UNIT MOTORCADE ESCORTS

All motorcade escorts performed by the Patrol's Special Operations Motor Unit shall be done in accordance with the North Carolina Highway Patrol Motorcade Operations Guidelines posted on the Patrol's Intranet site.

X. EMERGENCY MEDICAL RELAYS

Emergency medical relays may be made by Patrol members whenever an actual emergency situation exists. The procedures listed below shall be followed:

- Emergency relays will be authorized only when there is imminent danger of death or additional injury to the person being treated.

- An emergency relay may be authorized only when there is no alternate means of transportation available which could effectively perform the service.

- Hospital personnel must contact the local Section Director/Troop Commander, his/her designee, or the Patrol OD through the Raleigh Communications Center to obtain authorization for a medical relay.

XI. SECURITY ESCORTS FOR HAZARDOUS MATERIALS

Patrol members may be assigned to assist in the security of certain shipments of hazardous materials and other commodities. Members engaged in these assignments shall follow all rules, SOPs and/or protocols provided by the Hazardous Materials Coordinator for each shipment. These documents will remain on file with the Hazardous Materials Coordinator and are not public records.

I. POLICY

This policy establishes guidelines for the investigation of a motor vehicle collision.

II. COLLISIONS TO BE INVESTIGATED

Members shall proceed immediately to the scene of any motor vehicle collision assigned to them for investigation unless the assignment is changed by a supervisor or unless another member or allied agency assumes responsibility for conducting the investigation. Members responding to motor vehicle collision calls shall abide by Directive B.02 (Extraordinary Patrol Vehicle Operation).

When an assignment relating to a motor vehicle collision is completed, the assigned member shall notify the Telecommunicator whether a NC Crash Report (DMV-349) will be filed. If no report is to be filed, the Telecommunicator will ensure that the slip log shows the assignment was not for a motor vehicle collision. If a report is to be filed, the Telecommunicator will provide the member with a slip log sequence number that must be entered on the DMV-349. This number will allow the slip log assignment and the collision reports filed to be compared to ensure all assigned collisions are investigated and reports filed.

Regardless of territorial jurisdiction, any member who initiates an investigation of a collision may not relinquish responsibility for completing the investigation or for filing criminal charges as appropriate without clear assurance that another law enforcement officer or agency has fully undertaken responsibility. In such cases he/she shall render reasonable assistance to the succeeding officer or agency if requested.

Members shall complete NC Crash Report (DMV-349) for each motor vehicle collision they are assigned to investigate or which they discover while on patrol that results in any personal injury or property damage of $1,000 or more. Members shall indicate non-reportable on the DMV-349 for collisions that do not involve personal injury and involve less than $1,000 total property damage. Non-reportable (DMV-349) reports shall be filed in the district office. Members shall submit the DMV-349 to the district office immediately after completing the investigation. Members must complete forms HP-49A (Collision Scene Measurements) and HP-326A (Voluntary Statement) from drivers and witnesses on all collisions except animal collisions that involve property damage only. These forms shall be retained by the investigating member and shall be available when requested by a District Supervisor. Members shall complete the HP-49 (Collision Investigation Checklist) along with all the applicable forms listed on the HP-49 when the collision involves a fatality (F), serious injury (PI), or a hit and run in which the driver remains unidentified and results in any personal injury.

Hit and Run Collisions

- Hit and Run collisions involving a fatality or serious personal injury represent an especially high priority and every reasonable effort shall be made to locate the unidentified driver. Upon being notified of such a collision the supervisor of the investigating member shall as soon as practical notify and consult with the Collision Reconstruction Unit Duty Officer. A Collision Reconstruction Unit Supervisor will ensure an on site review of the investigation is conducted by a Collision Reconstruction Unit investigator within 48 hours to determine if further investigative measures are necessary.

- As such, the investigative file (HP-49) and all evidence recovered during the investigation shall be retained until such time as the unidentified operator involved in the collision is located and all criminal and civil court proceedings are completed. (Note: this includes all photographs, videos, and digital recordings).

- The District First Sergeant shall ensure that the investigative file (HP-49) for each hit and run collision involving a fatality is reviewed annually during the month of August to determine if any new information leading to the identification of the unknown driver is available. A separate file for hit and run fatal collisions shall be maintained as directed by the filing guide. This annual review will continue until after three (3) years from date of incident or at such time as the driver is identified and all criminal and civil court proceedings are complete. At such time the file will become inactive.

- During the annual review of the investigative file (HP-49), the supervisor conducting the review shall compose a detailed memorandum containing all additional steps taken or information received to identify the unknown driver in the form of a memorandum. The memorandum outlining steps taken must be placed in the HP-49 file upon completion.

- The supervisor conducting the review may consider taking, but is not limited, to the following steps to gather additional information by:

    - Re-interviewing witnesses and family members.

    - Contacting media (TV, Radio, Newspapers).

    - Having the Collision Reconstruction Unit re-exam the investigative file.

Animal Collisions

- When submitting an Animal Collision report, the full DMV-349 will be used with the exception of the diagram, unless a fatality(s) or personal injury(s) occur.

All burned vehicles, not the result of a collision, shall be reported as follows:

- If a motor vehicle is in transport (motor vehicle in motion) and a fire starts in the motor vehicle, it is considered a non-collision crash. Therefore, if the motor vehicle was in transport on a roadway and the fire resulted in a fatality, personal injury, or property damage of $1,000 or more, a (**reportable DMV-349**) shall be filed.

- If a motor vehicle is in transport (motor vehicle in motion) and a fire starts in the motor vehicle, it is considered a non-collision crash. Therefore, if the motor vehicle was in transport on a roadway and the fire resulted in property damage of less than $1,000 and had no fatality or personal injury, a (**non-reportable DMV-349**) shall be filed.

- If a motor vehicle was not in transport and off the roadway at the time a fire started, a (**non-reportable DMV-349**) shall be filed regardless of the amount of property damage, personal injury, or fatality.

When an unsafe highway condition exists as a result of a motor vehicle collision, the investigator will immediately take necessary action to ensure that highway users are placed on notice and protected. Corrective measures may include replacing of highway signs, notifying the local North Carolina Department of Transportation engineer, and placing emergency flares. The investigator will ensure that a CARS tag is affixed to any damaged guardrail, cable barrier, road sign, etc., if applicable. A Highway Condition Report (HP-320) will be completed and submitted to the District First Sergeant. The District First Sergeant will ensure the HP-320 is promptly entered into the Department of Transportation's Citizens Action Request System (CARS) and routed as required to ensure necessary follow-up. The vehicle owner's name, address, and insurance company (where available) will be included in the State Property section of the form for all collisions involving damage to State-owned property.

Supplemental motor vehicle collision reports must be submitted when:

- The original report was incomplete because of lack of information or an incomplete investigation.

- A correction in the original report is necessary because of inaccurate information.

- If a person dies of injuries sustained in a motor vehicle collision within one year of the collision, a supplemental DMV-349 must be completed and filed. The narrative of the supplemental DMV-349 shall contain the date of death. <u>If applicable, the District First Sergeant shall ensure that Forensic Advantage is notified via email that the case involves a fatality.</u>

Supplemental reports shall be completed within 30 days of being notified of the change on a DMV-349 and shall include the date, time, day of the week, and

location of the collision as well as the names of the drivers (or the names of owners if names of drivers were not shown on the **original report**). The additional information or correction to be made shall be included. The Supplementary Report block at the top left-hand corner shall be marked to indicate the status of the report. Supplemental reports shall be **attached to a copy of the original report** and forwarded in the same manner as original reports.

Reporting Motor Vehicle Collisions in Construction Zones

- **Construction Zone.** A section on a public highway right-of-way within which the DOT, public utilities, or private contractors are performing some construction or maintenance which may affect highway users and necessitates advisory sign or motor vehicle control.

- When a member investigates a collision in a construction zone in which the construction zone conditions contributed to the collision, the member shall immediately notify the Communications Center. The Telecommunicator receiving the report shall immediately relay all reported information to the appropriate DOT district engineer's office.

- Whenever a member investigates a motor vehicle collision occurring in a highway construction zone, the member shall forward a copy of the DMV-349 without delay to:

NC Department of Transportation
Chief Engineer of Operations
1503 Mail Service Center
Raleigh, NC 27699-1503

III. COLLISION INVOLVING A FATALITY OR CRITICAL INJURY

A member assigned to a collision shall notify the supervisor on duty when one or more persons are killed or critically injured or when it appears likely that felony charges may arise as a result of the collision. If felony charges are likely the supervisor shall be responsible to ensure a thorough investigation is conducted, including the immediate response of the Collision Reconstruction Unit as outlined in Directive L.03. The primary district investigator **shall** request a blood sample from any driver charged with any of the implied consent offenses set out in G.S. 20-141.4, including Misdemeanor Death by Vehicle. However, if the driver submits to a breath sample and the sample shows an alcohol concentration of .08 or more, then requesting a blood sample shall be in the discretion of the member. If a person is charged with any of the offenses in G.S. 20-141.4, other than Misdemeanor Death by Vehicle, and refuses to submit to a blood test, the member shall seek a search warrant for blood. If a person is charged with Misdemeanor Death by Vehicle (i.e. there is no probable cause to believe the person is impaired) and refuses to submit to a blood test, the member shall **not**

seek a search warrant for blood but the refusal shall be treated as an implied consent refusal pursuant to G.S. 20-16.2(d1).

In all fatal or critical injury collisions, video and/or still photographs shall be taken of the interior and exterior of vehicles, skid marks, gouge marks and other relevant aspects of the collision scene. Vehicles involved in serious or fatal collisions should be secured as evidence if warranted. If more than one vehicle is secured as evidence, the vehicles shall be secured at the same location, when possible. Vehicles with supported Event Data Recorders (EDR) shall be imaged by a field level reconstructionist, certified as an EDR technician (EDT Training Code). Fatal collisions involving a single vehicle that do not result in injury or death to a third party are not required to be imaged.

All EDR Image Portable Document Format (.PDF) files shall be stored using the following procedures:

- EDR image files shall be transferred directly to a new, Read-Only media format (CD-R). The file name for the CD-R shall match that of the SHP sequence number. This disc shall be considered the Archived Digital Recordings (ADR) of the image and shall be stored in the primary member's HP-49 investigation folder.

- The Archive Digital Recordings disc, and disc case or sleeve shall be labeled to reflect the following information

    - Crash sequence number

    - Date image was taken

    - Location of the scene/address, and

    - Name and initials of the member taking the image

- Labels shall be written on the CD-R with a CD marker (not a Sharpie)

If the investigation requires EDR data interpretation, a request shall be made through the chain-of-command to the Troop I Commander. This request shall be forwarded to the Collision Reconstruction Unit First Sergeant or his designee for EDR analyst assignment. (Requires HP-49 Change see HP-49 w EDR Info.dotx)

In non-fatal/critical injury collisions, if the primary district investigator suspects the operator of driving while impaired or other especially reckless conduct that result in felony charges the notified supervisor shall determine if a Collision Reconstruction Unit investigator will assist in the investigation and prosecution of the offender. If a Collision Reconstruction investigator is not immediately available, one shall be assigned as soon as possible.

The Collision Reconstruction investigator assigned shall have the authority to request additional investigation resources when needed. The notified supervisor

directing the investigation shall assist the Collision Reconstruction Unit as necessary to secure additional resources.

All other collision special assistance should be handled by a troop level Field Reconstructionist assigned to that troop as outlined in Directive L.03.

Criminal charges for any fatality shall be filed after consultation with the District Attorney or based upon any existing standing policy.

Fatality or Serious Bodily Injury Collisions Involving Underage Alcohol Use

- Any member assigned to investigate a motor vehicle collision that involves fatality or serious bodily injury, where there is alcohol involved, and the driver and/or passenger(s) is underage and suspected of possessing or consuming alcohol, shall notify Alcohol Law Enforcement (ALE) immediately.

- The primary district investigator shall contact the appropriate Communications Center and request an on-duty/call ALE Agent, and request that he/she report to the scene of the collision for the purpose of conducting a separate investigation. The requesting member shall make every effort to secure and preserve all evidence relating to the underage possession/consumption of alcohol.

IV. NOTIFYING RELATIVES OF COLLISION VICTIMS

Investigating members shall notify the nearest relative of deceased collision victims without delay. Notification may be made by other officials or by medical personnel; however, the primary district investigating member should make certain that proper notification is made in each instance.

- Members must be tactful in delivering the message. If possible, a friend of the person receiving the message should be present.

- Messages should not be delivered by telephone unless all efforts to deliver the message in person have failed.

- Messages shall not be delivered to young children or to domestic help.

- Members shall give relatives information concerning the location of the victim, where the collision took place, and the location of the vehicle.

- Members shall offer to assist the person receiving the message in any practical way.

- Members shall use extreme caution in notifying relatives or in releasing names of deceased persons before positive identification of the deceased person is made.

Members shall make a reasonable effort to notify a relative or a friend of a person hospitalized due to injuries received in motor vehicle collisions if the injured person is unable to do so.

The above listed procedures shall also be considered when delivering requests for next of kin or emergency notifications that are initiated by other agencies. This should ensure that the requests are carried out promptly and in a considerate manner.

V. IDENTIFICATION CREDENTIALS OF COLLISION VICTIMS

Any driver's license or credentials identifying a collision victim as an organ donor or as having a medical problem requiring special attention should be left in the victim's possession when being transported to a hospital.

VI. ROUTING AND REVIEW OF COLLISION REPORTS

Electronic Submission

Members shall electronically transmit the DMV-349 to the server for review by district supervisor(s) immediately after completing an investigation. A supplementary report shall be completed and filed if required.

Supervisors will sign into the e-Crash server to review transmitted reports at least one time prior to the end of their shift. All reports approved by the supervisor shall be transmitted to DMV immediately. All reports, rejected by the supervisor, will appear in the trooper's status list with a status of "Rejected (Sup)." The rejected report will include complete comments as to the reason for rejection. The trooper will make the required corrections to the report and re-transmit the report to the Supervisors' queue on the e-Crash server. The District Supervisor shall ensure all DMV-349s are accurate and submitted promptly.

Written Submission

Members shall submit the original copy of the DMV-349 to the district office immediately after completing an investigation. The investigating member shall complete the collision diagram and sign the report. A supplementary report shall be completed and filed if required.

All DMV-349s and HP-49 packets, if applicable, will be reviewed by a district supervisor and initialed on the back, bottom right hand corner. Incomplete or inaccurate reports will be returned to the member for correction. The District Supervisor shall ensure all DMV-349s are accurate and submitted promptly to NC DMV.

VII. INVESTIGATION OF FATAL SCHOOL BUS COLLISION

A member shall immediately notify his/her First Sergeant when he/she investigates a school bus collision where occupant(s) is fatally injured or where

occupant(s) is injured so critically that death seems imminent. The scene supervisor shall contact the Collision Reconstruction Unit through the chain-of-command and is assigned to assist with the investigation of these collisions. The District Supervisor shall immediately initiate a direct telephone call to:

The National Response Center
(800) 424-8802 or (800) 424-8803
Washington, DC

and report the following information:

- Date, time, location, distance, and direction from nearest town
- Number and location of critically injured and deceased person(s)
- Type of collision (bus, car, single vehicle, fixed object, other), make, model, year, and body manufacturer of school bus
- Extent of property damage
- Name of investigating member, duty station, telephone number, and supervisor's name and telephone number

The primary district investigator shall not hold the scene of a fatal school bus collision for the arrival of the federal investigation team; however, the First Sergeant shall upon request provide all reasonable assistance to any investigation team assigned to investigate a selected fatal school bus collision.

VIII. NOTIFYING THE FEDERAL HIGHWAY ADMINISTRATION OF MAJOR HIGHWAY COLLISIONS OR INCIDENTS

According to the procedure set forth below, the Highway Patrol shall notify representatives of the FHWA, Region Four, Raleigh, when any of the following major catastrophic types of collisions or incidents occur.

- Collisions/incidents causing multiple fatalities, numerous injuries, or significant property damage involving fire, explosion, or the release of hazardous materials which necessitates the evacuation of the immediate area and the closing of roads, streets, or highways
- Highway collisions/incidents involving the deaths of ten or more persons
- Any collisions/incidents involving school buses which result in fatalities and/or disabling injuries whether or not occurring on the school bus
- Any incidents causing significant damage or closure over eight hours to a major highway or bridge facility such as an Interstate or principle arterial road, except for closures involving maintenance, construction, etc. where the public

has been notified in advance via newspaper, radio, or television announcements

- Any incidents causing major damage to highway facilities

- Bridge failures or closures (specify if the closure resulted from bridge inspections)

- Chain reaction collisions/incidents involving 20 or more vehicles regardless of the fatalities, injuries, or highway closure

- Any major traffic alteration due to an evacuation or natural or manmade disaster

- Any collision/incident resulting in death or serious injury of a prominent individual such as a member of Congress, senior Executive Branch or military official, diplomatic dignitary, or other major public figure

When any of the preceding events occur, the investigating member in charge shall report the collision/incident to the appropriate Communications Center for relay to the Communications Center in Raleigh. The report is to include a narrative description of the event, casualties, scope of highway stoppage, or estimated dollar value of damage, and location and general description of the roadway (i.e. urban; suburban; rural; straight, level; hilly two-lane; four-lane; divided; etc.).

The Communications Center in Raleigh shall make necessary notifications as outlined in Directive 9 of the *Telecommunications Manual*.

IX. REPORTING MOTOR VEHICLE COLLISIONS INVOLVING MEAT OR POULTRY PRODUCTS

In cooperation with the United States Department of Agriculture and in an effort to reduce the possibility of contaminated meat and poultry products being offered to the general public, members shall report motor vehicle collisions involving meat or poultry products, using the following procedure:

- When a motor vehicle collision occurs involving a commercial transporter of meat or poultry products, members shall notify their troop Communications Center, which shall notify the Raleigh Communications Center. Members shall report the location of the collision, the carrier, and the type of product involved.

- The Raleigh Communications Center shall make necessary notifications as outlined in Directive 9 of the *Telecommunications Manual*.

X. REPORTING COLLISIONS INVOLVING ANY FOOD, DRUG, OR COSMETIC

The Food and Drug Protection Division of the North Carolina Department of Agriculture is charged with enforcing the North Carolina Food, Drug, and Cosmetic Act. Part of its responsibility is to respond to collisions and disasters where any food, drug, or cosmetic may have become distressed.

When a collision or disaster occurs involving food, drug, or cosmetic, members shall notify their troop Communications Center which shall notify the Raleigh Communications Center. Members shall report the location of the collision, the carrier, and type of product involved.

The Raleigh Communications Center shall make necessary notifications as outlined in Directive 9 of the *Telecommunications Manual*.

XI. COLLISIONS INVOLVING TRANSPORTED LIVE/DEAD ANIMALS AND POULTRY

The North Carolina Department of Agriculture, Veterinary Division is charged with enforcing the North Carolina Food, Drug, and Cosmetic Act. Part of its responsibility is to respond to collisions and disasters where the transportation of live or dead animals or poultry are involved.

When a collision or disaster occurs involving live or dead animals or poultry, members shall notify their respective Troop Communications Center which shall notify the Raleigh Communications Center. Members shall report the location of the collision, the carrier, and type of product involved.

The Raleigh Communications Center shall make necessary notifications as outlined in Directive 9 of the *Telecommunications Manual*.

XI. ASSISTING CIVILIAN INVESTIGATORS IN MOTOR VEHICLE COLLISION INVESTIGATION

Members may return to the scene of a collision to assist interested persons with investigations. Members shall only provide a factual description of the scene and shall not express any opinion as to the reason for the collision or as to the fault of any person involved in the collision.

Members may return to collision scenes to assist the District Attorney with the investigation of criminal cases.

Patrol Vehicle Collision / Incident / P.I.T.

Directive L.02

Applicable to: Members

Revised 11/13/2020
Effective 03/01/2016

I. POLICY

This policy designates the responsibilities to the supervisor and the member involved in a Patrol vehicle collision / incident / P.I.T.

II. DUTIES OF INVOLVED MEMBER

Any member involved in a traffic collision while driving a State-owned vehicle shall, as quickly as possible, notify a supervisor of the district in which the collision occurs, or other appropriate supervisor and advise the specific location, the extent of injuries, and the extent of property damage. If possible, involved members shall obtain:

- Names, addresses, and driver's license numbers of other drivers
- Other vehicle identification numbers, license plate numbers, and names of vehicle owners
- Names of other drivers' insurance companies and policy numbers
- Names and addresses of all witnesses

If the collision or P.I.T occurs during a chase, the member shall complete a Post Chase Report in accordance with Directive B.02 and/or Directive B.03.

III. DUTIES OF INVESTIGATOR

The appropriate first-level supervisor shall investigate all Patrol vehicle collisions occurring within their respective districts. The appropriate first-level supervisor shall submit form HP-351 (Supervisor Notification of Member Involved Incident (24 Hours)) via e-mail within twenty-four (24) hours of the Patrol Vehicle collision, incident, or P.I.T. according to the HP-351 instructions. The appropriate first-level supervisor shall e-mail a copy of the HP-351 "To:" the appropriate Unit/Troop Headquarters and "Cc:" Patrol Vehicle Collision-Incident Committee Liaison for informational and tracking purposes.

Reporting supervisors shall refer any requests to accept or deny liability to the General Counsel's Office to ensure consistency with existing facts and law. District supervisors shall not agree to accept liability for a patrol vehicle collision.

The investigator shall conduct an investigation and complete the required collision report on the NC Crash Report (DMV-349).

The investigator shall conduct a more detailed investigation to obtain information not recorded on NC Crash Report (DMV-349). This information is recorded on a

Report of Investigation (HP-721A) and documented on a Vehicle Accident/Incident Report in BlueTeam for internal management purposes. Exception to a HP-721A is permissible for non-domesticated animal collisions. The investigator shall complete only the following; Supervisor Notification of Member Involved Incident (HP-351, to be submitted within 24 hours), NC Crash Report Form (DMV-349), Member's Statement (HP-326B1), and Estimate of Vehicle Repair Costs (CL-36) for proper submission into BlueTeam. The investigator shall immediately arrange to have damaged State-owned vehicles removed to the nearest reliable garage if the vehicle(s) are not drivable. Patrol garages shall be used when practical. Damaged Patrol vehicles shall not be driven unless the damage is minor.

The appropriate first-level supervisor shall ensure that a Report of Investigation (HP-721A) is completed and documented on a Vehicle Accident/Incident Report in BlueTeam for internal management purposes. The appropriate first-level supervisor shall ensure that a preventable collision is documented on a NCVIP and HR-562 unless the collision involves a fatality or serious personal injury. For collisions that involve a fatality or serious personal injury, the Unit Commander of Internal Affairs will be notified and determine if policy violations may exist and classify those potential violations as deemed appropriate. (Refer to Policy Directive H.02).

When the investigation is completed, the First Sergeant or appropriate second-level supervisor shall review the investigation and confer with the investigating member. The First Sergeant or appropriate second-level supervisor that conferred with the investigating member's decision shall be documented on the HP-721A. The First Sergeant or appropriate second-level supervisor forwards the approved, completed report, with attachments to the Unit/Troop Supervisor or Section Director (third-level review) for his/her review, no later than thirty (30) calendar days of the occurrence via the Vehicle Accident/Incident Report in BlueTeam. The Unit/Troop Supervisor or Section Director (third-level review), shall confer with the Unit Commander of Internal Affairs or their designee to make sure no further discipline is necessary. The Unit/Troop Supervisor or Section Director (third-level review) shall then forward the BlueTeam report within forty-five (45) calendar days of the incident "To:" the Chairman of the PVCIC Board for review, and "Cc:" PVCIC-Board Members, unless an extension was granted by the Chairman of the PVCIC Board.

- In cases involving a SBI investigation or Internal Affairs investigation, the PVCIC Board will review the BlueTeam report for accuracy and training purposes only.

- In the event a video(s) or audio of the occurrence exists, the supervisor will label the video(s) or audio file as the sequence number to include the members rank, first and middle initial(s) with last name (e.g. 170725001CA Trp. J K Smith). Upload the video(s) or audio file within 30 days of the incident at the following address:

  - G:\BlueTeam Videos\Uploads\Respective Troop\District.

- The appropriate District First Sergeant will manage the authorized Troop/District video(s) or audio file on the G Drive and delete the uploaded file four (4) months after the occurrence date of the incident.

- Supervisors shall indicate the video(s) or audio has been reviewed in the "Comment" section of the BlueTeam submission process. If no video(s) or audio exists, then an explanation shall be documented in the "Comment" section of the BlueTeam submission process. Attach a copy of the CL-29 if applicable.

- Should the initial BlueTeam report be sent to the PVCIC Board later than the forty-five (45) calendar day deadline, but before sixty (60) calendar days, then a detailed explanation describing the reason the report is late in the form of an email shall be sent to the Chairman of the PVCIC Board.

- Should the initial BlueTeam report be sent to the PVCIC Board later than sixty (60) days, then documentation in the form of NCVIP and HR562 (Documented Counseling Session) detailing the reason the report is late and that this discrepancy has been documented shall be emailed to the Chairman of the PVCIC Board by the Unit/Troop Supervisor or Section Director (third-level review), unless an extension was granted by the Chairman of the PVCIC Board. **These unrelated documents to the collision/incident shall not be attached to the submitted BlueTeam Report.**

- The appropriate supervisor will manage the authorized Troop/District video(s) or audio file on the G Drive and delete the uploaded file four (4) months after the occurrence date of the incident.

If the member is involved in a serious PI or fatal crash, the appropriate first-level supervisor shall ensure the following steps are taken:

- Notify the Collision Reconstruction Unit (CRU) is notified as soon as possible to travel to the scene. The Collision Reconstruction Unit will be responsible for completing the collision investigation including the DMV-349.

- For purposes of this section, Serious Injury is defined as an injury, other than fatal, which results in one or more of the following: Severe laceration resulting in exposure of underlying tissue/muscle/organ or resulting in significant loss of blood; broken or distorted extremities (arm or leg); crush injuries; suspected skull, chest, or abdominal injury other than bruises or minor lacerations; significant burns (second- and third-degree burns over 10 percent or more of the body); unconsciousness when taken from the crash scene.

- If the patrol vehicle is equipped with a video recording camera, ensure the camera hard drive is secured and the Collision Reconstruction Unit (CRU) is notified

- Remove the MDC from the involved member's patrol vehicle and remove the battery to preserve any time stamps

- Complete an HP-52 for Safe Keeping

- Notify the Collision Reconstruction Unit (CRU) so a copy of the hard drive can be made, and the MDC can be returned to the member

- After a copy has been made, the original hard drive shall be stored in the district office's permanent storage locker under Safe Keeping, ensuring chain of custody and preservation of any relevant data

A supervisor shall order a member to take an alcohol/drug test to eliminate the possibility that drug use affected the member's actions or judgment in any case where the member:

- Is involved in a fatal vehicle collision

- Is involved in a vehicle collision which results in serious bodily injury

IV. PATROL VEHICLE INCIDENT

Unintentional Damage

- A member who has damage to his/her assigned Patrol vehicle that does not involve a collision, shall immediately notify his/her supervisor of such damage.

- The appropriate first-level supervisor shall conduct an investigation to determine the extent of the damage, the cost of repair, and the circumstances under which the damage occurred. The investigative results shall be reported as a Patrol Vehicle Incident on a HP-721A, and the supervisor shall complete a Vehicle Accident/Incident Report in BlueTeam.

Upon completion of the investigation, the First Sergeant or appropriate second-level supervisor shall review the investigation and confer with the investigating member. The First Sergeant or appropriate second-level supervisor that conferred with the investigating member's decision shall be documented on the HP-721A. The First Sergeant or appropriate second-level supervisor forwards the approved, completed report, with attachments to the Unit/Troop Supervisor or Section Director (third-level review), no later than thirty (30) calendar days of the occurrence via the Vehicle Accident/Incident Report in BlueTeam. The Unit/Troop Supervisor or Section Director (third-level review) shall then forward the BlueTeam report within forty-five (45) calendar days of the incident "To:" the Chairman of the PVCIC Board for review, and "Cc:" PVCIC-Board Members.

- In the event a video(s) or audio of the occurrence exists, the supervisor will label the video(s) or audio file as the sequence number to include the members rank- first and middle initial(s) with last name (e.g. 170725001CA Trp. J K Smith). Upload the video file within 30 calendar days of the incident at this address:

  - G:\BlueTeam Videos\Uploads\Respective Troop\District.

  - The appropriate supervisor will manage the authorized Troop/District video(s) or audio file on the G Drive and delete the uploaded file four (4) months after the occurrence date of the incident.

  - Supervisors shall indicate the video has been reviewed in the "Comment" section of the BlueTeam submission process. If no video(s) or audio exists, then an explanation shall be documented in the "Comment" section of the BlueTeam submission process. Attach a copy of the CL-29 if applicable.

- Should the initial BlueTeam report be sent to the PVCIC Board later than the forty-five (45) calendar day deadline, but before sixty (60) calendar days, then a detailed explanation describing the reason the report is late in the form of an email shall be sent to the Chairman of the PVCIC Board.

- Should the initial BlueTeam report be sent to the PVCIC Board later than sixty (60) days, then documentation in the form of NCVIP and HR562 (Documented Counseling Session) detailing the reason the report is late and that this discrepancy has been documented shall be emailed to the Chairman of the PVCIC Board by the Unit/Troop Supervisor or Section Director (third-level review), unless an extension was granted by the Chairman of the PVCIC Board. **These unrelated documents to the collision/incident shall not be attached to the submitted BlueTeam Report.**

Intentional Damage

- Any member who has intentional damage to his/her Patrol Vehicle or any Patrol Equipment in the vehicle, caused by someone other then the member, shall notify his/her supervisor of such damage. The supervisor shall determine if restitution for the damage will be sought through the court system. The supervisor shall also ensure that the person(s) responsible for causing the damage has been charged with Damage to State Property. **(Damaged uniform equipment does not apply)**

The appropriate first-level supervisor shall conduct an investigation to determine the extent of the damage, the cost of repair or replacement, and the circumstances under which the damage occurred. The investigative results shall be reported as a Patrol Vehicle Incident on a HP-721A. Upon completion of the investigation, the First Sergeant or appropriate second-level supervisor shall review the investigation and confer with the investigating member. The First

Sergeant or second-level supervisor that conferred with the investigating member's decision shall be documented on the on the HP-721A. The First Sergeant or appropriate second-level supervisor forwards the approved, completed report, with attachments to the Unit/Troop Supervisor or Section Director (third-level review) for his/her review, no later than thirty (30) calendar days of the occurrence via the Vehicle Accident/Incident Report in BlueTeam. The Unit/Troop Supervisor or Section Director (third-level review) shall then forward the BlueTeam report within forty-five (45) calendar days of the incident "To:" the Chairman of the PVCIC Board for review, and "Cc:" PVCIC-Board Members.

- In the event a video(s) or audio of the occurrence exists, the supervisor will label the video(s) or audio file as the sequence number to include the members rank, first and middle initial(s) with last name (e.g. 170725001CA Trp. J K Smith). Upload the video(s) or audio file within 30 calendar days of the incident at this address:

  - G:\BlueTeam Videos\Uploads\Respective Troop\District.

  - The appropriate supervisor will manage the authorized Troop/District video(s) or audio file on the G Drive and delete the uploaded file four (4) months after the occurrence date of the incident.

  - Supervisors shall indicate the video has been reviewed in the "Comment" section of the BlueTeam submission process. If no video(s) or audio exists, then an explanation shall be documented in the "Comment" section of the BlueTeam submission process. Attach a copy of the CL-29 if applicable.

- Should the initial BlueTeam report be sent to the PVCIC Board later than the forty-five (45) calendar day deadline, but before sixty (60) calendar days, then a detailed explanation describing the reason the report is late in the form of an email shall be sent to the Chairman of the PVCIC Board.

- Should the initial BlueTeam report be sent to the PVCIC Board later than sixty (60) days, then documentation in the form of NCVIP and HR562 (Documented Counseling Session) detailing the reason the report is late and that this discrepancy has been documented shall be emailed to the Chairman of the PVCIC Board by the Unit/Troop Supervisor or Section Director (third-level review), unless an extension was granted by the Chairman of the PVCIC Board. **These unrelated documents to the collision/incident shall not be attached to the submitted BlueTeam Report.**

- The First Sergeant or appropriate second-level supervisor shall complete a Reimbursement of Damage to State Property Form (CL-38A) and add as an attachment to the completed HP-721A. The First Sergeant or appropriate second-level supervisor shall attach a copy of the CL-38A to a copy of the

citation charging Damage to State Property and distribute as indicated on the CL-38A instructions.

V. ADMINISTRATIVE REVIEW

The Unit/Troop Supervisor or Section Director (third-level review) shall consider any special circumstances in all Patrol vehicle collisions, incidents or P.I.T.'s. Upon review of the HP-721A and the Vehicle Accident/Incident Report, he/she shall make comments (Refer to Vehicle Collision/Incident Report BlueTeam Instructions) in the appropriate space in BlueTeam indicating their approval/disapproval of the recommendations. The Director of Field Operations makes comments regarding their approval/disapproval for collisions or incidents involving the rank of Unit/Troop Supervisor or Section Director or higher. If the reviewing Supervisor disapproves the recommendation, he/she shall state the reason(s) for disapproval in the comments section during the approval process in BlueTeam.

In the event a video(s) or audio of the occurrence exists, the Unit/Troop Supervisor or Section Director (third-level review) shall indicate comments (Refer to Vehicle Collision/Incident Report BlueTeam Instructions) in the "Comment" Section of BlueTeam submission process that the video(s) or audio have been reviewed.

The designated Unit/Troop Supervisor or Section Director (third-level review) shall forward the report via BlueTeam, "To:" the Chairman of the Patrol Vehicle Collision/Incident Committee (PVCIC), and "Cc:" the PVCIC-Board Members distribution list within forty-five (45) calendar days of the date of the collision/incident. Due to the complexity of these types of investigations, an extension can be granted by contacting the Patrol Vehicle Collision-Incident Board Chairperson via chain of command. The extension should only be granted for substantiated reasons. (i.e. Recon Unit assisting, Serious Injury of a member, etc…). NOTE: Dissemination of these reports shall be completed within forty-five (45) calendar days of the date of occurrence, unless an extension is granted.

VI. ADMINISTRATIVE ACTIONS FOR PATROL VEHICLE COLLISIONS

Due to the risk factor involved in Patrol vehicle operation and the potential for Patrol vehicle collisions to occur during such operation, written warnings may be given upon approval from the Unit Commander of Internal Affairs or their designee.

Investigating members and reviewers should be certain the collision did not result from carelessness or intentional misuse of the Patrol vehicle. In that event, charges of personal conduct or more serious disciplinary actions may be appropriate. If a pattern of poor driving develops and improvement does not occur, the member may be required to attend the Precision Driving Course. If improvement still does not occur, progressive disciplinary action should be taken.

The Unit/Troop Supervisor or Section Director (third-level review) shall determine whether there is sufficient information to support the recommendation and shall take such action as may be deemed appropriate. If the Unit/Troop Supervisor or Section Director (third-level review) determines that the Patrol vehicle collision or incident was preventable, he/she shall consult with the Unit Commander of Internal Affairs or designee to determine the action to be taken (NCVIP, HR-562 or disciplinary action, if any). If the collision or incident involves the rank of Unit/Troop Supervisor or Section Director or higher, the Director of Field Operations shall make this determination and take such action as may be deemed appropriate.

The Director of Training or designee in conjunction with the Patrol Vehicle Collision-Incident Committee (PVCIC) shall maintain records as to frequency and causes of Patrol vehicle collisions and make recommendations for the reduction of collision frequency to the Commander's Office, with a copy to the Director of Field Operations and the Director of Support Services.

A member involved in a Patrol vehicle collision may be required to undergo medical examinations approved by the Commander's Office or designee.

Without exception, all Patrol personnel involved in a preventable Patrol vehicle collision and/or incident shall be required to undergo the appropriate driver training at either the Highway Patrol Training Academy, Troop/District level and/or undergo other administrative measures designed to improve his/her driving skills. A remedial drivers training instructional flowchart is located on the HP-721A instructions as a visual aid in the determination of proper remedial driver training for all preventable Patrol vehicle collisions.

This may apply at the discretion of the Unit/Troop Supervisor or Section Director (third-level review) even when the Patrol vehicle collision or incident is indicated as non-preventable and no disciplinary action is being taken.

When appropriate, disciplinary action shall be imposed in compliance with the Patrol's Disciplinary System and Rules of Personal Conduct and Job Performance. There is no need to complete a Personnel Complaint.

VII. REPAIRS TO PATROL VEHICLES

Patrol Vehicles shall be repaired at Patrol garages unless otherwise authorized by the Director of Support Services.

The Unit/Troop Supervisor or Section Director, and the Troop Garage Foreman must approve all repairs made before a release is signed.

The Director of Support Services is the sole authority to execute a release of an insurance carrier for the Patrol.

VIII. RECORD OF REIMBURSEMENT

District Responsibility

The appropriate first-level supervisor shall seek initial reimbursement for all Patrol vehicle collisions occurring within their respective districts. When a Patrol vehicle is damaged as a result of negligence by a non-member, reimbursement will be attempted by the appropriate first-level supervisor in the following manner:

- Document each attempt for reimbursement in detail on the CL-38 (Patrol Vehicle Damage Reimbursement). He/She shall diligently seek reimbursement at least once every (30) thirty days for a period of (90) ninety days from the date of the collision. If reimbursement has not been obtained in ninety (90) days, the CL-38 shall immediately be forwarded to the Unit Commander of Logistics or his/her designee.

- Contact the responsible insurance company, by telephone, and request reimbursement for damage be paid directly to the State. Insurance settlement checks shall be made payable to the North Carolina Department of Public Safety. The reimbursement should include the amount listed on the CL-36 (Estimate of Vehicle Repair Cost) and **any additional equipment damage as indicated on the HP-721A** (Report of Investigation) and/or SBI-78 (State Property Incident Report). The CL-36, DMV 349, and additional equipment damaged (if applicable) should be faxed to the insurance company at the time of the request. If the insurance company agrees to make reimbursement, the appropriate first-level supervisor shall instruct the insurance company to forward the settlement check to the district office. The settlement check and CL-38 shall then be forwarded directly to the Unit Commander of Logistics or designee.

- **Note:** Private Sector estimate of damages may exceed the amount listed on the CL-36. In these cases, the appropriate first-level supervisor should accept this payment and forward to the Unit Commander of Logistics or designee.

- At **no time** will the appropriate first-level supervisor enter into negotiations for settlement of damages. If an insurance company requests a negotiated settlement, the appropriate first-level supervisor will document this information on the CL-38 and forward it immediately to the Unit Commander of Logistics or designee.

- At no time will the appropriate first-level supervisor enter into any agreement related to personal injury

- At any time during the ninety (90) day period the insurance company denies responsibility or refuses to make reimbursement for total damages, the appropriate first-level supervisor shall document this information in detail on the CL-38 and immediately forward the CL-38 to the Unit Commander of Logistics or designee

- If a CL-38A/CL-38B has been completed, it is the responsibility of the appropriate first-level supervisor to track reimbursement through the courts until the case is closed or for three (3) years and (1) month from the date of offense. The appropriate first-level supervisor will then document this information on the CL-38 and forward it to the Unit Commander of Logistics or their designee.

- If the CL-36 (Estimate of Vehicle Repair Cost) indicates the Patrol vehicle is a "Total Loss" the appropriate first-level supervisor will not be required to attempt reimbursement. He/She shall document this on the CL-38 and immediately forward the CL-38 to the Unit Commander of Logistics or designee.

- A copy of all CL-38s must be maintained according to the District Filing Guide

Logistics Responsibility

The Unit Commander of Logistics or designee shall be responsible for seeking reimbursement in all cases where reimbursement was not, or could not, be achieved at the district level.

Upon receipt of a CL-38 indicating reimbursement was denied, the Unit Commander of Logistics or his/her designee shall contact the responsible insurance company, by telephone, and request reimbursement. He/She shall also, regardless of whether reimbursement is agreed upon, forward a written notification letter to the insurance company. The notification letter will advise the insurance company that they have (30) thirty days to make full reimbursement and if reimbursement is not received, all documents related to the reimbursement claim will be forwarded to the Highway Patrol's Legal Section for the appropriate action.

The Highway Patrol's Legal Section, in consultation with the Commander's Office, will determine the appropriate response to all unresolved pending Patrol vehicle reimbursements.

The Unit Commander of Logistics shall maintain records pertaining to monetary damages to Patrol property.

IX. STATE FLEET AUTOMOBILE LIABILITY

The web-based reporting system listed below is a system that all State Agencies must comply with. The term "Supervisor" in this system does NOT apply to our Patrol Supervisors. The Patrol Supervisors are merely entering the data into the web-based system.

Members investigating any collision involving a State-owned vehicle assigned to the Patrol, shall notify The North Carolina Association of Insurance within forty-eight (48) hours of occurrence in a manner dictated by the following descriptions.

When a collision occurs, the investigating supervisor shall report a claim using the following procedure; except for the following collisions:

1. There is no third-party property damage, no third-party injuries, and no passengers in the Patrol Vehicle (Uniformed Patrol passengers are exempt).

2. The collision involves a deer or any type of wild, non-domesticated animal or other debris (roadway hazards).

- Navigate to the North Carolina Auto Claims System Website at https://autoweb.ncaia.com

- The user I.D. is the member's email e.g. (first.last@ncshp.org)

- The password is case sensitive – Ncshpxxxx! (xxxx=Registry Number)

The investigating supervisor shall be prepared to provide the following information listed below;

- Accident Location; City, County and State.
- Date and time of accident
- Reporting members' work telephone and work e-mail address.
- Driver's Name address and Operator's License Number
- State Owned Vehicle information (Make, Model and VIN.)
- If applicable, Other Driver's Information
- If applicable, any other property damage involved (include property owner's information)
- Up to (3) three entries for any passenger injuries or other personal injuries resulting from crash.
- Name of Investigating Officer and Agency
- Names and Addresses of any known witnesses.

A Traveler's adjustor will contact the reporting supervisor within (2) two business days after the claim has been submitted electronically.

X. HIGHWAY PATROL DRIVING FACILITY

The Division of Motor Vehicles (DMV) has classified the Patrol Driving Facility in the same category as the Charlotte Motor Speedway, a driving facility not open to the general public, thereby relieving the Highway Patrol from the obligation of submitting a DMV-349 to DMV.

Collisions occurring at the Highway Patrol Driving Facility will be investigated in a manner similar to that set out in this directive with the following exceptions:

- The HP-721A shall be completed for internal use only, and be considered a training incident. The HP-721A must have a diagram of the collision attached when the report is submitted.

- This provision applies to designated training vehicles used for driver training at the Patrol Driving Facility only. In addition, this only applies to collisions occurring within the confines of the Patrol Driving Facility.

- Upon completion of the investigation, the investigator shall prepare a memorandum directed to the Training Academy Executive Officer, in which he/she shall identify the causes of the incident and recommend administrative action.

- After the Executive Officer has reviewed the report of investigation, he/she shall prepare a memorandum directed to the Director of Training in which he/she shall summarize his/her conclusions as to incident causes and recommendation of administrative action.

- The Director of Training or designee shall review Reports of Investigation and cover memorandums to determine if proper recommendation of administrative action was taken by subordinate supervisors and shall make any additional recommendation he/she may deem necessary. The Director of Training will inform the Director of Support Services of the incident and provide him/her with a copy of the Report of Investigation if needed.

XI. PATROL VEHICLE COLLISION-INCIDENT COMMITTEE (PVCIC)

Following a member's involvement in a collision, incident or P.I.T., a Report of Investigation (HP-721A), report for non-domesticated animal collision or the required P.I.T. documents shall be completed by an appropriate first-level supervisor and submitted via the electronic format of BlueTeam protocols “To:” the Patrol Vehicle Collision-Incident Board Chairperson and “Cc:” PVCIC – Board Members distribution list within forty-five (45) days of the occurrence date. Only one report should be submitted per occurrence and routed via the BlueTeam protocol that will automatically track chain-of-command. Due to the complexity of these types of investigations, an extension can be granted by contacting the Patrol Vehicle Collision-Incident Board Chairperson via chain of command. The extension should only be granted for substantiated reasons. (i.e. Recon Unit assisting, Serious Injury of a member, etc…).

XII. PATROL VEHICLE COLLISION-INCIDENT COMMITTEE REVIEW AND CRITIQUE

All Reports of Investigations (HP-721A), Non-domesticated animal collisions, and P.I.T’s will be reviewed and analyzed based on entry into BlueTeam on a monthly basis by the Patrol Vehicle Collision-Incident Committee (PVCIC). The

PVCIC may request additional information and clarification on any HP-721A, Non-domesticated animal collision, or P.I.T. information supplied.

The Director of Professional Standards or designee will appoint the chairperson and members of the Board from the following sections for not more than two (2) years:

- One Captain or Higher Ranking Official (Serving as Chairperson)
- Internal Affairs – One Member
- Training Academy – One Member (PVCIC Board Liaison)
- Logistics Unit- One Member
- Legal Section – One staff attorney

The Patrol Vehicle Collision-Incident Committee shall submit a summary report of reviewed HP-721A(s), Non-domesticated animal reports, and P.I.T.'s to the Commander's Office and Director of Training on a yearly basis to make informed decisions on Training and Equipment needed to reduce the frequency of collisions amongst our members.

The PVCIC will identify trends and/or safe driving concerns for our members and will make recommendations for the development of Driver Training, Safety Equipment for Patrol Vehicles, In-service Training, and/or any other essential programs to ensure the safety of our members. The PVCIC was not developed to take the place of a Supervisory role for remediation or any disciplinary action that would be appropriately based on Policy and Procedures.

I. POLICY

This policy defines the function and responsibilities of the Collision Reconstruction Unit.

II. COLLISIONS TO BE INVESTIGATED

The Collision Reconstruction Unit (CRU) may be assigned to reconstruct any collision resulting in serious personal injury or fatality subject to felony charges (e.g. Alcohol or Drug induced collisions) at the discretion of the Troop I Commander

The Collision Reconstruction Unit shall be assigned to all collisions involving a Patrol vehicle resulting in serious personal injury or fatality and to all Trooper involved shootings in order to assist the SBI with evidence collection.

The CRU team completing a collision reconstruction report involving a Patrol vehicle, if at all possible, shall not be based in the same area as the Patrol member involved.

All other reconstruction requests must be approved by the Troop I Commander or his/her designee.

The primary district investigator assigned to investigate collisions meeting the above criteria shall immediately notify a supervisor and proceed with a collision investigation as defined in Directive L.01. The primary district investigator shall ensure evidence is preserved, witnesses are identified and interviewed, and shall be responsible for the completion of any required North Carolina Crash Report Forms (DMV-349), and shall make all charges.

When the notified supervisor determines that a collision/criminal case meets the above criteria, the supervisor shall contact the Troop OD. The Troop OD shall then make contact with the Troop I OD and the State OD. The notified supervisor shall direct the initial investigation until relieved by the Collision Reconstruction Unit member.

Once the Collision Reconstruction Unit member has made contact with the on-scene district supervisor, the following information shall be provided:

- Date, time, and location of the collision
- Crash situation including any circumstances which require immediate attention
- The number and type(s) of vehicles involved

- Suspected or confirmed hazardous material involvement (if possible the type material)

Reports of Investigation (HP-721A) will be the responsibility of a district supervisor for the County where the collision occurred.

III. AT-SCENE COLLISION INVESTIGATIONS

When a member of the Collision Reconstruction Unit is responding to conduct an on-scene investigation as directed by subsection II, the district supervisor, prior to the arrival of the Collision Reconstruction Unit member shall:

- Ensure a thorough and complete investigation is being conducted. This includes, but is not limited to:
    - Obtain detailed written or recorded statements from all witnesses and participants
    - Mark on-scene physical evidence and complete field sketch
    - Document and collect evidence
    - Photograph and sufficiently document the entire collision scene, vehicle involved, physical evidence, before-during-after collision indicators, area of impact, and other relevant aspects of the collision.
- It is imperative that the on-scene investigator/supervisor establishes a perimeter around the crash scene and designates a single entrance/exit point. A member must be designated to monitor personnel authorized to enter the perimeter. Persons authorized in the perimeter should be limited to EMS personnel attending to the needs of the injured, fire personnel needed to extinguish a fire and assist with extrication of victims and Patrol personnel needed to investigate the scene. Non-essential personnel should not be allowed to enter the crash scene perimeter. A list of persons entering the perimeter should be maintained.
- The Collision Reconstruction Unit investigator at the scene shall assume all duties as the on-scene coordinator and be responsible for directing the investigation. District Supervisors will provide the Collision Reconstruction Unit investigator (s) with sufficient resources to conduct the reconstruction.

IV. OTHER COLLISION RECONSTRUCTION REQUESTS

Collisions not included in subsection II of this policy, needing special assistance from a certified reconstructionist, should be assigned to a Field Reconstructionist. If the investigation exceeds the capability of a Field Reconstructionist, the Collision Reconstruction Unit may be assigned to provide special assistance with collision investigations requested through the proper chain-of-command.

Assignment of Collision Reconstruction Unit investigators will be made at the discretion of the Troop I Commander or his/her designee. Prior to making the request it must be determined by the requesting Troop Commander or his/her designee that the assistance needed exceeds the capabilities of the investigating member, Troop Field Reconstructionist, or supervisor.

- During normal duty hours (0800-1700), on-scene investigation requests shall be made to the Troop I Commander or his/her designee through the appropriate chain-of-command. After normal duty hours requests will be made through the chain-of-command to the Troop I OD.

- Requests for post collision reconstruction from within the Patrol shall be made through the chain-of-command to the Troop I Commander. The request shall be forwarded to the Collision Reconstruction Unit First Sergeant or his/her designee who will review the request and make a recommendation to the Troop I Commander.

- Requests from outside the Patrol shall be directed through the chain-of-command to the Troop I Commander. The Collision Reconstruction Unit First Sergeant will review the request and make a recommendation regarding the reconstruction request to the Troop I Commander.

Reconstruction assistance will be classified as:

- Consultation (Assessment) – render advice regarding collision issue(s).

- Single Issue Reconstruction – addresses a single issue or question.

- Limited Reconstruction – reconstruction addresses multiple issues or questions.

- Comprehensive Reconstruction – all aspects of the investigation/ reconstruction are conducted.

V. POST CRASH RECONSTRUCTION

The Collision Reconstruction Unit First Sergeant will determine the special assistance needed to support the requestor and forward his recommendation to the Troop I Commander or his/her designee. If approved, a date, time and location for an initial briefing with the assigned reconstructionist, initial investigating member, and others deemed appropriate will be arranged by the requesting District First Sergeant. The member who conducted the initial investigation shall be assigned a work schedule that will allow him/her to be accessible to the Unit Reconstructionist.

VI. RECONSTRUCTION REPORTS

A written report will be generated for single issue, limited and comprehensive reconstructions. The Reconstruction Unit First Sergeant will be responsible for

approving all reports prior to releasing the results outside the Unit. Reports will be maintained by the Collision Reconstruction Unit.

Requests for copies of completed reports must be made in writing to the Collision Reconstruction Unit. The Collision Reconstruction Unit First Sergeant shall maintain an itemized price list of materials used to produce reports. This price list shall be used to calculate the amount to charge for requested reports. The Collision Reconstruction Unit will maintain the original report for a period of five years or until the matter is adjudicated in the Courts and all appeals exhausted.

VII. FIELD RECONSTRUCTIONIST EVENT DATA RECORDER (EDR) TECHNICIAN PROGRAM

Field level reconstructionists will be assigned and trained as Event Data Technicians (EDT) by a certified Event Data Instructor (EDI) assigned to the Collision Reconstruction Unit (CRU). As directed by Directive L.01, EDT's will image all supported vehicles involved in critical injury / fatality crashes investigated by the Highway Patrol. Technician(s) assigned to this program shall never attempt to interpret the data. Only CRU members certified as Event Data Analyst (EDA) shall interpret data received during downloads. Technician(s) assigned to the EDT program will require yearly EDR in-service conducted by the Collision Reconstruction Unit. EDR Image Portable Document Format (.PDF) files shall be stored using the following procedures:

- EDR image files shall be transferred directly to a new, Read-Only media format (CD-R). The file name for the CD-R shall match that of the SHP sequence number. This disc shall be considered the Archived Digital Recordings (ADR) of the image and shall be stored in the primary member's HP-49 investigation folder.

- The Archive Digital Recordings disc, and disc case or sleeve shall be labeled to reflect the following information

    - Crash sequence number

    - Date image was taken

    - Location of the scene/address, and

    - Name and initials of the member taking the image

- Labels shall be written on the CD-R with a CD marker (not a Sharpie)

VIII. RECONSTRUCTIONIST QUALIFICATIONS

The member must have successfully completed a course of specialized collision investigation/reconstruction training from an accredited training facility (e.g. Northwestern University Traffic Institute or the Institute of Police Technology and Management), or have a Baccalaureate Degree in Civil Engineering.

IX. RECONSTRUCTION UNIT MEMBER

A member assigned to the Collision Reconstruction Unit must be trained and qualified as a traffic collision reconstructionist.

X. EVIDENCE COLLECTION AND MAINTENANCE

All evidence collected during the process of a collision reconstruction shall conform to Directive J.01 of Highway Patrol Policy and shall be stored and maintained at the District Office where the collision occurred.

I. POLICY

This policy establishes procedures and responsibilities related to critical and hazardous incidents/unusual occurrences and to adopt the North Carolina Emergency Operations Plan, the North Carolina State Highway Patrol Unusual Occurrence Manual, and the North Carolina Emergency Highway Traffic Regulation Plan as the official plans for response to emergencies and/or disasters.

II. COMMAND AND CONTROL

Statutory Provisions

- The Governor shall have general direction and control of the State Emergency Management Program and shall be responsible for carrying out the provisions of N.C.G.S. § 166A-5, Article 1.

- N.C.G.S. § 143B-476(c) states in the event the Governor, in the exercise of his/her constitutional and statutory responsibilities, shall deem it necessary to utilize the services of more than one subunit of State government to provide protection to the people from natural or manmade disasters or emergencies, including but not limited to wars, insurrections, riots, civil disturbances, or accidents. The Secretary of the Department Public Safety (DPS), under the direction of the Governor, shall serve as the chief coordinating officer for the State between the respective subunits so utilized.

- The Secretary has the authority pursuant to N.C.G.S. § 166A-5(2) to activate state and local plans applicable in emergency/disaster situations.

- After obtaining permission from the Secretary, his/her representative, or the Governor, the Commander's Office or his/her designee may commit Patrol forces to assist local officials.

III. OFFICER IN CHARGE (CALEA 12.1.2)

The Director of Field Operations is responsible for coordinating the Highway Patrol's planning functions for response to critical and hazardous incidents/unusual occurrence. If unavailable, the State Officer of the Day (OD) will assume command and become the principle adviser until relieved by higher authority. **(CALEA 46.1.1)**

The Director of Field Operations shall maintain liaison with the North Carolina Emergency Management Division to coordinate Patrol operations and plans with other affected agencies concerning critical and hazardous incidents/unusual occurrences.

Upon receiving information of an critical and hazardous incidents/unusual occurrence, the appropriate Section Director/Troop Commander or Troop OD shall immediately confer with local officials to determine the nature of the occurrence and need, if any, for State assistance, and shall then relay this information to the appropriate Director of Field Operations or State OD. The District First Sergeant or other non-commissioned district supervisor shall be the liaison between the Patrol and the local agencies until the appropriate Section Director/Troop Commander is contacted.

IV. GENERAL OPERATING PROCEDURES

In the event a Patrol member is the first law enforcement officer on the scene of an unusual occurrence, the following procedures shall be followed:

- Advise appropriate Patrol supervisory personnel and the agency with primary jurisdiction

- Secure the area and set up a perimeter for the safety of law enforcement and emergency personnel

- Request the assistance of appropriate fire, medical, or law enforcement service applicable to the situation

- The Patrol member shall be relieved of these responsibilities only when a Patrol supervisor arrives at the scene and assumes command or the Incident Command System is put into operation.

Patrol members may respond to unusual occurrences at the request of the law enforcement agency with primary jurisdiction as set forth in this directive or upon authority of the Commander's Office or his/her designee.

Patrol members shall maintain all issued equipment in a manner, which will allow a rapid response to requests for assistance in these situations.

Special equipment designated for use during a critical and hazardous incidents/unusual occurrence, which is stored at a troop and/or section, shall be inspected monthly to determine operational readiness. Such equipment may include but is not limited to, pepper foggers, gas guns and gas masks, portable and primary generators. Section Directors/Troop Commanders or their designees are responsible for ensuring an inspection is conducted. Findings of the inspection (memorandum or e-mail) shall be filed at the appropriate troop and/or section and maintained for two (2) years. **(CALEA 81.3.1; 81.3.2)**

Communication during unusual occurrences will be coordinated by the agency with primary jurisdiction. When feasible, proper communication procedures and other crucial information will be addressed with all cooperating agencies in a briefing prior to initiating any Patrol activity associated with the incident! Patrol

mobile command/communications vehicles may be utilized upon approval of a Section Director/Troop Commander or higher authority.

The Department of Public Safety Public Affairs Office or a designated spokesperson from the agency with primary jurisdiction will coordinate all media releases and public information.

The Highway Patrol Legal Staff shall address legal issues.

Requests for additional law enforcement, military support personnel, or other emergency services personnel will be made at the discretion of the Commander's Office or designee, the Secretary of DPS or his/her designee, and the head of the law enforcement agency with primary jurisdiction.

Members making arrests shall be governed by Patrol policy while assisting the agency with primary jurisdiction.

The supervisor in charge shall keep assigned members apprised of the overall situation and the appropriate state of readiness for members and equipment during all phases of an unusual occurrence. At the conclusion, members will be advised to return to assigned duties by the supervisor in charge.

At the conclusion of a critical and hazardous incident/unusual occurrence, or special event, the Special Incident Report (HP-335) shall be completed as outlined in Section 01 "Basic Guidelines", of the North Carolina State Highway Patrol Unusual Occurrence Manual, "Special Incident Report".

V. NORTH CAROLINA STATE HIGHWAY PATROL UNUSUAL OCCURRENCE MANUAL

General Plans

- Basic guidelines for responding to critical and hazardous incidents/unusual occurrences are contained in the North Carolina State Highway Patrol Unusual Occurrence Manual. It shall be accessible to all Patrol members and each Patrol Communications Center.

Procedures

- The developments of specific procedures for critical and hazardous incidents/unusual occurrences are impractical, due to the variances associated with the different types and causes of emergencies and disasters. Therefore, general guidelines for these types of situations must be flexible so modification can be made as needed. The North Carolina State Highway Patrol Unusual Occurrence Manual shall be used in emergency/disaster situations to supplement the North Carolina Emergency Operation Plan (NCEOP).

- Patrol members shall be governed by procedures and guidelines set forth in the North Carolina Highway Patrol Unusual Occurrence Manual, with said publication hereby incorporated by reference the same as if fully set out herein.

Information Unique to a Troop

- Section Directors/Troop Commanders shall personalize their Manual to include additional information, which may be useful for their troop. Section Directors/Troop Commanders shall review and update their manuals as needed.

- Section Directors/Troop Commanders shall ensure written plans for handling special events, within their respective troops (e.g. entertainment/sporting events, races, fairs, festivals, large spectator attended events) as outlined in the North Carolina Highway Patrol Unusual Occurrence Manual, SPECIAL EVENTS, Operational Plan section are maintained. Section Directors/Troop Commanders shall review written plans and update as needed.

I. POLICY

It is the policy of the North Carolina Highway Patrol to identify hazardous chemicals/materials in the work place by compiling a hazardous chemicals list, using Safety Data Sheets (SDS), ensuring containers are labeled, and by providing training to all affected employees in compliance with the Federal OSHA Hazard Communication Standard (29 CFR 1910.1200). This policy incorporates the updated Globally Harmonized System (GHS) requirements.

II. HAZARDOUS MATERIALS LIST

All known hazardous materials used by Highway Patrol employees and stored on Highway Patrol property will be identified by the appropriate Section Director/Troop Commander or his/her designee and placed on the Hazardous Materials Inventory Sheet (HCS-1) and placed in the Hazard Communication Notebook. Materials will be listed by chemical name and trade name and shall be updated as necessary. A copy of the latest corresponding SDS for each chemical will be included in these notebooks.

Each location where hazardous materials are used and/or stored will maintain a Hazard Communication Notebook. The Highway Patrol vehicle is considered an employee work location. A Hazard Communication Notebook for the Highway Patrol vehicle will be stored and maintained at each of the Highway Patrol Communications Centers.

Each Section Director/Troop Commander will ensure all notebooks are reviewed and, if necessary updated when hazardous materials are added or removed from the work place, whichever occurs first. Each supervisor is responsible for notifying his/her Section Director/Troop Commander whenever hazardous materials are added or deleted from their inventory.

III. SAFETY DATA SHEETS (SDS)

Each Highway Patrol location that uses and/or stores hazardous materials shall have a SDS on file in the Hazard Communication Notebook for each chemical.

- The SDS shall be readily accessible to all employees in the work area at all times. All SDS must be in compliance with GHS (16 sections).

- No hazardous material shall be received without a current SDS.

IV. LABELS

Each container of hazardous chemicals/materials shall be properly labeled and updated as necessary. Updated GHS Labels shall list the following information as required:

- Product Identifier/Chemical identity
- Hazard and Precautionary Statements
- Signal Word (Danger or Warning)
- Name and address of the manufacturer, importer, or other responsible party
- Visual Pictogram – if required
- Emergency and first aid procedures may be separate or incorporated into Precautionary or other Subsidiary Statements

Improperly labeled hazardous chemicals/materials are not to be accepted.

No existing labels shall be removed or defaced on containers of hazardous materials unless the containers are immediately re-marked with the proper information as required by regulations.

As provided in the Federal and State OSHA Standards, the following labeling exemptions may be followed:

- Signs or placards may be posted if there are a number of stationary containers within a work area, which have similar contents and hazards, as long as the signs or placards contain the required information set forth in this policy.
- No labeling shall be required for portable containers into which hazardous chemicals are transferred from labeled containers as long as the chemicals are intended for immediate use by the employee making the transfer.

V. EMPLOYEE TRAINING

All employees who work with or could be potentially exposed to hazardous chemicals shall receive the following basic training:

This written policy, and the the Hazard Communication Program.,

- Chemical and physical properties of hazardous materials (e.g. flash point, reactivity), and methods and observations that can be used to detect the presence or release of chemicals

- Physical hazards of chemicals (e.g. potential for fire, explosion, etc.)

- Health hazards, including signs and symptoms of exposure to chemicals and any medical condition known to be aggravated by exposure to the chemical

- Procedures to protect against hazards (e.g. personal protective equipment that is required, proper use, and maintenance; work practices or methods to assure proper use and handling of chemicals; and procedures for emergency response if necessary)

- How to read and interpret the information of both GHS labels and SDS's, and how employees may obtain additional hazardous information

- Watch the Highway Patrol's hazardous communications GHS training Video or other presentation that covers updates to the regulations

In addition to the above initial training, it shall be the responsibility of each supervisor to ensure that their employees receive thorough training in the specific hazards to which they are exposed on the job. Supervisors shall provide initial/additional training whenever:

- New hazardous materials are introduced into the workplace

- Whenever a new employee enters the workplace

Written documentation of each training session listing employees attending, subjects covered, and date shall be filed with the Training Academy (HPTC-1).

VI. HAZARDOUS NON-ROUTINE TASKS

Employees may occasionally be required to perform hazardous tasks for which they are not responsible on a regular basis (e.g. firearms and pepper gas training). Prior to beginning such projects, the supervisor shall provide the employees with information about the hazardous materials to which they may be exposed. This information shall include but is not limited to:

- Specific chemical hazards

- Specific physical hazards

- Specific health hazards

- Protective safety measures the employee can use

- Measures taken to lessen the hazards, including ventilation, removal of employee or employees from spill area, and emergency procedures

- Applicable provisions as set forth in this directive

VII. OUTSIDE CONTRACTORS

Section Directors/Troop Commanders or the responsible supervisor shall ensure that the following information is provided prior to the beginning of work to outside contractors whose employees are working on Highway Patrol premises:

- Hazardous chemicals to which they may be exposed while on the job site
- Precautions which should be taken to lessen the possibility of exposure
- The location and availability of SDS's in the area where the outside contractors are working
- Prior to performing any work on Patrol property the contractor shall be provided with a copy of this directive

Section Directors/Troop Commanders or the responsible supervisor shall also be responsible for contacting each outside contractor prior to the beginning of work to gather and disseminate information concerning chemical, physical and health hazards the contractor is bringing onto Highway Patrol premises and to which Highway Patrol employees may be exposed while on the job. Any outside contractor that works with or uses hazardous chemicals/materials is required to have hazardous communication training provided by their employer. Any Section Directors/Troop Commanders or supervisor may request a copy or verification of the contractor's hazardous communication training from their employer.

VIII. OSHA REPORTING

An occupational hazardous materials exposure incident (e.g. ingestion, inhalation, injection, absorption) shall be classified as an injury since it usually results in an instantaneous event or exposure. It shall be recorded on OSHA Form 300 if the incident results in the recommendation of medical treatment beyond first aid.

IX. HAZARD COMMUNICATION RISK MANAGEMENT

The Highway Patrol Hazardous Materials Coordinator shall be responsible for:

- Periodic on-site inspections ensuring Patrol compliance in the Hazard Communication Program
- Recommending policy updates concerning the Hazard Communication Program to the Director of Professional Standards

- Developing, coordinating, and implementing initial Hazard Communication Standard Training and recommending additional training when the hazard changes or when a new hazard is introduced in the work place

- Evaluate the circumstances surrounding hazardous materials exposure incidents and evaluate the policy, work practices, engineering controls, and protective equipment in use at the time of the exposure and make recommendations for improvement if necessary

Note to Emergency Responders: The 2016 DOT Emergency Response Guidebook discusses the New GHS labeling to include hazards associated with the visual pictograms.

This updated policy covers OSHA Hazardous Communication Standard; Globally Harmonized System (GHS) Final Rule dated May 25, 2012.

I. POLICY

This policy establishes guidelines for the procedural operation of the Highway Patrol Aviation Unit and to establish procedures governing the utilization and deployment of an Unmanned Aircraft System (UAS) platform.

II. GENERAL

Highway Patrol aircraft shall be used to provide support for Patrol operations. Helicopters may be available to other agencies for law enforcement or public safety purposes subject to the availability of personnel and equipment.

Members shall not use privately owned aircraft or Unmanned aerial systems in performing official Highway Patrol functions, whether on or off duty, without first obtaining approval of the Commander's Office or his/her designee.

Members shall not use Highway Patrol owned aircraft or Unmanned Aerial Vehicles or Systems for anything other than the official Highway Patrol duties.

The Aviation Unit will be assigned to Troop I.

Members selected to be on a UAS squad are subject to all policies, procedures, Standard Operating Procedures and Standard Operating Guides pertaining to Aviation.

Members selected to be on a UAS squad are subject to jurisdiction of Troop I concerning all UAS operations.

The Aviation Unit Commander, with approval from the Troop I Commander shall construct and maintain a Standard Operating Procedure that supplements this policy and details the daily operations of the Unit. The Aviation Unit Standard Operating Procedure shall discuss topics such as, maintenance, flight operations, training operations, safety/risk management, and NVG operations.

The Aviation Unit Commander, with approval from the Troop I Commander shall construct and maintain forms and reports that supplement the Highway Patrol forms reports. The Aviation Forms and Reports Manual shall document accountability of the processes described in the Unit's Standard Operating Procedure.

The Aviation Unit Commander, with approval from the Troop I Commander shall construct and maintain Unmanned Aerial Systems chapter(s) as part of the Aviation Unit Standard Operating Procedure that supplements this policy and details the daily operation of UAS specific to the Unit operating UAS.

III. USE OF AIRCRAFT

Use of Highway Patrol Aircraft will be granted on a priority basis with life-threatening situations given first consideration.

Valid helicopter missions include, but are not limited to:

Search

- Disaster operations (natural and man-made disasters, hurricanes, tornadoes, and nuclear accidents)
- Evacuation of stranded persons in remote areas during disasters
- Land and water (missing persons, hunters, boaters, etc.)

Enforcement Operations

- Criminal Interdiction and drug law enforcement
- Search for dangerous felons and escapees
- Surveillance of motor vehicle violations on the highways of North Carolina
- Hostage situations (containing suspects or surveillance if situation is mobile)
- Other law enforcement activities (i.e. vehicle pursuits, etc.)

Photography & Evidence Collection

- Criminal Investigations – Preserve and document evidence as part of a criminal investigation
- Non-criminal documentation – Gather and preserve information that may be vital during future events or public safety operations

Traffic Control

Assist with traffic control at special functions such as State Fair, football games, or auto races.

Transportation

Transportation of persons or property as determined to be necessary by the Secretary, the Commander's Office, or their designees. Only the Commander's Office can authorize the transport of a passenger

whose presence is not required to perform, or is associated with the performance of a governmental function.

Short Haul Rescue

Capable aircraft may be used for short haul rescue. Short haul rescue is conducted as part of the North Carolina Helicopter Aquatic Rescue Team (NCHART). NCHART Standard Operating Guidelines will dictate rescue response and procedures.

Valid missions for Unmanned Aerial Systems are restricted to the specific function and purpose of the tenant unit that has been approved by the Patrol Commander's office to augment their duties with UAS. Mission profiles are detailed in the Aviation Standard Operating Procedure (AV-SOP) specific to that unit.

IV. REQUESTS FOR SERVICE

Helicopter Mission Requests – Internal Source

Internal source requests for helicopter missions made will be made through the chain of command to the affected Troop OD. The affected Troop OD may forward the request to the Troop I OD as they deem appropriate.

Helicopter Mission Requests – External Source

All external source requests for helicopter missions made between 6:00 AM and 12:00 midnight will be made directly to an on-duty Aircraft Operations supervisor. If there is not an on-duty Aircraft Operations supervisor available, the on-duty aircrew will be contacted directly.

Any requests for helicopter missions services made between 12:00 midnight and 6:00 AM will be made to the Troop I Officer of the Day.

The Troop I Officer of the Day will be notified of any helicopter mission requests generated after normal business hours.

The Unit Commander, with approval from the Troop I Commander, will establish an after-hours request procedure.

Information Needed for Missions

Certain information is necessary for the pilots who will be flying the mission. This information should be sent with the initial request. This information includes:

- Location – Global Positioning that provides the latitude and longitude is by far the best method of determining location. Road numbers and names, large intersections, and geographical landmarks are also useful.

- Description – An accurate and complete description of the suspect or items being looked for is a must.

- Weapons – The aircrew must know if weapons are involved and what type. This information will determine to what extent the aircraft can be used. Also members on the ground should notify the aircrew if shots are being fired. The aircrew most likely will not hear this due to the engine and rotor noise.

- Point of Contact – The aircrew will need to know who the point of contact is on the scene (name, radio call sign or number, and a telephone number).

- Air-to-Ground Communications Plan – Determination if the helicopter aircrew will be talking to ground units with their legacy radio system or if a VIPER State Events talkgroup will be used for coordination. VIPER State Events talkgroups can be reserved through the State Emergency Operations Center at (919) 733-3300.

- Suitable Landing Zone – If the aircrew is required to land the helicopter during the mission, a suitable landing zone will be needed. Landing zones should be open areas that are easily accessible and free of obstructions. This area should be at least 100' x 100' with less than a five degree slope. The landing zone should be a firm surface that can hold the weight of the aircraft. Good examples of landing zones would be: athletic fields, blocked highways, agricultural fields without tall crops, etc.

Unmanned Aerial Systems Mission Requests – Internal Source

Unmanned Aerial Systems are restricted to the specific function and purpose of the tenant unit that has been approved by the Patrol Commander's office to augment their duties with UAS.

Mission profiles and procedures are detailed in the Aviation Standard Operating Procedure (AV-SOP) specific to that unit.

Launch of an Unmanned Aerial System shall be coordinated with the Aviation Unit OD to ensure de-confliction with manned air assets.

Unmanned Aerial Systems Mission Requests – External Source

Use of Unmanned Aerial Systems outside the specific function and purpose of the tenant unit is prohibited without prior consent of the Patrol Commander's office.

If use of Unmanned Aerial Systems outside the specific function and purpose is approved by the Patrol Commander's office, the launch is still required to be coordinated with the Aviation Unit OD.

Only members of the State Highway Patrol may manipulate the controls of an Unmanned Aerial Vehicle or Unmanned Aerial Systems owned by the State Highway Patrol. Exceptions to this rule are made at the discretion of the Patrol Commander.

V. SAFETY

Any and all manned aircraft have the right-of-way and priority over an Unmanned Aerial System flight. A UAS Operator must immediately land their UAV when a manned aircraft is operating in the same vicinity. Protection of life and property of a manned aircraft is a greater priority than the rapid collection of evidence or information gathered by use of a UAS.

Since helicopters and Unmanned Aerial Systems are typically occupying the same airspace, helicopter aircrews and UAS operators shall monitor and make "blind" radio calls on Aviation VHF frequency 123.025 to ensure separation from other medical or electronic news gathering aircraft operating at low altitudes.

All public safety officials must use caution when the aircraft is landing and taking off as strong winds produced by the rotors may cause debris to be blown around.

Helicopters are extremely loud. Repeated exposure to these high noise levels can damage hearing. Issued hearing protection used during firearms should be used if you are near the aircraft.

Wait for a signal from the pilot or operator before approaching any aircraft.

Always approach the aircraft from the front. Never approach the aircraft from the rear. Do not approach the helicopter from the upslope side.

All headgear should be removed prior to approaching a helicopter.

Secure the landing zone. All persons near the landing zone should stay at least 100 feet from the touchdown area.

All bystanders should be kept at least 200 feet from the landing zone or area of operations.

No person shall smoke within 50 feet of any aircraft.

VI. MISSIONS

An approved mission request shall be forwarded to the pilot who shall make the final decision as to whether the flight shall be initiated or postponed. The pilot shall give valid consideration to the weather conditions at the base, along the route of flight and the mission location. The time of the request regarding night flying shall also be considered. The pilot's recommendation as to the safety of the proposed mission shall be the ultimate deciding factor pertaining to the use of the aircraft.

No helicopter pilot shall be permitted to perform a solo law enforcement mission as the Pilot-in-Command until he/she has obtained a commercial helicopter rating and a written recommendation has been effected by the Chief Pilot or his/her designee.

No UAS flight shall be conducted without a two person team consisting of a licensed UAS operator and a visual observer.

The UAS operator is directly responsible for, and is the final authority over, the actual operation of the UAS. UAS operators have absolute authority to reject a flight based on personnel safety, public safety or violation of FAA regulations. UAS operators are responsible for compliance with NCSHP policy and FAA regulations.

VII. WEATHER MINIMUMS

Helicopters

- Flight into low-level IFR, thunderstorms, or other severe weather is prohibited.
- Day weather minimums are 500-foot ceiling and 1 mile visibility
- Night weather minimums are 1,000-foot ceiling and 3 miles visibility
- Weather minimums may be waived with approval of the Chief Pilot

Unmanned Aerial Vehicles

- Flight into low-level IFR, thunderstorms, or other severe weather is prohibited
- No UAS operations will be conducted when the ceiling is less than 500’ at ground level (AGL)
- Flight at night is prohibited unless waivered by the FAA.

VIII. PILOT & UAS OPERATOR QUALIFICATIONS

Helicopter Pilots

Helicopter pilots assigned to the Aviation Unit must be properly licensed for the type of aircraft assigned and must abide by the rules and regulations of the North Carolina State Highway Patrol and applicable Federal Aviation Administration regulations.

A unit Helicopter Pilot-in-Command must possess at least a commercial helicopter rating, FAA Night Vision Goggle certification, a second-class medical certificate, and written approval from the Chief Pilot or his/her designee.

Unmanned Aerial System Operators

The Aviation Unit Commander and the Unit Commander of tenant unit approved to utilize UAS will work together to develop a squad of members to be UAS Operators for that unit.

Members assigned to a UAS squad within their assigned unit must meet the requirements for and successfully pass the FAA Part 107 Remote Pilot Certification and NC UAS Government operator permit administered by NC Department of Transportation, Division of Aviation

Only those personnel authorized by the Aviation Unit Commander to operate a UAS will be charged to do so.

Only members who hold a current Federal Aviation Administration Part 107 certificate may manipulate the controls of an Unmanned Aerial Vehicle or Unmanned Aerial Systems.

Aviation Unit Candidates

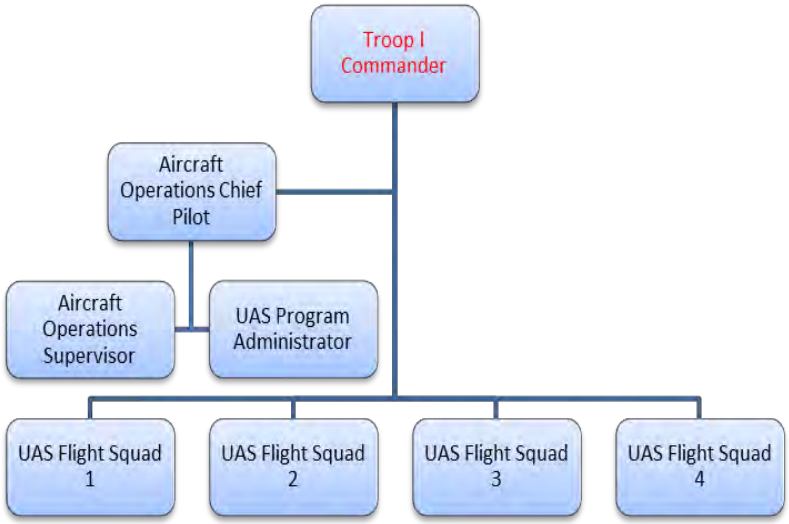
Members requesting transfer into the Aviation Unit shall meet the following minimums.

- Must have at least 3 years' experience as a NC State Highway Patrol Trooper.
- Must possess at least a private pilot's license or applicable aviation experience as determined by the Commander's Office or his/her designee.
- Must be capable of passing a FAA Second Class Medical Exam.

- Must successfully complete the Aircraft Operations Unit application process. This process will be maintained in accordance with Directive E.09 Section III (Transfer to Another Duty Station within the Patrol at the Request of the Member).

Unmanned Aerial System Squads

The UAS squads will be asymmetrical in nature, being compromised of agency members to serve the mission needs of the agency and assist other local, state, and federal agencies when a need exist. UAS squad members will remain assigned to their respective agency duty assignment, and will conduct UAS operations as a secondary function. Squad members will be selected from all agency units with a bias towards sections that will most likely utilize UAS services and that have a greater flexibility to afford additional duties. The following matrix displays the organizational structure of the UAS Squad Administration.



Pilot & UAS Operator Currency Requirements

Each pilot or UAS Operator shall be responsible for meeting the recent experience requirement of the Federal Aviation Regulations (FAR).

Each helicopter pilot in command shall fly a minimum of 1 hour of night vision goggle time each forty-five (45) days.

Each helicopter pilot in command shall fly a minimum of 1 hour instrument flight training time each forty-five (45) days.

Each helicopter pilot shall maintain a second-class medical certificate as a minimum.

Recurrent training shall be conducted in accordance with the AviationUnit SOP specific to the aircraft flown or operated.

An FAA bi-annual flight review shall be successfully completed by each pilot.

An agency annual flight review shall be successfully completed by each UAS operator. The annual flight review will be conducted by an FAA flight or ground instructor.

IX. RECORDS

Flight Log Report

A flight plan shall be submitted into the aviation management software prior to each flight of a helicopter or UAS.

The Pilot-in-Command or Unmanned Aerial Systems operator shall be responsible for updating the remarks on the flight plan as soon as practical.

Contact with Communication Centers

The appropriate Communications Center shall be notified before the helicopter departs the duty station.

The appropriate Communications Center shall be contacted by the helicopter aircrew at least once every hour with a status report.

The appropriate Communications Center shall be notified once the helicopter is on the ground upon completion of the flight.

Maintenance Records

Helicopter maintenance records are the responsibility of the Aviation Maintenance Supervisor and shall be maintained at the Aviation Unit district Office.

A virtual copy of helicopter maintenance records shall be maintained in the aviation management software system.

Unmanned Aerial Vehicles maintenance records are the responsibility of the member issued the Unmanned Aerial System and shall be maintained with the vehicle.

A virtual copy of Unmanned Aerial system maintenance records shall be maintained in the aviation management software system.

Pilot & Operator Training Records

Pilot and Operator training records shall be completed by the flight instructor or the individual conducting the training session. Training records are maintained in the aviation management software system.

X. INSPECTIONS

All patrol aircraft shall be maintained in accordance with applicable aircraft maintenance and aircraft flight operations manuals, Unit SOP, and Federal Aviation Administration regulations.

Use of Canine Teams

Directive N.02

Applicable to: Members
CALEA Chapter 84

Revised 6/10/2009
Effective 6/10/2009

I. POLICY

This policy establishes procedures for the supervision, operation, training, and utilization of the Patrol's canine teams.

II. GENERAL

Trained canine teams are a valuable law enforcement aid for use in drug detection and promoting favorable public relations. This directive addresses the procedures for the use and certification of canine teams, canine training, and the use of controlled substance training aids.

Canines are the property of the State Highway Patrol and shall be used solely for official Patrol business. Canines will be utilized only in accordance with State and Federal laws and consistent with the provisions of this directive.

III. ORGANIZATION

Supervision

The Criminal Interdiction Unit (CIU) First Sergeant or his/her designee shall be responsible for the supervision of each canine team unless the canine team is in training, at which time the Canine Training Coordinator will be responsible for the supervision of the canine teams.

The Training Academy's Canine Training Coordinator will supervise and document all canine training, maintain all records and files associated with each canine, ensure the annual certification of canine teams, and ensure all other canine needs are met.

All canine requests and utilizations except requests for vehicle sniffs on traffic stops initiated by Patrol personnel require the prior approval of a CIU Supervisor.

Public displays (such as school demonstrations, civic clubs, etc.) to demonstrate the canine's skills and abilities may be conducted with the approval of a CIU Supervisor. All public displays or demonstrations will be conducted on lead and documented on an HP-51.

IV. PROCEDURES

A canine handler's primary responsibility shall be to perform his/her assigned duties as a member of the Patrol and make use of the canine whenever a situation warrants.

When conducting a search, members shall secure the scene and remove all persons and animals present. Whenever possible, the scene should not be disturbed in any manner prior to the deployment of the canine. The investigating or requesting member shall be responsible for the seizure of evidence and case follow-up.

Canines will remain on a lead at all times when outside of the Patrol vehicle unless the deployment requires off-lead conditions. When transporting or allowing someone in their vehicle, canine handlers will ensure that the canine is secured in the vehicle kennel without access to the person.

Under no circumstances will a canine be allowed to sniff a person for controlled substances. Canine teams will not be used to conduct random, non-specific searches.

Canine handlers will not permit **anyone** except another certified Patrol handler to pet, handle, or give commands to their canine. If someone attempts to do so, the person should be informed that canines can become protective if approached. If a handler is unable to command his canine, the Canine Training Coordinator or his/her designee shall be contacted immediately to secure the canine.

Members shall perform only canine handler techniques and/or training methods for which they have received training. No member shall intentionally cause harm to or willfully or neglectfully treat a canine in a manner that is likely to result in harm to the canine. No member shall kick, punch, or beat any canine except in cases where a person's safety and/or life are at risk. Teasing, agitating, or roughhousing with a canine or the handler in the presence of the canine is strictly prohibited. Other behaviors or compliance techniques that are expressly prohibited include, but are not limited to, the use of tasers or similar devices, helicoptering, tying off, or suspending the canine off the ground.

Handlers shall not use their assigned canine for intentional breeding purposes or enter their assigned canine in **any** show or trial.

A veterinarian shall not be permitted to euthanize a Patrol canine without prior approval from the Commander's Office except in an emergency when a delay would cause undue pain and suffering. A necropsy will be performed on all canines that have died of unknown causes.

V. TRAINING

Unless approved by the Director of Training or his/her designee, no Patrol member shall sponsor any canine training. Members shall not attend any outside canine training classes or work with outside agency trainers without prior approval of the Director of Training.

The CIU First Sergeant will schedule canine training in coordination with the Canine Training Coordinator. All canine teams are required to attend mandatory training sessions that will consist of a minimum of two (2), eight (8) hour sessions

per month. This scheduled training should not exceed three (3) weeks between sessions. Any canine team that misses two (2) or more consecutive training sessions will be placed out-of-service until the missed training is completed and the Canine Training Coordinator reinstates the team to full-duty. The CIU First Sergeant, with the concurrence of the Canine Training Coordinator, will designate make-up sessions and/or evaluation sites. The Canine Training Coordinator will publish the recertification and in-service training schedule annually. The certification and in-service training will consist of a minimum of thirty-two (32) training hours annually.

Only issued equipment authorized by the Director of Training shall be used when training or working with Patrol canines.

VI. CERTIFICATION

All Patrol canine teams must receive formal training and certification through a recognized course of instruction approved by the Director of Training. All canine teams must be certified prior to field deployment. All canine teams must undergo annual performance evaluations to maintain their certification. The certification shall be conducted by a canine trainer from an outside agency approved by the Director of Training.

The Canine Training Coordinator shall immediately notify the Director of Training of any certification failures.

VII. HANDLER DECERTIFICATION

Only the Patrol Commander may decertify a handler. A Patrol Supervisor or the Canine Training Coordinator may request a member be decertified by submitting a recommendation in writing through the chain-of-command to the Patrol Commander.

If a handler is promoted and/or transferred from CIU, he/she will be decertified as a handler. In such case, the canine in question may be placed with another handler and/or retired from service after an evaluation performed by the Canine Training Coordinator. If the canine is reassigned to a new handler, the team must receive formal training and certification through a recognized course of instruction approved by the Director of Training.

A handler may be decertified in the discretion of the Patrol Commander or for any of the following reasons:

- Failure to recertify
- An established pattern of failure to attend training sessions
- A documented failure to progress in training
- Any documented mistreatment, neglect, or improper use of the canine

- Failure to maintain proper training and utilization records

- Exhibition of a pattern of unsafe practices

VIII. CONTROLLED SUBSTANCE TRAINING AIDS (CALEA 84.1.4)

Maintenance of the canine's proficiency requires controlled substance odors in training. To protect the integrity of the Patrol and the canine handler, the use of controlled substances for training must be carefully monitored.

Controlled substances used as *training aids* will be obtained through the courts. A court order will be prepared designating the controlled substance from the case to be used by the Highway Patrol for canine training. All controlled substances will be obtained from cases in which the Highway Patrol or a Federal Agency was the arresting entity. Prior to obtaining these training aids, they must be tested and weighed by an approved laboratory.

The Canine Training Coordinator will be responsible for the custody of the training aids and shall prepare and document the packaging of each controlled substance training aid. Canine Controlled Substance Training Aid Preparation and Destruction Record Form (HP-400A) will be used to record all information regarding the preparation and/or destruction of the training aids. The documentation shall contain the type and weight of the controlled substance. When this form is completed, a numbering system for each training aid will be used to identify the controlled substance. All controlled substance training aids will be secured in separate airtight "Pelican" brand or similar style briefcases and stored in a storage locker. This training aid storage locker will be accessible only to the Canine Training Coordinator and his direct supervisor. The Patrol vehicle trunk may be used for temporary storage (maximum of twenty-four (24) hours unless an emergency prevents return to storage) during training periods. The addition, loss, or destruction of controlled substances must be recorded on the HP-400A. Any significant addition, loss or theft (five (5) percent for marijuana, hashish; two (2) percent for heroin, cocaine, ecstasy, or methamphetamine) of training aid materials will be immediately reported to the Director of Training.

Controlled substance training aids should be replaced at yearly intervals (dependent on the availability of appropriated replacements). The training aids shall be destroyed by the Canine Training Coordinator while accompanied by his immediate supervisor and documented on the original Controlled Substance Preparation form HP-400A. The original HP-400A shall be maintained in the file for two (2) years following destruction, then placed in the Canine Training Coordinator's supervisor's files for two (2) additional years.

Canine Training Aid Controlled Substance Annual Inventory Form (HP-400) shall be completed on all controlled substances on hand. The form must remain in the storage locker with the training aid for one (1) year from the date the inventory is conducted. A copy of the inventory will also be maintained by the Canine Training Coordinator's supervisor. When it is replaced with a new HP-400, the

original (expired) HP-400 shall be retained in the Canine Training Coordinator's supervisor's files for two (2) years. Unannounced inventories may be conducted at the discretion of the Director of Training.

The Canine Training Coordinator or his supervisor will be responsible for signing out training aids and upon their release and return shall note the date, time, and item number on form HP-400B. The HP-400B shall remain in the storage locker for two (2) years after the last entry and then maintained in the Canine Training Coordinator's supervisor's files for an additional two years.

At no time will any Canine Handler have in his/her possession any controlled substance training aids unless authorized in writing by the Canine Training Coordinator.

IX. SAFETY

When a canine is deployed, the handler is responsible for the canine's actions and safety. Handlers will not engage in any form of careless activity that jeopardizes the health, welfare, or safety of the canine or any other person. Canine bites must be reported via the chain-of-command to the Director of Training. All canines will wear a NCHP identification collar.

X. TESTIMONY IN COURT

The canine handler shall be prepared to testify regarding the experience, training, and the circumstances of each use of the canine. The canine handler shall notify the CIU First Sergeant, who will, via the chain-of-command, notify the Director of Training of any court determination that the canine is not adequately trained, reliable, or that he/she is not sufficiently qualified to allow testimony of the actions of the canine to be admitted as evidence in any trial or hearing. Further training or other appropriate action shall be taken prior to any additional use of the canine.

XI. RETIREMENT OF CANINE

A canine handler may apply to take possession of his/her canine when:

- The Canine Training Coordinator has determined, by evaluation, the canine in question is not suitable for reassignment to another handler.

- An Agreement for Disposition of Dog is signed by the handler and approved by the Commander's Office and Director of State Surplus Property.

Criminal Interdiction

Applicable to: Members

Directive N.03
Revised 04/2015
Effective 3/20/2012

I. POLICY

This policy sets forth guidelines governing uniform Criminal Interdiction activities by members. Criminal Interdiction activities shall, at all times, be consistent with the United States Constitution, the Constitution and laws of the State of North Carolina, applicable federal laws and regulations, and policies of the North Carolina State Highway Patrol. Members shall safeguard the rights of all persons. Factors such as race, color, religion, sex, and national origin shall not influence members in the performance of their duties.

II. OBJECTIVES

While aggressively enforcing traffic laws and regulations applicable to commercial and non-commercial motor vehicles, members shall maintain an increased awareness of terrorism and criminal activity on State highways. Members not assigned to the Criminal Interdiction Team **shall not** make pre-textual stops or detain motorists for the purpose of aggressively investigating state and/or federal controlled substance violations unless requested to do so by a member of the Criminal Interdiction Unit.

Deploy a specialized Criminal Interdiction Unit with unique training in the detection of criminal and terrorist activity at strategic locations throughout the State with a concentration of enforcement efforts within the main corridors of the State. This Unit shall complement and enhance the overall mission of the Highway Patrol while working in a coordinated effort with all levels of government to reduce terrorism and criminal activity. This mission will be accomplished through the aggressive detection, apprehension and prosecution of persons involved in the use, transportation and trafficking of controlled substances, and other criminal activities on North Carolina highways.

Maintain a communication network of criminal/terrorist-related information throughout the Highway Patrol and other state, federal and local agencies to ensure cooperation, teamwork and exchange of intelligence data.

III. OPERATIONAL GUIDELINES

Request(s) for Assistance

- Any request(s) from allied agencies for coordinated Criminal Interdiction Activity assistance shall be referred to the Criminal Interdiction Supervisor on call. Any member who has articulable information on a subject is involved in criminal activity shall contact a Criminal Interdiction Unit Supervisor.

Vehicle Stops

- Vehicle stops may be based on any of the following:
    - Probable cause to believe that a crime or traffic violation has occurred or is about to occur
    - Reasonable articulable suspicion that a crime or traffic violation has occurred or is about to occur
    - In connection with enforcement of state or federal laws and regulations at any lawfully operated weigh station
- While conducting traffic enforcement and/or criminal interdiction activities, officer safety shall be a primary concern.

Detention

- Motorists stopped for investigation of routine criminal or traffic violations may be detained for a reasonable period of time sufficient to conduct those duties normally associated with traffic stop investigations. Such investigations include, but are not limited to; checking the status of the driver's license, vehicle registration, vehicle identification number (VIN), appropriate motor carrier documentation, other pertinent information, and completing any related paperwork.
- Members certified to complete the North American Standard (CVSA) inspection must, at a minimum, conduct a Level III Commercial Vehicle Inspection on all commercial vehicles stopped that are subject to Federal Motor Carrier Safety Administration (FMCSA) regulations.
- Immediately upon completing the investigation associated with the traffic violation and/or Level III Commercial Vehicle Inspection, the member shall immediately inform the driver and/or occupant(s) that they are free to leave unless the member has developed reasonable articulable suspicion that they are involved in additional criminal activity.

Vehicle Searches

- In those cases where a member develops reasonable articulable suspicion that the driver and or occupant(s) of the vehicle may be engaged in additional criminal activity, the member shall complete enforcement activities pertaining to the initial traffic violation or inspection and immediately return the driver's license, registration and any other documents to the operator. If a decision is made to detain the vehicle, **do not** tell the driver and/or occupants that they are **free to leave**. Instead, the member should detain the driver and/or occupant(s) for a reasonable period of time in which to confirm or dispel the reasonable articulable suspicion. Members shall not request consent to search any vehicle based upon a mere **hunch** of criminal activity, but shall

have reasonable articulable suspicion that the driver and/or occupant(s) are involved in criminal activity.

- Members shall obtain back up and, whenever practicable, a canine team prior to searching a vehicle.

- Vehicle searches may be conducted based on several legal justifications, please refer to Directive B.04

Consent to Search

- Voluntary consent to search by the owner/operator of the vehicle confers authority to conduct such a search. Consent to a search must be voluntary and freely given rather than a mere submission to an expressed or implied authority, duress, or coercion. Although consent to search need not, as a matter of law, be written, members shall, pursuant to this policy, attempt to obtain written consent whenever practicable. In those cases where an individual indicates a willingness to consent to a search of the vehicle but desires not to sign a Consent to Search (HP-52A), the member shall document the verbal consent on the HP-52A and proceed with the vehicle search. In all cases where a consent search is conducted, a copy of the HP-52A shall be furnished to the person consenting to the search. Once consent to search is obtained, members shall, as expeditiously as practicable, either confirm or dispel their belief that drugs, contraband or other criminal activity exists during the enforcement contact. **Under no circumstances** shall any person or vehicle be detained for a period of time longer than is reasonably necessary under the existing circumstances.

    - Whenever available, a Canine Team will be requested to assist in the search of the vehicle unless use of the Canine Team would delay rather than expedite conduct of the search. Canine Teams will be notified in accordance with Directive N.02 (Use of Canine Teams).

    - While conducting a vehicle search, members shall, at all times, treat the motorists in a courteous and considerate manner and provide for their comfort and safety.

Documentation of Searches

- Members shall complete all applicable forms and reports consistent with Highway Patrol policy, Highway Patrol forms and reports, and Federal Motor Carrier Safety Regulations.

- In all cases where a search of a vehicle was conducted, by a Criminal Interdiction Unit member, the interdiction team member shall submit a contemporaneous report documenting the basis of the stop, the subsequent detention, consent to search, if any, and search of the vehicle. If the duration of the stop exceeds one (1) hour, the contemporaneous report shall include

any particular facts and circumstances necessitating the duration of the detention.

Damage to Vehicle / Property

- Every reasonable effort shall be made to avoid causing damage to vehicles and/or contents of vehicles being searched. Members conducting a vehicle search will be guided by the principle that they shall treat the property of others with the level of respect with which they would want their property treated. Following a vehicle search, every effort shall be made to restore the vehicle and its contents to the condition prior to the search. In the event that property damage results in the course of a search, the member causing such damage shall immediately notify the owner and the member's supervisor that such damage has occurred. The property owner shall be informed by the member of his or her right to seek fair compensation for damages and the applicable procedures to be used. The member shall provide a written statement describing the extent of damage and affix photographs to illustrate the damage. Additionally, the member shall request that the property owner provide a written statement or initial the member's written statement.

IV. TRAINING

The Criminal Interdiction Unit members shall attend annual and other in-service training as may, from time to time, be prescribed for all members of the Highway Patrol. Additionally, these members shall meet a standard of training as directed by the Troop I Commander and approved by the Commander's Office. These members will also meet to review and discuss interdiction policy and procedures, legal updates, and receive specialized in-service training. A minimum of thirty-two (32) hours of Criminal Interdiction in-service training shall be conducted annually. All training shall be approved through the Training Academy and upon completion documented on a HPTC-1.

The Troop I Commander shall approve all training standards relating to Criminal Interdiction activities by members. No member shall provide or participate in Criminal Interdiction Training without prior approval of the Troop I Commander unless such training is provided by the Training Academy. Members are not authorized to teach and or attend any aspect of Criminal Interdiction Training without obtaining prior approval as required herein.

V. EQUIPMENT

Criminal Interdiction Unit members shall be issued such equipment and uniforms as approved by the Commander's Office or designee.

VI. FOLLOW-UP INVESTIGATIONS

Members shall conduct follow-up investigations that include the following:

- Reviewing and analyzing all previous reports prepared in the preliminary phase, departmental records, and results from laboratory examinations
- Conducting additional interviews and interrogations
- Seeking additional information (from uniformed officers, informants)
- Planning, organizing, conducting searches, and collecting physical evidence
- Identifying and apprehending suspects
- Determining involvement of suspects in other crimes
- Checking suspects' criminal histories
- Preparing cases for court presentation

VII. PARTICIPATION IN / PARTNERSHIP WITH OUTSIDE AGENCY TASK FORCE(S)

All Memorandums of Understanding (MOU) shall include at a minimum the following:

- The member's purpose for participation / partnership with the outside agency task force(s)
- Defining specific authority, responsibilities, and written agreements for the member
- Evaluating results and the need for continued operation(s) for the position

Four-Wheel Drive Vehicles

Directive N.04

Applicable to: Employees
CALEA Chapter 41

Revised 9/29/2011
Effective 7/20/2000

I. POLICY

This policy establishes basic procedures and responsibilities for employees using Patrol four-wheel drive vehicles during emergencies, natural or manmade disasters, unusual occurrences, and special operations. This directive shall govern a member's conduct in the evaluation of unusual occurrences while engaged in special vehicle operation. It is neither the intent nor the purpose to place the primary responsibility for the handling of these incidents upon the Patrol. Such duties are properly assigned to local emergency services and law enforcement personnel. **(CALEA 41.1.3)**

II. TRAINING (CALEA 41.1.3)

Any employee assigned to operate a four-wheel drive Patrol vehicle during unusual occurrences and/or special operations shall have successfully completed all appropriate training on the use of these vehicles. In case of a disaster or severe weather situation, an employee may temporarily operate a patrol issued four wheel drive vehicle with briefing in operations from a garage mechanic or other qualified individual.

III. OPERATIONS

Most special purpose four-wheel drive vehicles are not designed for high speed driving. Excluded is the pursuit rated Jeep Cherokee. Employees operating a non-pursuit rated four-wheel drive Patrol vehicle shall not engage in a chase.

Emergency response is permitted in a life-threatening situation upon the member's evaluation of the external physical conditions. These conditions include but are not limited to:

- Width and physical condition of the areas of operation
- Weather conditions
- Geographic area
- The performance capabilities and limitations of the vehicle
- Passengers in the vehicle

A district supervisor or higher authority shall have the authority to determine if a special vehicle(s) is warranted and commit the same to special operations. **(CALEA 41.1.3)**

Section Directors/Troop Commanders shall have the authority to select qualified personnel to participate and receive training in four-wheel drive operations. Qualifications for participation will include but not be limited to the following:

- Desire and willingness to participate in the program
- Hold the rank of Senior Trooper
- Ability to make competent decisions under stress

IV. MAINTENANCE (CALEA 41.1.3)

The operator of the four-wheel drive vehicle shall be responsible for ensuring the vehicle is in proper working order and report any damages upon the completion of an assignment to his/her supervisor. The Troop Garage Supervisor or his/her designee shall be responsible for maintenance of special operation vehicles.

V. SPECIALIZED EQUIPMENT (CALEA 41.1.3)

Special operation four-wheel drive vehicles shall have on board the following equipment:

- First Aid/EMT Kit
- Fire extinguisher
- Tow strap
- Flashlight/Charger
- Patrol radio
- Disposable blanket
- Flares
- Axe

The Section Director/Troop Commander or District First Sergeant who is assigned a special operation vehicle shall have the authority to add other equipment they determine necessary for their particular troop/district.

VI. COURSE COMPLETION – ENTRY INTO PERSONAL HISTORY INFORMATION (C.A.D.) (CALEA 41.1.3)

It shall be the responsibility of the Precision/Defensive Driving Supervisor to make notification of successful course completion through the NCSHP intranet Training Records. It will be incumbent upon that District First Sergeant to make the appropriate entry into the Computer Automated Dispatch (C.A.D.) system.

Motor Unit

Applicable to: Members

Directive N.05
Revised 04/2015
Effective 10/24/2007

I. POLICY

This policy establishes guidelines and responsibilities for the Highway Patrol Motor Unit.

II. USE

A Motor Unit member will patrol an area designated by his/her supervisor and provide traffic supervision for highway users, supervise and direct vehicular and pedestrian traffic, promptly investigate traffic collisions, enforce all North Carolina Motor Vehicle Laws consistent with Patrol policy, and render courteous service to highway users.

Weather conditions will be considered when assigning motorcycles to tasks.

Requests for the services of the Motor Unit are sent to the Troop I Commander or his/her designee, who authorizes assignments.

III. CHAIN-OF-COMMAND

The Motor Unit is under the direct supervision of the Troop I Commander.

IV. TRAINING

Members of the Motor Unit shall participate in at least eight (8) hours of motor skills training per quarter. The Motor Unit Training Coordinator will confer with the Training Academy Motorcycle Training Coordinator to determine the most appropriate training for each quarter. Such training may include, but is not limited to, police motorcycle training classes provided by Northwestern University, the Institute of Police Technology and Management (IPTM), and other schools that concentrate on safe motorcycle operations such as braking and curves skills.

V. EQUIPMENT

The motorcycle and motor uniform are unique to the Motor Unit member. Only members of the Motor Unit are authorized to wear the Motor Unit Uniform. Only Motor Unit members and members holding a current Basic Police Motorcycle School Certification shall operate Patrol issued motorcycles. The only exception is when an authorized motorcycle civilian mechanic or a Patrol mechanic must road test the issued motorcycle; however the mechanic must possess a motorcycle endorsement on their driver's license

The Motor Unit supervisor will schedule mechanical maintenance on the motorcycle. Each Motor Unit member shall provide routine care and maintenance for his/her assigned motorcycle and motorcycle trailer.

Motor Unit members will be issued a motorcycle helmet, gloves, rain suit, protective jacket, protective pants, boots and motorcycle related uniforms and protective gear. Additional uniforms and equipment will be issued as deemed necessary.

Motor Unit members shall be responsible for the care of all issued equipment, and shall not abuse or misuse such equipment. Motor Unit members shall report any damaged or lost equipment to their immediate supervisor as soon as possible.

I. POLICY

This policy establishes guidelines and responsibilities for the operation and care of the North Carolina State Highway Patrol's mobile command and communications vehicles as they are used to serve the citizens of North Carolina in emergency and non-emergency situations. **(CALEA 41.1.3)**

II. AUTHORIZATION (CALEA 41.1.3)

Section Directors/Troop Commanders or higher authority may authorize the dispatch of the command/communications vehicles to emergency and/or non-emergency situations.

Emergency situations are defined as aircraft crashes, toxic chemical spills, natural gas line ruptures, public disturbances, natural and manmade disasters, crashes involving radioactive materials, major highway collisions or incidents, and major crimes.

Non-emergency situations are defined as scheduled DWI Checkpoints, educational and training events, community service programs, NC State and Western NC State Fairs, and scheduled sport/race events.

Use of the command/communications vehicles by other emergency response agencies is authorized provided such request emanates from a command staff officer representing the requesting agency and made to the Commander's Office or his/her designee.

For use outside this state, a mutual aid agreement must be signed by an authorized person of command staff level from the requesting agency and the Commander's Office prior to use.

III. MEMBERS AUTHORIZED TO DRIVE THE COMMAND / COMMUNICATIONS VEHICLES (CALEA 41.1.3)

The Patrol Communications Equipment Manager (PCEM) has been authorized by the Director of Support Services to train and certify authorized members designated to drive the command/communications vehicles. Only trained and properly licensed personnel are authorized to drive the command/ communications vehicles. This section does not limit the driving of both vehicles by non-enforcement personnel, when the vehicle is being driven by a certified mechanic for the purpose of providing maintenance.

Each Troop Commander shall select personnel from his/her respective troop to be certified as an authorized driver. Troop Commanders shall adhere to the following criteria during the selection process. The personnel must:

- Be properly licensed.

- Be in good standing with the Highway Patrol.

- Successfully complete related training requirements to include written and practical examinations.

IV. VEHICLE OPERATIONS (CALEA 41.1.3)

Driver's Responsibility

- Conduct an inspection of the command/communications vehicle prior to departure to ensure the vehicle is safe to drive, and free of visible damage. Any damage located to the vehicle shall be documented on the Driver's Vehicle Inspection Report. If the damage will prevent the vehicle from being driven safely, it shall not be driven, and the PCEM or designee must be notified without delay.

- Never use vehicle in pursuit situations.

- Ensure all doors are closed, and equipment is properly secured prior operation.

- The driver is responsible for the safe operation of the command/ communications vehicle during operation. Drivers of the command/ communications vehicles shall comply with all applicable North Carolina Motor Vehicle Laws during operation.

- Verify proper fluid levels, i.e. engine oil and electrical generator oil, prior to operation.

- The driver shall park the vehicle at a safe location to prevent damage to the vehicle and injury to persons entering and leaving the vehicle. Pylons or other protective equipment must be used as the situation dictates.

- The driver may be reassigned to perform additional duties by the Commissioned Officer in charge of the event, once the vehicle is safely parked and secured for operation.

Operator's Responsibilities

- Operators are defined as personnel that have received proper training and have demonstrated the ability to conduct MCCU operations during a deployment. These personnel may include SHP Telecommunicators, garage personnel, and radio engineers.

- Operators shall be utilized to handle communications in the command/ communications vehicles. Whenever possible a certified Telecommunicator should be utilized. If a Telecommunicator is unavailable, a member will be assigned to this position that is DCI/MDT certified.

V. VEHICLE EQUIPMENT (CALEA 41.1.3)

The command/communications vehicles contain specialized agency equipment such as:

- NC Department of Health and Human Services certified Intoxilizers for which preventive maintenance has been performed
- NC Department of Health and Human Services certified simulators
- Highway checkpoint signs/brackets
- Mobile Data Terminals (MDT)
- Viper Radio Equipment
- Satellite data connection (Command Vehicle)
- Telephone PBX (Command Vehicle)
- Flares/barricades

An inventory form shall be posted inside the command/communications vehicles, and the driver shall conduct an inspection and inventory of the command/communications vehicle equipment prior to departure, and upon the vehicle's return. Any observed damage to the equipment, or if equipment is needed, it shall be documented on the inventory form. Damage that will prevent any item from being used safely shall be reported to the PCEM or his/her designee without delay and the damaged equipment shall be taken out of service until repaired or replaced.

The Inventory Form shall be maintained by the driver on equipment or items issued, used, damaged, or lost during command/communications vehicles operations. He/she shall submit the Inventory Form to the PCEM or his/her designee. At the conclusion of the operation, a copy of the inventory form shall be submitted to the PCEM or his/her designee with the operations report.

VI. COMMAND / COMMUNICATIONS VEHICLE STAGING AND RESPONSE

The PCEM is responsible for ensuring proper staging for all command/ communications vehicles.

The Director of Support Services shall receive notification of all requests for service, regardless if the request is an emergency, routine or scheduled, and

shall forward the request to the PCEM. Upon receiving the request, the PCEM will coordinate with the requesting authority in order to ensure the most appropriate response.

Emergency Response. Depending on the location for the response, the PCEM will activate a local on-call driver to proceed to the response area with the requested equipment, and meet the requesting Troop operator on scene. The Troop operator will assume control of the equipment, and the on-call driver will be relieved. (An example that would warrant this type of response would be a shooting, manhunt or other pressing need).

Routine Response. Same procedures as an emergency response. A (unscheduled) routine response would be any event that is not emergency or scheduled.

Scheduled Response. In response to a request for a scheduled event, the MCCU will be delivered to the requesting authority and placed into service. Once in operation, the MCCU will be released to the Troop Operator for the duration of the event. Once the mission is completed, a certified driver will return the MCCU to the staging area in Raleigh.

VII. COMMUNICATIONS (CALEA 41.1.3)

The command/communications vehicles are equipped with **UHF, VHF,** and **800 MHz** radios to ensure radio contact with other emergency agencies in the area. A list of channels and assignments are located at the communications console inside the command/communications vehicles. **NCSHP assigned FCC identifiers are KA4407.**

VIII. AUXILIARY POWER UNIT (CALEA 41.1.3)

The command/communications vehicles are equipped with propane/diesel generators. The generators are mounted under the left side of the command/communications vehicles with an access door to same. The generator operates from the vehicles fuel tank and/or associated fuel tank and has its own starting batteries.

The manufacturer's instructions pertaining to starting and stopping the generator shall be followed.

The command/communications vehicles are equipped with power cables to connect the units to a stationary power source.

IX. AIR CONDITIONER AND HEATER (CALEA 41.1.3)

The command/communications vehicles are equipped with both air conditioners and heater units, which operate from 220/240-volt generator source. If the command/communications vehicle is connected to a stationary power source other than 220/240 volt, only one air conditioner will operate. The MCCU requires a 100amp single phase auxiliary power source.

X. ADDITIONAL LIGHTING (CALEA 41.1.3)

Additional 1000 candle-power lights are stored in the cabinets. These stand type lights run off a 110-volt system.

- Care shall be exercised in handling these lights because they become very hot while in use.

- Extension cords for the lights and associated auxiliary equipment are to be wiped clean and rolled up properly after each use and returned to the designated cabinet.

- Portable Maxi-Lites are available from each Patrol garage for assignments.

XI. AFTER USE PROCEDURE

A visual inspection shall be conducted upon the vehicle return, and the driver will list any needed repairs or maintenance on a Vehicle Repair Request form and deliver it to the PCEM or his/her designee.

The command/communications vehicles will be cleaned inside and out at the conclusion of the operation under the direction of the PCEM or his/her designee.

All equipment is to be left or replaced in its proper location according to the inventory form. All equipment shall be in working order, or reported to the PCEM or his/her designee.

The PCEM or his/her designee shall ensure the command/communications vehicles are maintained in a state of readiness at all times.

XII. MAINTENANCE (CALEA 41.1.3)

The PCEM or his/her designee, under the direction of the Patrol Fleet Manager First Sergeant, shall ensure routine maintenance, as well as the Annual Automotive Service Schedule (AASS) equipment checks for the command/communications vehicles are conducted.

The PCEM or his/her designee shall ensure the vehicles and equipment are checked on a monthly basis. A log shall be completed and maintained with the vehicles by the PCEM or his/her designee.

XIII. RESPONSIBILITY

The command/communications vehicles belong to the North Carolina State Highway Patrol, the North Carolina Governors Highway Safety Program, and the citizens of North Carolina. Any misuse or abuse of the command/ communications vehicles will be considered a serious violation of policy and the violator will be held individually responsible.

SHP Professional Range Instructor Simulator (PRISim) Judgment and Shooting Skills Trainer

Directive N.07
Revised 11/10/2004
Effective 7/20/2000

Applicable to: Members
CALEA Chapter 41

I. POLICY

This policy establishes guidelines and operational procedures, and responsibilities for operation and care of the North Carolina State Highway Patrol's mobile and fixed site "PRISim" Shooting Simulators. Due to the responsibility required for competent and safe handling of firearms and the ability to deploy and fire them accurately, it shall be the policy of the North Carolina State Highway Patrol to provide and maintain the "PRISim" Judgment and Shooting Skills Trainer**. (CALEA 41.1.3)**

II. AUTHORIZATION (CALEA 41.1.3)

Use of the "PRISim" Shooting Simulator will be provided for Patrol personnel on a regular basis to augment regular firearms training. This training shall include, but not be limited to "Shoot – Don't Shoot" scenarios.

Training of personnel from allied agencies shall only be conducted when approved by the Highway Patrol Director of Training in response to a written request and signed Agreement to the Terms and Conditions for Use of the "PRISim" Simulator by the director of the allied agency making the request for use.

III. AUTHORIZED PERSONNEL (CALEA 41.1.3)

Only certified firearms instructors specifically trained in the use of the "PRISim" Shooting Simulator shall be authorized to operate the mobile or fixed unit.

Authorized training of personnel for use of the simulator shall only be provided by the unit manufacturer (Advanced Interactive Systems, Incorporated, Tukwila, Washington) or the Patrol's Training Academy Armory staff.

IV. SIMULATOR OPERATIONAL PROCEDURES (CALEA 41.1.3)

The mobile unit, which is housed in a 36-foot trailer, shall only be towed by a member having a valid Class A CDL driver's license.

Only the vehicle specifically provided for towing this unit shall be used. All laws and regulations for trailer hook-up and towing shall be strictly observed.

The trailer shall be parked in a safe location and leveled with equipment provided by the manufacturer.

Absolutely no live ammunition or duty weapons will be allowed inside the simulator during training. NO EXCEPTIONS.

The air pressure setting for the “Shoot-Back” Cannon shall not exceed the factory-specified limit of 55 psi.

Power supply for the simulator shall be by electrical current supplied from two separate outlets while using the factory supplied electrical cords only. If electrical outlets are not available, use of the diesel generator installed in the simulator is permissible.

It shall be the responsibility of the Armory Supervisor to ensure that regular and/or any other maintenance is performed on the trailer and the simulator as required by the manufacturer or for whatever reason when needed.

The firearms instructor conducting training shall be responsible for safe and proper operation of the unit. He/She shall also be responsible to verify that the unit is working correctly and notify the Training Academy Armory staff of any defects or malfunctions as quickly as possible.

When the “Shoot-Back” Cannon is utilized, none of the plastic projectiles shall be intentionally fired at the student’s face, groin area, or bare hands. Protective eyewear shall be worn by the student at all times while participating in the scenarios.

V. VEHICLE EQUIPMENT (CALEA 41.1.3)

Towing unit which shall contain at least the following equipment:

- One case of fuses
- Patrol radio
- Cellular telephone
- First Aid Kit
- Flashlight with charger
- Reflective vest
- Fire extinguisher

Trailer which shall contain at least the following equipment:

- Two simulator pistols complete with laser inserts and batteries
- “Shoot-Back” Cannon ammunition
- Protective eyewear

- Two electric power cords supplied with the unit by the manufacturer
- Fire extinguisher
- First Aid Kit

The above items utilized in the trailer shall also be present at the site of the fixed unit.

Bicycle Rodeo Vehicle

Applicable to: Members
CALEA Chapter 41

Directive N.08
Revised 11/10/2004
Effective 7/20/2000

I. POLICY

This policy establishes guidelines, operational procedures, and responsibilities for the operation, use, and care of the North Carolina Highway Patrol's bicycle rodeo vehicle. **(CALEA 41.1.3)**

The Highway Patrol shall utilize its members in developing, promoting, and delivering Bicycle Safety Programs (Bicycle Rodeos) that emphasize the importance and use of bicycle helmets. The Patrol shall target a population of children under the age of 10 for participation in these events. However, older children will not be turned away if they wish to participate. **(CALEA 41.1.3)**

II. AUTHORIZATION (CALEA 41.1.3)

Any member, upon coordination with a troop Traffic Safety Information Officer, (TSI) may conduct a Bicycle Rodeo Safety Clinic.

Scheduling the Bicycle Rodeos and maintaining records and statistical documentation will be supervised and coordinated by the State TSI Coordinator at Patrol Headquarters in Raleigh.

Any member or mechanic of the Highway Patrol may operate this vehicle.

III. QUALIFICATION AND TRAINING (CALEA 41.1.3)

Each Patrol TSI Officer has been trained to present the Bicycle Rodeos. He/She may be assisted by a Patrol member in the community where the Bicycle Rodeo is being held.

IV. VEHICLE MAINTENANCE (CALEA 41.1.3)

Each bicycle rodeo vehicle will be maintained at the troop garage where the required maintenance and mileage occurs. The troop TSI Officer will be responsible for ensuring the required maintenance is completed as scheduled.

V. LIST OF EQUIPMENT MAINTAINED IN BICYCLE RODEO VEHICLE

State Highway Patrol Bicycle Safety Program Equipment	
Item	**Quantity**
Bicycles (Student) – BMX style, 20”, single speed, coaster brake, oversize frame	13
Bicycles (Instructor) – BMX style, 26”	2
Tubes (Spares)	12
Tool Kits	2
Air Pump (12 Volts)	1
Helmets (Program)	25
Helmets (Give-Aways)	25
Sizing Pads (For Helmets)	25
Helmet Liners	1,000
Cramer Two-Wheel Line Marker	1
Marking Chalk (Bags)	25
Measuring Tape (25 Foot)	1
Measuring Tape (50-100 Foot SHP Issued)	1
First Aid/EMT Kit (SHP Issued)	1
Traffic Cones (36 Inch)	20
Traffic Cones (18 Inch)	50
Table (60 Inch Folding)	2
Chairs (Metal Folding)	6
Trash Cans (Rubbermaid 20-30 Gallon)	2
Display (TSI)	1
Safety Brochures (DOT Supplied)	2,500
Props	
Stop Light	
Bull Horn with Microphone	1
Directional Signs	**Quantity**
Stop Signs	4
Yield Signs	2
Do Not Enter	4
Railroad (R&R)	2
One Way	2
Caution	2

Drone Vehicle

Applicable to: Members
CALEA Chapters 41; 61

Directive N.09
Revised 6/22/2004
Effective 6/22/2004

I. POLICY

This policy establishes guidelines, operational procedures, and responsibilities for the operation, use, and care of North Carolina State Highway Patrol's drone vehicles. **(CALEA 41.1.3)**

Members of the Patrol shall utilize the Drone Vehicle to help reduce crashes in the immediate vicinity of active highway work zones. Highway Patrol members and Department of Transportation Engineers will work cooperatively to identify problem areas, and how best to utilize drone vehicles. When used, drone vehicles shall be placed on the shoulder of a highway, or in the median prior to an active work zone with blue lights and emergency flashers activated. Drone vehicles shall be placed in a safe location so as not to interfere with the normal flow of traffic through active work zones. It shall be the responsibility of the affected Section Director/Troop Commander to ensure that drone vehicles are periodically monitored while they are deployed in an active highway work zone or another approved location. **(CALEA 41.1.3; 61.1.6)**

II. AUTHORIZATION (CALEA 41.1.3)

Upon the approval of the appropriate Section Director/Troop Commander, or his/her designee, a district supervisor may utilize a drone vehicle when a highway work zone is active within their assigned duty station. The Drone Vehicle may also be utilized in a High Crash Corridor, however the work zone utilization shall take priority.

Scheduling and operation of drone vehicles shall be coordinated through the appropriate Section/Troop office.

III. QUALIFICATION AND TRAINING (CALEA 41.1.3)

No specialized training or qualifications are required to operate a drone vehicle. The member responsible for transporting and placing a drone vehicle in the immediate vicinity of a work zone shall have the responsibility of activating the blue lights, emergency flashers, and radar transmitter using the toggle switch located in the dash area of the drone vehicle.

IV. VEHICLE MAINTENANCE (CALEA 41.1.3)

All required and scheduled maintenance for drone vehicles shall be performed by the appropriate Troop Garage where assigned. Troop Commanders shall assign the Motor Carrier Enforcement Lieutenant to oversee the maintenance of the drone Vehicle assigned to their troop. Drone vehicles are equipped with a solar panel that supplies the necessary electrical power to operate the vehicle's blue lights and radar, and these panels must be inspected prior to each use. The

MCE Lieutenant shall be responsible for inspecting the drone vehicle prior to assigning it to a District. Upon its return, The MCE Lieutenant will re-inspect the drone vehicle to ensure all equipment is operating properly and that no damage is present. The North Carolina Department of Transportation has assumed financial responsibility for the cost of operation and upkeep of Drone Vehicles and its equipment.

V. LIST OF EQUIPMENT MAINTAINED IN THE DRONE VEHICLE (CALEA 41.1.3)

Item	Quantity
Booster Cables	1
Radar Transmitter with Antennas	1

I. POLICY

This policy establishes guidelines and procedures for the operation and maintenance of the North Carolina State Highway Patrol's Caisson Unit.

II. AUTHORIZATION

Use of the State Highway Patrol Caisson Unit will be for the purpose of conducting funerals for law enforcement officers and firefighters killed in the line of duty; current and past Governors of North Carolina; Incumbent members of the Council of State, Cabinet Members, and North Carolina General Assembly Members; Sitting Sheriffs; and, with the approval of the Patrol Commander, law enforcement officers from bordering states who are killed in the line of duty and any others deemed appropriate by the Patrol Commander, if the Caisson is reasonably available.

Request for the Caisson Unit will be forwarded to the State Duty Officer of the Day (OD) for approval. The OD will immediately notify the Commander of Troop I, or his/her designee, who will coordinate the events with the appropriate personnel. Upon notification, the Commander of Troop I, or his designee, will assemble a team consisting of two trained members, via the chain-of-command who will prepare, transport and conduct the funeral. The Caisson Team shall be placed on special assignment as soon as possible after the request notification. Caisson Team members shall remain on special assignment until the assignment is completed. Members of the North Carolina State Highway Patrol Honor Guard Team will assist in the activities as a support component to the Caisson Unit and will abide by Directive E.07 "Funerals," of Patrol Policy and Procedure Manual.

III. PERSONNEL AUTHORIZED TO OPERATE THE CAISSON UNIT

Only trained Caisson Team members with experience working with horses and operating horse team driven wagons, shall be authorized to operate the Caisson Unit.

IV. SELECTION OF CAISSON UNIT TEAM MEMBERS

The Commander of Troop I will notify each Section Director/Troop Commander and District First Sergeant via CAD of any vacancies to the unit. District First Sergeants will post the notification in each district office and satellite office. Interested members must submit an application and resume via chain of command to the Commander of Troop I. Applicants must have experience and basic understanding of equine care and upkeep and have attained the rank of Senior Trooper.

V. TRAINING

Members assigned to the Highway Patrol Caisson Unit shall receive training from the United States Army Old Guard Caisson Platoon assigned to Arlington National Cemetery, at no cost to the Patrol. Trained personnel will then conduct training sessions with all Troop Honor Guard Teams to ensure a seamless transition with the addition of the Caisson Unit.

VI. EQUIPMENT AND MAINTENANCE / BOARDING

The equipment and maintenance necessary to support the Caisson Unit will be funded through monetary or in-kind donations in accordance with State Highway Patrol Policy Directive H.03 pertaining to gifts, favors, and donations. A memorandum of Agreement will be prepared between the potential donor and the State Highway Patrol and approved by the Secretary Department of Public Safety or his/her designee.

The items and services listed below will be available to the Caisson Unit:

- (4) Draft Horses
- (1) Riderless Walker Horse
- (1) Horse Trailer (Capable of transporting 5 horses with the appropriate GVWR)
- (1) Caisson
- (1) Caisson Trailer
- (1) Dual Wheeled 4 x 4 Truck
- Assorted Tack
- (4) Sets of Uniform Riding Gear
- Horse Stables and Pasture Area
- Feed
- Veterinarian Services
- Farrier Services

All maintenance associated with the Caisson Unit will be performed by a Caisson Team Member with the necessary training and experience.

VII. OPERATIONAL GUIDELINES

The State Highway Patrol Caisson Unit will be maintained in a state of operational readiness to respond to a duly authorized funeral request. The horses will be boarded at a location that is approved by the Commander of Troop I. The approved location (farm) must be suitable and equipped to provide day-to-day care for the animals to ensure peak performance.

The Commander of Troop I will appoint a Team Leader to transport and conduct the ceremonies as it relates to the Caisson Unit. The Team Leader will coordinate his/her efforts with the appropriate Troop Commander or a representative from the requesting agency. At least one other member will be assigned to assist the Team Leader with the detail. At the conclusion of the assignment, each member of the Caisson Team will complete an expense account and submit through their appropriate chain-of-command.

VIII. FUNERAL DETAIL PROTOCOL

- Caisson request made to the Patrol Officer of the Day
- State OD notifies the Troop I Commander or his/her designee
- The Troop I Commander or his/her designee selects a Caisson Unit Team Leader and assistant
- Team Leader and assistant prepare unit for departure/travel
- Team departs for destination
- Team Leader coordinates funeral plans with the affected family members, Funeral Home Personnel, Troop Commander, Chief or Executive Officer from requesting agency
- Funeral executed
- Team Leader and assistant prepare unit for travel
- Team travels back to farm where equipment is unloaded and cleaned
- Team Leader prepares a HP-335 and submits to the Assistant Commander of Troop I, or his/her designee

Wearing Patrol Uniforms

Directive O.01

Applicable to: Members

Revised 08/05/2019
Effective 11/10/2004

I. POLICY

This policy establishes guidelines for wearing Patrol issued uniforms and equipment.

II. ON DUTY

Members shall wear a complete Highway Patrol uniform while on duty consistent with N.C.G.S. § 20-190 and Patrol regulations and directives, unless otherwise authorized by the appropriate Section Director/Troop/Unit Commander or higher authority.

Members shall be considered to be on duty when wearing the uniform and it shall be worn consistent with the following:

- The appropriate “Serving Since” pin, badge, and rank insignia shall be worn by the member at all times while in uniform. The only exception is when the member is wearing the issued Class B uniform or Jumpsuit for an official function, and after the approval of his/her supervisor.

- Headgear shall be worn at all times when out-of-doors, except when the member believes the use of headgear would interfere with his/her prompt performance with regard to officer safety. The wearing of headgear while inside Patrol vehicles is discretionary.

- Buttons on trousers, jackets, shirts, and blouses shall be buttoned. Zippers on jackets shall be fully zipped. Buttons shall not be added or attached to shirt collars.

- Trousers and shirts shall not be altered to fit tightly so as to prevent the wearing of soft body armor under the shirt

- Trousers shall be hemmed so as to break slightly at the shoes

- Neither shirts nor trousers shall have sewn-in creases; however, military creases may be pressed in shirts

- Bulky items shall not be carried in pockets

- Only gray or black socks shall be worn

- Collar stays may be worn provided they are of plain design and are the same color as the nameplate. Commissioned officers may wear silver colored stays.

- Only standard issue lapel ornaments may be worn on Ike jackets or blouse lapels

- Only the standard issued tie tac may be worn

- The nameplate shall be worn over the right pocket of the shirt, jacket, or blouse. Members actively participating in the FTO or STO program may wear the FTO or STO flashing.

- The Patrol Award of Valor, or the Purple Heart ribbon, may be worn by award recipients centered ¼ of an inch above nameplate, FTO or STO flashing and centered horizontally on crease (See Figure 1)

- Should a member have earned both the Valor and a Purple Heart Ribbon at anytime, the member may wear both of the ribbons at the same time on the uniform, spaced ¼ of an inch apart

- Aviation Section, Motor Unit, or other approved insignia identifying a specialization will be worn ¼ inch above the nameplate and centered horizontally on crease. It will be worn ¼ inch above Award of Valor or Purple Heart ribbon when both are worn. The Commander's Office shall be to sole authority for authorizing any insignia to be worn on Patrol Uniforms. See Figure 1.

- The black mourning band for the badge shall be worn when attending funerals of all deceased police officers, active or retired, and on other occasions as set forth in Directive E.07

- Leather and metal uniform items shall be cleaned and shined

- The Sam Browne belt without the shoulder strap shall be worn with the uniform

- Holsters shall be worn on the right side unless the member is left-handed. Patrol issued holsters shall be worn with all safety devices engaged for maximum weapon security, and officer safety. Members shall not modify issued holsters in any manner.

- The whistle and chain shall be worn with the chain attached to the right epaulet and the whistle in the right breast pocket of the shirt or blouse

- Neither miniature flags nor service pins shall be worn on the uniform

- Uniforms shall not be worn if noticeably torn or worn

- Only issued leather uniform items, including holsters, shall be worn

- The wearing of the black raincoat is optional with commissioned and non-commissioned officers and may be worn by Troopers when not performing enforcement functions

- Clip-on pocket knives shall not be visible or bulky in nature

- Oleoresin Capsicum (O.C.) Spray (If the member is issued a CEW, the wearing of the O.C. Spray is optional.), the ASP Baton, one set of handcuffs, ammo carrier, and the service pistol shall be worn at all times. Wearing of the O.C. Spray and the ASP Baton may be considered optional for uniformed members assigned to Patrol Headquarters, sections, or troop headquarters with approval of the appropriate Section Director. Those members granted an option in this instance must have these items of equipment available in their Patrol vehicles when making enforcement contacts or responding to special incidents.

Members of the Highway Patrol, on or off duty, shall not wear the uniform or any portion thereof outside the geographical boundaries of this State without prior written authorization from the Commander's Office or designee.

Patrol issued Class B Uniforms and Jumpsuits are considered official uniforms and shall be worn by Troopers and Sergeants who have the authority to do so while performing an official function, and with the approval of the member's immediate supervisor (e.g. Conducting CVSA Inspections, Diesel Compliance, Criminal Interdiction Unit, Mobile Field Force, Collision Reconstruction; Hazardous Materials Conductions, etc.).

Unless performing specific job functions (e.g. Conducting CVSA Inspections, Diesel Compliance, Criminal Interdiction, Mobile Field Force, and Collision Reconstruction; Hazardous Materials Conductions, etc.), Class B uniforms shall not be worn by the rank of First Sergeants and above.

Class B short-sleeved shirts shall not be issued to, or worn by, First Sergeants and above.

- Class B uniforms shall be black in color and bear the shoulder patch/badge emblem of the North Carolina Highway Patrol

- Class B uniforms may not be worn while attending court, conducting public speaking engagements, or attending funerals, and they may not be worn while participating in special event assignments unless directed or approved by the Troop Commander or higher authority

- The Class B trousers may be bloused when worn

- The Class B uniform shall include an approved issued boot and appropriate web gear

- Embroidered badges shall be used as opposed to metal badges

- Class B short-sleeved shirts are authorized to be worn between 1 March and 1 November.

- The Class B uniform ball cap shall always be worn with the protective hard cap insert when the member is conducting CVSA inspections or weighing CMV vehicles

III. BODY ARMOR

Only Highway Patrol issued soft body armor or personal body armor meeting Threat Level II standards or greater shall be worn.

- All members assigned to uniformed and plain clothes positions are required to wear body armor while assigned to field activities unless the member is involved in undercover or plain clothes work that his/her supervisor determines could be compromised by wearing body armor.

- The approved outer carrier shall be worn with the Class B uniform.

- Members shall wear the approved outer carrier at all times while conducting traffic stops.

    - Note: If a member is performing duties relevant to their position and not part of a traffic stop, then the outer carrier may be temporarily removed. (Example: A CMV member performing a truck inspection, an accident reconstruction member working a collision scene, etc.)

IV. REFLECTORIZED SAFETY VEST

At all times, members shall wear their reflectorized safety vests while directing or exposed to traffic during assigned traffic-related events.

Members who respond to emergency situations (i.e. traffic collisions, chemical spills, requests for assistance, etc.) shall at the earliest practical time don their reflectorized safety vests while exposed to or directing traffic unless officer safety would be compromised. This policy should not be construed to prohibit a prompt officer response when an incident demands his/her immediate attention to prevent injury, death, or loss of property.

For the purposes of this policy, the reversible short rain jacket satisfies the OSHA requirement for visibility during inclement weather. Members are not required to don their reflectorized vest as long as they have on the short rain jacket with the green side turned out.

V. RANK INSIGNIA PLACEMENT

Rank Insignia (Chevrons)

- Cloth chevrons for Sergeant and First Sergeant shall be sewn on uniform shirts, Blouse, and Ike Jackets. The chevron shall be attached point up. It shall be centered and positioned 1 inch below the bottom seam of the shoulder patch. Cloth chevrons shall not be attached to Light Weight Jacket, Aviator uniform, utility overalls, or raincoats.

- The Years of Service cloth chevron (optional) shall be sewn on the left arm of the Blouse, Ike and Foul Weather Jacket. It shall be attached on the flat part of the jacket, 1 inch above the piping on the Blouse and Ike Jacket. It shall be sewn three (3) inches above the cuff on the Foul Weather Jacket.

- The Emergency Medical Technician Patch (optional) shall be worn only on the uniform shirt. The patch will be placed 1 inch above the shirt cuff seam on the right sleeve facing in a frontal position.

Rank Insignia (Metal)

- Uniform shirt rank insignias for commissioned officers shall be attached as follows: One insignia will be worn on each collar. The insignia will be centered between the top and bottom edge of the collar with the outer edge of the insignia 1 inch from the front edge of the collar except Captains and Lieutenants whose insignias will be worn ½ inch from the front edge of the collar.

    - Colonel insignias will be worn with the head of the eagle toward the top of the collar facing to the front, with the wings perpendicular to the front edge of the collar (See Figure 2)

    - Lieutenant Colonel and Major insignias will be worn with the stem toward the bottom of the collar and the line from the tip to the stem parallel to the front collar edge (See Figure 2)

    - Captain and Lieutenant insignias will be aligned with the long axis of the bars parallel to the front collar edge (See Figure 3)

- Blouse, Ike, and Foul Weather rank insignias for commissioned officers shall be attached as follows: one insignia will be worn on each shoulder. The insignia will be centered from the front and rear edges of the shoulder strap on the cross-stitching and ¾ inch from the shoulder seam.

    - Colonel insignias will be worn with the wings at right angles to the centerline of the shoulder strap with the eagle's head toward the collar and facing front

    - Lieutenant Colonel and Major insignias will be worn with the leaf stem facing the shoulder seam

    - Captain and Lieutenant insignias will be worn with the long axis of the bars parallel to the shoulder seam

Rank Insignia Metal for Light Weight Jacket

- Non-Commissioned Officers: Metal rank insignias shall be attached on the Light Weight Jacket as follows: One insignia shall be worn on each shoulder. The insignia will be centered from the front and rear edges, single point inboard, with base of the insignia positioned 1 inch from shoulder strap fold at the shoulder seam.

- Commissioned Officers: Metal rank insignias shall be attached on the Light Weight Jacket as follows: one insignia shall be worn on each shoulder. The insignia will be centered from the front and rear edges of the shoulder strap with base of the insignia positioned 1 inch from the shoulder strap fold at the shoulder seam.

    - Colonel insignias will be aligned with the wings at right angles to the center of the shoulder strap with the eagle's head toward the collar and facing forward

    - Lieutenant Colonel and Major insignias will be aligned with the leaf stem facing the shoulder seam

    - Captain and Lieutenant insignias will be aligned with the long axis of the bars parallel to the shoulder seam

Rank Insignia for Aviator Uniform and Uniform Coveralls

- Non-Commissioned Officers: Rank insignia will only be worn on the badges and nameplates not on the uniform itself

- Commissioned Officers: One cloth insignia will be worn on each shoulder. The insignias will be centered ¾ inch from the shoulder seam

Nameplate shall be worn in space provided. Award of Valor and/or Purple Heart Ribbon will be worn ¼ inch above top edge of nameplate, FTO, or STO flashing and centered horizontally on crease of shirt. Motor unit or aviation pin will be worn ¼ inch above top edge of the ribbon centered horizontally on crease.



Collar insignia will be worn centered vertically from top to bottom of the collar and with the edge of the insignia 1 inch from front edge of collar. Long edge of insignia should be parallel to front edge of collar.





Collar insignia will be worn centered vertically from top to bottom of the collar and with the edge of the insignia ½ inch from front edge of collar. Long edge of insignia should be parallel to front edge of collar.





Personal Appearance

Applicable to: Members

Directive O.02
Revised 03/01/2016
Effective 10/1999

I. POLICY

This policy establishes guidelines for all uniformed members to maintain a neat and well-groomed appearance. These procedures, regulations and policies are intended to promote the professional image expected by the Patrol and to encourage good health for consistently optimum job performance while increasing public confidence.

II. PERSONAL APPEARANCE

All members shall maintain a neat, well-groomed appearance while on duty. Attention to personal hygiene is a requisite when in uniform. Excess body weight is detrimental to good health. It has been medically linked to the causes of many diseases proven to be common hazards to law enforcement personnel. The Patrol encourages all members to participate in a personal fitness/wellness program.

Necklaces. Necklaces may be worn, but shall not be visible in uniform. Necklaces of sufficient strength, which may choke the member, should not be worn while on duty.

Rings. Rings which restrict the wearing of gloves, shooting of firearms, use of Patrol equipment, have sharp projections which snag or cut, or otherwise create an undue hazard will not be worn while on duty.

Body Piercing. Body piercing which is visible anytime while on duty and/or in uniform is prohibited.

Earrings. Male members may not wear any type of ear stud or earring when in uniform or civilian clothing, on or off duty. **Female** members may wear clip-on or post-type earrings with the Patrol uniform. Earrings must be of unadorned spherical or disc shape and may not exceed 6mm or 1/4 inch in diameter. They must be of gold, silver, diamond, or white pearl and worn as a matched pair with only one earring per ear.

Fingernails. Members shall keep their fingernails clean and trimmed. Uniformed members' fingernails shall not extend beyond 1/8th inch beyond the tip of the fingers. If worn, fingernail polish shall be clear, translucent pastels, or beiges which are conservative. Ornaments or stick-ons are prohibited on the fingernails. Only one color of polish may be worn.

Tattoos and Brands. Members will not place or obtain any tattoos or brands on any part of the body which are visible while wearing the uniform. Members are not authorized to have a tattoo that is visible and cannot be covered by natural skin tone makeup.

Cosmetic Makeup. Cosmetics worn by members must be conservative both in appearance and application so as to be consistent with the uniform concept. Cosmetics used may be either traditional brands or permanent in nature.

Glasses/Sunglasses. If glasses or sunglasses are worn, they shall be maintained in good condition and shall be conventional and conservative in nature. No faddish, multi-colored, or mirrored glasses shall be worn. Glasses or sunglasses may not be hung from any part of the uniform.

Hair. All members' hair must be of a natural color (i.e. blond, black, brown, red, or grey) and not such that would diminish the professional uniform appearance. Fluorescent or similar dyed hair colors are not acceptable.

Hairstyles must be worn in a neat, trimmed, combed, clean, conservative, and professional appearance at all times.

- **Male uniformed members** shall style their hair according to the following guidelines:

  - Hair must be no longer than the top of the shirt collar at the back of the neck when the member is standing with his head in a normal posture. Hair must not cover any portion of the ears. Hair on the sides and back of the head must be tapered; a *block-cut* in back is not permitted.

  - Hair shall not be styled so as to present a bulky or bushy appearance with or without headgear. The bulk and length of hair shall not interfere with the normal wearing of standard headgear or other Patrol equipment.

  - Sideburns shall be neatly trimmed and rectangular in shape. Sideburns shall not extend below the lowest part of the exterior ear opening.

  - Members shall be clean-shaven. Mustaches, beards, and goatees are not permitted

- **Female uniformed members** shall style their hair according to the following guidelines:

  - Short hair must be no longer than the bottom of the shirt collar at the back of the neck when the member is standing with her head in a normal position. Long hair shall be worn up and be **neatly and securely pinned** (i.e. French braid, bun, twist, etc.) so as not to interfere with wearing of uniform headgear or equipment. Ponytails or other hairstyles that allow the hair to hang free are not authorized. Female members shall notify their immediate supervisor in writing of an intention to adopt a longer hairstyle. They shall be given a reasonable period of time for transition to a longer hairstyle not to exceed one (1) year. It is not the intent of this policy to allow these members to wear a hairstyle which is mid-length for an extended period of time.

- Hair may be worn over the ears but shall not extend below the bottom of the ears. Hair clips, pins, and/or barrettes that blend with the color of the hair may be worn; but non-functional hair ornaments shall not be worn.

- The bulk and length of hair shall not interfere with the normal wearing of standard headgear.

- Wigs and hairpieces are permitted only if they conform to the standards set forth in this rule.

III. USE OF TOBACCO, VAPOR PRODUCTS AND CHEWING GUM

Members shall not smoke, use vapor products (as defined by G.S. 14-313(a)(5)), chew tobacco or gum at any time while in direct contact with the public in an enforcement action, while directing traffic, or on any other official Patrol business.

Members are permitted to chew tobacco and gum while patrolling in automobiles. The Patrol vehicle shall be cleared periodically to discard spit containers. Spit containers shall be kept out of sight of the public.

Uniforms and Equipment Issued / Records

Directive O.03

Applicable to: Employees

Revised 01/08/2021
Effective 10/1/1999

I. POLICY

This policy addresses issues concerning uniforms and equipment. Employees shall be held responsible for proper care and upkeep of all issued equipment.

II. UNIFORMS AND EQUIPMENT ISSUED / RECORDS

Employees shall be issued and held responsible for maintaining the following equipment in good condition. Members must make sure that all issued equipment is readily available and notify their supervisor when the need arises to obtain a replacement.

UNIFORM ITEMS	
Item	**Quantity**
Alcohol Screening Test Device (ASTD)	1
Badge (Hat)	1
Badge (I.D.)	1
Badge (Uniform)	2
Belt (Sam Browne)	1
Boots (All Terrain)	1
Braid (Hat)	1
Ball Cap	1
Chain (Whistle)	1
Campaign Hat	1
Holster (Pistol)	1
Identification Holder	1
Jacket (All-Weather)	1
Jumpsuit	1
Magazine / Handcuff Carrier	1
Nameplates	2
Nameplate Attachments (Serving Since, etc.)	2
Ornaments (Collar)	1 pair
Raincoat	1
Rain Cover (Campaign Hat)	1
Rain Pants	1
Shirt	6
Shoes	2 pairs
Strap (Hat)	1
Tie	3
Tie Tac	1
Trousers (Year-Round)	6
Whistle	1

LEGEND		
A – Armory	M – MCSAP	T – Training Academy
AP – Auto Parts	OS – Office Supplies	TSU – Technical Services Unit
DT – Defensive Tactics	R – Radio Shop	UW – Uniform Warehouse

MISCELLANEOUS ITEMS		
	Item	**Quantity**
UW	Arrest Report Holder	1
UW	Blanket (Disposable)	1
AP	Booster Cables	1
TSU	Camera	1
A	Cleaning Rod (Multi-Cal)	1
OS	Clipboard	1
T	EMT Kit	1
AP	Fire Extinguisher	1
UW	Individual First Aid Kit	1
UW	Bloodborne Pathogens/ Latex Gloves	1
UW	Handcuff Key (Long)	1
A	Hearing Protectors	1
TSU	Mobile Data Computer (MDC)	1
UW	Meter (Measure) Rolla-Tape	1
R	Printer (In-Car)	1
TSU	800 MHz Portable Radio (Hand Held)	1
A	Safety Glasses	1
UW	Stop Sticks	1
UW	Tape (50') (Steel)	1
UW	Tape (200') (Nylon)	1
AP	Tire Tread Depth Gauge	1
UW	Traffic Wand Flashlight	1
UW	Vest (Reflectorized Safety)	1
AP	Wrench (Lug)	1

DEFENSIVE ITEMS		
	Item	**Quantity**
A	Ammunition, Pistol	50
A	Ammunition, Rifle	125
A	Ammunition, Shotgun (Buck)	10
A	Ammunition, Shotgun (Slug)	10
DT	Electronic Control Device (Taser)	1
UW	Flashlight, Large (Rechargeable)	1
UW	Flashlight, Small (Rechargeable)	1
UW	Baton (ASP)	1
UW	Expandable Baton Holder	1
UW	Handcuffs	2
UW	Hobble Strap	1
A	Pistol	1

DEFENSIVE ITEMS		
	Item	**Quantity**
A	Shotgun	1
A	Rifle	1
UW	Ties (Flex-Cuff)	5
UW	Vest (Body Armor)	1
UW	Active Shooter Vest (ASV)	1
UW	Active Shooter Helmet (ASH)	1
UW	Oleoresin Capsicum Spray	1

Additional Equipment Issued

Members authorized to perform Size and Weight, Motor Carrier Safety Assistance Program (MCSAP), Commercial Vehicle Safety Alliance (CVSA) and Dyed Diesel Fuel Compliance (DCO) duties shall be issued and held responsible for maintaining the following additional equipment in good condition:

LEGEND		
A – Armory	M – MCE	T – Training Academy
AP – Auto Parts	OS – Office Supplies	TSU – Technical Services Unit
DT – Defensive Tactics	R- Radio	UW – Uniform Warehouse

SIZE & WEIGHT / CVSA / MCSAP		
	Item	**Quantity**
AP	Air Gauge (Truck)	1
UW	Ball Cap and Insert	1
UW	Class B Shirts, Long Sleeves	3
UW	Class B Shirts, Short Sleeves	3
UW	Class B Trousers	4
UW	Belt Class B	1
AP	Bolt Cutter	1
UW	Boots	1
UW	Gloves, Inspection	1
UW	Holster Class B	1
UW	Magazine Carrier Class B	1
UW	O.C. Carrier Class B	1
M	Portable Scales	4
UW	Stinger Flashlight with Charger	1
UW	Brake Chamber Measuring Tool	1
AP	Creeper	1
TSU	Digital Camera	1
UW	Glove Case Class B	1
OS	Hand Calculator	1
UW	Hand Cuff Carrier Class B	1
UW	Metal Ruler	1
UW	Soap Stone	3
UW	Soap Stone Holder	1
UW	Size & Weight Clipboard Metal	1

SIZE & WEIGHT / CVSA / MCSAP		
	Item	**Quantity**
AP	Wheel Chocks	2
TSU	Air card	1
TSU	GPS Unit (Handheld or Portable)	1

NEW ENTRANT AUDITOR UNIFORM AND EQUIPMENT LIST		
	Item	**Quantity**
TSU	Document Scanner	1
TSU	Digital Camera	1
TSU	Laptop Computer	1
R	Portable Printer	1
MCE	Voltage Inverter	1
R	In-Car Printer and Power Cable	1
MCE	Rolling Bag for Computer	1
OS	Hand Calculator	1
R	In-Car Computer Docking Station	1
TSU	In-Car Radio	1
TSU	800 MHz Portable Radio (Hand Held)	1
UW	In-Car Rechargeable Flashlight	1
AP	Fire Extinguisher	1
UW	Reflective Vest	1
TSU	Cell Phone	1
UW	Cell Phone Case, Class B	1
UW	First Aid Kit	1
AP	Bolt Cutter	1
AP	Tire Depth Gauge	1
AP	Tire Pressure Gauge (Truck)	1
UW	Chalk (Soapstone) Holder with Ruler	1
UW	Brake Chamber Measuring Tool	1
UW	Head Lamp (LED)	1
AP	Creeper	1
UW	Inspection Gloves	1 pair
AP	Jumper Cables	1
UW	Metal Clipboard Document Holder	1
AP	Wheel Chocks	1 pair
UW	Shirt Class B – Short Sleeve	3
UW	Shirt Class B – Long Sleeve	3
UW	Pants Class B	3
UW	Belt Class B	1
UW	Hat	2
UW	Plastic Bump Insert (For Hat)	1
UW	Safety Glasses	1 pair
UW	Boots	1 pair
UW	All Weather Jacket	1
UW	Rain Jacket	1
UW	Rain Pants	1

III. MEMBER OWNED FIREARMS

A member is authorized to use a personally owned firearm(s) as a backup or off duty firearm if the member owned firearm(s) meets specifications, and the member has completed all required prerequisites. A member is not required to carry additional firearm(s) in addition to North Carolina State Highway Patrol issued firearm(s), but may at their discretion.

Members are authorized to use any combination of member owned and North Carolina State Highway Patrol owned long gun(s), not to exceed one (1) rifle/carbine and one (1) shotgun for duty use. If a member chooses to carry a member owned rifle/carbine and/or shotgun, in lieu of an North Carolina State Highway Patrol issued rifle/carbine or shotgun, the member shall return the North Carolina State Highway Patrol issued long gun to the Patrol Armory within ten (10) business days after successful qualification with the member owned rifle/carbine and/or shotgun.

While on duty, member owned handgun(s) will be utilized as a secondary or supplemental handgun(s) only. A member owned handgun will never be substituted for the North Carolina State Highway Patrol issued handgun for primary duty use.

PREREQUISITES FOR USE OF A MEMBER OWNED FIREARM

Handgun

A member must pass the current day and night handgun qualification test administered by a North Carolina State Highway Patrol Specialized Firearms Instructor.

The member must test under the conditions in which they intend to carry the handgun. Example; Member carries a handgun in an ankle holster as a backup on duty firearm. Member must deploy the handgun from the ankle holster during their qualification test.

Rifle/Carbine

A member must have successfully completed the North Carolina State Highway Patrol Basic Patrol Rifle Course.

A member must pass the current day and low light rifle/carbine qualification test administered by a North Carolina State Highway Patrol Specialized Firearms Instructor.

Shotgun

A member must have successfully completed the North Carolina State Highway Patrol Shotgun Course.

A member must pass the current day and night shotgun qualification test administered by a North Carolina State Highway Patrol Specialized Firearms Instructor.

SPECIFICATIONS FOR MEMBER OWNED FIREARMS

HANDGUN

Caliber

Members may use any caliber within the range of .380 to .45 caliber. Any caliber smaller than .380 or larger than .45 is prohibited.

Revolver

A revolver must be from a reputable manufacturer and be in good working order with a minimum cylinder capacity of five (5) rounds.

Semi-automatic

A semi-automatic handgun must be from a reputable manufacturer and be in good working order with a minimum magazine capacity of six (6) rounds.

A minimum of two (2) magazines are required for qualification. A member is not required to carry or purchase additional handgun magazines for on duty use, but is recommended.

A semi-automatic handgun capable of firing fully automatic or having a “burst” option allowing for multiple projectiles to be fired with a single trigger press is prohibited.

A North Carolina State Highway Patrol Specialized Firearms Instructor may disqualify any handgun for duty use due excessive wear, unsafe condition, or poor performance of the firearm.

A North Carolina State Highway Patrol Specialized Firearms Instructor may prohibit a member from utilizing a member owned handgun for duty use if the member demonstrates poor manipulation skills, demonstrates a lack of understanding of the handgun, or is unsafe with the handgun. The member may retest at the discretion of a North Carolina State Highway Patrol Specialized Firearms Instructor post remediation.

Any appeals to the decision of whether a firearm is fit for use by a North Carolina State Highway Patrol Specialized Firearms Instructor will be directed to the North Carolina State Highway Patrol Armorer or their designee. The decision of the Patrol Armorer or their designee shall be final.

RIFLE / CARBINE

Caliber

A member owned rifle/carbine must be chambered in 5.56 x 45mm NATO. A rifle/carbine that is stamped "Cal 223-5.56MM" is acceptable. A rifle/carbine stamped ".223 Rem Only" is prohibited.

Platform

A rifle/carbine shall be of an AR style platform. A member may use either a commercially produced AR, or use a custom AR built by a certified AR armorer or gunsmith.

If a member chooses to utilize a custom built AR, a North Carolina State Highway Patrol Specialized Firearms Instructor holding an AR armorer certification will inspect the rifle/carbine prior to use. If a custom built gun has been constructed with substandard parts, or the build fails to meet all specifications, then the AR will not be authorized for use. If a member believes the AR to be in compliance, then the member may appeal to the Patrol Armorer who will decide if the AR is or is not in compliance.

Commercially produced and custom built AR's must have a trigger group that meets or exceeds U. S. Military Specification for minimum trigger pull weight. The U. S. Military Specification that governs trigger pull weight is MIL-C-71186 (AR) 3.4.3.

A minimum of four (4) rifle/carbine magazines are required for duty use. Magazines will have a thirty (30) round capacity only.

Modifications to the trigger or trigger group that allow for more than one projectile to be fired with a single press and release of the trigger are prohibited.

A member owned AR will not have the capability for fully automatic fire or have a "burst" fire option.

Short Barrel Rifles/Carbines (SBR) are allowed for use only after the Patrol Armory has received legible copies of compliance with the National Firearms Act (NFA) rules, and all other prerequisites and specification are met. The Patrol Armory will include these documents in the members permanent firearms file.

A North Carolina State Highway Patrol Specialized Firearms Instructor may deny use of a personally owned AR for any non-compliance of the above specifications. Appeals to the decision of whether a firearm is fit for use by a

North Carolina State Highway Patrol Specialized Firearms Instructor will be directed to the North Carolina State Highway Patrol, Patrol Armorer or their designee. The decision of the Patrol Armorer, or their designee, shall be final.

SHOTGUN

Gauge

Shotguns shall be chambered in 12 Gauge. No other gauge is approved for use.

A shotgun must be either a Military or Law Enforcement Service Grade Shotgun. Pump action or semi-automatic actions are the only approved actions for North Carolina State Highway Patrol use. No shotgun will be capable of fully automatic fire.

All Shotguns will be single magazine tube fed.

A short barreled shotgun (SBS) is not authorized for use.

A non-magnified optic is approved for use on a shotgun. Due to limitations of the shotgun design, co-witness is not a requirement for an optic used on a shotgun. If an optic is used either on an North Carolina State Highway Patrol or personally owned shotgun, it will be a non-magnified optic.

A North Carolina State Highway Patrol Specialized Firearms Instructor may deny use of a personally owned shotgun for any violation of the above specifications. Appeals to the decision of whether a firearm is fit for use by a North Carolina State Highway Patrol Specialized Firearms Instructor will be directed to the North Carolina State Highway Patrol Armorer, or their designee. The decision of the Patrol Armorer, or their designee, shall be final.

ACCESSORIES

Optics

Non-magnified and magnified/variable optics are authorized for use in compliance with this directive.

Non-magnified

A non-magnified optic from a reputable manufacturer that must be able to co-witness with existing iron sights or back up iron sights on a rifle/carbine. Shotguns are not required to be co-witnessed.

Prior to duty use of a non-magnified optic, the member must successfully qualify with the firearm utilizing the optic on all required courses of fire.

If an optic fails to maintain zero, it will be removed from the firearm until properly serviced, repaired, or replaced.

Magnified

Members are authorized to use magnified/variable optics following successful completion of the North Carolina Justice Academy Law Enforcement Sniper Course. The Patrol Armory must receive and maintain a copy of the certificate in the member file prior to use.

Lights

A weapon light is permissible for use on a member's long gun. Members will ensure that when a light is mounted to a firearm, the mount or the light does not interfere with manipulation of the firearm.

If a weapon light is mounted to a North Carolina State Highway Patrol owned long gun, the mounting system shall not permanently alter the long gun or its components.

Slings

AR rifles/carbines and shotguns are required to have slings attached prior to training, qualification, and duty use. Although the member is not required to utilize the same sling issued by the North Carolina State Highway Patrol it is highly recommended.

Magazines

Additional magazines may be purchased and utilized by members for member owned and Patrol issued firearms. Members should purchase manufacturer specific magazines but are not required. If a non-factory magazine is to be used in a member owned firearm for duty, the member will ensure the magazine(s) function with equal or better performance as a factory magazine(s).

AMMUNITION

Rifle/Carbine, Shotgun

A member who utilizes a member owned rifle/carbine and/or shotgun will be issued the North Carolina State Highway Patrol basic load for the particular firearm(s) from the Patrol Armory at no cost to the member.

Members are authorized to carry additional rifle/carbine/shotgun ammunition at their own expense, provided it meets Patrol Armory specifications.

Handgun

Members are responsible for providing their own ammunition for a member owned handgun that is not the current caliber utilized by the North Carolina State Highway Patrol.

Ammunition will be "Service/Law Enforcement Grade" from a reputable ammunition manufacturer with the projectile being a jacketed hollow point.

Remanufactured or re-loaded ammunition is prohibited for use.

A member, who attempts to qualify with the same caliber handgun that is currently utilized by the North Carolina State Highway Patrol, may be issued ammunition for qualification if available. If the member qualifies with that weapon, the member may be issued duty ammunition if available.

Any ammunition that is either lead, or cast lead is prohibited from use unless the firearm is designed specifically for lead use. Any ammunition that is steel cased or has a lacquer finish is prohibited.

MAINTENANCE AND REPAIRS

Member owned firearms will be maintained in accordance with the manufactures recommendations.

A member owned firearm will be inspected by the member periodically to ensure cleanliness and proper lubrication.

A North Carolina State Highway Patrol supervisor will inspect any personally owned firearm used for duty or off duty use during required inspections. The inspecting supervisor will inspect the firearm for cleanliness and compliance to this policy.

The member is solely responsible for any and all repairs made to a member owned firearm(s).

North Carolina State Highway Patrol owned parts will not be used to repair any personally owned firearm(s).

IV. ANNUAL CLOTHING ALLOWANCE

An Individual Clothing and Equipment Record (HP-715) and an Annual Clothing Allowance (HP-716) for each employee shall be maintained by the Support Services Section Uniform and Supplies Warehouse Manager. These records shall be forwarded to the appropriate Section Director, Troop/Unit Commander upon request.

Uniforms unusable by the recipient may be replaced as needed, within reasonable amounts. Items destroyed or damaged in a job-related incident may be replaced

irrespective of the annual clothing allowance, provided a memorandum of explanation accompanies the requisition. The item must be inspected by the First Sergeant and declared unusable.

V. REQUISITIONS

Uniform and equipment replacements may be obtained only by requisition and/or stopping at the Uniform and Supplies Warehouse when in Raleigh. Supervisors shall prepare requisition forms and forward to troop headquarters. The Section Director, Troop/Unit Commander must approve all requisition forms. If an employee has exceeded his/her allowance, the requested items will still be issued; however, the member's Section Director, Troop/Unit Commander will be notified.

Requisitions for uniforms and equipment shall be submitted only when the need arises.

A limited number of commonly used articles will be stocked at troop headquarters for replacement purposes, namely:

- Collar ornaments
- First-aid kit supplies
- Hat braids
- Flashlight batteries
- Steel tapes
- Ties
- Whistles and chains

Requisitions must also be prepared and approved for these items and records maintained.

VI. UNSERVICEABLE ITEMS / EXCHANGES

Supervisors shall inspect items of clothing and equipment to determine if they are unserviceable prior to requisitioning replacements.

Non-fitting uniforms may be exchanged for usable items. New items will be exchanged for new items, and used items will be exchanged for used items.

VII. UNIFORM ALTERATIONS, REPAIRS, AND CLEANING

Employees may not be reimbursed for tailoring or alterations to uniforms unless pre-approved in writing, by the appropriate Section Director, Troop/Unit Commander. The pre-approval justification memorandum must be submitted with

the expense account when requesting reimbursement. An exchange of non-fitting uniforms will be made at Troop and Patrol Headquarters supply. If properly fitting uniforms are not available, written documentation of this fact is provided to the employee by the Director of Support Services. The First Sergeant may use this documentation to approve necessary alterations by a reliable business or individual.

Repairs to damaged uniforms, attachment of chevrons/patches, and hemming of trousers may be obtained without prior approval provided the expense does not exceed $12.00 per item. Expenses of this nature exceeding $48.00 for one employee for one month shall first be pre-approved in writing, by the appropriate Section Director, Troop/Unit Commander. The pre-approval justification memorandum must be submitted with the expense account when requesting reimbursement.

Alterations or repairs to the Class B Uniform shall be in strict compliance with this section. No items other than those items approved by this policy shall be added to any Highway Patrol uniform.

The cost of uniform alterations and repairs shall be initially paid for by the employee. A properly executed receipt should be obtained and submitted with the employee's monthly expense account.

Uniforms must be kept cleaned and pressed at the employee's expense.

VIII. COMMUNICATIONS TECHNOLOGY EQUIPMENT INVENTORY TRACKING

Communications Technology Equipment shall include, but is not limited to: mobile data computers, 800 MHz handheld radios, handheld or portable GPS units, and wireless broadband devices.

Whenever an employee who is issued any of this equipment is either separated from the State Highway Patrol, is laterally transferred to a new position and must leave his/her issued equipment with the position that he/she is vacating, is promoted into a position that is not eligible for any of these items, or has equipment that has become damaged/destroyed and is in need of repair or replacement, it shall be the responsibility of the affected employee to return this equipment to the Section/Unit Director. No unassigned Communications Technology Equipment shall be retained in the District/Section/Unit.

After collecting the equipment from the employee, the Section/Unit Director or his/her designee shall return the unit to the Technical Services Unit along with a completed CL-33 (Notice of Transfer of Equipment).

After receiving the equipment and form CL-33, the Technical Services Unit shall perform one of the following functions:

- Place the equipment into "Stock" / Update CAD / Personal Information File (PIF)

- Perform a re-imaging and re-assign the equipment to an employee filling the vacated position

- Perform a re-imaging and re-assign of the equipment to another employee as requested by the submitting Section/Unit (if feasible)

- Repair/replace the equipment

IX. DUTIES OF SUPERVISORS UPON SEPARATION OF MEMBER

The immediate supervisor of a member retiring, resigning, or otherwise being separated shall complete form CL-90 (Separation Clearance Checklist) when retrieving all items of equipment issued to that member and returning those items to the Section Director, Troop/Unit Commander.

The member's immediate supervisor shall be responsible for securing the member's service weapon(s) by ensuring that the weapon(s) are unloaded and the slide/bolt secure in an unlocked, partially open position, utilizing a wire tie or the provided orange barrel flag if feasible. The weapon shall be returned to the Patrol Armory in the original issued container along with the issued magazines (bandoleers for carbines), grip panels, and cleaning kits. Form CL-33 (Transfer of Equipment) shall be submitted with the weapon within 10 business days.

Mandated and detailed weapon records shall be maintained by the Patrol Armorer in a secure location. Weapon reassignments or transfers in the field shall be indicated on form CL-33 (Transfer of Equipment) and submitted to the Patrol Armorer without delay.

An inventory shall be conducted under the direction of the Section Director, Troop/Unit Commander to ascertain that every item issued to the member has been relinquished. With the exception of firearms, conducted electrical weapons (CEW) and technical items issued by the Technical Services Unit (TSU), all uniforms and equipment shall be delivered to the Logistics Unit Uniform Warehouse within 30 calendar days after a member's separation. In consultation with the Logistics Unit Commander, the Section Director, Troop/ Unit Commander or their designee shall conduct an investigation into any missing items. The investigation shall include the completion of the Report of Investigation (HP-721) and SBI-78. At the discretion of the Director of Support Services, the cost of any items not returned to the State Highway Patrol at the time of retirement or separation may be deducted from the member's or employee's pay or billed to the member or employee. This shall not apply to uniform clothing items including, but not limited to, trousers, shirts, shoes, boots, used gloves or ball caps.

Sworn members separating from employment through a "service retirement" as defined in Directive E.09, Section VIII are permitted to retain the number of items that are prepopulated in the "Retained by Retiree" column on the CL-90.

Members separating from employment other than through a "service retirement" as defined in Directive E.09, Section VIII, shall return all badges attained in each rank the member once held, e.g. Trooper, Senior Trooper, Master Trooper, Sergeant, etc. Exceptions may be made for members separated from employment due to disabling injuries received in the line of duty. These exceptions will be evaluated by the Director of Support Services on a case by case basis.

X. UNATHORIZED USE OR SALE OF PATROL EQUIPMENT

Please refer to Directive O.03, Section VII of this policy. Unauthorized use or sale of Patrol issued equipment is strictly prohibited.

XI. RETURN OF UNIFORM BADGES UPON MEMBER REALLOCATION OR PROMOTION

When a member is reallocated to the rank of Senior or Master Trooper, one (1) shirt badge of the previously held rank shall be returned to the Logistics Unit Uniform Warehouse. Each Troop Commander shall ensure the badge from each newly reallocated member in their respective Troop are returned within 30 calendar days of the reallocation date. Badges should be packaged together along with an attached list documenting the name, registry number and previously held rank of each member returning a badge.

When a member is promoted to the rank of Sergeant or above, one (1) shirt badge and one (1) wallet badge of the previously held rank shall be returned to the Logistics Unit Uniform Warehouse. The new Section Director, Troop Commander or Unit Commander shall ensure both badges from each newly promoted member in their respective Section, Troop or Unit are returned within 30 calendar days of the promotion date. Badges should be packaged together along with an attached list documenting the name, registry number and previously held rank of each member returning badges.

Patrol Vehicle Assignment and Maintenance; Use of Patrol Vehicles

Directive O.04
Revised 11/13/2020
Effective 10/1/1995

Applicable to: Employees

I. POLICY

This policy maintains a standard for the use and maintenance of Patrol Vehicles.

II. PATROL VEHICLE ASSIGNMENT

Each member shall be issued a Patrol vehicle. Patrol vehicles will not be replaced until they have been driven for at least 100,000 miles or for four (4) years. Earlier replacement will be made only if the Director of Support Services determines such replacement to be in the best interest of the Patrol.

The Support Services Section shall notify Section Directors, Troop/Unit Commanders as to the make, model, vehicle identification number, and the license number of each vehicle issued to members within their respective troops.

Section Directors, Troop/Unit Commanders shall not change or transfer motor vehicles without notifying the Unit Commander of Logistics.

Unmarked Patrol vehicles shall be issued in accordance with law and with the approval of Field Operations and the Director of Support Services.

Each member shall park his/her issued Patrol Vehicle at his/her established residence as defined in Directive E.09.

III. WHO MAY DRIVE

Only the persons listed below are authorized to drive Patrol vehicles:

- Enforcement members while on duty
- A Patrol mechanic while road testing a vehicle or while delivering a vehicle to a member or to a garage
- A civilian while transporting a member to a hospital who is incapacitated by illness or injury
- Civilian employees of the Department when authorized by a Section Director, Troop/Unit Commander or higher authority
- Civilian mechanics on premises of garage or service stations while servicing Patrol vehicles
- Any person participating in a course of instruction provided by the Training Academy that requires the operation of a Patrol vehicle

IV. PERSONS AUTHORIZED AS PASSENGERS

Members shall not transport unauthorized persons in Patrol vehicles. Authorized persons may be transported when circumstances require.

A. Authorized Passengers in the Line of Duty

This shall include, but is not limited to:

- Accident victims
- Stranded motorists
- Witnesses
- Prisoners
- Other persons when required or authorized by a First Sergeant or higher authority
- Request for Transport from the Governor's office or the Secretary of DPS

An HP-3 (Ride Agreement) is **not** required and does not have to be approved by the First Sergeant or higher authority.

Members shall **not** engage in extraordinary patrol vehicle operations.

Members shall **not** transport arrested persons who were charged with Driving While Impaired back to their vehicles if the persons were released by a magistrate for any reason.

Members shall notify the Communications Center using Signal 30 when an individual of the opposite sex must be placed within the Patrol vehicle for the purpose of public service or enforcement contacts

B. Authorized Passengers by Request

This shall include but is not limited to:

- **Applicants**
    - Applicants may ride along with Highway Patrol Field Training Officers or Members holding the rank of Senior Trooper or higher (if an FTO is not available) provided he/she has successfully completed the "Initial Screening," "Pre-Employment Polygraph" and he/she remains eligible for employment throughout the State Highway Patrol Applicant process.

Prior to approval, the Applicant's eligibility status must be verified through the Training Academy by the approving authority.

- The Applicant shall be limited to two (2) ride along sessions at the discretion of the approving supervisor

- **Chaplains**

  - The Communications Center shall be advised any time a Chaplain is in a Patrol vehicle. Chaplain ride alongs are part of the Chaplaincy Program; however, a member may decline to have a Chaplain ride along with him/her. At no time during the course of the ride along should a Chaplain interfere with the member in the performance of his or her law enforcement duties.

- **Interns**

  - Interns may ride along with Highway Patrol Field Training Officers or Members holding the rank of Senior Trooper or higher (if an FTO is not available). He/she must be participating in the Patrol's Internship Program and an Internship Ride Agreement (HP-3A) or High School Internship Ride Agreement (HP-3B) must be completed.

- **Media**

  - Members of the media may ride along with Members holding the rank of Senior Trooper or higher provided they have received authorization from either the Section Director/Troop Commander or his/her designee. If the ride along is approved, the appropriate Section Director/Troop Commander or designee shall notify the PIO that is on call.

- **Judicial Officials**

  - Judicial Officials may ride along with members holding the rank of Senior Trooper or higher for the purpose of observing Patrol law enforcement procedures and to promote relations between respective agencies. Prior to any official riding, he/she must have received authorization from the affected District First Sergeant or higher authority.

- **Legislative Officials**

  - Legislative Officials may ride along with members holding the rank of Senior Trooper or higher for the purpose of observing Patrol law enforcement procedures. Prior to any official riding, he/she must have received authorization from the affected District First Sergeant or higher authority.

- **Other Sworn Law Enforcement Officers**

    - Law Enforcement officers may ride along with Members holding the rank of Senior Trooper or higher for the purpose of observing Patrol law enforcement procedures and to promote relations between respective agencies. Prior to any official riding, he/she must have received authorization from the affected District First Sergeant or higher authority.

An HP-3 (Ride Agreement), HP-3A (Internship Ride Agreement), or HP-3B (High School Internship Ride Agreement) is required before the ride begins and must be approved by a First Sergeant or higher authority. Members shall hold the rank of Senior Trooper or higher to transport an "Authorized Passenger by Request".

Members are <u>not</u> authorized to take enforcement action <u>or</u> engage in extraordinary patrol vehicle operations <u>with non-sworn passengers</u>. Members shall not initiate or engage in a chase with non-sworn members inside the vehicle. Members must employ due caution for the safety of said passengers at all times.

Members shall provide a "pre-ride" training session that shall include, but is not limited to the following information:

- Familiarization with the Highway Patrol radio functions

- Instructions on remaining inside of the patrol vehicle while the patrol member is involved in a traffic stop unless a life threatening situation exists

- Instructions to maintain vigilant watch over the driver and possible occupant(s) inside the violator vehicle in order to react to officer and/or personal safety concerns

The "Authorized Passenger by Request" shall possess no weapon of any type during the ride along (with the exception of Sworn Law Enforcement Officers), and shall take no action of any type against a violator except to protect themselves or the Member from the eminent use of deadly force

The "Authorized Passenger by Request" shall not report for a ride along with any odor of an alcoholic beverage on their breath or while under the influence of any impairing substance

Persons Authorized as Passengers	
Line of Duty (No HP-3 needed)	**Request to Ride (HP-3 needed)**
- Accident victim - Stranded motorist - Witnesses - Prisoners - Other people authorized by FSG or higher - Request for Transport from Gov., Sec. of DPS	- Chaplain - Interns (HP-3A or HP-3B) - Media - Applicant - Judicial Official - Legislative Official - Other LEO

C. Family Members

Members are authorized to transport family members and/or active or retired Highway Patrol personnel in an issued patrol vehicle when traveling to a specific State Highway Patrol funeral service, retirement event, or promotional ceremony. Prior to transporting individual(s) in their issued patrol vehicle, the member shall provide their immediate supervisor with the name(s) of the individual(s) that will be transported. Members shall take no enforcement action and shall not engage in any extraordinary patrol vehicle operations. Members must exercise due caution for the safety of transported individual(s) at all times.

V. REQUESTS FOR TRANSPORTATION

Any request from the Governor or the Secretary for Patrol transportation or services shall be acknowledged and handled immediately.

All requests for security, medical or other emergency assistance shall be assessed by the Section Director, Troop/Unit Commander or higher authority for approval based on need.

Requests from other governmental officials for Patrol transportation or services shall be granted only on approval by the Commander's Office, his/her designee, or the Secretary.

VI. MEMBERS TO BE IN UNIFORM

Members shall be in uniform while operating a Patrol vehicle unless granted permission to wear civilian apparel by a Section Director, Troop/Unit Commander or higher authority.

VII. USE OF PATROL VEHICLES FOR AUTHORIZED OFF-DUTY TRAVEL

Authorized Use for Off-Duty Functions

- Members may be authorized to use Patrol vehicles for off-duty travel with the consent of and in the discretion of the First Sergeant or higher authority.

- Members are encouraged to enroll in advanced education courses and may use the Patrol vehicle for travel to classes with the approval of the First Sergeant or higher authority

- Time spent operating the Patrol vehicle for authorized off-duty travel is not compensable. Members must check 10-86 (Beginning Authorized Travel) and 10-87 (Ending Authorized Travel) with the appropriate Communications Center. Members traveling to the Training Academy shall use on-duty hours when reporting for training and when traveling back to their duty stations at the conclusion of the course of instruction. If a member elects to return to his/her residence at night while still assigned to the Training Academy, 10-86 and 10-87 shall be used.

- The member shall park the Patrol vehicle on arrival at the designated location and the vehicle shall not be used again until the return trip

Preparation of the Request for Use of Patrol Vehicle for Off-Duty Travel (HP-312)

- All Troopers and Sergeants, regardless of duty station, must complete form HP-312 for all off-duty travel, consistent with the instructions set forth in this policy and in the Forms Section on the Highway Patrol's Intranet Site

- A member authorized to use a Patrol vehicle for off-duty travel shall have an approved copy of the HP-312 in his/her possession. The form must bear the signature of the member and his/her First Sergeant or higher authority.

- Deviations from the planned route of travel shall be recorded on form HP-312 with explanations for the deviation

- Form HP-312 may be submitted to cover an entire school semester or other period of training

Taking Enforcement Action

- When confronted with a situation normally performed by on-duty personnel, members shall respond unless a local member is available. Members should attempt to obtain assistance from a member assigned to the area to avoid the need to return to court. If assistance is not readily available, members shall take the necessary action required by the situation. Members who are out of uniform must follow the policy concerning arrest while out of uniform.

- Time spent performing enforcement duties must be considered work time. Members shall contact the appropriate Communications Center, check 10-87 (Ending Authorized Travel), check 10-41 (Beginning Tour of Duty), complete

the necessary action, check 10-42 (Ending Tour of Duty), check 10-86 and continue travel. The work time shall be recorded on the HP-201.

- All work time and duties performed shall be recorded on the member's copy of the HP-312

Off-Duty Use by Commissioned Officers and First Sergeants

- Commissioned Officers and First Sergeants are authorized to travel without a travel request after receiving verbal approval from their respective supervisor. They must notify the Communications Center of their travel status and destination.

VIII. MAINTENANCE / ALTERATIONS / ACCESSORIES

- All installed equipment to include radios, radars, Vascars/trackers, in-car cameras, computers, and any other equipment shall not be altered or moved without the written authorization of the Troop/Unit Commander/Section Director

- All Patrol vehicles shall be repaired and maintained at Patrol garages whenever practical. Minor repairs costing $20.00 or less may be made at public garages whenever such repairs are necessary.

- Patrol vehicles shall be serviced (gas, oil, lubrication, and washing) only at Patrol installations except when special authorization is granted. This service shall be performed each 6,000 miles with a 500-mile tolerance given before and after the 6,000-mile interval.

- Section Directors or Troop/Unit Commanders may authorize the painting of wheel covers on Patrol vehicles. Wheel covers shall only be painted black after prior authorization from the appropriate Section Director or Troop/Unit Commander.

- NCSHP garage personnel are not responsible for painting wheel covers. Lug nuts are not to be painted.

- Aside from the above wheel cover authorization, patrol vehicles shall not be painted or altered in any way without prior written authorization by the Director of Support Services.

- No additional accessories may be placed on a Patrol vehicle after it is issued.

- Compact Disc players may be installed in the dash of the vehicle provided it is of the same type and design as original equipment on the make of the vehicle upon which it is installed

Telephone Use and Mandates, Use of CB Radios, Amateur Radios, Wireless Telephones, Scanners, and Two-Way Radios by State Highway Patrol Members

Directive O.05
Revised 8/19/2021
Effective 3/1/1995

I. POLICY

This policy establishes rules governing the use of telephones, cell phones, radios, and scanners by members of the State Highway Patrol.

II. TELEPHONE AT RESIDENCE

At all times, members shall maintain a residential telephone that is in proper working order. For the purposes of this directive, cellular telephones may be considered residential telephones.

Members may have their telephone numbers non-published or unlisted. In either case, it is the members' responsibility to furnish their residential telephone number to certain essential personnel. Members shall appropriately notify all personnel outside the Highway Patrol, including police agencies, other governmental units, or other persons on a need-to-know basis. Members' non-published/unlisted telephone numbers must be provided by written memorandum via chain-of-command or the Information Management System to the following:

- All Patrol Communications Centers
- Patrol Headquarters
- All Section Directors/Troop Commanders and Supervisors

The residential telephone number, assigned cellular telephone number, and assigned pager number of each member shall be listed in the *Employee Roster* section of the Information Management System. Additionally, the residential telephone number of each member will be listed in the *Patrol Personnel Roster*. All residential home telephone numbers, whether published or non-published, are to be considered confidential and not to be released to unauthorized persons.

III. USE OF STATE TELEPHONES

Members shall exercise the utmost courtesy and project the best professional image possible at all times while conducting Patrol business over the telephone. The following guidelines will normally apply to the use of Patrol telephones:

- When answering a telephone at a Patrol facility, identify your agency, rank, and name. Example: "State Highway Patrol, Trooper Doe, may I help you."
- When placing a call of an official nature, identify your agency, rank, and name. Example: "Hello, this is Trooper Doe, with the State Highway Patrol in Raleigh."

- Members shall not engage in lengthy telephone conversations unnecessarily.

- Members shall not deliver death messages by telephone.

- Members shall not utilize state telephones, or credit cards to make personal long distance or toll calls.

Members will courteously accept reports and information over the telephone and will take appropriate action in accordance with Patrol policy concerning all such information even when it is anonymous.

State Owned Wireless Telephones / Personal Digital Assistants (PDAs aka Smart Phones)

- State owned wireless telephones will be issued only to employees whose position and/or responsibilities are deemed essential to the Highway Patrol's mission. The position and job functions of each member will govern the type of wireless telephone to be issued and the number will appear in the Roster Details located on the Highway Patrol's Intranet. To determine eligibility, refer to the "Wireless Telephone Eligibility List" (posted on the intranet). If a position is authorized to receive a wireless telephone, it shall be provided to the employee at the agency's expense and shall not be used to conduct personal business.

- All Highway Patrol Personnel issued a wireless telephone shall have the unit in their immediate possession **"powered-on"** at all times whether on duty or off duty.

- State issued data enabled wireless telephones may be used to transmit e-mail messages, text messages, documents, photographs, videos and audio recordings only when they pertain to state-related business.

- All members issued a wireless telephone shall immediately contact the Unit Commander of the Technical Services Unit should the issued device become lost or stolen.

- If a member separates from the Highway Patrol or their job function no longer supports the requirement for a state-owned phone, the device and all accessories shall be returned to the Technical Services Unit.

Wireless Telephone Special Approval Procedures

- In order for a state-owned wireless telephone to be issued to personnel that do not prequalify based on job functions, the employee's supervisor must submit a justification memorandum via the chain-of-command, to the Unit Commander of the Technical Services Unit. This memorandum must include the change in job function(s) that warrant the issuance of a state-owned

wireless telephone and if those changes are temporary or permanent. If the new functions are temporary, a timeframe for use should also be defined.

- When a civilian employee is approved to be issued a state-owned wireless telephone, the appropriate supervisor shall have the affected civilian employee read and sign a copy of form HP-30, "State-Owned Wireless Telephones Procedures," which is located on the intranet. Once signed, a copy of the HP-30 shall be given to the civilian employee. The original HP-30 shall be filed in the affected civilian employee's Personal History file at the appropriate Section, Troop/Unit, or District office and shall remain on file indefinitely, or until the employee no longer has a state-owned wireless telephone.

- Members issued a wireless telephone shall be responsible for the care of all wireless communications equipment and shall neither abuse, damage, nor lose it through carelessness.

IV. AUTHORITY TO INSTALL CB RADIOS, AMATEUR RADIOS, SCANNERS, OR TWO-WAY RADIOS IN PATROL VEHICLES

Members are permitted to install the following communication units in their issued Patrol vehicle: amateur radio, CB radio, scanner, or two-way radio with the approval of the Section Director/Troop Commander. Such installation and maintenance or any damage incurred shall be the sole responsibility of the member. All such radio equipment installed in Patrol vehicles shall be operated in conformance with Federal Communications Commission regulations and Patrol procedures.

Any member who intends to install a two-way radio equipped with frequencies assigned to the Sheriff's Department of the county in which the member is assigned must obtain approval from the Section Director/Troop Commander. The installation of such radio must be determined to be necessary for the safety of the member or other law enforcement officers in the county. The monitoring of Patrol radio communications is a primary responsibility of members; therefore, use of both types of radios and scanners should receive careful attention to prevent distraction that may cause essential Patrol radio traffic to be missed.

V. PERSONALLY-OWNED WIRELESS TELEPHONES AND PAGERS

Members may carry and use personally-owned wireless telephones. Members who choose to carry their own wireless device must adhere to the following guidelines:

- The member may be permitted to carry a personally-owned wireless telephone on duty once the member completes and submits form HP-30A (Personally-Owned Wireless Telephone Notification) to his/her supervisor.

- The member shall not use a personally-owned wireless telephone to conduct secondary employment business while on duty.

- The member shall have the personally-owned wireless telephone number entered into the Comments section of the CAD.

- The member must have full subscriber rights and privileges of the wireless telephone or pager account he/she wishes to carry while on duty (i.e. contract for service for the wireless telephone or pager to be carried must authorize the member access to itemized bills upon request).

- The member shall be responsible for all expenses relating to the use and maintenance of the personally-owned wireless device.

- When requested, the member shall furnish a copy of his/her billing records to his/her First Sergeant or Section Director/Troop Commander for review. The requested billing records provided shall display all incoming and outgoing calls made or received by the phone in question during the time period requested. Information such as dates, times, telephone numbers, and minutes used may be redacted if such information is not pertinent to an inquiry or investigation.

- The wireless device shall not be used to circumvent normal radio communications procedures or the records management system. **Wreckers shall not be called by wireless telephone.** The use of the wireless telephone to check 10-41 (Beginning Tour of Duty), 10-42 (Ending Tour of Duty), 10-7 (Out of Service), 10-8 (In Service), or other procedures relating to the member's activity is prohibited unless dictated by justifiable circumstances.

- Use of the *HP (*47) or the Patrol's toll-free (1-800) numbers shall be limited to emergency or supervisory situations, or when directed to telephone a Communications Center.

- Use of the wireless telephone does not interfere with the members' ability to monitor Patrol radio traffic or to safely operate the vehicle.

Any member who abuses the privilege of having a wireless telephone shall have this privilege revoked.

VI. LIMITATIONS ON USE OF SCANNERS OR TWO-WAY RADIOS

Members shall not communicate directly with members of other agencies through the scanner receivers or two-way radios **unless an emergency requires otherwise**.

Emergency information obtained by members through the scanner or two-way radio shall be communicated directly to the appropriate Patrol Communications Center by radio or telephone. Members shall notify the Communications Center when they are responding to an emergency they have learned about through the scanner or two-way radio.

The scanner-receiver or Sheriff's Department radio shall not be used by members to circumvent patrol communications or records management systems.

VII. INSTALLATION AND MAINTENANCE OF CB RADIOS, AMATEUR RADIOS, SCANNERS, OR TWO-WAY RADIOS

The installation and maintenance of privately owned CB or amateur radios, scanners, or two-way radios shall be the responsibility of the members owning the units. Any damage incurred during installation or use shall be the sole responsibility of the members. Privately owned CB or amateur radios, scanners, or two-way radios cannot be installed at Patrol facilities without prior approval of the Section Director/Troop Commander.

Members installing CB or amateur radios, scanners, or two-way radios on Patrol vehicles shall use only antennas of a clip-on type which are similar to antennas issued by the Patrol. **Members shall install only one antenna for each authorized communications unit with the approval of the Section Director/Troop Commander.**

VIII. IDENTIFICATION OF PATROL MEMBERS ON CB RADIO

Members shall use the Patrol call sign, KXB-7782, during all CB radio transmissions.

There are occasions when Patrol members equipped with CB radios may have a need to identify themselves as individuals when transmitting to both Patrol operators and civilian CB operators. On those occasions, members shall use their own Patrol call number in conjunction with the Patrol call sign as in the following example: "This is KXB-7782, Unit D-111, go ahead with your traffic."

Members shall not use "CB handles" in communicating through privately owned CB radios in their issued Patrol cars. The purpose of the use of CB radios is not to carry on frivolous conversations with the motoring public, it is to obtain information useful to the Patrol in carrying out its assigned duties; therefore, handles are not necessary.

IX. ADDITIONAL REGULATIONS GOVERNING THE USE OF CB RADIOS

No member shall transmit false or deceptive information or in any way entice any person to commit an unlawful act.

Members shall monitor Emergency Channel 9, except that other channels may be monitored if radio traffic is sufficiently light.

Citizen band calls should be answered promptly and courteously. Non-emergency calls will be terminated as promptly and tactfully as possible. **The formality expected on Patrol radio frequencies will be maintained on CB transmissions.**

There will be no retaliation either by stopping or by radio transmission against any person recording members' location or activities for the apparent purpose of evading traffic laws.

CB contacts calling for action beyond giving information by radio shall be reported to Patrol base Communications Center as soon as practicable.

Members shall not communicate with base CB stations that have been installed or may in the future be installed in their residences.

Members shall comply with all Federal Communications Commission (FCC) rules and regulations governing the use of CB radios.

X. ADDITIONAL REGULATIONS GOVERNING THE USE OF AMATEUR RADIOS

No member shall transmit false or deceptive information or in anyway entice any person to commit an unlawful act.

Members shall use their own FCC issued radio license call sign, but shall, in the course of conversation, identify themselves as Patrol members giving their Patrol call number (e.g. "Highway Patrol Unit C-411"). **The formality expected on Patrol radio frequencies will be maintained on amateur transmission.**

Amateur radio equipment installed in Highway Patrol vehicles shall not be used for recreation purposes, but shall be used to enhance coordinating assistance to motorists and/or citizens in emergency situations.

Other than requests for routine information, amateur radio communications shall be reported to the Patrol Communications Center serving the area in order that important traffic will be electronically logged.

Members shall comply with all FCC rules and regulations governing the use of Amateur Radio.

Civilian Assignment / Use of Vehicles

Directive O.06

Applicable to: Employees

Revised 07/27/2018
Effective 6/20/2006

I. POLICY

This policy establishes guidelines and procedures for the assignment and/or use of non-enforcement state-owned vehicles assigned to a civilian employee by the Highway Patrol, when approved by the appropriate Section Director, Troop/Unit Commander or higher authority.

State-owned vehicles shall be driven only by state employees when used for official state business only.

II. APPROVED CIVILIAN EMPLOYEES

Non-sworn employees assigned a state-owned vehicle, shall not use such vehicle for commuting or other personal use unless an exception has been granted by the Patrol Commander and Secretary pursuant to DPS policy (https://www2.ncdps.gov/emp/DPS%20Travel%20Policy%20(6-19-2018).pdf). In any event where an exception has been made, the employee shall reimburse the State for mileage through payroll deduction. Commuting, for purposes of this restriction, does not include the following field positions that do not have an assigned SHP office and who work exclusively out of their vehicle:

- VIPER Technician
- VIPER Tower Climber
- VIPER Power Distribution Electrician
- VIPER Facility Maintenance
- VIPER HVAC Mechanic
- New Entrant Auditor
- New Entrant Auditor Supervisor
- Compliance Review Officer

Civilian employees with duties that require him/her to attend meetings, training, or perform other official duties, may be temporarily assigned/use a state-owned vehicle. (This provision shall also include Patrol mechanics test driving or transporting official Patrol vehicles.)

III. VEHICLE USE

Employees with a permanently/temporary assigned state-owned vehicle may drive to and from his/her residence. The appropriate supervisor shall instruct the employee to park the vehicle once they have arrived at their home and that the vehicle shall not be driven again expect for official business.

Employees who are issued a vehicle or authorized to use a state-owned vehicle may use the vehicle for the purpose of meal breaks (in-state), and/or other

necessities (if traveling out-of-state) while on official business, but not for entertainment purposes.

Seat Belts

- In accordance with North Carolina General Statutes and the North Carolina State Highway Patrol, the driver and all other passengers shall be properly restrained by seat belt or approved child safety device, when the vehicle is in forward motion.

Motor Vehicle Laws and Ordinances

- Employees who are authorized to drive a state-owned vehicle shall observe all state motor vehicles laws and ordnances. All violations and fines shall be the responsibility of the affected employee. An employee who is cited for a violation of state law or city/county ordinance shall report same to his/her supervisor within 24 hours of issuance.

Firearms, Other Weapons, and Explosives

- Employees shall not possess, transport, or store firearms, others weapons, or explosives in any state-owned vehicle at anytime.

Alcohol and Drugs

- Employees shall not operate any state-owned vehicle while under the influence of an alcoholic beverage or illegal drug. Employees are also prohibited from operating a state-owned vehicle while taking any physician prescribed or over-the-counter medication, which could impair the employees' ability to operate a vehicle safely. Under no circumstances will an employee possess, transport, or store any alcoholic beverage, or illegal drug in a state owned vehicle.

Hitchhikers

- Employees operating state-owned vehicles shall not transport hitchhikers under any circumstances.

Relatives

- After being approved by the appropriateSection Director, Troop/Unit Commander or higher authority, the employee may be allowed to transport their family members in accordance with the provisions outline in this section.

- Employees may be authorized to transport family members and/or active or retired Highway Patrol personnel in an issued state-owned vehicle when traveling to a specific State Highway Patrol funeral service, retirement event, or promotional ceremony. Prior to transporting individual(s) in their issued state-owned vehicle, the employee shall provide their immediate supervisor

with the name(s) of the individual(s) that will be transported. Employees must exercise due caution for the safety of transported individual(s) at all times.

Non-State Employees

- Non-state employed persons may accompany state employees driving state-owned vehicles when they have an interest in the purpose of the trip and their presence is related to state business. Non-state employed persons are not allowed to operate a state-owned vehicle.

Fuel

- Employees shall use only the type of fuel designated by the manufacturer for the type of vehicle being driven by the employee. Also, an employee driving state-owned vehicles shall only obtain fuel from those locations that are approved by the Commander's Office or his/her designee.

IV. TRAFFIC COLLISIONS

Any employee involved in a traffic collision while driving a state-owned vehicle shall, as quickly as possible, notify the appropriate supervisor of the Section, Troop/Unit in which the employee is assigned, and he/she shall also contact the appropriate Highway Patrol district supervisor, or appropriate law enforcement agency for investigation. The employee's supervisor or his/her designee shall submit form HP-721B (Notification of SHP-Owned Vehicle Collision (48 Hours)) via e-mail to Field Operations within forty-eight (48) hours of the Patrol vehicle collision.

The employee's supervisor or his/her designee shall ensure that a Report of Investigation (HP-721A) is completed, and documented on a Vehicle Accident/Incident Report in BlueTeam for internal management purposes. The employee's supervisor shall ensure that a preventable collision be documented on a NCVIP and HR-562. Furthermore, remedial drivers training shall be considered in direct consultation with the Section Director of Drivers Training. The investigating supervisor shall forward the BlueTeam report with attached documentation to the Unit/Troop Commander or their designee in which the employee is assigned via chain of command within twenty (20) business days of the date of occurrence. The Unit/Troop Commander shall confer with the Internal Affairs Unit Commander or their designee to make sure appropriate discipline is administered. The Unit/Troop Commander or designee shall then forward the BlueTeam report to the PVCIC Board for review.

At any time an employee is involved in a collision while driving a state-owned vehicle which results in serious bodily injury or death, the employee shall be ordered by the appropriate patrol supervisor to take a drug and alcohol test to eliminate the possibility that drug/alcohol use may have affected the employee's actions or judgment, to include an administrative review of the collision. The testing protocol set forth in Directive E.02C, "Civilian Employee / Applicant Drug Screening" located on the intranet shall be followed for this test.

An employee, who is involved in a collision which results in serious injury or death under the provisions of this directive, shall not operate a state-owned vehicle until the administrative review has been completed, and the drug and alcohol test results return to the satisfaction of the Medical Director in consultation with the Director of Professional Standards. Employees who are involved in any critical incident shall be referred to the Patrol Medical Office for post-incident counseling pursuant to Directive E.15, Section VI (Procedures for the Member's Assistance Team.

V. MAINTENANCE / ALTERATIONS / ACCESSORIES

All state-owned vehicles shall be repaired and maintained at Patrol garages whenever practical. Minor repairs costing $20.00 or less may be made at public garages whenever such repairs are necessary.

State-owned vehicles shall be serviced (gas, oil, lubrication, and washing) only at Patrol installations except when special authorization is granted. This service shall be performed each 6,000 miles with a 500-mile tolerance given before and after the 6,000-mile interval.

State-owned vehicles shall not be painted or altered in any way without prior written authorization by the Director of Support Services with the exception of wheel covers as outlined in Directive O.04.

State-owned vehicles shall not be decorated without authorization of the Director of Support Services. This includes, but is not limited to, unauthorized decals, bumper stickers, baseball caps, hard hats, and stuffed animals, etc.

No additional accessories may be placed on a State-owned vehicle.

Tape or Compact Disc players may be installed in the dash of the vehicle provided it is of the same type and design as original equipment on the make of vehicle upon which installed.

VI. ADMINISTRATIVE REVIEW

The Unit/Troop Commander or their designee shall consider any special circumstances in all Patrol vehicle collisions or incidents. The Unit/Troop Commander or their designee shall verify for accuracy, clarification, and discrepancies, during the submission process of BlueTeam, and notations inputted into the "Comment" section. If the appropriate documentation is in order, the designated Unit/Troop Commander or their designee shall approve said collision/incident and route this via the electronic format of BlueTeam To: the Patrol Vehicle Collision-Incident Board Chairperson and Cc: PVCIC – Board Members distribution list within ten (10) business days of the date of initial receipt. Due to the complexity of these types of investigations, an extension can be granted by contacting the Patrol Vehicle Collision-Incident Board Chairperson via chain of command. The extension should only be granted for substantiated

reasons. (i.e. Recon Unit assisting, Serious Injury of a member, etc…). NOTE: Dissemination of these reports shall be completed within thirty (30) business days of the date of occurrence, unless an extension is granted.

Use of Highway Patrol Computer Systems, Internet, and E-Mail

Directive P.01
Revised 08/2014
Effective 11/30/1999

Applicable to: Employees

I. POLICY

This policy ensures proper and professional use of North Carolina Highway Patrol computer systems including Internet, e-mail, and all forms of computerized transactions made available to employees by the Highway Patrol. This policy establishes rules and regulations which govern the use of Highway Patrol information and computer systems.

II. USE OF COMPUTER SYSTEMS

Only authorized employees of the Department of Public Safety (DPS) or its contractors and agents may use Highway Patrol computers, networks, or computerized databases.

- Employees shall not access or attempt to access any Highway Patrol computer system without being authorized to use the system and assigned a valid password and user identification.

- Employees shall not use or permit the use of passwords or user identifications assigned to other persons unless there are extenuating circumstances and both parties are aware and agree to the use. In these instances, the original passwords shall be changed as soon as practical.

- Employees shall keep all passwords confidential. Passwords must be made available to immediate supervisors when requested.

- Employees shall not knowingly enter or cause false information to be entered into any Highway Patrol computer system.

Unauthorized copying or unauthorized use of computer software is a violation of State and Federal law. Copyright law also prohibits loading of software from one disk to multiple machines unless allowed by a license. The Patrol's Technical Services Unit Commander or his/her designee shall first approve all software used on Highway Patrol computer systems.

- Typically, all software used on Highway Patrol computer systems will be purchased and owned by the Highway Patrol.

- Other software deemed appropriate and approved for use on Highway Patrol computer systems shall fall under the rules and regulations of this directive. Although an individual employee may be granted permission to use software not purchased and owned by the Highway Patrol, the software is not protected from managerial review once it is loaded into or operated on a machine owned by the Highway Patrol.

Only trained and authorized Patrol employees or authorized service personnel are allowed to work on, repair, or modify any Patrol computer equipment.

III. INTERNET

Internet access is provided to Patrol employees for the sole purpose of supporting the mission, goals, and objectives of the Highway Patrol.

- Employees shall refrain from downloading information from the Internet unless it is job related and originates from a reliable source. Downloading non-job-related information or data shall be considered a violation of this directive.

- Employees are prohibited from utilizing Highway Patrol computer systems, on or off duty, to access Internet sites which would embarrass and/or have an adverse impact on the Highway Patrol or constitute a violation of law. Prohibited sites include but are not limited to those that promote and/or provide access to adult and/or child pornography, hate groups, and online gambling. Visiting such sites with Patrol computer systems will constitute a violation of this directive and may also constitute violations of other Patrol directives. An exception to this regulation is granted to the Technical Services Unit Commander or his/her designee and/or a member of Internal Affairs when conducting official investigations, inquiries, or random checks to ensure compliance with this directive. This exception is allowed solely for the purpose of determining the identity of the site and in no way permits interaction.

- Visiting and interacting with non-job related chat room sites are prohibited.

- Employees are permitted to utilize Internet access for personal use on a limited basis provided it does not adversely impact the employee's performance of public duties, generate more than a negligible direct measurable cost to the public, or constitute a violation of the restrictions outlined above.

IV. E-MAIL

E-mail connectivity is provided to Patrol employees for the purpose of supporting the mission, goals, and objectives of the Highway Patrol. It is intended to enhance and expedite communications both internally and externally.

- The content of any message and/or attachment sent over the Intranet, Internet, or the Patrol's CAD system must be appropriate and consistent with Patrol policy and subject to the same restrictions as any other correspondence.

- Other rules and regulations pertaining to computer use and information content contained elsewhere in this directive will apply when exchanging e-mail.

- The sending of a non-patrol related message (i.e. a chain letter) intended to generate excessive or multiple transmissions is strictly prohibited.

- Employees are permitted to utilize e-mail for personal use on a limited basis provided it does not adversely impact the employee's performance of public duties. However, accessing personal e-mail accounts (e.g. AOL, Hotmail, Yahoo) through the Internet from Highway Patrol computers exposes the Patrol's Network to risk of virus and cyber attacks, and is therefore prohibited.

V. USE OF WIRELESS DEVICES (AIR CARDS, MIFI, ETC.)

The Department of Public Safety or Highway Patrol assigned cellular/data devices should only be used for official business related activities. Personal use of assigned equipment is prohibited. This includes connecting personally owned computers, laptops, tablets, smartphones, or other data capable equipment to State issued Blackberries, smartphones, air cards, MiFi, or other Internet device.

Additionally:

- The use of these devices is strictly limited to accessing the Internet for official Highway Patrol business (i.e. CJ Leads, NC Aware, etc.)

- These devices may only be used with Highway Patrol owned computer equipment. Under no circumstances may an issued MiFi device be used with any personally owned equipment (computers, smartphones, etc.).

VI. SECURITY, CONFIDENTIALITY, AND PRIVACY

All electronic messages or files sent or received via Patrol connections are not to be considered confidential and will be considered Patrol business communications that may be monitored, audited, read, copied, archived, or otherwise accessed and reviewed.

VII. ADDITIONAL PROVISIONS

Patrol owned computer systems, including portable laptop devices and MDCs, shall not be connected to the Internet in any manner other than that provided by the Patrol.

Employees shall also be governed by the Department of Public Safety Policy entitled *Policy Governing the use of the North Carolina Integrated Information Network and the Internet*.

I. POLICY

This policy sets forth guidelines governing the State Highway Patrol communication network.

II. GENERAL

In accordance with N.C.G.S. § 20-196, the State Highway Patrol is charged with the responsibility of establishing and maintaining a statewide radio system, and will direct and confine its communications operations and transmissions to official law enforcement business and to emergency services.

All information transmitted over the Division of Criminal Information (DCI) and the National Law Enforcement Teletype System (NLETS) shall be restricted to law enforcement agencies and court officials.

III. OPERATIONAL LIMITATIONS

Patrol Communications Centers are licensed by the Federal Communications Commissions (FCC) and must adhere to FCC rules and regulations.

Patrol Communications Centers are licensed to carry only police related service messages. Employees shall confine use of the radio to messages of urgent police nature. Patrol Communications Centers provide 24-hour, toll-free telephone access for non-emergency and emergency calls for service.

Telecommunicators are authorized to refuse to handle any message deemed improper for radio transmission and classified as 10-71 traffic unless otherwise directed by a commissioned or noncommissioned officer.

Radio operational procedures shall be uniform throughout the State, and changes in procedures shall not be made except as approved by Patrol Headquarters.

IV. USE OF RADIO

Patrol Communications Centers have 24-hour 2-way radio capability providing continuous communications between the center and officers on duty.

Members shall memorize the official Ten Signals (10-Code) and use the code for Patrol radio transmissions. All radio communications shall be made in a businesslike manner and the use of slang and satirical or humorous comments shall be avoided.

When an emergency exists, the emergency signal 10-33 should be used. The member and Telecommunicators handling the emergency shall have the first radio priority until the emergency traffic is concluded.

The radio call number assigned to all employees shall be utilized during radio transmissions for identification.

Members shall check 10-7 each time they go out-of-service unless instructed otherwise by a Section Director/Troop Commander or higher authority. They shall inform the Communications Center of their location and give the telephone number, if possible, when going 10-7 at locations other than their residences. Members shall promptly check 10-8 each time they return to service and shall maintain radio contact with the appropriate Communications Center while in service.

Supervisors shall notify the Communications Center when a change is made in the work schedule.

Members shall promptly cancel radio messages when matters to which the messages are related have been concluded.

V. LOUDSPEAKER ON PATROL VEHICLES

Loudspeaker equipment may be used as a means of communicating from a safe distance with persons who display suspicious or questionable behavior. Such equipment may also be used to provide for official announcements or instructions at accident locations or other crowd situations. It may be used at other times when the normal voice is inadequate to accomplish communication.

A loudspeaker may be used to issue instructions to occupants of a vehicle when information or actions indicate that a normal approach would expose the member to possible danger. All such communication will be given in a clear and courteous manner.

Members shall not use the loudspeaker when the Patrol vehicle is in motion unless circumstances demand communicating with highway users and it is impractical or impossible to communicate in any other manner.

When used in crowds or heavy traffic situations where several units are available, all loudspeaker announcements should be coordinated and given by the member in charge.

Restrictions

- The loudspeaker will not be used to circumvent the arrest policy. All motorists committing definite, clear-cut, and substantial violations shall be stopped and enforcement action taken.

- The device should never be used when a normal person-to-person contact can be safely accomplished with reasonable precaution.

VI. DRIVER'S LICENSE / REGISTRATION CHECKS

Verification of driver's license status may be obtained by radio. The Telecommunicator should be given the driver's license number, the driver's full name (last name first), date of birth, and address.

Members may obtain vehicle registration information by providing the Telecommunicator with one of the following:

- Registration plate number
- Make of vehicle and vehicle identification number
- Name and address of registered owner
- Title number

Driver's license and registration information shall not be disclosed except for official Patrol purposes (Reference N.C.G.S. § 20-43.1).

VII. HIT-AND-RUN REPORTS

A member learning of a hit-and-run violation shall immediately transmit all available details to the troop Communications Center.

A member following through with an investigation of a hit-and-run case shall advise the Telecommunicator of any substantial errors or omissions in the hit-and-run report.

Members reporting hit-and-run cases should transmit the report in the following sequence:

- Location of hit-and-run collision
- Any personal injury
- Time of collision
- Color, year, make, body style, and registration plate number of the hit-and-run vehicle
- Identifying features of the hit-and-run vehicle, such as a crushed fender or broken bumper
- Description of driver of the hit-and-run vehicle and passengers, if known
- Direction of travel of hit-and-run vehicle and highway where it was last seen

VIII. STOLEN VEHICLE REPORTS

Upon receipt of a report that a vehicle has been stolen, members shall advise the Telecommunicator of the theft as follows:

- Site of theft
- Time and date of theft
- Color, year, make, body style, license number, registered owner's name and address, and vehicle identification number of the stolen vehicle
- Direction of travel of suspect, if known

IX. REPORTING ROBBERIES, RIOTS, AND DISASTERS

A member who learns of a riot, public disturbance, labor dispute, robbery, or other man-made or natural disaster shall immediately report it to the appropriate Communications Center. It is the Telecommunicator's responsibility to contact the appropriate District Supervisor and/or Troop Officer of the Day. If contact with the immediate supervisor is not possible; the member shall advise the Communications Center to contact the Troop Officer of the Day. Telecommunicators who learn of any such event shall immediately notify the Supervising Telecommunicator or his/her designee.

X. SIGNAL 22

Members shall promptly report each traffic collision they investigate in which a person is killed to their Communications Center. Priority should be given to handling this traffic by telephone, where possible.

The following procedure will be used to assure uniformity:

- Members will proceed to report the collisions as follows:
    - Time of collision
    - Date
    - County (where collision occurred)
    - Highway number and exact location (state distance to nearest town and intersection)
    - Number of vehicles involved
    - Number of persons killed

- Name, race, sex, age, and address of person(s) killed and whether the next of kin has been notified

- Cause of collision: this shall be restricted to the physical evidence available at the scene. Also, include if the deceased was operator or passenger, which vehicle they were occupying, seat belt information, and if alcohol was a contributing factor

- Number injured

The names of deceased persons shall not be released until next of kin has been notified.

If the next of kin was not notified at the time of the original Signal 22 report, members must notify the Communications Center when next of kin has been contacted at which time all information may be released.

If injuries sustained in a traffic collision later result in death and the death occurs within twelve (12) months of the collision, the investigating member shall contact the appropriate Communications Center and update the collision slip log to reflect a fatality. Supervisors must instruct the investigating member under their supervision; that he/she must use sound professional judgment, based on available medical reports, in determining if the delayed death occurred as the result of the traffic collision.

XI. SIGNAL 24

Signal 24 is a summary of collision fatalities during the preceding 24-hour period ending at midnight, plus a summary of the number of traffic fatalities for the year-to-date and to-date for last year. The report will be transmitted in that order.

XII. RADIO EQUIPMENT MAINTENANCE

Employees shall not permit any person other than a Patrol radio engineer or technician to adjust or repair Patrol radio equipment. Patrol radio equipment shall not be assigned to any person, agency, or department without the approval of the Secretary of Crime Control and Public Safety.

XIII. MISCELLANEOUS

Each District First Sergeant shall have a completed Trooper Work Schedule entered in the Computer Assisted Dispatch System (CAD) prior to a copy of the work schedule being posted in accordance with Directive E.04, Section V, “Shift Schedule / Regular Days Off”.

Employees shall not transmit on the Patrol radio within 300 feet of a quarry, construction job, or any project where electric blasting caps are used. Blasting caps shall not be transported in a Patrol vehicle.

Members shall not transport acids, fertilizer, sand, gravel, cement, or other similar materials in the trunk of the Patrol vehicle.

Members shall secure all emergency equipment carried in the trunk to prevent damage to radio equipment and the Patrol vehicle.

Employees shall use care when driving beneath low-hanging tree limbs, garage doors, and other obstructions, which present a hazard to the radio antenna. Employees shall have the radio antenna approximately vertical at all times. Employees shall promptly remove ice and snow from the base of the radio antenna because ice will reduce the range of the radio unit.

NORTH CAROLINA
STATE HIGHWAY PATROL
POLICY MANUAL TABLE OF CONTENTS

* Policy directive applies to ALL EMPLOYEES (Sworn and Civilian)

Directive A	**Organizational Standards**
A.01	Mission, Vision, and Values *
A.02	Effect and Use of Manual – Liability *
A.03	Code of Professional Ethics *
A.04	Performance Standards
A.05	Oath of Office
A.06	Policy Definitions *
Directive B	**Critical Issues**
B.01	Use of Force
B.02	Extraordinary Patrol Vehicle Operations
B.03	Forced Vehicle Stops
B.04	Treatment of Persons In and Out of Custody
B.05	Responding to Persons with Mental Illness
B.06	Blood borne Pathogens*
Directive C	**Organizational Structure / Role**
C.01	Administration, Organization and
C.02	Officers of the Day
C.03	Allocation of Personnel
C.04	Highway Patrol Jurisdiction on Fe Parks, Forests, Roadways, and R

663 pages – wealth of knowledge in it PDF

Directive F	**Promotional and Performance Procedures**
F.01	Performance Appraisal Procedures
F.02	Promotion Procedures*
Directive G	**Professional Standards**
G.01	Quality*
G.02	Inspections
Directive H	**Conduct**
H.01	Rules of Personal Conduct and Job Performance
H.02	Investigation of Complaints and Charges Against Highway Patrol Employees*
H.03	Gifts, Favors, and Donations*
H.04	Highway Patrol Disciplinary System
H.05	Military Courtesy
H.06	Political Activities*
H.07	Personal Use of Social Networking Websites*
Directive I	**Enforcement Procedures**
I.01	Citation and Arrest Enforcement Regulations
I.02	Leaving Assigned Duty Station While On Duty
I.03	Speed Enforcement
I.04	Interrogations and Field Interviews
I.05	Arrest of Foreign Nationals
I.06	Juvenile Offender Procedures

Directive J	Operational Procedures
J.01	Evidence / Property Collection, Analysis, and Disposal
J.02	Chemical Analysis for Alcohol
J.03	Court*
J.04	Wrecker Service Vehicle Towing / Notification / Inventory*
J.05	Use of Patrol Video Recording Devices and Still Photography Cameras
J.06	Crime Prevention and Community Involvement*
J.07	Executive Protection
J.08	Victim / Witness Assistance
J.09	Media Relations
J.10	Assignment, Use, and Disposition of North Carolina Uniform Citations and eCitations; CVSA Decals; CMV Replacement Seals; CMV Out-of-Service Decals; Members/ New Entrant Auditors
J.11	Service and Completion of Process Orders and NCAWARE System
Directive K	**Traffic Operations**
K.01	Selective Traffic Enforcement
K.02	Patrol Methodology and Traffic Supervision
K.03	Traffic Direction at Public Gathering for Private Purposes
K.04	Checking Stations
K.05	Railroad Crossing Traffic Hazards
K.06	Patrol Relays and Escorts

Directive L	**Collision Investigation**
L.01	Motor Vehicle Collision Investigation
L.02	Patrol Vehicle Collisions / Incidents
L.03	Collision Reconstruction Unit
Directive M	**Unusual Occurrences**
M.01	Unusual Occurrences
M.02	Hazard Communications
Directive N	**Special Operations**
N.01	Aircraft Operations
N.02	Use of Canine Teams
N.03	Criminal Interdiction
N.04	Four-Wheel Drive Vehicles*
N.05	Motor Unit
N.06	SHP Mobile Command / Communications Vehicles Members Telecommunicators
N.07	SHP Professional Range Instructor Simulator (PRISim) Judgment and Shooting Skills Trainer
N.08	Bicycle Rodeo Vehicle
N.09	Drone Vehicle
N.10	State Highway Patrol Caisson Unit
N.12	Mobile Weigh Station; Member/ WSO
Directive O	**Uniforms and Equipment**
O.01	Wearing Patrol Uniforms
O.02	Personal Appearance
O.03	Uniforms and Equipment Issued / Records*

NCDOT
North Carolina Department of Transportation

Minimum Uniform Crash Criteria for North Carolina

DMV 349 CRASH REPORT DATA ELEMENT DICTIONARY

107 pages - Wealth of knowledge in it

PDF

Published September 24, 2015

By: North Carolina Department of Transportation, Division of Motor Vehicles

DMV-349 (Rev. 4/2018)

THIS REPORT IS FOR THE USE OF THE DIVISION OF MOTOR VEHICLES. THE DATA IS COLLECTED FOR STATISTICAL ANALYSIS AND SUBSEQUENT HIGHWAY SAFETY PROGRAMMING. DETERMINATIONS OF "FAULT" ARE THE RESPONSIBILITY OF INSURERS OR OF THE STATE'S COURTS.

Do not write in these spaces

Date Received by DMV

No. of Units Involved | Form ___ of ___ | ☐ Supplemental Report | ☐ Non-Reportable

Date (mm/dd/ccyy) | County | Time (23 : 00, 24 Hour HH:MM) | Local/Patrol Area

LOCATION

Relation to Roadway Surface ___ | Crash occurred ☐ In ☐ Near ___ Municipality | or ___ Miles ☐☐☐☐ N S E W outside municipality

On ___ (Highway Number, or Highway, Street ramp or service road, indicate on line) ☐ Ramp or Service Road (R.R. Crossing # ___) ___ Miles ___ (0 ft intersection) ft. ☐☐☐☐ N S E W (if available)

At or from ___ (Use Highway Number, Street Name or Adjacent County or State Line) ☐☐☐☐ N S E W toward ___ (Use Highway Number, Street Name or Adjacent County or State Line)

Latitude ___ Longitude ___ Altitude ___

Unit # ___ ☐ Vehicle ☐ Pedestrian ☐ Hit & Run ☐ Commercial Vehicle

Driver ___ First Middle Last Suffix

Address ___

City ___ State ___ Zip ___

Same Address on Driver's License? ☐ Yes ☐ No | Driver's Phone Numbers H(___) ___ W(___) ___

D.L. # ___ D.L. Class ___ State ___ CDL License ☐

DOB ___ (mm/dd/ccyy) | 34 Vision Obstruction ___ | 35 Physical Condition ___ | 36 D.L. Restrictions ___

37 Alcohol/ Drugs Suspected ___ | 38 Alcohol/ Drugs Test ___ | 39 Results (If known) ___ | 40 Vehicle Seizure (DWI) ☐

Owner ___ Same as Driver? ☐

Address ___ Same Address as Driver? ☐

City ___ State ___ Zip ___

Plate # ___ Plate State ___ Plate Year ___

VIN ___

Vehicle Make ___ | Vehicle Year ___ | 41 Vehicle Style (Type) ___ | 42 Vehicle Drivable ☐ Yes ☐ No

43 TAD ___ | 44 Estimated $ Damage ___

Insurance Company ___

Policy # ___

Unit # ___ ☐ Vehicle ☐ Pedestrian ☐ Hit & Run ☐ Other ___

Driver ___ First Middle Last Suffix

Address ___

City ___ State ___ Zip ___

Same Address on Driver's License? ☐ Yes ☐ No | Driver's Phone Numbers H(___) ___ W(___) ___

D.L. # ___ D.L. Class ___ State ___ CDL License ☐

DOB ___ (mm/dd/ccyy) | 34 Vision Obstruction ___ | 35 Physical Condition ___ | 36 D.L. Restrictions ___

37 Alcohol/ Drugs Suspected ___ | 38 Alcohol/ Drugs Test ___ | 39 Results (If known) ___ | 40 Vehicle Seizure (DWI) ☐

Owner ___ Same as Driver? ☐

Address ___ Same Address as Driver? ☐

City ___ State ___ Zip ___

Plate # ___ Plate State ___ Plate Year ___

VIN ___

Vehicle Make ___ | Vehicle Year ___ | 41 Vehicle Style (Type) ___ | 42 Vehicle Drivable ☐ Yes ☐ No

43 TAD ___ | 44 Estimated $ Damage ___

Insurance Company ___

Policy # ___

20 COMMERCIAL VEHICLE: Cargo, Carrier Name, Address, Source

Unit ___ 45 Cargo Body Type ___ ☐ Same Address as Owner?

Source: ☐ Truck ☐ Shipping Papers ☐ Driver

Carrier Identification Numbers, GVWR, Axles

US DOT # ___ | ICC# ___ | Axles or Vehicle Including Trailers ___

State ___ | State# ___ | IFTA# ___

FEI# ___ | Fleet# ___ | Gross Vehicle Weight Rating ___

	21	22	23	24	25	26	27	28	29	30	31	32	Names and Addresses for All Persons (Unit 1/
A				Unit1-Drv1, Ped1, etc. see above									see above Veh# Towed To/By:
B				Unit2-Drv2, Ped2, etc. see above									see above Veh# Towed To/By:
C													
D													
E													
F													
G													
H													

46 Name of EMS ___ | 46 Name of EMS ___

47 Injured Taken by EMS to ___ (Treatment Facility and City or Town) | 47 Injured Taken by EMS to ___

Contained in PMV 349 crash report data element directory

48 POINTS OF INITIAL CONTACT (Write in Codes)	Unit# ___	Unit# ___
CRASH SEQUENCE (Unit Level)	Unit#___	Unit#___
49 Vehicle Maneuver/Action		
50 Non-Motorist Action		
51 Non-Motorist Location Prior to Impact		
52 Crash Sequence-First Event for This Unit		
53 Crash Sequence-Second Event		
54 Crash Sequence-Third Event		
55 Crash Sequence-Fourth Event		
56 Most Harmful Event for This Unit		
57 Distance/Direction to Object Struck		
58 Vehicle Underride/Override		
59 Vehicle Defects		

VEHICLE INFO.	Veh # ___	Veh # ___
60 Authorized Speed Limit		
61 Estimate of Original Traveling Speed		
62 Estimate of Speed at Impact		
63 Tire Impressions Before Impact (ft.)		
64 Distance Traveled After Impact (ft.)		
65 Emergency Vehicle Use		
66 Post Crash Fire (If "Yes" check block)	☐	☐
67 School Bus – Contact Vehicle	☐	☐
68 School Bus – Noncontact Vehicle	☐	☐

ROADWAY INFO.	
69 Road Feature	
70 Road Character	
71 Road Classification	
72 Road Surface Type	
73 Road Configuration	
74 Access Control	
75 Number of Lanes	
76 Traffic Control Type	
77 Traffic Control Oper	

WORK ZONE RELATED	
78 Workzone Area	
79 Work Activity	
80 Work Area Marked	
81 Crash Location	

TRAILER INFO.	Unit#___	Unit#___
82 Trailer Type		
1st Trailer No. Axles		
Width (inches)		
Length (feet)		
2nd Trailer No. Axles		
Width (inches)		
Length (feet)		

COMMERCIAL VEHICLE: Hazardous Materials Involved Unit ___

Haz Mat Placard ☐ Yes ☐ No — From Placard indicates: 4-digit placard number ____ 1-digit number from bottom of diamond ◇ ___

Hazardous Cargo ☐ Yes ☐ No

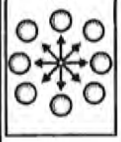
Released (does not include fuel from fuel tank)

Carrying Haz Mat ☐ Yes ☐ No

83 Unit# ___ Overwidth Trailer and Overwidth Mobile Home — Overwidth Permit # ____

84 DIAGRAM

Indicate North



Unit #___was: ☐ Traveling ☐ Parked Facing ☐N ☐S ☐E ☐W on ____ Unit#___was: ☐ Traveling ☐ Parked Facing ☐N ☐S ☐E ☐W on ____

85 NARRATIVE (Note: If additional space is needed for the Narrative or Diagram, please use the Continuation Page.)

ADDITIONAL PROPERTY DAMAGE

86 Type/ Owner ____ Owner Address Phone ____ State Property ☐ Estimated Damage ____

WITNESS

Name ____ Address ____ Phone No ( ) ____

Name ____ Address ____ Phone No ( ) ____

TRAFFIC VIOLATION(S)

Name ____ Charger(s) (Citation # optional) ____

Name ____ Charger(s) ____

Officer Name ____ Officer Number ____ Department ____ Date of Report ____

North Carolina
Crash Report Form DMV-349

A reportable motor vehicle crash must meet at least one of the following criteria:

- results in a fatality, or
- a non-fatal personal injury, or
- property damage of $1,000 or greater, or
- property damage of any amount to a vehicle seized

In addition, a reportable motor vehicle crash must occur on a trafficway (any land way open to the public as a matter of right or custom for moving persons or property from one place to another) or occur after the motor vehicle runs off the roadway but before events are stabilized.

The terms collision, accident, and crash are synonymous when describing a motor vehicle crash.

(FILLING OUT THE DMV-349)

(*) EXPLAIN IN CRASH NARRATIVE
(-) IF QUESTION DOES NOT APPLY, USE A DASH

(If a section does not apply, draw diagonal line through section)

☐ ONLY USE "CHECK BLOCKS" IF THEY APPLY

The Division of Motor Vehicles (DMV) requests that:

1. The DMV-349 should be typewritten or if handwritten the officer should use black ink,
2. The report must be legible. This is of the utmost importance for clarity, when reports are imaged for later storage, and
3. The original should be submitted to the DMV Traffic Records Section.

(1) Locality — 1
1 Rural (<30% developed)
2 Mixed (30% to 70% developed)
3 Urban (>70% developed)

(2) Predominant Development Type — 2
1 Farms, woods, pastures
2 Residential
3 Commercial
4 Institutional
5 Industrial

(3) Road Surface Condition — 3
1 Dry
2 Wet
3 Water (standing, moving)
4 Ice
5 Snow
6 Slush
7 Sand, Mud, Dirt, Gravel
8 Fuel, Oil
9 Other*
10 Unknown

(4-5) Weather Condition (Maximum – two per crash) — 4 - 5
1 Clear
2 Cloudy
3 Rain
4 Snow
5 Fog, smog, smoke
6 Sleet, hail, freezing rain/drizzle
7 Severe crosswinds
8 Blowing sand, dirt, snow
9 Other*

(6) Weather Contributed To the Crash — 6
1 Yes 2 No 3 Unknown

(7) Ambient Light — 7
1 Daylight
2 Dusk
3 Dawn
4 Dark – lighted roadway
5 Dark – roadway not lighted
6 Dark – unknown lighting
7 Other*
8 Unknown

(8-9) Contributing Circumstances, Non-Motorist (Maximum – two per person)
0 None
1 Coming from behind parked veh.
2 Darting
3 Lying and/or illegally in roadway
4 Failure to yield right of way
5 Not visible (dark clothing, etc.)
6 Inattentive (talking, eating, etc.)
7 Failure to obey traffic signs, signals
8 Wrong side of road
9 Other*
10 Unknown

(12-13) Contributing Circumstances, Roadway (Maximum - two per crash)
0 None (no unusual conditions)
1 Road Surface Condition
2 Debris
3 Rut, holes, bumps
4 Work zone (construction, maintenance, utility)
5 Worn travel-polished surface
6 Obstruction in roadway
7 Traffic control device inoperative, not visible or missing
8 Shoulders low, soft or high
9 No shoulders
10 Non-highway work
11 Other*
12 Unknown

(20) Commercial Motor Vehicle (CMV)
A commercial motor vehicle (CMV) is defined as a motor vehicle or combination of motor vehicles **used in commerce** to transport passengers or property if the motor vehicle: **A.** Has a gross combination weight rating of 10,001 or more pounds inclusive of a towed unit, **B.** Is designed to transport 16 or more passengers, including the driver, or **C.** Is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Act **and which require the motor vehicle to be placarded** under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F). **If the vehicle is a CMV. Check Box 20 on the DMV-349**

(14-19) Contributing Circumstances -- Driver
0 No contributing circumstances indicated
1 Disregarded yield sign
2 Disregarded stop sign
3 Disregarded other traffic signs
4 Disregarded traffic signals
5 Disregarded road markings
6 Exceeded authorized speed limit
7 Exceeded safe speed for conditions
8 Failure to reduce speed

(10-11) CRASH LEVEL First Harmful Event & Most Harmful Event
0 Unknown
Non-Collision
1 Ran off road – right
2 Ran off road – left
3 Ran off road - straight
4 Jackknife
5 Overturn/rollover
13 Other non-collision*
Collision of Motor Vehicle With
14 Pedestrian
15 Pedalcyclist
16 RR train, engine
17 Animal
18 Movable object*
19 Fixed object*
Collision of Two or More Motor Vehicles
20 Parked motor vehicle
21 Rear end, slow or stop
22 Rear end, turn
23 Left turn, same roadway
24 Left turn, different roadways
25 Right turn, same roadway
26 Right turn, different roadways
27 Head on
28 Sideswipe, same direction
29 Sideswipe, opposite direction
30 Angle
31 Backing up
32 Other collision with vehicle*

Contributing Circumstances Non-Motorist 8 - 9
First Harmful Event at Crash Level 10
Most Harmful Event at Crash Level 11
Contributing Circumstances Roadway 12 - 13

(14-19) Contributing Circumstances Continued -- Driver (Maximum - three per driver)
9 Improper Turn
10 Right turn on red
11 Crossed centerline/going wrong way
12 Improper lane change
13 Use of improper lane
14 Overcorrected/oversteered
15 Passed stopped school bus
16 Passed on hill
17 Passed on curve
18 Other improper passing
19 Failed to yield right of way
20 Inattention
21 Improper backing
22 Improper parking
24 Improper or no signal
25 Followed too closely
26 Operated vehicle in erratic, reckless, careless, negligent, or aggressive manner
27 Swerved or avoided due to wind, slippery surface, vehicle, object, non-motorist
28 Visibility obstructed
29 Operated defective equipment
30 Alcohol use
31 Drug use
32 Other*
33 Unable to determine
34 Unknown
35 Driver distracted by electronic communication device (cell phone, texting, etc.)
36 Driver distracted by other electronic device (navigation device, DVD player, etc.)
37 Driver distracted by other inside the vehicle
38 Driver distracted by external distraction (outside vehicle)

Driver 1 Contributing Circumstances 14 - 16
Driver 2 Contributing Circumstances 17 - 19

(21) Vehicle Number 1, 2, 3, etc. — 21

(22) Person Type — 22
1 Driver
2 Passenger
Non-Motorist (including)
3 Pedestrian
4 Pedalcyclist
5 Roller skater, roller blader, etc.
6 Other*
7 Unknown

(23) Seating Position — 23
1 Front – left (Driver, motorcycle driver)
2 Front – middle
3 Front – right
4 Second seat – left (motorcycle passenger)
5 Second seat – middle
6 Second seat – right
7 Third row – left (motorcycle passenger)
8 Third row – middle
9 Third row – right
10 Sleeper section of cab (truck)
11 Passenger in other enclosed area (refer to multi-occupant form)
12 Passenger in unenclosed area (pickup)
13 Trailing unit
14 Riding on vehicle exterior
15 Unknown

(24) DOB mm/dd/ccyy — 24 25 26
(If unavailable approx. **Age**)

(25) Ethnicity
W White
B Black
I American Indian
H Hispanic
A Asian
O Other*
U Unknown

(26) Gender
M Male
F Female
U Unknown

(27) Occupant/Non-Motorist Protection — 27
0 None used
1 Lap belt only
2 Shoulder and lap belt
3 Shoulder belt only
4 Child restraint
5 Helmet (motorcyclist or Non-Motorist)
Codes 6-8 Non-Motorist
6 Protective pads
7 Reflective clothing
8 Lighting
9 Other*
10 Unable to determine

(28) Air Bag Deployed — 28
0 No Air Bag(s)
1 Not deployed
2 Deployed front
3 Deployed side
4 Deployed both front and side
5 Unknown

(29) Air Bag Switch Status — 29
0 No ON-OFF switch
1 Switch in ON position
2 Switch in OFF position
3 Unknown if Switch present
4 Unknown pos. in vehicle

(30) Trapped — 30
1 Yes
2 No
3 Unknown

(31) Ejection — 31
1 Not ejected
2 Totally ejected
3 Partially ejected
4 Unknown

(32) Injury Status — 32
1 Killed
2 A type injury (suspected serious injury)
3 B type injury (suspected minor injury)
4 C type injury (possible injury)
5 No injury
6 Unknown

Names and Addresses

Names and addresses are necessary for all persons involved in the crash, including non-motorists, as well as motor vehicle occupants.

This will help later investigations, including identifying persons previously involved in a crash, as well as persons whose injury status is later updated following a crash.

Vehicle Towing
Towed To/By:

(Codes Rev. 04/2018)

(33) Relation to Roadway Surface

The location of the first harmful event (at the crash level) as it relates to its position within or outside the trafficway

1 On Roadway (Surface)

Off Roadway
2 Shoulder
3 Median
4 Roadside
5 Outside Trafficway
6 Unknown

(34) Vision Obstruction

0 None
1 Vehicle window(s) obscured
2 Trees, crops, brush, etc.
3 Building(s)
4 Embankment
5 Sign(s)
6 Hillcrest
7 Parked vehicle(s)
8 Vehicle(s) in traffic/moving
9 Blinded, headlights
10 Blinded, sunlight
11 Blinded, other lights
12 Other*
13 Unknown

(35) Physical Condition

1 Apparently normal
2 Illness
3 Fatigue
4 Fell asleep, fainted, loss of consciousness
5 Impairment due to medications, drugs, alcohol
6 Medical condition
7 Other physical impairment
8 Restriction not complied with
9 Other*
10 Unknown

(36) Driver License Restrictions

Restrictions assigned to an individual's driver license by the license examiner.

Indicate restrictions shown on the Driver's License. For out-of-state drivers, write out the restriction.

(37) Alcohol/Drugs Suspected

0 No
1 Yes – alcohol, impairment suspected
2 Yes – alcohol, no impairment detected
3 Yes – other drugs, impairment suspected
4 Yes – other drugs, no impairment detected
5 Yes – alcohol and other drugs, impairment suspected
6 Yes – alcohol and other drugs, no impairment detected
7 Unknown

(38) Alcohol/Drugs Test Status

0 No test
1 Alcohol test
2 Test for other drugs
3 Alcohol & other drugs test
4 Test refused
5 Unknown

(39) Alcohol/Drugs Test Results

0 No test
1 No alcohol or other drugs
2 Alcohol (percent BAC)
3 Other drugs reported
4 Contaminated sample/unusable
5 Pending
6 Unknown

(40) Vehicle Seizure (DWI)

Check this box if the crash involves alcohol or other drugs in sufficient amount to constitute a DWI, and the vehicle is "seized."

(41) Vehicle Style (Type)

1 Passenger car
2 Pickup
3 Light truck (mini-van, panel)
4 Sport utility
5 Van
6 Commercial bus
7 School bus
8 Activity bus
9 Other bus
10 Single unit truck (2-axle, 6-tire)
11 Single unit truck (3 or more axles)
12 Truck/trailer
13 Truck/tractor (i.e., bobtail)
14 Tractor/semi-trailer
15 Tractor/doubles
16 Unknown heavy truck
17 Taxicab
18 Farm equipment
19 Farm tractor
20 Motorcycle
21 Moped
22 Motor scooter or motor bike
23 Pedalcycle
24 Pedestrian
25 Motor home/recreational vehicle
26 Other*
27 All terrain vehicle (ATV)
28 Firetruck
29 EMS Vehicle, Ambulance, Rescue Squad
30 Military
31 Police
32 Unknown
33 Autocycle

(42) Vehicle Drivable

Vehicle is disabled by damage severe enough to prevent driving it. For comparison purposes, this data element could be used as a minimum reporting threshold for "property damage only" crashes.

(43) TAD

Damaged Areas

FC Front concentrated
FD Front distributed
FL Front left corner
FR Front right corner
BC Rear concentrated
BD Rear distributed
BL Rear left corner
BR Rear right corner
LP Left side (door)
RP Right side (door)
LFQ Left side front quarter
RFQ Right side front quarter
LBQ Left side rear quarter
RBQ Right side rear quarter
LD Left side distributed
RD Right side distributed
L&T Left side & top (rollover)
R&T Right side & top (rollover)
TOP Top
UND Underneath
ND No Damage
UNK Unknown

Extent of Deformity

The Severity of Damage is based on a scale of "0" being no damage and "7" being the most severe damage

(44) Estimated Damage

Dollar estimate of the cost to restore the vehicle to its condition just prior to the crash, or the estimated value of the vehicle before the crash, whichever is less. For a "totaled" vehicle, enter a dollar estimate of the retail value of the vehicle prior to the crash. Do not enter the word "totaled".

A vehicle being towed by another is part of the towing vehicle and its damage should be included in the "Parts Damaged" and "Amount of Damage" categories.

(45) Cargo Body Type

1 Bus (seats for 16 or more, including driver)
2 Bus (seats for less than 16, including driver)
3 Van/enclosed box
4 Grain/chips/gravel truck
5 Pole truck
6 Cargo tank
7 Flatbed
8 Dump
9 Concrete mixer
10 Auto transporter
11 Garbage/refuse
12 Log truck
13 Other*
14 Intermodal Cargo Container

(46) Name of EMS

Record the name of the EMS (or EMS unit number if available) that responded to the crash. A letter designation, unique to each injured person is provided in the first column of the Occupant and Non-Motorist Section. This unique identifier must precede the name of the EMS for each injured person being transported.

Example: A - Cumberland County Ambulance

(47) Injured Taken by EMS to

Record the destination of the injured person preceded by the unique letter designation (from the first column) for the person involved. If they were taken to a hospital, clinic, doctor's office, or other place of emergency medical aid. Include both name of treatment facility and city or town.

Example: A - N.C. Memorial, Chapel Hill; B - Duke Hospital, Durham, etc.

KEY DEFINITIONS

CRASH/MOTOR VEHICLE/UNIT

A **motor vehicle crash** is any event that results in death, injury or property damage attributable directly to a motor vehicle or its load in transport, but not involving aircraft or watercraft. It must occur on a trafficway or after the motor vehicle runs off the roadway but before events are stabilized.

A **motor vehicle** is any mechanically or electrically powered device, not operated on rails, upon which any person or property may be transported or drawn upon a highway.

A **unit** is any motor vehicle, pedestrian, pedalcyclist, moped or other road vehicle, excluding railway vehicles, which can be shown on the report as "other" RR train.

DRIVERLESS MOTOR VEHICLE

A driverless motor vehicle, though previously parked, or a motor vehicle out of control while being towed or pushed, is considered to be a motor vehicle in transport. Also, an abandoned motor vehicle, upon a roadway, is considered to be a motor vehicle in transport. This principle does not apply to such devices as farm or industrial machinery, highway graders, construction machinery, or similar devices which are not in use at the time of the crash for transport.

HIT & RUN

A hit & run vehicle is one which was involved in the crash as the "striking vehicle" or as the "vehicle struck" but which left the scene. The appropriate box must be checked, e.g., vehicle 1, vehicle 2, etc. and any information that is known, included in the Driver and/or Vehicle areas.

NON-CONTACT VEHICLE OR NON-MOTORIST

Non-contact phantom motor vehicles or non-motorists are units that caused the crash but left the scene. They should not be counted in the number of units, but should be referred to in the narrative.

Non-contact motor vehicles or non-motorists are units that caused the crash and remained at the scene. They should be counted as units with identifying information, and referred to in the narrative. A school bus could be an example of a non-contact vehicle that is related to a crash (refer to data element # 68).

SCHOOL BUS

A motor vehicle used for the transportation of any school pupil at or below the 12th-grade level to or from a public or private school or school-related activity.

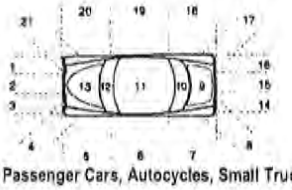
A school bus must be externally identifiable by the color yellow, the words "school bus", flashing red lights located on the front and rear, and identifying lettering on both sides indicating the school or school district served, or the company operating the bus.

MOTOR VEHICLE STATUS

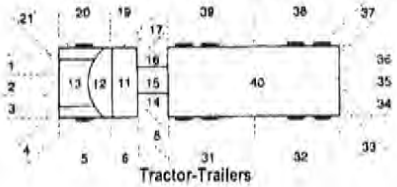
The use of the device at the time of the crash is the primary criterion for establishing motor vehicle status. For example:

1. A registered motor vehicle is being drawn by a team of horses on a city street; it is considered other road vehicle.
2. A registered motor vehicle is being used to draw a plow engaged in breaking ground on a farm; it is considered farm machinery while engaged in plowing.
3. A registered truck is engaged in spreading concrete at a road construction site; it is construction machinery.
4. A motorized highway grader, under its own power, is moving from one work place to another on a public way; it is considered a motor vehicle in transport.
5. A registered truck, with a blade attached, is engaged in plowing snow from a trafficway; it is considered road maintenance machinery.
6. A riding, motorized lawn mower, under its own power, is being driven from one home to another on a city street; it is considered a motor vehicle in transport.
7. A military tank is being moved, under its own power, from the firing range to the motor pool, on a land way of a military post; it is considered a motor vehicle in transport.

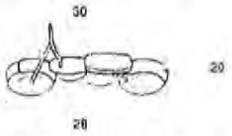
48 Points of Initial Contact 0 Pedestrian & Non-Contact Vehicle UNDERNEATH: 22 Front, 23 Center, 24 Rear, 25 Rollover, 26 Unknown



Passenger Cars, Autocycles, Small Trucks



Tractor-Trailers



Motorcycle, Bicycle, Moped or ATV

(49) Vehicle Maneuver/Action
1 Stopped in travel lane
2 Parked out of travel lanes
3 Parked in travel lanes
4 Going straight ahead
5 Changing lanes or merging
6 Passing
7 Making right turn
8 Making left turn
9 Making U turn
10 Backing
11 Slowing or stopping
12 Starting in roadway
13 Parking
14 Leaving parked position
15 Avoiding object in road
16 Other*

(50) Non-motorist Action
1 Entering or crossing specified location
2 Walking, riding, running/jogging with traffic
3 Walking, riding, running/jogging against traffic
4 Working
5 Pushing vehicle
6 Approaching or leaving vehicle
7 Playing
8 Standing
9 Other*

(51) Non-motorist Location Prior to Crash
1 Marked crosswalk at intersection
2 At intersection but no crosswalk
3 Non-intersection crosswalk
4 Driveway access crosswalk
5 In roadway
6 Not in roadway
7 Median (but not on shoulder)
8 Island
9 Shoulder
10 Sidewalk
11 Within 10 feet of roadway (not on shoulder, median, sidewalk, island)
12 Beyond 10 feet of roadway (within trafficway)
13 Outside trafficway
14 Shared-use path or trails

(57) Distance & Direction from Road to Object Struck
0 None
1 In road
2 Right of road, 0-10 ft.
3 Right of road, 11-30 ft.
4 Right of road, over 30 ft.
5 Left of road, 0-10 ft.
6 Left of road, 11-30 ft.
7 Left of road, over 30 ft.
8 Straight ahead, 0-10 ft.
9 Straight ahead, 11-30 ft.
10 Straight ahead, over 30 ft.

(58) Vehicle Underride/Override
An underride refers to a vehicle sliding under another vehicle during a crash. An override refers to a vehicle riding up over another vehicle. Both can occur with a parked vehicle.
1 Underride

(59) Vehicle Defects
Maximum of two per Vehicle
0 None detected
1 Brakes
2 Headlights
3 Rear lights
4 Steering
5 Tires
6 Other defects*
7 Unknown

(60) Authorized Speed Limit
Authorized speed limit for the vehicle at the time of the crash. The authorization may be indicated by the posted speed limit, blinking sign at construction zones, restricted speed for permitted vehicles

(61) Estimate of Original Speed
Estimated speed in miles per hour for each vehicle involved in the collision. Estimates reflect the speed of each vehicle at the moment the driver initially perceived an existing hazard.

(62) Estimate of Speed at Impact
Estimated speed in miles per hour for each vehicle involved in the collision. Estimates reflect the speed of each vehicle at the moment of impact.

(63) Tire Impressions Before Impact
Length (in feet) of the tire impressions (skid marks, tire print yaw) for each vehicle involved in the collision, prior to impact.

(64) Distance Traveled After Impact
Distance (in feet) each vehicle or pedestrian traveled after impact as a result of the force of the collision.

(65) Emergency Vehicle Use
Indicates vehicles which are on an emergency response, i.e., traveling with physical emergency signals in use; lights, siren sounding, etc.
1 Firetruck
2 EMS Vehicle, Ambulance, Rescue Squad, etc.
3 Military
4 Police
5 Other

(66) Post Crash Fire
If "Yes" check block

(67) School Bus - Contact Vehicle
If "Yes" check block. This data element is used to determine "school bus related." The school bus, with or without a pupil on board, is directly involved as a contact vehicle.

(68) School Bus - Noncontact Vehicle
If "Yes" check block. This data element is used to determine "school bus related." The school bus, with or without a pupil on board, is indirectly involved as a noncontact vehicle.

(69) Road Feature
0 No special feature
1 Bridge
2 Bridge approach
3 Underpass
4 Driveway, public
5 Driveway, private
6 Alley intersection

Intersection of roadways (7-12)
7 Four-way intersection
8 T-intersection
9 Y-intersection
10 Traffic circle/roundabout
11 Five-point, or more
12 Related to intersection

13 Non-intersection median crossing
14 End or beginning-divided highway

Interchange (15-21)
15 Off-ramp entry
16 Off-ramp proper
17 Off-ramp terminal on crossroad
18 Merge lane between on and off ramp
19 On-ramp entry
20 On-ramp proper
21 On-ramp terminal on crossroad
22 Railroad crossing
23 Tunnel
24 Shared-use paths or trails
25 Other*

(70) Road Character - Horizontal and Vertical Alignment
1 Straight, level
2 Straight, hillcrest
3 Straight, grade
4 Straight, bottom (sag)
5 Curve, level
6 Curve, hillcrest
7 Curve, grade
8 Curve, bottom (sag)
9 Other*

(71) Road Classification
1 Interstate
2 US Route
3 NC Route
4 State Secondary Route
5 Local Street
6 Public Vehicular Area
7 Private Road, Driveway
8 Other*

(72) Road Surface Type
1 Concrete
2 Grooved concrete
3 Smooth asphalt
4 Coarse asphalt
5 Gravel
6 Sand
7 Soil
8 Other*

(73) Road Configuration
(Trafficway Description)
1 One-way, not divided
2 Two-way, not divided
3 Two-way, divided, unprotected median
4 Two-way, divided, positive median barrier
5 Unknown

(74) Access Control
1 No access control
2 Full access control
3 Partial access control

(75) Number of Lanes
Total number of lanes in both directions in the trafficway. If parking lot,

(76) Traffic Control Device
0 No control present
1 Stop sign
2 Yield sign
3 Stop and go signal
4 Flashing signal with stop sign
5 Flashing signal without stop sign
6 RR gate and flasher
7 RR flasher
8 RR crossbucks only
9 Human control
10 Warning sign
11 School zone signs
12 Flashing stop and go signal
13 Double yellow line, no passing zone
14 Other*

(77) Traffic Control Operating
1 Yes
2 No
3 Unknown

(78 - 81) Work Zone Related

(78) Did crash occur in or near
1 Construction work area
2 Maintenance work area
3 Utility work area
4 Intermittent/moving work- e.g., patching pothole
5 No

(79) Work activity at time of crash
1 On going
2 No apparent activity

(80) Work area marked with warning signs, cones
1 Yes
2 No

(81) Location of crash
1 Before work area
2 In work area approach taper
3 Adjacent to actual work area

(82) Trailer Type
0 No trailer
Non-semi trailers
1 Boat
2 Camper
3 Utility
4 Horse
5 House trailer (mobile home)
6 Towed vehicle
7 Other non-semi
Semi trailers
8 Tanker
9 Enclosed van
10 Flatbed or platform
11 Other semi trailer
12 Double trailer

(83) Overwidth Trailer/Mobile Home
Enter the number of the vehicle pulling overwidth trailer, including overwidth mobile home, followed by the permit number.

(84) Crash Diagram
The diagram should include:
1 Roads and intersecting roads; if a vehicle is struck exiting a driveway, give the name of the business or resident
2 Direction of travel for each lane
3 All pertinent roadside features
4 Paths of travel for vehicles, pedestrians, bicyclists, etc.
5 Tire marks and debris
6 Measurements pertinent to the location of the point of impact. Use a tape for distances up to 500 feet. Use an odometer for greater distances

For crashes within an interchange:
1 Add a small line sketch of the interchange and show an "X" where the crash occurred
2 Sketch should be less than 25% of the total diagram area, and
3 Conform to the north arrow
4 Identify number, name of the road(s), ramps, and service roads shown

(85) Crash Narrative
Provide a word description of events occurring prior to, during, and after the crash which are not elsewhere on the form. Note all pertinent and unusual aspects of the crash. Statements made in this narrative should be in the opinion of the investigating officer.

(86) Additional Property Damage
Enter any property other than motor vehicles that was damaged, identify property and its owner and enter an estimate of the dollar damage. Damage to signs, buildings, mailboxes, fences, etc., should be entered here.

(52-56) VEHICLE LEVEL

Crash Sequence of Harmful Events (First, Second, Third, Fourth), fields 52-55, and Most Harmful Event, field 56 for each Unit (Vehicle)
If a vehicle has only one event, then only one code is required. Vehicles can have up to 4 harmful events. The Most Harmful Event may or may not be one of the 4 events.

0 Unknown

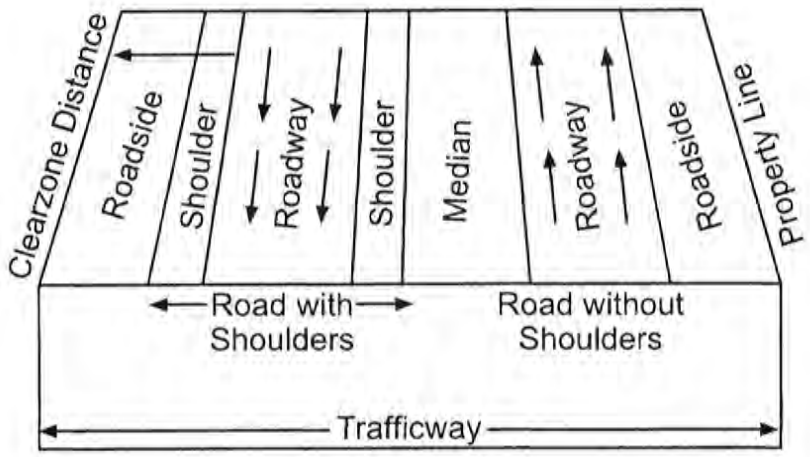
Non-Collision
1 Ran off road right
2 Ran off road left
3 Ran off road straight ahead
4 Jackknife
5 Overturn/rollover
6 Crossed centerline/median
7 Downhill runaway
8 Cargo/equipment loss or shift
9 Fire/explosion
10 Immersion
11 Equipment failure (tires, brakes, etc.)
12 Separation of units
13 Other non collision*

Collision of Motor Vehicle With
14 Pedestrian
15 Pedalcyclist
16 RR train, engine
17 Animal
18 Movable object*

Collision of Two or More Motor Vehicles
20 Parked motor vehicle
21 Rear end, slow or stop
22 Rear end, turn
23 Left turn, same roadway
24 Left turn, different roadways
25 Right turn, same roadway
26 Right turn, different roadways
27 Head on
28 Sideswipe, same direction
29 Sideswipe, opposite direction
30 Angle
31 Backing up
32 Other collision with vehicle*

Collision with Fixed Object
33 Tree
34 Utility pole (with or without light)
35 Luminaire pole (non-breakaway)
36 Luminaire pole (breakaway)
37 Official highway sign (non-breakaway)
38 Official highway sign (breakaway)
39 Overhead sign support
40 Commercial sign
41 Guardrail end on shoulder
42 Guardrail face on shoulder
43 Guardrail end in median
44 Guardrail face in median
45 Shoulder barrier end (non-guardrail)
46 Shoulder barrier face (non-guardrail)
47 Median barrier end (non-guardrail)
48 Median barrier face (non-guardrail)
49 Bridge rail end
50 Bridge rail face
51 Overhead part of underpass
52 Pier on shoulder of underpass
53 Pier in median of underpass
54 Abutment (supporting wall) of underpass
55 Traffic island curb or median
56 Catch basin or culvert on shoulder
57 Catch basin or culvert in median
58 Ditch
59 Embankment
60 Mailbox
61 Fence or fence post
62 Construction barrier
63 Crash cushion
64 Other fixed object*

Trafficway



TRAFFICWAY DEFINITIONS

Trafficway – the entire width between property lines, or other boundary lines, of every way or place, of which any part is open to the public for purposes of vehicular travel as a matter of right or custom.

Road – that part of a trafficway which includes both the roadway and any shoulder alongside the roadway.

Roadway – that part of the trafficway designed, improved, and ordinarily used for vehicular travel. In the event the trafficway includes two or more separate roadways, the term "roadway" refers to any such roadway separately, but not to all such roadways collectively.

Traffic Lane – the specific part of the roadway that is used for vehicular travel.

Auxiliary Lane – the portion of the roadway adjoining the through traveled way for parking, speed change, turning, weaving, truck climbing, or for other purposes supplementary to through traffic movement.

Shoulder – that portion of the road contiguous with the roadway for accommodation of stopped vehicles, emergency use, and for lateral support of the roadway structure. The line between the roadway and the shoulder may be a painted edge line, a change in surface color of material, or a curb.

Clearzone Distance – the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area. The desired width is dependent on the traffic volumes and speeds, and roadside geometry.

Number of Lanes – the total number of thru lanes of the "road on" at the point of the collision (if two-way, total for both directions). Do not count turning lanes unless they are continuous between intersections. Enter "0" for parking lots.

Median – the portion of a divided trafficway separating the traveled way for traffic in opposing directions.

Crossover – an area in the median of a divided roadway where vehicles are permitted to travel across the opposing lanes of traffic or do a U-turn.

Driveway – a roadway providing access to property adjacent to a trafficway.

Intersection – an area which (1) contains a crossing or connection of two or more roadways not classified as driveway access and (2) is embraced within the prolongation of the lateral curb lines or, if none, the lateral boundary lines of the roadways. Where the distance along a roadway between two areas meeting these criteria is less than 30 feet, the two areas and the roadway connecting them are considered to be parts of a single intersection.

Intersection Related – may refer to a crash that occurs within the influence area of the intersection and is caused by the operation of the intersection. The influence area is a variable distance that depends on the intersection design, traffic control and operating characteristics.

Access Control – the condition where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

Full Access Control – authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only, by prohibiting crossings at grade or direct private driveway connections.

Railway Grade Crossing – an intersection between a roadway and train tracks which cross each other at the same level (Grade).

Highway, Street or Road – a general term denoting a public way for purpose of vehicular travel, including the entire area within the right-of-way (recommended usage: in urban areas – highway or street, in rural areas – highway or road).

Outside Trafficway – not physically located on any land way open to the public as a matter of right or custom for moving persons or property from one place to another.

LOCATIONS – SPECIAL INSTRUCTIONS

Road On – Enter the class and number of the "road on", such as U.S. 13. If this road is also referred to by street, name, please list the street name in parenthesis, following the class of road and number. If a road has more than one classification or number, use the highest class with the lowest number. If the "road on" is a ramp or service road, also indicate "ramp" or "service road." The road reflected in "Road On" and Diagram must be the same.

Primary roads (I, US, NC) ending with an odd number, such as "1, 3, 5, 7" are North-South roads, whereas roads ending with an even number, such as "2, 4, 6" as East-West roads, with the exception of US 220 and US 258, which are North-South roads.

Interchange Ramp – For "road on" enter the class and number of the road from which the ramp exits, followed by the word "ramp."

Railroad Crossing – Enter the number posted at the site. If is composed of six digits and a letter, it may be found strapped to a railroad signal post or part of the gate structure. If the number is not available, write in the name of the railroad company owning or operating the tracks and strike through the # on the form.

PVA – Public vehicular area is coded for any area generally open to and used by the public. Examples include:

- College campus (not state maintained road)
- Military reservation (not state maintained road)
- Driveway to or parking lot of school, church, hospital or other facilities; service station, office building, store or other business, etc.

In the space on the form for "road on" enter PVA and place in parenthesis a brief description of where the crash occurred, name of shopping center, business, etc.

PP – Private property is coded for any private areas of non-traffic areas. In the space on the form for "road on" enter PP and place in parenthesis a *brief description of name of the private drive*, or other private area.

ABBREVIATIONS FOR STREET DESIGNATORS

Word	Abbreviation	Word	Abbreviation
Alley	AL	Lane	LN
Avenue	AVE	Parkway	PKWY
Boulevard	BLVD	Place	PL
Court	CT	Road	RD
Circle	CIR	Street	ST
Drive	DR	Terrace	TER
Highway	HWY	Trail	TR

Names which should not be abbreviated include: Acres, Heights, Hills, Loop, Park, Plaza, Row, Saint, Square, Village Way

GEOGRAPHIC LOCATIONS

Global Positioning System (GPS) – exact geographic location indicated in terms of latitude and longitude.

Geographic Information System (GIS) – system which associates information with specific geographic locations, for example roadway characteristics by latitude/longitude.

Latitude/Longitude on the DMV-349 – for those agencies/municipalities which are able to record the latitude, longitude, and altitude (elevation) for specific crash locations, space has been provided on the form for capturing this information.

CRASH SEQUENCE OF EVENTS, FIRST EVENT AND MOST HARMFUL EVENT

The crash sequence of events is a list of things that occurred to the vehicle in question that was relevant to the crash. The first harmful event is the injury or damage production event which characterizes the crash type. The most harmful event is the event which caused the most severe injury or greatest amount of property damage.

For crash sequence of events, up to four (4) harmful events may be recorded for each vehicle involved in the crash. If only one event occurred in the crash, events 2-4 would be marked with a dash (-), not applicable.

Data elements 10-11 refer to the first harmful and most harmful events at the crash level, while data elements 52-56 refer to the first four harmful events (52-55) and the most harmful event (56) at the vehicle level.

It is important that these separate data elements are captured at both the vehicle and crash Levels and that a determination is made in a multi-vehicle crash, which harmful event was "first" in the crash and which was the "most harmful event". These distinctions are important in Classifying and comparing different types of crashes.

Data element values at the vehicle level have been expanded for "non-collision" and "fixed object" crash types, to present a greater number of categories for describing crash sequence of events.

COLLISION WITH FIXED OBJECT

The following fixed object descriptions are provided as a reference to the fixed object types listed under the data elements "Sequence of Events" (#52-55) and "Most Harmful Event" (#56) for each vehicle.

Utility Pole – a pole or post constructed for the primary function of supporting an electric line, telephone line or other electrical-electronic transmission line or cable.

Luminaire Pole – a pole or post constructed to support a luminaire for lighting a roadway.

Official Highway Sign – a pole, post or structure constructed to support a highway sign intended to guide, or regulate or inform highway users.

Overhead Sign Support – a pole, post, or structure constructed to support a sign which is over a roadway (usually installed on or relocated to nearby overpasses or other structures).

Commercial Sign – a sign placed by an area business as a means of advertising. Logo signs (advertising upcoming businesses along the roadway) placed by the State DOT are not commercial signs.

Guardrail – a longitudinal barrier consisting of posts and rails or cables, whose primary functions are to prevent penetration and to safely redirect an errant vehicle away from a roadside or median hazard.

Shoulder Barrier – concrete barrier or something other than a guardrail placed on the shoulder.

Median Barrier (non-guardrail) – a longitudinal barrier (such as concrete) used to prevent an errant vehicle from crossing the portion of a divided highway separating the traveled ways for traffic in opposite directions.

Bridge Rail – a barrier attached to a bridge deck or a bridge parapet (a low wall built along the edge of a bridge deck) to restrain vehicles, pedestrians or other users.

Overhead Part of Underpass – any part of an underpass that is over the reference or subject roadway. For a bridge, this typically refers to the beams or other structural elements supporting the bridge deck.

Bridge Pier – a support for a bridge structure other than at the ends.

Abutment (Supporting Wall) of Underpass – a structure that supports the end of a bridge.

Traffic Island – the cement or grassy area in the middle of a trafficway.

Curb – a raised edge (typically less than 9 inches) or border to a roadway.

Culvert – an enclosed structure providing free passage of water under a roadway.

Ditch – an open channel dug into the ground, usually paralleling the highway embankment and within the limits of the highway right-of-way.

Embankment – a mound of earth or stone above the original ground, built to hold back water or to support a roadway.

Construction Barrier – a traffic barrier designed to protect from entering work areas, provide protection for workers, separate two-way traffic, protect construction, and separate pedestrian and vehicular traffic.

Crash Cushion – a barrier at a spot location designed to prevent an errant vehicle from impacting a fixed object hazard by gradually decelerating the vehicle to a safe stop or by redirecting the vehicle away from the hazard.

CHARACTERISTICS OF MOTOR VEHICLE TRAFFIC CRASHES
(According to the ANSI D161.1 Classification Manual)

Motor vehicle traffic crashes have a number of characteristics which are used to distinguish between motor vehicle traffic crashes and other events such as non-crashes, aircraft or railway crashes and other motor vehicles, cataclysms and non-traffic crashes. The questions below address all of the distinguishing characteristics of motor vehicle traffic crashes. If the answer to each of the questions below is "yes", the incident is a motor vehicle crash.

1. Did the incident include one or more occurrences of injury or damage?
2. Was there at least one occurrence of injury or damage which was not a direct result of a cataclysm?
3. Did the incident involve one or more motor vehicles?
4. Of the motor vehicles involved, was at least one in transport?
5. Was the incident an unstabilized situation?
6. Did the unstabilized situation originate on a trafficway or did injury or damage occur on a trafficway?
7. If the incident involved a railway train in transport, did a motor vehicle in transport become involved prior to any injury or damage involving the train?
8. Is it true that neither an aircraft in transport nor a watercraft in transport was involved in the incident?

DEFINITIONS APPLYING TO MOTOR VEHICLE TRAFFIC CRASH CHARACTERISTICS

In Transport – is the state or condition of a vehicle when it is in use primarily for moving persons or property (including the vehicle itself) from one place to another, and is

- in motion, in readiness for motion, or on a roadway, but not parked in a designated parking area.

Harmful Event – is an occurrence of injury or damage.

Cataclysm – is a cloudburst, cyclone, earthquake, flood, tornado, or volcanic eruption.

Unstabilized Situation – is a set of events not under human control. It originates when control is lost and terminates when control is regained or, in the absence of persons who are able to regain control, when all persons and property are at rest. Exclusions are:

- Deliberate Intent – suicide, homicide and other harmful events under human control do not imply the existence of an unstabilized situation. A set of unintended consequences of such acts might be an unstabilized situation.

Stabilized Situation – is the condition prevailing after motion and other action constituting the events of a crash have ceased and no further harm will ensue unless a new series of events is initiated by some means.

EXCLUSIONS FROM MOTOR VEHICLE TRAFFIC CRASHES

Some injury or damage producing events involving motor vehicles in transport are motor vehicle crashes by definition, but they are not classified as motor vehicle crashes, because transport is not deemed to be the primary contributing factor to the injury or damage producing event excluded, while other parts are included in a motor vehicle crash classification. The following examples are illustrative of the application of the exclusion principle:

- A motor vehicle in transport was washed away with a trafficway bridge during a hurricane. This crash was due to a cataclysm rather than the action of a motor vehicle in transport. However, this exclusion would not apply if the motor vehicle were driven into the water after the bridge had washed away because transport would be the primary contributing factor.
- A motor vehicle in transport was overwhelmed by a landslide or an avalanche which was a direct result of a cataclysm such as an earthquake, torrential rain, etc. However, this exclusion would not apply if a cataclysm were not in existence at the time of the event, nor would this exclusion apply if the motor vehicle were driven against any fallen materials covering a trafficway as a result of any landslide or avalanche.
- A loaded firearm was being carried in a motor vehicle in transport and it accidentally fired causing injury or damage. In such an event, transport is not considered to be the primary contributing factor; therefore, the event is not a motor vehicle crash.
- The driver of a motor vehicle in transport dies from a disease condition such as cerebral hemorrhage, heart attack or diabetic coma, prior to involvement of the motor vehicle in a motor vehicle crash. The death is due to the disease condition if it can be clearly established and not due to transport. However, to other persons, vehicles, or other property, this event, if it involved more than the death of the driver, would be a crash, and would be classified as a motor vehicle crash.
- The driver of a motor vehicle in transport suffers an epileptic seizure and the motor vehicle is involved in a motor vehicle crash. The injury or death to the driver is due to epilepsy. However, other injury or damage in the event would be classified as a motor vehicle crash.
- A pregnant woman, occupying a motor vehicle in transport, gives birth to a stillborn fetus following the involvement of the motor vehicle in a motor vehicle crash. The death of the fetus is not classified as a fatal injury resulting from a motor vehicle crash.

Top 10 Evidence Issues

Daniel Spiegel, Assistant Professor
UNC School of Government
Public Defender Conference
May 2025

1



2

Rules 401 and 403: Relevance and Prejudice Balancing

- Rule 401. Definition of "relevant evidence."
- **"Relevant evidence"** means evidence having **any tendency** to make the existence of **any fact** that is **of consequence to the determination of the action more probable or less probable** than it would be without the evidence.

3

Rules 401 and 403: Relevance and Prejudice Balancing

- Rule 403. **Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.**
- Although relevant, evidence may be excluded if its **probative value** is **substantially outweighed** by the **danger of unfair prejudice**, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

4

Andrew v. White, 604 U. S. ____ (2025)

- D on trial for murder of her husband
- Prosecution presented extensive evidence about her sex life:
  - Her sexual partners going back two decades
  - Two witnesses take stand solely to discuss her provocative clothing
  - Display of thong underwear D packed on trip to Mexico with her boyfriend (and co-D) after the murder
- Also presented evidence re: her failings as mother and wife



5

Rules 401 and 403: *Andrew v. White*

- Question was whether the evidence was so unduly prejudicial that it rendered the trial fundamentally unfair and violated the Due Process Clause



- Also see recent NC case- *State v. Hicks*, COA20-665-2
  - Plain error when pornographic images were displayed to jury

6

2 Character Evidence in Self-Defense Cases

- Hypo: D is charged with shooting V outside of a bar after an argument about whether V approached D's girlfriend. D contends V came at him with a knife.
- What can State elicit about D?
- What can D elicit about V?



7

Rule 404(a)- Character Evidence

- Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.
  - (a) Character evidence generally. – Evidence of a person's **character** or a trait of his character is **not admissible** for the **purpose of proving that he acted in conformity therewith** on a particular occasion, **except**:
    - (1) Character of **accused**. – Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;
    - (2) Character of **victim**. – Evidence of a pertinent trait of character of the victim of the crime **offered by an accused**, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

8

Rule 405- Methods of Proving Character

- Rule 405. Methods of proving character.
  - (a) **Reputation or opinion**. – In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct. Expert testimony on character or a trait of character is not admissible as circumstantial evidence of behavior.
  - (b) **Specific instances of conduct**. – In cases in which character or a trait of character of a person is an **essential element of a charge, claim, or defense**, proof may also be made of specific instances of his conduct. (1983, c. 701, s. 1.)

9

Character Evidence in Self-Defense Cases

- Did V regularly carry a knife?
  - Is this habit evidence?
    - Maybe so under Rule 406 (distinguish habit from character)
  - Is this relevant?
    - Likely so if parties contest whether V was carrying a knife.



10

Character Evidence in Self-Defense Cases

- V stabbed someone two years ago?
  - Comes in if D knew about the incident (either present or learned of it).
  - Relevant for D's state of mind, as it shows reasonable fear and reasonable belief in need to defend self. *See* 405(b)-specific incidents allowed where character is essential element of defense
  - Extrinsic evidence allowed- no limitation in 405(b)- (but could become cumulative under 403 if excessive)



11

Character Evidence in Self-Defense Cases

- V's general character for violence – reputation or opinion admissible?
  - If D knew this, likely comes in to show D's fear of harm was reasonable and thus his belief in need to defense self was reasonable – see above slide
  - But even if D didn't know this, could come in to show victim was first aggressor under 404(a)(2)



12

Character Evidence in Self-Defense Cases

- What about D?
- Regularly carried a gun?
  - Only if relevant- probably not, unless D denies having a gun
- Assaulted someone previously?
  - Generally no- improper propensity (unless to rebut opinion evidence D elicits re: his peacefulness (405(a)), or as impeachment material with conviction per 609)
- Reputation for violence?
  - Generally no- pure propensity- not allowed under Rule 404. Unless rebutting D's evidence on peacefulness



13

3 Bodycam and Evidence Issues

Body-Worn Camera (BWC) footage is becoming more and more common as law enforcement agencies adopt the technology



14

Evidence Issues with Bodycam

- Things can get tricky
- What evidence issues commonly arise?
  - Authentication?
  - Completeness?



15

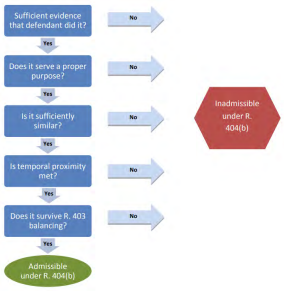
Evidence Issues with Bodycam

- Hearsay issues?
  - What exceptions might apply?
  - (1) excited utterance,(2) present sense impression, (3) then existing mental, emotional or physical condition (Rule 803(1)-(3))
- Confrontation issues?
  - Ongoing emergency?
  - Or aftermath of incident?



16

404(b) flow chart



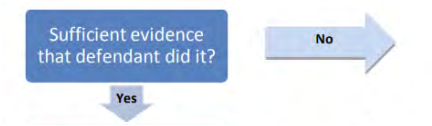
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Rule 404(b)

- Rule 404(b) **Other crimes, wrongs, or acts.** –
  - Evidence of other crimes, wrongs, or acts is **not admissible** to prove the character of a person in order **to show that he acted in conformity** therewith. It may, however, be **admissible** for **other purposes**, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.

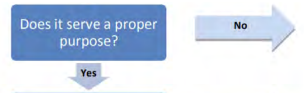
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404(b) flow chart



19

404(b) flow chart



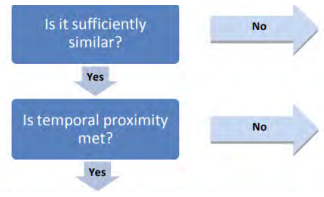
Proper purposes: Motive, Opportunity, Intent, Knowledge, Preparation, Plan, Modus Operandi, Identity, Absence of Mistake, Res Gestae/"Whole Story"

(really any relevant purpose other than propensity)

State v. Moseley, 338 N.C. 1, 32 (1994)

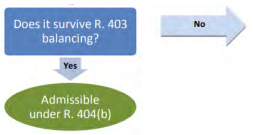
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404(b) flow chart



21

404(b) flow chart



Is the probative value substantially outweighed by danger of unfair prejudice?

22

404(b) flow chart



Once admitted, make **ruling on proper purpose** and craft **limiting instruction**

23

404(b) flow chart



Watch out for "Wilkerson" Rule- "Bare Fact of Conviction" – generally, it is the incident rather than the "bare fact of conviction" that is admissible

24

5 Confrontation and Domestic Violence cases

- Common Issue: Alleged victim not present at trial
- Confrontation
  - Are statements testimonial?
  - Statement about a past event or fact that the declarant would reasonably expect to be used later in a criminal prosecution when made.
  - Key: **Primary purpose? Ongoing emergency** when statement made?



Think: 911 call / V's statement as officers arrive on scene / V's statement after being separated from D and time has passed

25

Domestic Violence cases

- What about hearsay protections?
- Remember that Confrontation and Hearsay are separate but related bases for objection
- Common hearsay exceptions State may rely on:
  - Present Sense Impression (803(1))
  - Excited Utterance (803(2))
  - Then Existing Mental, Emotional or Physical Condition (803(3))
  - Statements for Purposes of Medical Diagnosis or Treatment (803(4))



26

6 Impeachment with Prior Conviction- Rule 609

- "What if any crimes punishable by 60 days or more have you been convicted of in the past 10 years?"
- "Other than Class 3 misdemeanors, what if any crimes have you been convicted of in the past 10 years?"
- "Weren't you convicted of felony larceny in 2019?"
- Can also ask about sentence received, time and place of conviction



27

7 Vouching - *State v. Aguilar*, 292 N.C. App. 596 (2024)

- D alleged to have assaulted V at Mexican restaurant where they both worked
- ADA asked officer whether officer had any reason to doubt victim's story, as well as follow-up questions regarding credibility of the victim's statements
- D objected



28

8 Business Records: Custodians, Affidavits, Signed Certificates



Rule 803(6): Please Hold for the Next Available Representative...

Print

A few weeks ago I participated in a seminar on digital evidence, and one of the topics we discussed was cell phone records (subscriber information, call detail records, historical location data, etc.). That's not surprising, since the widespread use of cell phones has made these records an increasingly common and important tool in criminal cases. Location data can help prove that the defendant was in the victim's house at the time of the murder, call logs can help prove the co-conspirators were in regular contact with each other, and so on.

What did surprise me was when I asked a group of 75+ prosecutors how often they have used an affidavit to authenticate these kinds of records and get them

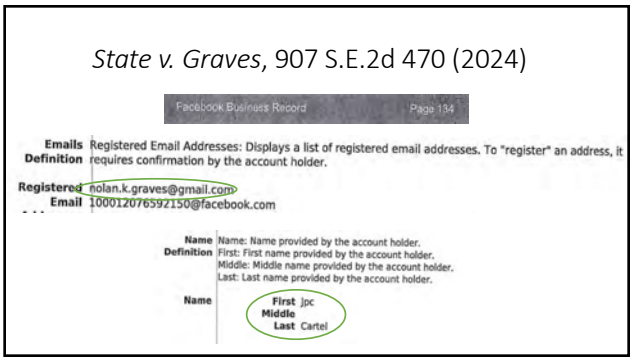
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Tweak to Business Records Hearsay Exception

- Amended Evid. R. 803(6) now allows business records to be authenticated by certification by custodian or witness if made on penalty of perjury
- May use in place of sworn affidavit or notarized document under seal
- Notice requirement: "advance notice" required -unclear exactly what is reasonable for time frame

30

State v. Graves, 907 S.E.2d 470 (2024)


Facebook Business Record Page 134

Emails Definition Registered Email Addresses: Displays a list of registered email addresses. To "register" an address, it requires confirmation by the account holder.

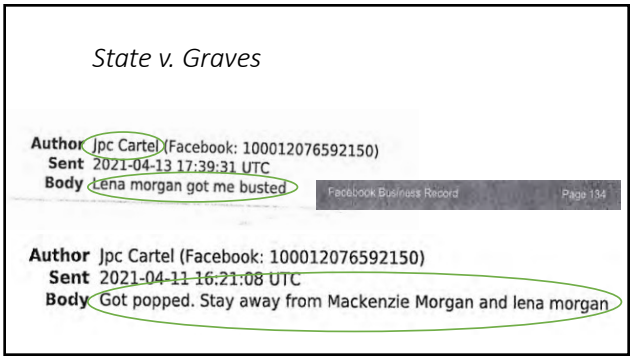
Registered Email nolan.k.graves@gmail.com
100012076592150@facebook.com

Name Definition Name: Name provided by the account holder.
First: First name provided by the account holder.
Middle: Middle name provided by the account holder.
Last: Last name provided by the account holder.

Name
First jpc
Middle
Last Cartel

31

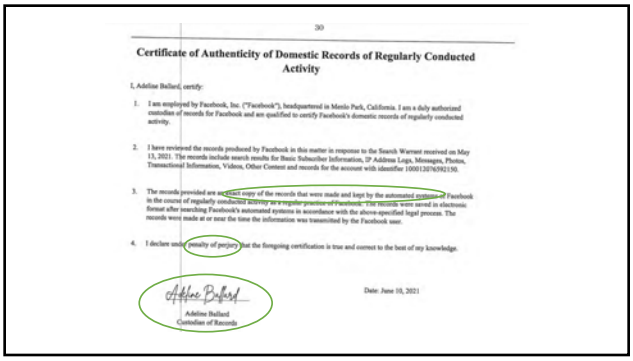
State v. Graves


Author Jpc Cartel (Facebook: 100012076592150)
Sent 2021-04-13 17:39:31 UTC
Body Lena morgan got me busted

Facebook Business Record Page 134

Author Jpc Cartel (Facebook: 100012076592150)
Sent 2021-04-11 16:21:08 UTC
Body Got popped. Stay away from Mackenzie Morgan and lena morgan

32


30

Certificate of Authenticity of Domestic Records of Regularly Conducted Activity

I, Adeline Ballard, certify:

1. I am employed by Facebook, Inc. ("Facebook"), headquartered in Menlo Park, California. I am a duly authorized custodian of records for Facebook and am qualified to certify Facebook's domestic records of regularly conducted activity.

2. I have reviewed the records produced by Facebook in this matter in response to the Search Warrant received on May 13, 2021. The records include search results for Basic Subscriber Information, IP Address Logs, Messages, Photos, Transactional Information, Videos, Other Content and records for the account with identifier 100012076592150.

3. The records provided are an exact copy of the records that were made and kept by the automated systems of Facebook in the course of regularly conducted activity as a regular practice of Facebook. The records were saved in electronic format after searching Facebook's automated systems in accordance with the above-specified legal process. The records were made at or near the time the information was transmitted by the Facebook user.

4. I declare under penalty of perjury that the foregoing certification is true and correct to the best of my knowledge.

Adeline Ballard
Custodian of Records

Date: June 10, 2021

33

9

Surveillance Video





34

Authenticating Surveillance Video

- **Fair and Accurate** method (Illustrative)
  - Witness was present during the recorded events and can testify that the footage is a "fair and accurate" depiction of what occurred
  - Ex. Loss Prevention Officer was actually there and saw D steal items at the store
- **Silent Witness** method (Substantive)
  - No live witness
  - Footage has been retrieved and there is either a chain of custody for the footage or some other combination of factors that go to authenticity/reliability



35

State v. Jones



36

Surveillance Video- Common Authenticating Witnesses

- Loss Prevention Officer
- Store Clerk
- Store Manager
- Homeowner
- Law Enforcement Officer who extracted the video from the system (may or may not be specialist/expert)
- Investigating Officer (think *State v. Jones*)











37

State v. Jones



ADEQUATE

Foundation for Surveillance Video*

INADEQUATE

Foundation for Surveillance Video*

38

State v. Jones

ADEQUATE

Foundation for Surveillance Video*

***State v. Jones*, 288 N.C. App. 175 (2023)**

Officer testified that:

1. Video was same as footage she saw on night of incident;
2. Homeowner's description of events matched the video;
3. Surveillance system was working correctly "to [her] knowledge."

39

State v. Moore

INADEQUATE
Foundation for Surveillance Video*

***State v. Moore*, 254 N.C. App. 544 (2017)**

Officer testified that:

1. The day after the incident, since store manager was unable to make a copy of the footage, officer recorded footage on the store's equipment with his cell phone;
2. The video, which was a copy of the cell phone recording, accurately showed footage he had reviewed at the store.

40

State v. Moore (continued)

Store clerk testified that the defendant was seen on video, but did not testify as to whether the video accurately depicted events he observed on day in question.

No testimony pertaining to type of recording equipment and whether it was in good working order/reliable.

41

Surveillance Video- Example

- Felony credit card fraud trial- surveillance video shows D using credit card at cash register
- Security guard from store is present
  - The security guard retrieved the disc from where it was stored at the store
  - The security guard was not present during the incident
  - A previous security guard (who quit) was the one who burned the disc from the recording system
- Does the surveillance video come in? Why or why not?

42

On the horizon- is video just a business record?

- **Surveillance Video was introduced as a business record in *State v. Windseth*, __ N.C. App. __, No. COA24-718 (2025)**
  - **Affidavit submitted by Wells Fargo under 803(6)**
- **But video in *Windseth* was not objected to, and issue on appeal was more about stillshots taken from video**
- ***Windseth* relies on *State v. Jackson*, 229 N.C. App. 644 (2013) which addressed GPS records admitted as a business record.**




43

10 Digital Evidence and Authentication



- Authentication is identification
  - The proponent must show that "the [evidence] in question is what its proponent claims." N.C. R. Evid. 901
- Authentication is "a special aspect of relevancy"
  - Adv. Comm. Note, N.C. R. Evid. 901(a)
- Authentication is a low hurdle
  - State v. Ford, 245 N.C. App. 510 (2016) (stating that the "burden to authenticate . . . is not high – only a prima facie showing is required")
- Authentication often comes from:
  - Testimony of a "[w]itness with [k]nowledge," Rule 901(b)(1)
  - The "distinctive characteristics" of the evidence or other "circumstances," Rule 901(b)(4).

44

Two Step Authentication

- (1) Does the exhibit (screen capture, photo, video) accurately reflect the communication?
- (2) Is there reason to believe that the purported author actually wrote the communication?

- "To authenticate [social media] evidence . . . there must be circumstantial or direct evidence sufficient to conclude a screenshot accurately represents the content on the website it is claimed to come from and to conclude the written statement was made by who is claimed to have written it."
  - State v. Clemons, 274 N.C. App. 401 (2020).



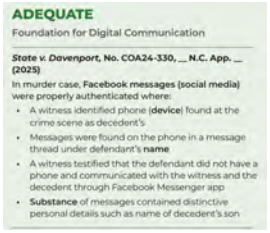
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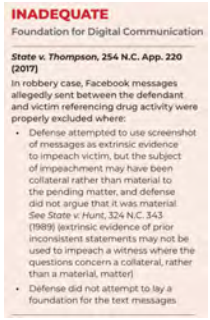
Digital Communications Chart



46

Authentication of Digital Communications Chart





47



48

State v. Clemons, 274 N.C. App. 401 (2020)

- V has a DVPO against D
- D is released from prison and their adult daughter picks him up
- Shortly thereafter:
  - V begins receiving multiple calls daily from an unknown number; the caller sometimes leaves messages referencing events from D and V's past
  - Comments appear on some of V's Facebook posts; they are made from V's daughter's account, but V testifies that her daughter never comments on her posts and wouldn't make comments of that kind
- V takes screenshots of the Facebook comments and gives them to the police, who charge D with violating the DVPO by contacting V

49

State v. Clemons, 274 N.C. App. 401 (2020)

- (1) "the screenshots must have accurately reflected [V's] Facebook page. . . . Therefore, the screenshots must have been authenticated as photographs."
- (2) "the screenshots of the Facebook comments are also statements—the State wanted the jury to use the screenshots to conclude [D] communicated with [V] in violation of the DVPO through the Facebook comments. . . . In light of this purpose, the Facebook comments also needed to be authenticated by evidence sufficient to support finding they were communications actually made by Defendant."

50

Memory Tool: "SANDVAT"

- **"S" is for "Substance"** – how does the **substantive content of the digital evidence itself** tend to authenticate it?
  - Remember, this is appropriate under Rule 104(a)- for preliminary questions such as authenticity, the court is not bound by rules of evidence (except for privileges)
  - *Example*: the sender uses the name of a common child and refers to an unusual incident
- **"A" is for "Account"** – information about the account (login, properties, pieces of identifying information associated with profile)
- **"N" is for "Name"** – is there a name or "handle" associated with the social media account?
- **"D" is for "Device"** – who possessed the phone or computer? What can we learn from the hardware itself?

51

Memory Tool: "SANDVAT"

- **"V" is for "Visuals"** - what do the photos/videos show on the account?
- **"A" is for "Address"** – what can we learn from the IP address or physical address associated with the evidence?
- **"T" is for "Timing"**
  - When was the post made?
  - What is the overall chronology and how does that line up with events **IRL**? (Example: D was released from prison in *Clemons* at a particular time and the messages started just after)
- **"SANDVAT" – remember, this is just a memory tool (not a legal test), but it can be a helpful way to think about the possible paths to authenticate digital evidence**

52

Evidence Issues

1) Rules 401 and 403
2) Character Evidence in Self-Defense Cases
3) Bodycam
4) 404(b)
5) Confrontation and DV cases
6) Impeachment with Prior
7) Vouching
8) Business Records
9) Surveillance Video
10) Digital Evidence Authentication



53



Questions

54

Top 10 Evidence Issues



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55

Authentication of Digital Communications

(social media content and text messages)

To authenticate digital evidence, the proponent must show that "the [evidence] in question is what its proponent claims." N.C. R. Evid. 901. A party may offer testimony of a "[w]itness with [k]nowledge" that evidence is what it is claimed to be. *See* Rule 901(b)(1). Alternatively, a party may rely on circumstantial factors such as the "distinctive characteristics" of the evidence. *See* Rule 901(b)(4). "The burden to authenticate… is not high—only a prima facie showing is required." *State v. Ford,* 245 N.C. App. 510 (2016).

Authentication of digital communications involves two questions:

1. **Does the exhibit (screen capture, photo, video) accurately reflect the communication?**
2. **Is there reason to believe that the purported author wrote the communication?**

See State v. Clemons, 274 N.C. App. 401 (2020) ("To authenticate [social media] evidence …there must be circumstantial or direct evidence sufficient to conclude a **screenshot accurately represents the content** on the website it is claimed to come from and to conclude the **written statement was made by who is claimed** to have written it") (emphasis added).

The following memory tool may be helpful in thinking about the various types of circumstantial evidence frequently used to authenticate digital communications.

SANDVAT

S is for **"Substance"**
How does the substantive content of the digital evidence itself tend to authenticate it? e.g., does the communication reference a particular event, nickname, or private topic, thereby tending to show that a particular person was the author?

A is for **"Account"**
Is there information about the account (username/login, digital properties, identifying information associated with account profile) that suggests ownership or authorship?

N is for **"Name"**
Is there a name or "handle" associated with the social media account that indicates authorship?

D is for **"Device"**
Who possessed the phone, computer, or device used to make the communication? What is distinctive about the hardware and is there information as to ownership or possession?

V is for **"Visuals"**
Does the webpage or account display photographs or videos that indicate ownership or authorship?

A is for **"Address"**
What can be learned from the IP address, physical address, or email address associated with the communication?

T is for **"Timing"**
When was the communication made? How does this relate to larger questions of chronology?

The chart below contains examples of adequate and inadequate foundations for digital communications. The types of circumstantial evidence used to authenticate the communication are emphasized.

ADEQUATE

Foundation for Digital Communication

***State v. Davenport*, No. COA24-330, __ N.C. App. __ (2025)**

In murder case, **Facebook messages (social media)** were properly authenticated where:

- A witness identified phone (**device**) found at the crime scene as decedent's
- Messages were found on the phone in a message thread under defendant's **name**
- A witness testified that the defendant did not have a phone and communicated with the witness and the decedent through Facebook Messenger app
- **Substance** of messages contained distinctive personal details such as name of decedent's son

***State v. Clemons*, 274 N.C. App. 401 (2020)**

In domestic violence protective order violation case, **Facebook comments made on victim's posts** were properly authenticated where:

- Although the comments originated from the victim's daughter's **account**, not defendant's, the daughter rarely commented on victim's Facebook page and the **style of communication** did not match that of the daughter
- The **timing** indicated that the defendant made the comments in that the daughter picked up the defendant upon his release from prison and the comments were posted shortly after
- Facebook messages occurred around the same **time** that voicemails were left on victim's phone; victim recognized defendant's voice in a threatening message

***State v. Ford*, 245 N.C. App. 510 (2016)**

In involuntary manslaughter trial involving dangerous dog, **screenshots of video and audio of a song**, both posted on **Myspace webpage (social media)**, were properly authenticated where:

- **Name of webpage** contained **defendant's nickname,** "Flex," and video depicting defendant's dog was captioned with **dog's name,** "DMX"
- Social media webpage contained distinctive **substantive content** such as **photos** of the defendant, **videos** of defendant's dog on a chain being called, and a song with lyrics denying that the victim's death was caused by defendant's dog
- A detective testified that he recognized the voice on the song as defendant's, and a neighbor testified that he heard the song coming from defendant's house

Ford cites to *United States v. Hassan,* 742 F.3d 104 (4th Cir. 2014) (**Facebook messages** properly authenticated where Facebook pages and Facebook **accounts** were tracked to defendant's mailing and email **addresses** using **IP (internet protocol) addresses)**.

***State v. Gray*, 234 N.C. App. 197 (2014)**

In robbery case, **text messages** between co-conspirators were properly authenticated where:

- **Substance** of text messages referred to location of trailer where victim was located, how many people were in the trailer, and the trailer door being open
- Officer testified that the text messages were found on defendant's cell phone (**device**) and that officer took a screenshot of them
- A **co-conspirator testified** that the screenshot accurately depicted the text messages she exchanged with the defendant

***State v. Taylor*, 178 N.C. App. 395 (2006)**

In kidnapping and murder case, **text messages** sent to and from victim's phone were properly authenticated where:

- A telecommunications employee testified that the messages were stored on the company server and accessible with access code
- The manager of cellphone store testified that he issued the victim the **cell phone (device)** with a particular phone number, and the text messages associated with that number were retrieved from the telecommunication company's server using the victim's access code

The **substance** of the text messages referred to the victim's first **name**, "Sean," as well as a 1998 Contour, which was the make of victim's car

INADEQUATE

Foundation for Digital Communication

***State v. Thompson*, 254 N.C. App. 220 (2017)**

In robbery case, Facebook messages allegedly sent between the defendant and victim referencing drug activity were properly excluded where:

- Defense attempted to use screenshot of messages as extrinsic evidence to impeach victim, but the subject of impeachment may have been collateral rather than material to the pending matter, and defense did not argue that it was material. *See State v. Hunt*, 324 N.C. 343 (1989) (extrinsic evidence of prior inconsistent statements may not be used to impeach a witness where the questions concern a collateral, rather than a material, matter)
- Defense did not attempt to lay a foundation for the text messages

***Rankin v. Food Lion*, 210 N.C. App. 213 (2011)**

In hearing on motion for summary judgment in civil trial, printouts from internet webpages offered to show ownership of a Food Lion store were properly excluded where:

- Plaintiff failed to offer "any evidence tending to show what the documents in question were… " and failed to "make any other effort to authenticate [the] documents."

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ADEQUATE

Foundation for Surveillance Video*

***State v. Jones*, 288 N.C. App. 175 (2023)**

Officer testified that:

1. Video was same as footage she saw on night of incident;
2. Homeowner's description of events matched the video;
3. Surveillance system was working correctly "to [her] knowledge."

***State v. Snead*, 368 N.C. 811 (2016)**

Loss prevention manager testified that:

1. He was familiar with recording equipment and it was in working order;
2. He viewed the footage on the recording equipment and video was same as the footage he viewed.

***State v. Fleming*, 247 N.C. App. 812 (2016)**

Corporate investigator testified that:

1. He was familiar with the recording system, it was functioning properly, and he made a copy of footage;
2. Video was the same as footage he copied, unedited, and same as that created by system.

***State v. Ross*, 249 N.C. App. 672 (2016)**

Store manager testified that:

1. Cameras were working properly because time and date stamps were accurate;
2. A security company manages the system and routinely checks to make sure cameras are online;
3. The video was same as footage he saw immediately following the incident and was not edited nor altered in any way.

***State v. Cook*, 218 N.C. App. 245 (2012)**

Facilities manager testified that:

1. He viewed the footage as a technician made a copy immediately after incident and video showed the same footage;
2. He didn't know how it worked, but the recording device live-streamed footage to a server.

***State v. Mewborn*, 131 N.C. App. 495 (1998)**

Officer testified that video was the same as footage he saw on the day of the incident and had not been edited.

Another officer and an assistant store manager testified that the recording equipment was working properly.

INADEQUATE

Foundation for Surveillance Video*

***State v. Moore*, 254 N.C. App. 544 (2017)**

Officer testified that:

1. The day after the incident, since store manager was unable to make a copy of the footage, officer recorded footage on the store's equipment with his cell phone;
2. The video, which was a copy of the cell phone recording, accurately showed footage he had reviewed at the store.

Store clerk testified that the defendant was seen on video, but did not testify as to whether the video accurately depicted events he observed on day in question.

No testimony pertaining to type of recording equipment and whether it was in good working order/reliable.

***State v. Mason*, 144 N.C. App. 20 (2001)**

Two store employees testified that surveillance system was in working order but were unfamiliar with maintenance, testing, or operation.

Store employee testified to the accuracy of a portion of the video for which he was present, but not to another more significant part.

Chain of custody was not established as a store employee gave a tape to an officer on the night of offense but the officer who testified at trial did not get tape from a police locker until several days after the robbery.

*The term "video" refers to the exhibit introduced at trial.

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MARCH 2024

20240048

CRIMMIGRATION UPDATE

Prepared by: Duke Immigrant Rights Clinic, Duke Criminal Defense Clinic, & Southern Coalition for Social Justice

Duke Law

IMMIGRANT RIGHTS CLINIC Duke Law

CRIMINAL DEFENSE CLINIC

SOUTHERN COALITION for SOCIAL JUSTICE

1

Introductions

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2

Agenda

- HB10
- Criminal Defendants in Custody Pursuant to an ICE Detainer
- HB10 Implementation So Far
- How to Contest Clients' Detention
- Looking Forward
- What HB10 is *not*?

3

What is HB10?

- S.L. 2024-55, now chaptered as G.S. 162-62
- Became law and went into effect on December 1, 2024
- Compels local sheriffs to cooperate with Immigration and Customs Enforcement (ICE)

4

HB10 Notification Provisions

(a) When any person charged with a felony or an impaired driving offense is confined for any period in a county jail, local confinement facility, district confinement facility, or satellite jail/work release unit, satellite jail, or work release unit, the administrator or other person in charge of the facility shall attempt to determine if the prisoner is a legal resident of the United States by an inquiry of the prisoner, or by examination of any relevant documents, or both both, if the person is charged with any of the following offenses:

1. A felony under G.S. 90-95 ("Felonies related to the Controlled Substances Act (not simple possession of other misdemeanors)").
2. A felony under Article 6 ("Homicide"), Article 7B ("Rape and Other Sex Offenses"), Article 10 ("Kidnapping and Abduction"), Article 10A ("Human Trafficking"), or Article 13A ("North Carolina Criminal Gang Suppression Act") of Chapter 14 of the General Statutes.
3. A class A1 misdemeanor or felony under Article 8 ("Assaults (including Assault on a Female and the other most serious misdemeanors but not a simple assault")) of Chapter 14 of the General Statutes.
4. Any violation of G.S. 50B-4.1 ("Violation of Valid Protective Order").

(b) If the administrator or other person in charge of the facility is unable to determine if that prisoner is a legal resident or citizen of the United States or its territories, the administrator or other person in charge of the facility holding the person whom possibly prisoner shall make a query of Immigration and Customs Enforcement of the United States Department of Homeland Security. If the prisoner has not been lawfully admitted to the United States, the United States Department of Homeland Security will have been notified of the prisoner's status and confinement at the facility by its receipt of the query from the facility.

5

HB10 Detainer Provision

(b)(1) When any person charged with a criminal offense is confined for any period in a county jail, local confinement facility district confinement facility, satellite jail or work release unit, and the administrator or other person in charge of the facility has been notified that Immigration and Customs Enforcement of the United States Department of Homeland Security has issued a detainer and administrative warrant that reasonably appears to be for the person in custody, the following shall apply:

1. Prior to the prisoner's release, and after receipt of the detainer and administrative warrant, or a copy thereof, by the administrator or other person in charge of the facility, the prisoner shall be taken without unnecessary delay before a State judicial official who shall be provided with the detainer and administrative warrant, or a copy thereof.
2. The judicial official shall issue an order directing the prisoner be held in custody if the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant.
3. Unless continued custody of the prisoner is required by other legal process, a prisoner held pursuant to an order issued under this subsection shall be released upon the first of the following conditions:
   a. The passage of 48 hours from receipt of the detainer and administrative warrant.
   b. Immigration and Customs Enforcement of the United States Department of Homeland Security takes custody of the prisoner.
   c. The detainer is rescinded by Immigration and Customs Enforcement of the United States Department of Homeland Security.

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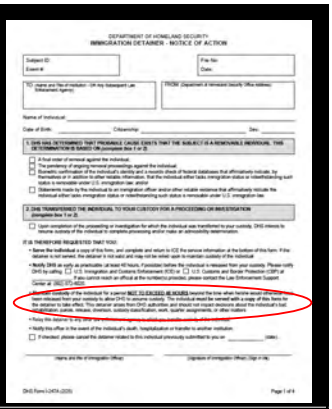
3 Required Conditions for HB10 Custody

1. There is a judicial order verifying the identity of the person named in the ICE detainer and administrative warrant;
2. 48 hours have not elapsed since the ICE detainer and administrative warrant was received by the sheriff's department; and
3. There is no state law basis for continued custody.



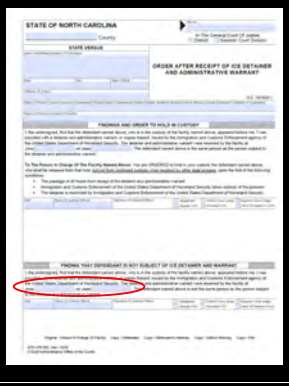
7

Sample ICE Detainer Form



8

Sample HB10 Judicial Order (AOC-CR-662)



9

Practice Note

Outside of HB10 and N.C. Gen. Stat. §128-1.1(c1), counties have **NO** authority to hold noncitizens in county jails for non-criminal matters.

10

HB10 Implementation So Far

- Sheriffs must serve detainer on person for detainer to take effect
- Where to find ICE detainers and administrative warrants
- Misunderstandings of HB10's clock
- Not setting bond because of HB10
- Rearrest with second ICE hold
- Not setting expiration time for ICE hold
- Inaccurate judicial orders (AOC-CR-662)
- Disappearing clients
- ICE's response to HB10

11

How to Contest Detention

HB10 provides two primary opportunities for defense counsel to contest the continued detention of impacted clients:



Where no Form AOC-CR-662 judicial order has been validly entered

Where 48 hours have passed from receipt of your client's detainer or your client was not served with the detainer and there's no state law basis for custody

12

Scenario 1: No Form AOC-CR-662 judicial order has been validly entered

G.S. 162-62(b1) requires, prior to the issuance of an HB10 detention order, both:

1. Presentment "without unnecessary delay before a State judicial official"; and
2. A determination that "the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant."



13

You can...

Seek to represent clients in their HB10 judicial proceedings

14

Scenario 2: 48 Hours Passed + No State Law Basis for Custody

- HB10 only allows detention for 48 hours from ***receipt*** of the ICE detainer and administrative warrant. This 48-hour period includes weekends and holidays.
  - The 48-hour clock will not necessarily align with the time when the judicial order was issued!



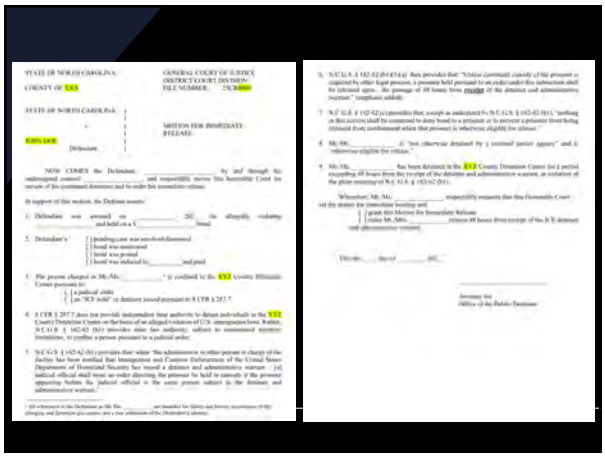
15

Less than 48 hours

If 48 hours have elapsed since the detainer was received **and** your client has already posted pond, obtained an unsecured bond, or had their charges dismissed, you can….

Move for the immediate release of your client

16



17

No state law basis for continued custody

If 48 hours have NOT elapsed since the detainer was received **and** your client has **NOT** posted pond, obtained an unsecured bond, or had their charges dismissed, you can….

Seek terms of release and assist in posting bond

18

What is HB10 *not*?

- 287(g)
- Does not require local law enforcement officers to participate in ICE raids & does not involve people detained by ICE as the result of raids or other immigration arrests
- Does not require sheriffs to notify ICE that a noncitizen is being released
- Does not involve immigration bonds. It only involves the criminal release process
- The Laken Riley Act: amends INA § 236
  - The Attorney General **shall** take into custody any alien who-
    - (E) (i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a); and
    - (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person
    - (2) Definition. For purposes of paragraph (1)(E), the terms "burglary", "theft", "larceny", "shoplifting", "assault of a law enforcement officer", and "serious bodily injury" have the meanings given such terms in the jurisdiction in which the acts occurred.
    - (5) Detainer. The Secretary of Homeland Security shall issue a detainer for an alien described in paragraph (1)(E) and, if the alien is not otherwise detained by Federal, State, or local officials, shall effectively and expeditiously take custody of the alien.

19

Looking Forward

- HB10 is likely to change
  HB 318 (The Criminal Illegal Alien Enforcement Act)
- Pending NC anti-immigrant bills
  SB 153 (North Carolina Border Protection Act)
- Pending federal immigration changes
  HR 30 (Preventing Violence Against Women by Illegal Aliens)

20

Additional Support

- Sample motions
- For questions related to HB10:
  hb10questions@scsj.org

21

Additional Support



- ACLU-NC & NCJC Immigrant Civil Rights Assistance Request Form: https://forms.office.com/r/DGKOBanPrS
  - Prolonged detention of immigrants in local jails or in ICE detention facilities
  - Denial of access to counsel for non-citizens in jail/detention facilities
  - Dangerous or inhumane jail or detention conditions
  - Denial of bail based on immigration status, race, ethnicity
  - Roadblocks or other law enforcement actions (traffic stops) that appear to be targeted to a specific community based on race, national origin, color, religion, or ethnicity
  - Abusive/coercive law enforcement questioning, harassment, or threats by law enforcement against immigrants
  - Immigration enforcement targeting groups of immigrants rather than individuals—especially workplace or "knock and talk"
  - Inadequate translation/interpretation services in jails, courts, or other settings
  - ICE conducting enforcement activities within courthouses
  - Denial of essential services (for example: emergency medical care, K-12 education) to non-citizens

22

Questions?

23

ADMINISTRATIVE OFFICE OF THE COURTS
OFFICE OF GENERAL COUNSEL
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MEMORANDUM

TO: Trial Court Officials

FROM: Seth Kandl
Assistant Legal Counsel

DATE: November 27, 2024

SUBJECT: S.L. 2024-55 and Judicial Officials' Obligations Re: Detainees Subject to ICE Detainers[1]

House Bill 10 became law on November 19, 2024, when the legislature overrode the Governor's veto of September 20, 2024, and is now chaptered as S.L. 2024-55 (hereinafter "The Act").[2] Section 9 amends the requirements of the sheriff and the court in G.S. 162-62 in determining the legal status of a person in the custody of a detention facility. Specifically, the Act amended G.S. 162-62 to add new subsection (b1) that creates a new obligation on judicial officials when individuals in the custody of detention facilities are subject to a detainer issued by Immigration and Customs Enforcement ("ICE") of the Department of Homeland Security. These new obligations consist of: **1)** receiving the administrative warrant or detainer issued by ICE from the detention facility staff, **2)** verifying the subject of the detainer and administrative warrant is the same individual brought before them, and, if so **3)** issuing an order directing the individual to be held. This memo summarizes these changes in the new G.S. 162-62(b1) applicable to judicial officials, which are effective December 1, 2024.

Receiving the Detainer and Administrative Warrant

The new G.S. 162-62(b1) provides that "[w]hen any person charged with a criminal offense is confined for any period in a county jail, local confinement facility, district confinement facility, satellite jail, or work release unit, and the administrator or other person in charge of the facility has been notified that Immigration and Customs Enforcement... has issued a detainer and administrative warrant that reasonably appears to be for the person in custody," the detainee "shall be taken without unnecessary delay before a State judicial official who shall be provided with the detainer and administrative warrant, or a copy thereof." Sec. 9.1.(a), S.L. 2024-55. Any ICE detainer will be received by the detention facility staff and presented to the judicial official. It is not the responsibility of the judicial official to inquire whether an ICE detainer exists.

Verifying Subject of Detainer and Administrative Warrant is Same Person as Detainee

New G.S. 162-62(b1)(2) requires judicial officials to "issue an order directing the prisoner to be held in custody if the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant." This language lays the obligation on the judicial official to verify the detainee brought before them is the individual referenced in the ICE detainer. After being sufficiently satisfied that

[1] For future reference, a copy of this memo will be available on the Administrative Office of the Courts (NCAOC)'s Juno site for Judicial Branch users at http://juno.nccourts.org/legal-memos, under the memo list for Criminal Memos.
[2] Full text of the enacted bill is available at:https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H10v6.pdf. The changes referenced by this memo appear in section 9.1.

the individual in the custody of the local agency is the same individual as the one referred to in the ICE detainer, the judicial official must issue the required order.

Issuing the Order

If the judicial official receives a detainer and administrative warrant issued by ICE and is sufficiently satisfied that the individual brought before them is the subject of the detainer and administrative warrant, then the judicial official shall issue an order to hold the individual in custody. The order shall state the individual is to be released, "unless continued custody of the prisoner is required by other legal process," after:

a) the passage of 48 hours from receipt of the detainer and administrative warrant,
b) Immigration and Customs Enforcement of the United States Department of Homeland Security takes custody of the prisoner, or
c) the detainer is rescinded by Immigration and Customs Enforcement of the United States Department of Homeland Security.

The existence of an ICE detainer does not prevent the issuance of a bond, per G.S. 162-62(c). Should a detainee be the subject of an ICE detainer, the detention order required under G.S. 162-62(b1) as well as conditions of release on the underlying offense should be entered.

To assist in the implementation of the newly required order, AOC created new form AOC-CR-662, Order After Receipt of ICE Detainer and Administrative Warrant. This form will be released shortly before December 1, 2024. AOC's Business and Process Management Division will provide notice via email once the form has been posted for use.

Frequently Asked Questions

Is it the judicial official's responsibility to determine if the person brought before them is a legal resident?

NO, the judicial official is only responsible for determining if the person before them is the same person referenced in the provided ICE detainer and administrative warrant. The facility administrator is responsible for determining residency status per G.S. 162-62(a).

Is it the judicial official's responsibility to decide when the 48 hours begins or when the person is released?

NO, the administrator in charge of the detention facility decides when the 48 hours begins and how it applies, not the judicial official.

Court officials with questions about the issues described above should feel free to contact Seth Kandl at Seth.P.Kandl@nccourts.org. Questions about the use of NCAOC's automated systems, forms, and recordkeeping procedures should be directed to the Emily.E.Mehta@nccourts.org or Courtney.Bailey@nccourts.org. Persons seeking information about ICE detainers, law enforcement officers, officials of other agencies external to the Judicial Branch, and other interested parties with questions about the impact of the legislation discussed above should consult their respective counsel; counsel for the NCAOC cannot provide legal advice to entities outside the Judicial Branch.

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
☐ District ☐ Superior Court Division

STATE VERSUS

Name And Mailing Address Of Defendant

Race	*Sex*	*Date Of Birth*

Offender ID (if any)

ORDER AFTER RECEIPT OF ICE DETAINER AND ADMINISTRATIVE WARRANT

G.S. 162-62(b1)

Name Of Facility (County Jail/Local Confinement Facility/District Confinement Facility/Satellite Jail/Work Release Unit) In Whose Custody Defendant Confined Or Committed

Name Of Person In Charge Of Facility

FINDINGS AND ORDER TO HOLD IN CUSTODY

I, the undersigned, find that the defendant named above, who is in the custody of the facility named above, appeared before me. I was provided with a detainer and administrative warrant, or copies thereof, issued by the Immigration and Customs Enforcement agency of the United States Department of Homeland Security. The detainer and administrative warrant were received by the facility at *(time)*_____ on *(date)*_____. The defendant named above is the same person as the person subject to the detainer and administrative warrant.

To The Person In Charge Of The Facility Named Above: You are ORDERED to hold in your custody the defendant named above, who shall be released from that hold, but not from continued custody when required by other legal process, upon the first of the following conditions:

- The passage of 48 hours from receipt of the detainer and administrative warrant.
- Immigration and Customs Enforcement of the United States Department of Homeland Security takes custody of the prisoner.
- The detainer is rescinded by Immigration and Customs Enforcement of the United States Department of Homeland Security.

Date	*Name Of Judicial Official*	*Signature Of Judicial Official*	☐ *Magistrate* ☐ *District Court Judge* ☐ *Superior Court Judge* ☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

FINDING THAT DEFENDANT IS NOT SUBJECT OF ICE DETAINER AND WARRANT

I, the undersigned, find that the defendant named above, who is in the custody of the facility named above, appeared before me. I was provided with a detainer and administrative warrant, or copies thereof, issued by the Immigration and Customs Enforcement agency of the United States Department of Homeland Security. The detainer and administrative warrant were received by the facility at *(time)*_____ on *(date)*_____. The defendant named above is **not** the same person as the person subject to the detainer and administrative warrant.

Date	*Name Of Judicial Official*	*Signature Of Judicial Official*	☐ *Magistrate* ☐ *District Court Judge* ☐ *Superior Court Judge* ☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

Original - Person In Charge Of Facility Copy - Defendant Copy - Defendant's Attorney Copy - District Attorney Copy - File

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Defender's Guide to HB10 &
Sample Motion for Immediate Release
Updated: March 3, 2025

HB10 Background:

Following a legislative override of the Governor's veto, S.L. 2024-55, now chaptered as G.S. 162-62(b1), became law and went into effect on December 1, 2024. The law is more widely known as HB10. This guide and the attached sample Motion for Immediate Release is intended as a resource for defense counsel whose clients are detained under the auspices of HB10.

HB10 seeks to compel local sheriffs to cooperate with Immigration and Customs Enforcement (ICE). When ICE issues a detainer and administrative warrant for someone in a North Carolina jail, HB10 requires state judicial officials to issue custody orders upon the officials' verification that the person in custody is the person named in the ICE detainer and warrant. The required verification concerns the person's identity alone, without inquiry into the validity of the legal basis for the hold.

The law then mandates detention of the person named in the ICE detainer for 48 hours from receipt of the detainer and only with a state judicial custody order. In other words, custody pursuant to an ICE detainer under HB10 is authorized only when three conditions are met:

(1) there is a judicial order verifying the identity of the person named in the ICE detainer;
(2) 48 hours have not elapsed since the ICE detainer and administrative warrant was received by the sheriff's department; and
(3) there is no state law basis for continued custody.

Motion for Immediate Release & Motion for Appropriate Relief [see attached sample motions]:

HB10 provides two primary opportunities for defense counsel to contest the continued detention of impacted clients. The attached sample Motion for Appropriate Relief, Motion for Immediate Release, and outline below set out the general contours of likely scenarios.

Scenario 1: No proper identity hearing or judicial order (Form AOC-CR-662)

G.S. 162-62(b1) requires, prior to the issuance of an HB10 detention order, both:
(1) Presentment "without unnecessary delay before a State judicial official" and;
(2) A determination that "the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant."

- Seek to represent clients in these hearings or contest prior findings:
  - Do not admit or stipulate to client's identity
  - Refer to client as "person charged as Mr./Ms._____"
  - Request the opportunity to examine any documents, photographs, and database search information relied upon to determine identity

- Request the opportunity to cross-examine any witness relied upon in determining identity
- Confirm that the date and time the detainer was received is accurate on the judicial order
- Request that judicial official includes date & time that the custody order expires based on the 48-hour limit set out in the statute

Scenario 2: 48 hours to hold your client has expired

If a client continues to be held following posting bond, obtaining an unsecured bond, dismissal of charges or completion of an imposed sentence, etc. defense counsel should move for their immediate release.

- Seek terms of release of your client and post bond to eliminate state basis for custody. Local bond funds may be able to help.
- Either through a first appearance or after the bond hearing, depending on local practice, defense counsel can seek release of their clients under HB10.
- HB10 only allows detention for 48 hours from ***receipt*** of the ICE detainer and administrative warrant. This 48-hour period includes weekends and holidays.
    - The 48-hour clock will not necessarily align with the time when the judicial order was issued. The clock starts when the facility receives the documents from ICE, which is necessarily prior to when the sheriffs' department seeks the judicial custody order.
    - The receipt time and how sheriffs receive and process these detainers will likely differ by jurisdiction and may be difficult to ascertain. Defense counsel should move for client's immediate release based on information and belief, even if the receipt time of the detainer is unknown, so long as at least 48 hours have elapsed since the client was booked into jail.
    - If 48 hours have elapsed since the detainer was received as noted in the judicial order or since the judicial order was issued, your client should be released
        - E-Courts entries may be helpful here
    - If still within the 48-hour window of receipt of the detainer, defense counsel should still request a finding ordering
        - the date/time the custody order expires; and
        - your client's immediate release thereupon

Resources & Additional Support

This guide and sample motion were prepared by the Immigrant Rights Clinic and Criminal Defense Clinic at Duke Law in partnership with the Southern Coalition for Social Justice.

For technical assistance or to set-up a training and strategy session for your office, please reach out to: HB10questions@scsj.org.

If you are seeking support for civil rights violations for impacted clients (prolonged detention, inhumane conditions in custody, inadequate language access, etc.) North Carolina Justice Center and the ACLU of North Carolina Immigrant have created a Civil Rights Assistance Request Form: https://forms.office.com/r/DGKQBqnPrS

NORTH CAROLINA **XYZ COUNTY**	**GENERAL COURT OF JUSTICE** **DISTRICT COURT DIVISION** **FILE NO(s):**
STATE OF NORTH CAROLINA **v.**	))))))) **MOTION FOR APPROPRIATE RELIEF**

NOW COMES Defendant, by and through counsel, and pursuant to N.C.G.S. § 15A-14115 and other applicable laws, for a Motion for Appropriate relief in the above numbered actions.

As grounds for this motion, Defendant states the following:

1. On _____, Defendant was arrested/issued a citation in alleged violation of_____under File No(s). _____.

2. Defendant is in the custody of the _____ facility.

3. On _____, an Order After Receipt of ICE Detainer and Administrative Warrant (Form AOC-CR-662) was entered by _____(judicial official), finding that:

   a. the judicial official was provided with a detainer and administrative warrant, or copies thereof, issued by the Immigration and Customs Enforcement Agency of the United States Department of Homeland Security;

   b. the detainer and administrative warrant were received by the facility at _____ on _____; AND

   c. Defendant is the same person as the person subject to the detainer and administrative warrant.

4. Defendant was not represented by counsel when appearing before the judicial official on _____.

5. Defendant did not receive or have the opportunity to review the detainer and administrative warrant relied upon in ordering Defendant's hold in custody.

6. Defendant did not have the opportunity to examine the documents, photographs, database searches, or witnesses relied upon in determining Defendant's identity as the person named in the detainer and administrative warrant.

Wherefore, the Defendant, by and through counsel, requests this Court allow this Motion for Appropriate Relief and grant that the Order After Receipt of ICE Detainer and Administrative Warrant be reopened and heard immediately as to the:

[ ] production of a valid Immigration and Customs Enforcement detainer and administrative warrant

[ ] date and time of receipt by the facility of the Immigration and Customs Enforcement detainer and administrative warrant

[ ] determination that the defendant named above is the same person as the person subject to the detainer and administrative warrant

[ ] determination that the defendant named above is the same person as the person subject to the detainer and administrative warrant

Respectfully submitted this the ___ day of _____, 2025.

_____

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served upon the Office of the District Attorney by email/efile and serve/hand-delivery to Assistant District Attorney _____.

Date Served: _____

_____
Attorney for Defendant

STATE OF NORTH CAROLINA	GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION
COUNTY OF XXX	FILE NUMBER: 25CR0000

STATE OF NORTH CAROLINA	)	
	)	
v.	)	MOTION FOR IMMEDIATE RELEASE
	)	
JOHN DOE	)	
Defendant	)	

NOW COMES the Defendant, _____, by and through his undersigned counsel _____, and respectfully moves this honorable Court for review of his continued detention and to order his immediate release.

In support of this motion, the Defense asserts:

1. Defendant was arrested on _____, 202__ for allegedly violating _____ and held on a $_____ bond.

2. Defendant's [ ] pending case was resolved/dismissed
   [ ] bond was unsecured
   [ ] bond was posted
   [ ] bond was reduced to_____and paid.

3. The person charged as Mr./Ms._____[1] is confined in the XYZ County Detention Center pursuant to:
   [ ] a judicial order
   [ ] an "ICE hold" or detainer issued pursuant to 8 CFR § 287.7.

4. The current edition of ICE's detainer, DHS Form I-247A (2/25) states that "[t]he individual must be served with a copy of this form for the detainer to take effect." Further, DHS makes clear, "This detainer arises from DHS authorities and should not impact decisions about the individual's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters."

5. 8 CFR § 287.7 does not provide independent state authority to detain individuals in the XYZ County Detention Center on the basis of an alleged violation of U.S. immigration laws. Rather, N.C.G.S. § 162-62 (b1) provides state law authority, subject to enumerated statutory limitations, to confine a person pursuant to a judicial order.

---

[1] All references to the Defendant as Mr./Ms._____ are intended for clarity and brevity in reference to the charging and detention documents, not a true admission of the Defendant's identity.

6. N.C.G.S. § 162-62 (b1) provides that: when "the administrator or other person in charge of the facility has been notified that Immigration and Customs Enforcement of the United States Department of Homeland Security has issued a detainer and administrative warrant… [a] judicial official shall issue an order directing the prisoner be held in custody if the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant."

7. N.C.G.S. § 162-62 (b1)(3)(a) then provides that: "Unless continued custody of the prisoner is required by other legal process, a prisoner held pursuant to an order under this subsection shall be released upon…the passage of 48 hours from **receipt** of the detainer and administrative warrant." (emphasis added).

8. N.C.G.S. § 162-62 (c) provides that, except as authorized by N.C.G.S. § 162-62 (b1), "nothing in this section shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement when that prisoner is otherwise eligible for release."

9. Mr./Ms._____ is "not otherwise detained by a criminal justice agency" and is "otherwise eligible for release."

10. Mr./Ms._____ has been detained in the XYZ County Detention Center

[ ] pursuant to an ICE detainer, DHS Form I-247A, that was not served on Mr./Ms. _____ and therefore has not taken effect and does not authorize detention under N.C.G.S. § 162-62 (b1).

[ ] for a period exceeding 48 hours from the receipt of the detainer and administrative warrant, in violation of the plain meaning of N.C.G.S. § 162-62 (b1).

Wherefore, Mr./Ms. _____ respectfully requests that this Honorable Court set the matter for immediate hearing and

[ ] grant this Motion for Immediate Release

[ ] order Mr./Mrs. _____release 48 hours from receipt of the ICE detainer and administrative warrant.

This the ____ day of _____, 202__.

_____

Attorney for
Office of the Public Defender

STATE OF NORTH CAROLINA

COUNTY OF XYZ

GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NUMBER: 25CR0000

STATE OF NORTH CAROLINA)
)
v.) PROPOSED ORDER
)
JOHN DOE)
Defendant)

THIS CAUSE coming on to be heard and being heard before the undersigned judge presiding, and the Court, having reviewed the file in this matter and having heard arguments of counsel makes the following Findings of Fact:

1. Defendant was arrested for allegedly _____ on _____, 202__ and held on a $_____ secured bond.

2. Defendant's [ ] pending case was resolved/dismissed, or
[ ] bond was unsecured
[ ] bond was posted
[ ] bond was reduced to_____and posted.

3. Defendant is confined in the XYZ County Detention Center pursuant to:
[ ] a judicial order
[ ] an "ICE hold" or detainer issued pursuant to 8 CFR § 287.7.

4. The current edition of ICE's detainer, DHS Form I-247A (2/25), requires the individual to be served with a copy of this form for the detainer to take effect.

5. N.C.G.S. § 162-62 (b1) provides state law authority to execute holds upon judicial order.

6. N.C.G.S. § 162-62 (b1) provides that: when "the administrator or other person in charge of the facility has been notified that Immigration and Customs Enforcement of the United States Department of Homeland Security has issued a detainer and administrative warrant… [a] judicial official shall issue an order directing the prisoner be held in custody if the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant."

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9. Mr./Ms._____ is "not otherwise detained by a criminal justice agency" and is "otherwise eligible for release."

11. Mr./Ms._____has been detained in the XYZ County Detention Center

[ ] pursuant to an ICE detainer, DHS Form I-247A, that was not served on Mr./Ms. _____ and therefore does not authorize detention under N.C.G.S. § 162-62 (b1).

[ ] for a period exceeding 48 hours from the receipt of the detainer and administrative warrant, in violation of the plain meaning of N.C.G.S. § 162-62 (b1).

Wherefore the undersigned judge HEREBY ORDERS AND DECREES that

[ ] _____ be released immediately.
[ ] Mr./Ms. _____ is to be released on ____day of _____, 202__ at ___:___ a.m./p.m., which is 48 hours from receipt of the ICE detainer and administrative warrant.

This the ___ day of _____, 202__.

_____
Presiding Judge

DWI Law – Issues and Updates

Belal Elrahal
UNC School of Government
May 2025

1

Audience Survey



Option 1



Option 2

2

Reasonable Suspicion

3

Reasonable Suspicion

Your client is driving in their neighborhood when they are blue-lighted by a police officer. They drive to their house and pull into their driveway and stop. The officer pulls in behind them, not perfectly blocking them in, and stops with their lights flashing. Has your client been seized?



Yes

No

4

Reasonable Suspicion

Your client is already sitting in their car, stopped in their driveway. The officer pulls in behind them, not perfectly blocking them in, and stops with their lights flashing. Has your client been seized?



Yes

No

5

Reasonable Suspicion

- Where the defendant's movement was impeded by a physical and "psychological barrier," they were seized since "most people would feel compelled to remain in their car and wait to speak with the officer, knowing that attempting to leave would only end in trouble and/or danger." The defendant would "have had to narrowly skirt around . . . the police cruiser while backing up in order to avoid either hitting the cruiser or running off the road."
  - *State v. Eagle*, 286 N.C.App. 80 (2022)

6

Reasonable Suspicion

- "[W]hat may amount to submission depends on what a person was doing before the show of authority: a fleeing man is not seized until he is physically overpowered, but one sitting in a chair may submit to authority by not getting up to run away."
  - *Brendlin v. California*, 551 U.S. 249 (2007)
- It all comes back to the test for whether a seizure occurs: the controlling inquiry is whether a reasonable person would feel free to ignore the officer and go about their business.
  - *Florida v. Bostick*, 501 U.S. 429, 434 (1991)

7

Reasonable Suspicion

- Language from *Eagle* about getting in trouble for leaving
  - "most people would feel compelled to remain in their car and wait to speak with the officer, knowing that attempting to leave would only ***end in trouble and/or danger***."
- G.S. 20-166?
- Prepare to argue the equities…

8

Witness Access

9

Witness Access

Your client has been arrested for DWI and taken to the law enforcement center for Intox testing. The officer waits 25 minutes instead of 30. Must the results be suppressed?



Yes



No

10

Witness Access

Your client has been arrested for DWI and taken to the magistrate. The magistrate imposed an impaired driver hold on the finding that their impairment makes them dangerous. Your client checked the box on AOC-CR-271 "Implied Consent Offense Notice" stating "I do not wish to contact anyone for the purposes of observing me at the jail or administering an additional chemical analysis." So, the jail does not provide your client with the local procedures for contacting witnesses. Your client is released once they sober up. Do you have a Knoll motion?



Yes



No

11

Witness Access

- For intox to be suppressed where law enforcement didn't wait the full thirty minutes, the defense must show that witnesses would have gotten there in time, were turned away, or were not otherwise granted access.
- Waiting less than thirty minutes was permissible as there was no evidence "that a lawyer or witness would have arrived to witness the proceeding had the operator delayed the test an additional 10 minutes."
  - *State v. Buckner*, 34 N.C. App. 447 (1977)
- Witnesses turned away or not granted access, leading to suppression:
  - *State v. Myers*, 118 N.C. App. 452 (1995)
  - *State v. Hatley*, 190 N.C. App. 639 (2008)
  - *State v. Buckheit*, 223 N.C. App. 269 (2012)

12

Witness Access

- Checking the "I do not wish to contact anyone" box does not kill your Knoll motion.
  - I do not wish to contact anyone for the purposes of observing me ***at the jail*** or administering an additional chemical analysis.
- "Even if defendant waived his right to have someone observe him at the jail, he did not waive his right to have friends or family observe his condition outside the jail, which is what would have occurred had he been permitted to call a taxi and return home to his wife."
  - *State v. C.K.D.*, 291 N.C.App. 693 (2023) (unpublished)
- *C.K.D.* relied on *Knoll*, and defendant Hicks in particular, who also could have been observed by a witness outside of the jail, had he been properly advised and lawfully held.

13

Witness Access

- What does your local jurisdiction require for setting a secured bond?
  - G.S. 15A-534(b)
- What does the law require for imposing an impaired driver hold?
  - G.S. 15A-534.2
  - *State v. Labinski*, 188 N.C.App. 120 (2008)

14

Witness Access

- What if you can't find a statutory violation but your client was denied access to witnesses after their DWI arrest?
- *State v. Hill*, 277 N.C. 547 (1971)
  - Led to G.S. 15A-954(a)(4) "The defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution.
  - Official Commentary: The provisions of subdivision (a)(4) are intended to embody the holding of the Supreme Court of North Carolina in *State v. Hill*, 277 N.C. 547 (1971). It is assumed that the drastic relief called for under this motion would be granted most sparingly.

15

Sentencing

16

Sentencing

Your client has been convicted of DWI. They were stopped in a private subdivision and had a BAC of .14. They have a "safe driving record."

What sentence level is the judge likely to impose?

17

Sentencing

Your client has been convicted of DWI. They were stopped in a private subdivision and had a BAC of .14. Their only prior convictions are felony serious injury by vehicle from 5 years ago and speeding last year. They obtained a substance abuse assessment and have already completed 24 hours of community service.

What sentence level is the judge likely to impose?

18

Sentencing

Your client has been convicted of DWI. They were stopped in a private subdivision and had a BAC of .14. Their license was revoked for an impaired driving revocation. They have a obtained a substance abuse assessment and completed the recommended treatment.

What sentence level is the judge likely to impose?

19

Sentencing

- Speeding to elude arrest is defined as operating "a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties."
- This offense is a felony if any two of the eight aggravating factors listed in the statute are present; one of those factors is "[d]riving when the person's drivers license is revoked."
- The defendant argued this aggravating factor required proof that the offense occurred on a street or highway, as otherwise required for DWLR.

State v. Dewalt, 209 N.C.App. 187 (2011)

20

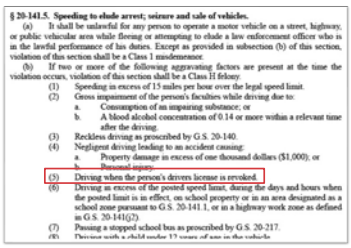
Sentencing

- We draw his attention to another well-known canon of statutory construction, expressio unius est exclusio alterius: the expression of one thing is the exclusion of another. See *Baker v. Martin*, 330 N.C. 331, 337, 410 S.E.2d 887, 890–91 (1991). The speeding to elude arrest statute cites several other criminal statutes when defining aggravating factors which support the felony level of this offense.
- However, the statute does not cite § 20–28 when listing the aggravating factor "[d]riving when the person's drivers license is revoked." Thus, the plain language of § 20–141.5 reveals that, while the General Assembly chose to cross-reference criminal statutes in defining the scope of certain aggravating factors, it chose not to do so in defining aggravating factor (b)(5).

State v. Dewalt, 209 N.C.App. 187 (2011)

21

Sentencing



§ 20-141.5. Speeding to elude arrest; seizure and sale of vehicles.

(a) It shall be unlawful for any person to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties. Except as provided in subsection (b) of this section, violation of this section shall be a Class 1 misdemeanor.

(b) If two or more of the following aggravating factors are present at the time the violation occurs, violation of this section shall be a Class H felony.

(1) Speeding in excess of 15 miles per hour over the legal speed limit.

(2) Gross impairment of the person's faculties while driving due to:

a. Consumption of an impairing substance; or

b. A blood alcohol concentration of 0.14 or more within a relevant time after the driving.

(3) Reckless driving as proscribed by G.S. 20-140.

(4) Negligent driving leading to an accident causing:

a. Property damage in excess of one thousand dollars ($1,000); or

b. Personal injury.

(5) Driving when the person's drivers license is revoked.

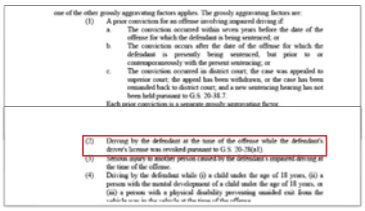
(6) Driving in excess of the posted speed limit, during the days and hours when the posted limit is in effect, on school property or in an area designated as a school zone pursuant to G.S. 20-141.1, or in a highway work zone as defined in G.S. 20-141(j2).

(7) Passing a stopped school bus as proscribed by G.S. 20-217.

(8) Driving with a child under 13 years of age in the vehicle.

22

Sentencing



one of the other grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or

c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor.

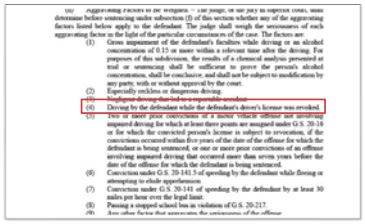
(5) Driving by the defendant at the time of the offense while the defendant's driver's license was revoked pursuant to G.S. 20-28(a1).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while (i) a child under the age of 18 years, (ii) a person with the mental development of a child under the age of 18 years, or (iii) a person with a physical disability preventing unaided exit from the vehicle was in the vehicle at the time of the offense.

23

Sentencing



(c) Aggravating Factors to Be Weighed. – The judge, or the jury in superior court, must determine before sentencing under subsection (f) of this section whether any of the aggravating factors listed below apply to the defendant. The judge shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.15 or more within a relevant time after the driving. For purposes of this subdivision, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove the person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval by the court.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that involved a reportable accident.

(4) Driving by the defendant while the defendant's driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

24

Sentencing

- Yes, this also likely means that driving *any vehicle* (bicycle, electric scooter, etc.) on a street, highway, *or a public vehicular area* while a person's license is revoked—either for an impaired or nonimpaired driving revocation—would subject a person to the aggravating factor.
- Unlike grossly aggravating factors, aggravating factors can be counterweighed by mitigating factors, including the catch-all.
  - 6,000 lb vehicle going 55mph vs. fixie bicycle in a neighborhood
  - Impaired driving revocation vs. non impaired driving revocation
  - Driving down a busy road vs. sleeping in a running car in the parking lot

25

Questions?

Belal Elrahal
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919-962-7098

26

Defending Human Trafficking Victims: A Trauma-Informed Approach

Amanda Gopal, LCSW

THE HUNDRED MOVEMENT

1

A trauma-informed legal practice integrates an understanding of trauma's impact into every aspect of client representation. It is grounded in both specific principles and practical strategies that prioritize client well-being, foster trust, and prevent further harm.

2

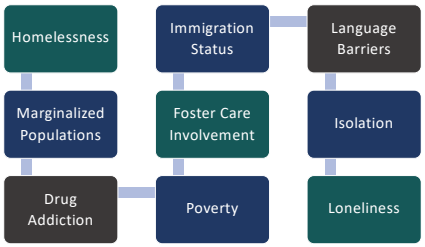
What Is Human Trafficking?

- Using force, fraud, or coercion to obtain some sort of labor or commercial sex act.
- A commercial sex act with anyone under the age of 18 is considered human trafficking.

THE HUNDRED MOVEMENT

3

Exploitation of Vulnerabilities



4

Methods of Control



This wheel was adapted from the Domestic Abuse Intervention Project's Duluth Model Power and Control Wheel, available at www.theduluthmodel.org Polaris Project | P.O. Box 53315, Washington, DC 20009 | Tel: 202.745.1001 | www.PolarisProject.org | Info@PolarisProject.org © Copyright Polaris Project, 2010. All Rights Reserved.

5

Forced Criminality and Incidental Crimes

Prostitution

Theft

Drug related charges

Assault

THE HUNDRED MOVEMENT

6

Human Trafficking Screening Tool- Short Version

1) Did someone you work for ever refuse to pay what they promised and keep all or most of the money you made?
2) Did you ever trade sexual acts for food, clothing, money, shelter, favors, or other necessities for survival before you reached the age of 18?
3) Were you ever physically beaten, slapped, kicked, punched, burned, or harmed in any way by someone you worked for?
4) Have you ever been unable to leave a place you worked or talk to people you wanted to talk to, even when you weren't working, because the person you worked for threatened or controlled you?
5) Did someone you work for ever ask, pressure, or force you to do something sexually that you did not feel comfortable doing?
6) Were you ever forced to engage in sexual acts with family, friends, clients, or business associates for money or favors, by someone you worked for?

7

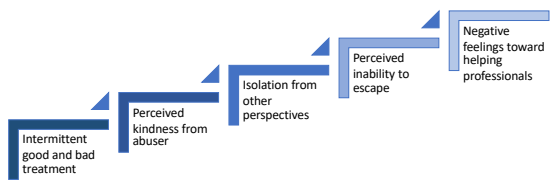
Sex Trafficking Victims May Not Identify Themselves Due To:

- Lack of understanding of trafficking
- Threats from the trafficker/pimp
- Fear of retribution against their families
- Fear of the legal system
- Despair, worthlessness, hopelessness
- Trauma bonds

8

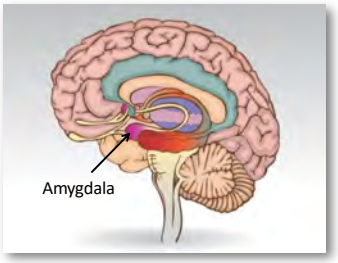
Trauma Bond

Phenomenon of survivor bonding with their abuser



9

Smoke Detector and Alarm System



System can become sensitized and stuck

Autonomic Nervous System Arousal

10

Key Hormones

Adrenaline
- Prepares body to respond to threat
- Anxious, heightened senses, increased heart rate and blood pressure

Cortisol
- Makes energy available for use
- Chronic high levels: inhibits immune function, insulin resistance, heart disease, sleep disruption, etc.

11

Responses To The Moment Of Trauma

FIGHT

FLIGHT

FREEZE

FAWN

12

Ongoing Responses After The Trauma

FIGHT:	FLIGHT:
Anger	Avoidance
Intimidation	No-shows
Physical Aggression	Constantly Busy
Resistance	Anxiety
Lying	Distractions
Irritability	Substance Use

THE HUNDRED MOVEMENT

13

Ongoing Responses After The Trauma

FREEZE:	FAWN:
Dissociation	Avoiding conflict
Withdrawal	People pleasing
Numbing out	Ignoring one's own needs
Indecisive	Codependence
Substance use	Difficulty saying "no"
	Seeking attention and flattery

THE HUNDRED MOVEMENT

14

Principles of Trauma-Informed Legal Practice



RECOGNITION OF TRAUMA: Acknowledging the impact of trauma and the unique responses of your client



SAFETY: Physical and emotional safety; Understanding how people perceive safety is key!



TRUSTWORTHINESS AND TRANSPARENCY: goal is to build trust; honest communication and transparency about legal process

15

Principles of Trauma-Informed Legal Practice

EMPOWERMENT AND COLLABORATION: Involving clients in decision making, respecting their autonomy, and validating their experiences

CULTURAL SENSITIVITY: Recognizing and adapting to client's cultural background and unique needs

PREDICTABILITY: Clear information about what to expect; preparation for scenarios they may encounter; reminders for appointments and court dates

16

Legal Defenses and Statutory Protections

- Coercion or Duress
- Affirmative Defense for victims of human trafficking G.S. 14-43.15
- Expunction of certain offenses G.S. 15A- 145.9

THE HUNDRED MOVEMENT

17

Best Practices

- Thoroughly document human trafficking experience
  - Go at client's pace
  - Utilize mental health professionals or advocates
  - Minimize the number of times a victim has to tell their story
  - Record information respectfully and sensitively
- Use expert testimony to explain victim behavior
- Prepare client for attacks on credibility

THE HUNDRED MOVEMENT

18

Other Considerations



- Explain confidentiality and limitations
- Referral resources for suicidal ideation
- Use visual aids to help create timelines
- Connect survivor with support system

19

The Hundred Movement

- Free counseling and case management services for victims of sex trafficking
- No session limits
- Serving all of North Carolina
- Training and consultation

828-782-0065 www.hundredmovement.com

THE HUNDRED MOVEMENT

20

Amanda Gopal, LCSW
The Hundred Movement
amanda.gopal@hundredmovement.com

THE HUNDRED MOVEMENT

21

THE HUNDRED MOVEMENT

The mission of The Hundred Movement is to provide points of exit to survivors of sex trafficking through specialized counseling, support, and educational services.

The Hundred Movement offers

- FREE individual and group counseling services
- Relational case management
- No session limits
- Available to victims of sex trafficking anywhere in North Carolina
- Training and Consultation services available

Visit us at www.hundredmovement.com to learn more or contact us at 828-782-0065 or at team@hundredmovement.com to make a referral.

Urban Institute
Human Trafficking Screening Tool - Short Form

1) Did someone you work for ever refuse to pay what they promised and keep all or most of the money you made?
2) Did you ever trade sexual acts for food, clothing, money, shelter, favors, or other necessities for survival before you reached the age of 18?
3) Were you ever physically beaten, slapped, kicked, punched, burned, or harmed in any way by someone you worked for?
4) Have you ever been unable to leave a place you worked or talk to people you wanted to talk to, even when you weren't working, because the person you worked for threatened or controlled you?
5) Did someone you work for ever ask, pressure, or force you to do something sexually that you did not feel comfortable doing?
6) Were you ever forced to engage in sexual acts with family, friends, clients, or business associates for money or favors, by someone you worked for?

Navigating Forensic Capacity Evaluations



Emily J. Byrum
Chief Assistant Public Defender
Brunswick County Office–District 15
Emily.J.Byrum2@nccourts.org

1

Case Example One

Background

- Male client
- Misuse of 911 System (class 1 misdemeanor)
- 52 calls made to 911 throughout a one day period
- Rambling/not making sense on calls
- Won't answer judge's questions during first appearance

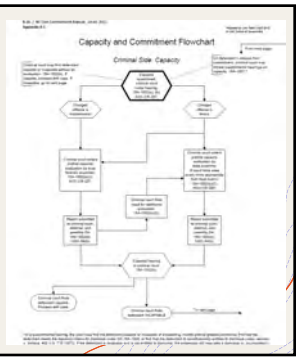
Observations/Attorney Investigation

- Scattered thoughts
- No eye contact
- Poor hygiene
- A/V hallucinations
- Schizophrenia diagnosis

2

Resources

- N.C.G.S. 15A-1001 - 1008
- Superior Court Judge's Benchbook
- NC Civil Commitment Manual (Chapter 2 & 8)
- Defender Manual Vol. 1 (Chapter 2)



3

Capacity to Proceed
N.C.G.S. § 15A-1001 *et seq.*
Drope v. Missouri, 420 U.S. 162 (1975)

- No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

4

Try to talk to client first, but…

+ Attorney may not allow client to proceed if believes client is incapable of doing so
+ Duty to raise capacity to proceed if good faith doubt
+ May be raised over client objection

5

AOC-CR-207B

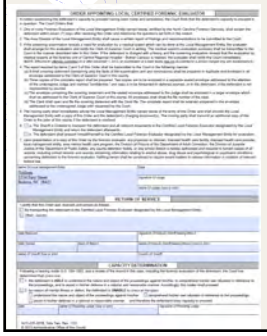

STATE OF NORTH CAROLINA

MOTION AND ORDER APPOINTING LOCAL CERTIFIED FORENSIC EVALUATOR

+ Misdemeanors = Local Forensic Screener only per 15A-1002(b)(1a)
+ Nccourts.gov/documents/forms
+ Be specific in the body of your motion
+ Serve ADA
+ Varying levels of formality

6

AOC-CR-207B



- Out of custody, can schedule appointment and appear on own
- #7–compels record release
- Know your local management facility
- NCDHHS.GOV
- CONTACT LOCAL EVALUATOR

7

N.C.G.S. 15A-1002(b1): May stipulate that defendant is capable to proceed. Prohibited from stipulating to incapacity.

8

Case Example Two

Background

- Male client
- Robbery with a Dangerous Weapon
- Was told by God to take property

Observations/Attorney Investigation

- Seems to have general understanding of legal system
- Paranoid
- Schizoaffective, bipolar type
- Refuses to discuss potential defenses–adamant that did what he was told to do

9

Fourth Prong

The ability to cooperate with counsel to the end that any available defense may be interposed

State v. Jackson, 302 N.C. 101 (1981)

State v. O'Neal, 116 N.C. App. 390 (1994)

10

Central Regional Hospital vs Retained Defense Expert

Central Regional Hospital

- Current 2-4 month waiting period for an appointment
- Generally a one day evaluation
- CRH easily gets records using the Order
- State often accepts CRH assessment

Retained Defense Counsel

- Potential for expedited evaluation
- If want expert to review records, counsel needs to obtain and provide
- Consider type of case
- Head start on MSO evaluation
- Forensicresources.org
- Talk to Sarah Olson
- Use form AOC-G-309

11

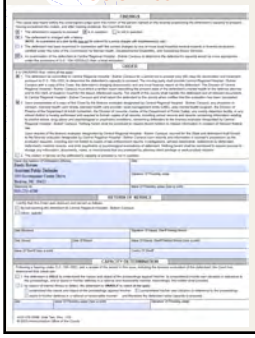
AOC-CR-208B



- Nccourts.gov/documents/forms
- Be specific in the body of your motion
- Serve ADA
- Varying levels of formality

12

AOC-CR-208B



- Out of custody, can schedule appointment and appear on own
- Finding #3 not required
- Order #2–allows records release
- Send to Central Regional Hospital Forensic Unit
  - Admissions (919) 764-5009
- Capacity determination: Could prepare an Addendum to the Order reflecting prong 4
- Felonies only

13

Capacity Hearing

- May be uncontested
- Timing of hearing request
- Level of formality varies
- Expert report admissible; expert may testify; lay witnesses
- Attorney observations
- D has burden of persuasion–preponderance of the evidence

14

AOC-SP-304B

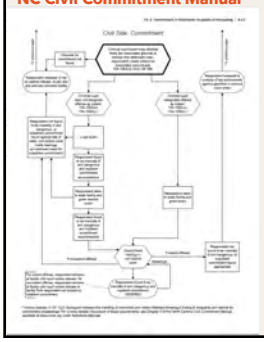


After being found ITP:

- Criminal court makes determination as to whether there are reasonable grounds to believe that defendant meets criteria for involuntary commitment. NCGS 15A-1003
- IVC criteria=mentally ill AND danger to self or others. NCGS 122C-268(j)

15

NC Civil Commitment Manual



After making IVC determination:

- Determination of violent vs non-violent offense
- Violent offense–no perfect definition.
  - Assault with dangerous weapon
  - Use, attempted use, threatened use, etc of physical force against person or property of another
  - Can look to underlying facts of case
- Send to 24 hour facility (violent) or local exam (non-violent)

16

Inpatient Commitment

- Cherry, Broughton, Central Regional Hospital
- Team including psychiatrist, psychologist, social worker, SLP
- IVC hearings in facility county; D represented by other counsel
- Capacity Restoration Program
  - Helping patients achieve three prongs of CTP
  - "Opinions vary on the nature and value of these efforts."
    ---NC Superior Court Judges' Benchbook

17

ITP from Mental Defect vs. Illness

- e.g. Intellectual Disability, Dementia, Alzheimer's, Traumatic Brain Injury causing Major Neurocognitive Disorder
- Set up client for success the best you can

18

Court ***SHALL*** Dismiss When: N.C.G.S. 15A-1008

- Appears to satisfaction of the court defendant will not gain capacity; or
- In custody >/= Level 6 (felonies) or Level 3 (misdemeanors; or
- Five years from incapacity determination for misdemeanors; Ten years for felonies
- Without prejudice to refile

19

Practice Tips

- Familiarize with John Rubin's manuals and articles
- Consider limiting orders
- Contested capacity to proceed hearing→use your own expert
  - Additional discovery requests
  - Prior hearing transcripts
  - Constitutionalize your motion
  - Object to court's finding capacity

20



Thank You

Emily J. Byrum
Emily.J.Byrum2@nccourts.org
(910) 253-4586

21

1

NEGOTIATION SPEECH

Fred T. Friedman

Associate Professor University of Minnesota

Retired Chief Public Defender Minnesota 6th Judicial District

2

HOW MANY CASES GO TO TRIAL?

98% NEGOTIATED

2% TRIED

3

WHY NEGOTIATE?

4

PROSECUTION

- CASE IS OVERCHARGED
- DON'T WANT TO GO TO TRIAL
- TOO MUCH WORK TO DO
- AFRAID OF LOSING
- MIGHT BE INNOCENT
- PROOF OR WITNESS PROBLEMS
- NO RECORD AND YOU WANT TO GIVE DEFENDANT A BREAK

5

DEFENSE

- CASE IS OVERCHARGED
- DON'T WANT TO GO TO TRIAL
- TOO MUCH WORK
- AFRAID OF LOSING
- PROBABLY GUILTY
- PROOF OR WITNESS PROBLEMS
- AN OFFER YOU REGARD AS TOO ATTRACTIVE TO REFUSE
- CLIENT INSISTS ON GOING TO TRIAL

6

WHY TRY THE CASE? PROSECUTION

- DEFENDANT IS GUILTY
- YOU ARE GOING TO WIN
- BOSS OR COPS WILL NOT LET YOU NEGOTIATE AND YOU FEAR THEM
- GUIDLEINE SENTENCE OR HIGHER IS APPROPRIATE

7

WHY TRY THE CASE? (DEFENSE)

- DEFENDANT IS INNOCENT
- YOU ARE GOING TO WIN
- NO REASON NOT TO--NO ADVANTAGE IN PLEADING

8

POOR REASONS TO GO TO TRIAL

- LET THE JURY DECIDE
- IT'S AN INTERESTING ISSUE
- I NEED TO IMPRESS MY BOSS TO JUSTIFY MY JOB

9

IT'S FUN TO GO TO TRIAL



10

YOU CAN OBTAIN MORE FAVORABLE SETTLEMENTS IF YOU:

DEVELOP A HISTORY AND REPUTATION OF GOING TO TRIAL

IF YOU ARE PREPARED

11

DEVELOP YOUR SKILLS AND YOU WILL EARN MORE ACQUITALS -- WHICH IN TURN WILL GET YOU BETTER OFFERS

12

- DEVELOPING A TRIAL HISTORY--TRIAL EXPERIENCE
- DEVELOP A REPUTATION FOR GOING TO TRIAL
- DEVELOP A REPUTATION OF ACCURATELY ASSESSING WHAT CASES SHOULD NOT BE SETTLED AND WHAT CASES SHOULD
- BE PERSONABLE

13

- KEEP YOUR WORD
- CONTROL YOUR CLIENT OR VICTIM
- EASIER IF YOU ARE LOCAL
- IT IS HARDER TO NEGOTIATE IF THE AMMUNITION IS UNEQUAL
- DO WHAT IS BEST FOR YOUR CLIENT
- HAVE A GOOD MEMORY
- EXPLAIN ALL OFFERS CAREFULLY

14

FINAL ADVICE

- COMPLIMENT ADVERSARY
- DO NOT BEG
- DO NOT BRAG
- DO NOT ALLOW YOURSELF TO GET PUSHED AROUND BY COURT PERSONNEL, WITNESSES, POLICE, CLIENT'S FAMILY, ETC.

15

CONCLUSION

16

- YOU HAVE AN IMPORTANT JOB THAT YOU WORKED HARD TO GET
- DON'T LEAVE IT TO CHANCE
- FIGURE OUT WHAT IS FAIR
- WHAT IS BEST FOR YOUR CLIENT

17

On the Civil Side

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https://civil.sog.unc.edu

Incapacity to Proceed (G.S. Chapter 15A) and Incompetency (G.S. Chapter 35A): Apples and Oranges?

This entry was contributed by Timothy Heinle on December 13, 2022 at 8:54 am and is filed under Guardianship, Incompetency.

Incapacity to proceed under North Carolina General Statutes (G.S.) Chapter 15A and incompetency proceedings under G.S. Chapter 35A involve, at least in part, a court inquiry into someone's cognitive abilities. Incapacity to proceed is narrowly focused on a person's cognition within a criminal legal proceeding. Incompetency is a bigger picture analysis, more broadly focused on the individual's life and needs, with a bit of forward-looking involved. In that way, incompetency is concerned with both a person's cognitive abilities and their functioning.

These proceedings are separate and distinct from one another. Yet, if a client has history or present involvement in both, the client's attorney in one proceeding should know about and understand the other. That attorney may want, for example, to access information or introduce evidence from the other proceeding. The attorney will want to consider issues such as information sharing and confidentiality, and the admissibility or other uses of records from one proceeding in the other.

These issues may be the subject of future posts. First, however, we need to understand incapacity to proceed under G.S. Chapter 15A and incompetency under G.S. Chapter 35A. This post provides a primer on incapacity and incompetency proceedings and compares the standards for each.

Incapacity to Proceed – A Primer

Under the Due Process Clause and North Carolina law, a defendant who is incapable to proceed in a criminal case cannot be tried or punished by the State. *See Drope v. Missouri*, 420 U.S. 162 (1975); G.S. Chapter 15A, art. 56 Official Commentary. There are three main components to a determination of incapacity: a psychiatric examination, a hearing on capacity, and additional proceedings if a person is found incapable. Below is a bird's eye view of the second component, the capacity to proceed hearing.

The inquiry at an incapacity hearing. To determine that a defendant is incapable of proceeding, the presiding judge must make two findings. First, the defendant must have a mental illness or defect. G.S. 15A-1001(a). Second, because of this condition, the defendant must be unable to complete any one of the tasks identified in G.S. 15A-1001(a)—meaning they must be unable to either understand the nature and object of the proceedings, to comprehend their own situation in reference to the proceedings, or to reasonably and rationally assist in their defense. The defendant is incapable of proceeding if they are deficient as to any one of the three tests. *State v. Shytle*, 323 N.C. 684 (1989).

Conditions and behaviors relevant to incapacity. G.S. Chapter 15A does not identify specific mental conditions that may result in incapacity. The existing case law, however, is instructive about such conditions.

- *See, e.g.*, *State v. Coley*, 193 N.C. App. 458 (2008).
- *See, e.g.*, *State v. Willard*, 292 N.C. 567 (1977).
- Mental retardation. *See e.g.*, *State v. McClain*, 169 N.C. App. 657 (2005).
- Posttraumatic Stress Disorder. *See, e.g.*, *State v. Avery*, 315 N.C. 1 (1985).
- Inappropriate emotional response. *See, e.g.*, *State v. Shytle*, 323 N.C. 684 (1989).

Remember, the mere presence of these conditions is not per se incapacity, but these conditions are potential bases for incapacity.

Of course, people do not arrive at their attorney's office to announce that they are incapable. Defense counsel must reasonably and diligently inquire into client capacity. *Becton v. Barnett*, 920 F.2d 1190 (4th Cir. 1990) (holding that defense counsel performed deficiently and prejudiced his client by failing to investigate the defendant's incapacity). Be alert to behaviors that could indicate incapacity, including:

- paranoia (e.g., unfounded conspiratorial theories),
- poor memory (e.g., inability to recall events),
- unusual emotional responses (e.g., sudden aggression or lack of feeling),
- difficulty communicating (e.g., frequent non sequiturs),

- acting erratically (e.g., obsessive nail biting and pacing), or
- failure to comprehend simple information (e.g., meeting times and places).

These behaviors may be apparent from observing and interviewing the client. Defense counsel should also make appropriate use of medical and school records, information from prior proceedings (including commitment hearings, if any), and interviews of others, such as friends, relatives, service providers, and even jailers. Counsel should be prepared to show the client's inability is the result of a genuine mental condition and not a choice. *See, e.g., State v. Brown*, 339 N.C. 426 (1994) (finding no error where the defendant had a "bad attitude, not a mental incapacity").

For more, see 1 North Carolina Defender Manual, Pretrial, Ch. 2 Capacity to Proceed (2d ed. 2013).

Incompetency – A Primer

Under state law, a person in North Carolina who is at least seventeen-and-a-half years-old (or any emancipated minor) who is adjudicated incompetent faces significant consequences, including a loss of rights and the ability to make some decisions. G.S. 35A-1101(7), (8). Known as incompetency proceedings, these are the method by which a person may be adjudicated incompetent—a necessary precursor to the possible appointment of a guardian to act on the person's behalf.

The following is a brief overview of incompetency proceedings under Ch. 35A.

The inquiry at an incompetency hearing. An incompetent adult in North Carolina "lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, intellectual disability, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition." G.S. 35A-1101(7).

It is not enough that a person has a condition like the ones identified in G.S. 35A-1101(7). To be incompetent, a person must also lack capacity. A person who has autism, for example, is not per se incompetent. To be adjudicated incompetent, the evidence will need to show that the person is unable to manage their affairs or to make and communicate important decisions.

Managing one's own affairs. The focus here is on the *effect* of a person's decisions—in other words, how well they can run their life. Can the respondent maintain housing, keep medical appointments, or appropriately utilize community services like 911, a grocery store, or a bank?

Making or communicating important decisions. Here, the focus is on the *process* of decision making, not necessarily whether the decision is a good or bad one. Can the respondent make choices, perhaps considering the pros and cons of each option, and can they communicate those choices to others? If so, the person is competent, even if they make what others would consider to be the wrong choice. *See Hagins v. Redevelopment Commission of Greensboro*, 275 N.C. 90 (1969) (reasoning that someone who can take care of property, weighing consequences, and exercising rational judgment is competent, regardless of actual performance). To put it plainly, people can make mistakes without being incompetent.

Conditions and behaviors relevant to incompetency. The statutory definition of incompetency identifies some of the conditions that are frequently seen in people who are incompetent, including mental illness, intellectual disability, disease, or injury. G.S. 35A-1101 (7), (8). The list is broad, made broader by the reference to any other "similar cause or condition." *Id*. Examples of unspecified but common conditions include:

- *See, e.g.*, *In re Rieger*, 269 N.C. App. 474 (2020) (unpublished).
- Posttraumatic Stress Disorder. *See, e.g.*, *Leonard v. England*, 115 N.C. App. 103 (1994).
- Paranoid delusions. *See, e.g.*, *In re Clark*, 202 N.C. App. 151 (2010).

GALs advocate for their client's wishes in incompetency matters and may also make recommendations to the court regarding their client's best interests. G.S. 35A-1107(b). In carrying out these duties, GALs should watch for behaviors that indicate possible incompetency. Some examples include

- impulsivity or recklessness (e.g., selling one's only car with no plan for transportation),
- excessive trustworthiness (e.g., allowing strangers into one's home),
- forgetfulness (e.g., unable to recall taking medication),
- lack of orientation (e.g., to time and place),
- difficulty communicating (e.g., nonresponsive to questions),
- confusion (e.g., regarding petition allegations or living situation), or
- failure to routinely perform tasks of daily life (e.g., cooking meals or maintaining hygiene).

GALs should observe and interview their client, speak with community members who know the client, and review records (including financial, school, medical, and those held by Social Services) when assessing client competency.

For more on how GALs can fulfill their responsibilities, including forming an opinion on competency, see my guide, The First Seven Days as a Guardian ad Litem in an Incompetency Proceeding, here. For more on what constitutes incompetency, see North Carolina Guardianship Manual, Ch. 6 Incapacity (1st ed. 2008).

Incapacity and Incompetency: Similarities and Differences

Incapacity to proceed criminally and incompetency share many aspects. Both involve an inquiry in a court proceeding into a person's cognitive functions. Conditions that impair capacity are relevant to both proceedings, but in neither case is a condition alone determinative. In both proceedings, a person can be capable if they are aided in their functioning by support or intervention. *See, e.g., State v. Buie*, 297 N.C. 159 (1979) (no error where capacity was the result of medication). For criminal defendants, help may mean a psychiatric stay or medication. For incompetency respondents, help may include access to supportive or adaptive equipment, a stable placement, medication, the involvement of social services or other social supports, or participation in therapy.

Despite these similarities, incapacity and incompetency inquiries have different purposes. Capacity hearings are designed to determine whether the person can functionally understand and participate in the specific legal proceeding brought against them. Incompetency hearings require clerks and parties to take a step back and consider the individual's life beyond the proceeding, including possibly the person's future needs. The different focus is reflected in the way each issue arises. Incapacity hearings arise only within an existing criminal matter. Incompetency proceedings can be initiated by any person, which, in this context, includes human services agencies and healthcare providers. G.S. 35A-1105.

Closing Thoughts

In this post, I explored what incapacity and incompetency each mean. There are other issues that must be considered by an attorney who represents a client involved in both incapacity and incompetency proceedings. Those issues include the confidentiality restrictions that surround each proceeding and the permissible uses of evidence and records from one proceeding in the other. An attorney representing a client in either proceeding will also want to be familiar with any relevant ethical obligations. *See, e.g.*, N.C. Rules of Prof'l Conduct R. 1.14 (representing clients with diminished capacity).

Be on the lookout for future posts where I will explore these additional considerations. Reach out to me at Heinle@sog.unc.edu if you would like to discuss the issues raised in this post or if you have experience representing a person involved in both incapacity and incompetency

proceedings.

This entry was tagged with the following terms: guardianship, Incompetency.

Timothy Heinle	Timothy Heinle joined the School of Government in 2020. Timothy works as part of the School's Public Defense Education program, focusing primarily on juvenile abuse, neglect, and dependency, and incompetency and guardianship matters.

On the Civil Side

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Incompetent Wards and the Sex Offender Registry

This entry was contributed by Timothy Heinle on June 16, 2021 at 2:41 pm and is filed under Guardianship.

I received an interesting question recently when I taught about the intersection of criminal defense and Chapter 35A incompetency. Suppose a person is adjudicated incompetent in a Chapter 35A proceeding and a guardian is appointed. Suppose that same person had been convicted of a crime requiring registration as a sex offender and compliance with the other obligations of Chapter 14, Article 27A. The person is required to register changes to their address (including providing notice to law enforcement of an intention to move out-of-state), to their academic and employment status, and to notify the State of changes to their name or online identifiers, including e-mail addresses. G.S. 14-208.7; G.S. 14-208.9. What effect does declaration of incompetency have on these registration requirements? Who is responsible for ensuring that the incompetent adult complies with these registration obligations—the adult or their guardian?

Incompetency and the Guardian's Role

What being incompetent means. An incompetent adult "lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property." G.S. 35A-1101(7). A person who is at least seventeen-and-a-half-years-old and has been adjudicated incompetent is known as a ward. G.S. 35A-1101(17). Depending on the capacity, needs, assets, and liabilities of the ward, the court may appoint one of three types of guardians. When considering the potential obligations of a guardian in ensuring a ward's compliance with sex offender registration obligations, the focus is on a guardian of the person or general guardian, both of whom may make decisions regarding the ward's medical, educational, habitation, employment, and other needs. G.S. 35A-1202(10), G.S. 35A-1241. A guardian of the estate is unlikely to have any such responsibility. G.S. 35A-1202(9), G.S. 35A-1251.

A guardian's role. Wards have a right to a "qualified, responsible guardian" to assist in exercising their rights and managing their personal affairs. G.S. 35A-1201(a)(1), (2). A guardian's powers and duties can be broad and may affect many aspects of daily life. The statutes enumerating those powers and duties do not specifically refer to a guardian's role in ensuring compliance with sex offender registration requirements. A guardian's powers and duties, however, are not limited to those specifically identified in Chapter 35A, and additional obligations of the guardian include "any other duties imposed by law." G.S. 35A-1253; *See also* G.S. 35A-1201, G.S. 35A-1241(a), G.S. 35A-1251.

Regardless of the legal principles that apply, discussed below, the guardian has a role to play in assuring compliance. A guardian may assist the ward by scheduling an appointment with law enforcement, providing transportation, reviewing paperwork, and helping to ensure that the ward understands and complies with ongoing requirements.

Is a Ward Required to Comply with Registration Requirements?

The defendant's state of mind. North Carolina sex offender registration laws have been amended multiple times regarding the knowledge of a defendant who fails to register. Initially, a person had to act "knowingly and with intent to violate" the registration requirements to be guilty of an offense. G.S. 14-208.11(a) (1995). Later, the legislature removed the specific intent requirement. G.S. 14-208.11(a) (1997). This would not be the final amendment, but it was at this time the courts weighed in.

In 2000, the North Carolina Court of Appeals considered the constitutionality of requiring a ward who is also a convicted sex offender to register when changing addresses. *State v. Young*, 140 N.C. App. 1 (2000). There the defendant, who had been convicted of an offense requiring registration, was also adjudicated incompetent, and his mother was appointed as his guardian. *Id*. at 2, 4. Based on conversations the defendant had with law enforcement, the defendant had "'actual knowledge' enough to satisfy due process requirements for any reasonable and prudent man"; however, as a ward he was "not a reasonable and prudent man," so actual notice on its own was insufficient. *Id*. at 9. Due process does not merely require providing notice to a person of the registration requirements. The court held that due process requires "that notice be synonymous with the ability to comply." *Id.* at 10. Without proof of his ability to comply, the defendant was denied due process and thus the registration requirements were unconstitutional "as applied to [him.]" *Id*. at 14. The Court took exception with the sheriff failing to contact the guardian, who the sheriff was aware of. "[I]t is impermissible (if not impossible) to solely give notice to the actual incompetent person himself, expecting then to enforce rights against him." *Id*. at 9-10. Law enforcement knew the defendant was incompetent and living with his guardian and "could easily have avoided the extreme time and cost of litigation" by informing the guardian that the ward had failed to register. *Id*. at 14.

In 2004, the Court of Appeals considered whether a trial court must instruct a jury that the State needs to prove a defendant's knowledge of the registration requirements. *State v. White*, 162 N.C. App. 183 (2004). The Court interpreted the legislature's removal of the specific intent element in 1997 to mean that failing to register was a strict liability offense. *Id.* at 189. The Court applied *Young*, holding that because the defendant's competency was not in doubt, the constructive notice of G.S. 14-208 and the actual notice he received when a sheriff told him of the registration requirements was sufficient "to satisfy due process requirements for any reasonable and prudent man." *Id*. at 189-90. Therefore, the trial court did not need to instruct the jury regarding the defendant's knowledge. *Id*. at 190.

In 2006, the legislature again amended G.S. 14-208.11. Session Law 2006-247 made a person who *willfully* fails to comply with the registration requirements guilty of a Class F felony. This version of the law remains in effect, and its implications are discussed next.

A ward's obligation to comply. Following *Young* and *White*, the legislature could have added a bright line rule that a ward is not required to comply with the registration requirements. It did not. A person convicted of an offense requiring sex offender registration is not necessarily exempt from these requirements simply because they were adjudicated incompetent.

Meaningfully, however, the legislature added language requiring that a person willfully fail to comply to be guilty. Determining the willfulness of the actions or inactions of a ward—who may not be a reasonable and prudent person—requires a case-by-case assessment. Such a determination involves consideration of the "acts and conduct of the defendant and the general circumstances existing at the time." *State v. Humphreys*, 853 S.E.2d 789 (N.C. Ct. App. 2020) (discussing factors involving mental state). Willfulness requires a showing that "the defendant acted without justification or excuse, 'purposely and deliberately in violation of law.'" *Id.* at 796. Like anyone else, a ward is only guilty of failing to comply with the registration requirements under 14-208.11 if the failure is willful.

The ward's ability to understand and comply with registration requirements is relevant when determining a ward's willfulness and whether due process requirements have been satisfied. Determining a ward's capacity to do a specific act is an analysis employed in other areas. In some circumstances, wards have been found capable of marrying (*Geitner v. Townsend*, 67 N.C. App. 159 (1984)), making a will (*In re Will of Maynard*, 64 N.C. App. 211 (1983)), and entering into a contract (*In re Dunn*, 239 N.C. 378 (1954). Whether law enforcement assists a ward with complying with registration requirements—e.g., communicating with the guardian—may also be relevant. A guardian's efforts to ensure that the ward complies with registration requirements could also be of significance. For example, did the guardian review the requirements with the ward, provide transportation, or otherwise assist with the process? Such evidence may be a factor in determining willfulness, although it may not be conclusive.

Is a Guardian Liable for a Ward's Failure to Comply?

Criminal liability. G.S. 14-208 does not address whether a guardian is liable if a ward fails to comply with registration requirements. It seems unlikely in most situations. Guardians should be aware, however, of the duty we all have not to knowingly conceal a person required to register or help the person elude law enforcement. G.S. 14-208.11A(1)-(4). To violate G.S. 14-208.11A, a guardian would need to have knowledge of the ward's noncompliance and intend to help the ward elude arrest. For example, a guardian may operate a home daycare and may not want law enforcement to know that the person resides in the home. If the guardian helps the ward conceal where they live, the guardian may be committing a crime.

A guardian who actively participates in a ward's failure to comply, for example by defrauding law enforcement about a ward's whereabouts, could also be guilty of felonious obstruction of justice. *See, e.g., State v. Ditenhafer*, 376 N.C. 846 (2021) (finding sufficient evidence to convict a defendant who interfered with a child welfare investigation on the basis that she (1) unlawfully and willfully (2) obstructed justice (3) with deceit and intent to defraud.)

Civil consequences. There could be consequences in the Chapter 35A proceeding for a guardian who does not ensure a ward's compliance with registration requirements. Clerks can enter orders ensuring "the better care and maintenance of wards." G.S. 35A-1290(a). The clerk must protect a ward's interests, which may include removal of the guardian, if the guardian "neglects to care for or maintain the ward…in a suitable manner," "has violated a fiduciary duty through default or misconduct," or is unsuitable for any reason. G.S. 35A-1290(b)(3), (b)(6), (b)(15).

These are complicated situations with a lot to consider. If you are navigating this situation, likely for the first time, please reach out to me at Heinle@sog.unc.edu.

This entry was tagged with the following terms: guardianship, Incompetency, ward.

Timothy Heinle	Timothy Heinle joined the School of Government in 2020. Timothy works as part of the School's Public Defense Education program, focusing primarily on juvenile abuse, neglect, and dependency, and incompetency and guardianship matters.

North Carolina Criminal Law Blog

What Does it Mean for a Criminal Case if the Defendant is Legally Incompetent and Has a Court-Appointed Guardian?

May 21, 2025 **Timothy Heinle** <https://nccriminallaw.sog.unc.edu/author/theinle/>

Derek was twenty years old when he suffered a stroke. He lost and then subsequently regained his ability to speak and to perform simple tasks; however, he cannot manage important matters like his medical care and finances. Derek's mom, Greta, successfully petitioned under G.S. Chapter 35A to have her son adjudicated incompetent and was appointed as Derek's guardian.

Recently, Derek was at a store and put candy he had not paid for in his pocket. When an employee intervened, Derek pushed the employee and ran home with the candy. Criminal charges were filed, and Derek was appointed counsel. This post explores difficult questions that arise when a criminal defendant is adjudicated incompetent and has a court-appointed guardian, including the effect those circumstances have on criminal case decisions, client confidentiality, and the allocation of authority between the attorney and client.

But first, a little background.

Attorney-client relationships and the allocation of authority, generally

Who makes case decisions: the attorney, or the client? The American Bar Association (ABA), in its published **Criminal Justice Standards** <https://www.americanbar.org/groups/criminal_justice/resources/standards/> , suggests that clients make decisions involving substantive rights (e.g., what plea to enter, whether to waive a jury trial, and whether the defendant should testify), while attorneys make strategic and tactical decisions (e.g., how to cross-examine witnesses, and whether to strike a potential juror). But the framework in North Carolina is somewhat different.

The North Carolina Rules of Professional Conduct (hereinafter Rules) provide that clients in North Carolina decide the goals of a case and the purposes of representation, but attorneys—in consultation with their client—determine the tactics and means for achieving those goals. Rules R. 1.2(a); -cmt. [1]. In interpreting what this means for defendants and defense counsel, our appellate courts have commented positively on the ABA's framework, but they have not adopted the approach outright, instead holding that defendants have more decision-making authority than the ABA's model suggests, including on tactical matters where the attorney and client are at an 'absolute impasse.' *See*, *e.g.*, *State v. Ali*, 329 N.C. 394 (1991) (holding that because attorneys are the agent working on behalf of their client, the principal, the defendant's wishes controlled where an absolute impasse existed over jury selection); *c.f. State v. Henderson*, __ N.C. App. __ (May 7, 2025) (discussing general rule that attorneys make tactical decisions except where an absolute impasse exists, but finding disagreement about evidence was seemingly resolved and thus not an impasse).

When an absolute impasse occurs, "defense counsel should make a record of the circumstances, her advice to the defendant, the reasons for the advice, the defendant's decision and the conclusion reached." *Ali*, 329 N.C. at 404. If an absolute impasse over a tactical matter is brought to the trial court's attention, it is generally reversible error for the court to allow the attorney's decision to prevail over the defendant's wishes. *State v. Holliday*, 289 N.C. App. 667, 674 (2023); *c.f. State v. Williams*, 191 N.C. App. 96 (2008) (defendant's unlawful demands do not control despite absolute impasse, where defendant would have attorney racially discriminate during jury selection); *State v. Jones*, 220 N.C. App. 392 (2012) (rule does not require attorney to file frivolous motions or make frivolous arguments at defendant's direction); *State v. Ward*, 250 N.C. App. 254 (2016) (attorney not required to cross-examine State's expert using a theory lacking a factual basis).

Incompetency and guardianship

An incompetent adult is someone who lacks sufficient capacity to manage their affairs or to make or communicate important decisions about themselves, their family, or their property due to some cause or condition, and for whom no less restrictive alternative to guardianship would enable them to do those things. G.S. 35A-1101(7). In North Carolina, a guardian is almost always appointed to make decisions for an incompetent adult. Depending on the person's assets, liabilities, and needs, a guardian may be appointed to make decisions related to housing, medical or other services, assets and debts, and more. *See* G.S. 35A-1241 (powers and duties of guardian of the person) and G.S. 35A-1251 (guardian's powers in administering the adult's estate). One purpose of guardianship is to substitute an incompetent person's decision-making authority with that of a guardian when the individual lacks capacity to make such decisions. G.S. 35A-1201(a)(3). However, guardianship also allows the individual a greater opportunity to (i) exercise rights within their comprehension and judgment and (ii) participate in decision making as fully as possible. G.S. 35A-1201(a)(5).

Ethical duties and clients with diminished capacity

Separate from the legal definition of incompetency in G.S. Chapter 35A, a client has diminished capacity when their ability to make adequately considered case decisions is lessened due to minority, mental impairment, or for some other reason. Rules R. 1.14(a). The same ethical duties apply to attorneys when representing a client with or without diminished capacity; however, some adjustments may be appropriate. *See*, *e.g.*, R. 1.2(a), cmt. [4] (allocation of authority); R. 1.4, cmt. [6] (communication); R. 1.6 (confidentiality).

Rule 1.14(a) requires attorneys to maintain as normal an attorney-client relationship as possible with a client with diminished capacity. All clients must be communicated with, advised, and consulted. Clients with diminished capacity are often able to understand concepts, consider options, and draw conclusions. *Id.* at cmt. [1]. A client whose ability to participate is so impaired they are unable to assist in their representation may not have capacity to proceed, which means they cannot stand trial, and the criminal case cannot move forward. For more on capacity to proceed, see the **NC Superior Court Judges' Benchbook** <https://benchbook.sog.unc.edu/criminal/capacity-proceed> . For a comparison of incompetency and capacity to proceed, including the inquiries and procedures for both, see my **previous post** <https://civil.sog.unc.edu/incapacity-to-proceed-g-s-chapter-15a-and-incompetency-g-s-chapter-35a-apples-and-oranges/> .

What if an attorney reasonably believes that the "client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest?" Rules R. 1.14(b). The attorney may take reasonably necessary protective action – a term that is not defined in the Rules but expressly includes (i) consulting with people or agencies who can help, and (ii) seeking the appointment of a guardian for the defendant. *Id.* In doing so, an attorney may disclose otherwise confidential client information that is reasonably necessary to protect the client's interests. Rules R. 1.14(c).

Some diminished capacity clients will have also been adjudicated incompetent by the clerk and been appointed a guardian. The remainder of this post explores relevant considerations when (i) a client is incompetent and under guardianship, or (ii) an attorney believes their client is incompetent and needs a guardian but does not have one.

Common questions about incompetent defendants

1. Can an incompetent defendant be charged and/or convicted of a crime?

Let's return to Derek, who shoved a store employee and ran home with candy he had not paid for, and his mother/guardian, Greta. There is no blanket rule that simply because Derek has been adjudicated incompetent, he cannot be criminally liable. Again, the procedures, standards, and implications for a legal determination of incompetency are different from incapacity to proceed, found in G.S. Chapter 15A, Article 56. Incompetency involves a more global assessment of a person's cognitive abilities beyond the immediate proceeding.

That a criminal defendant was previously adjudicated incompetent may, however, be a red flag for the defendant's attorney to heed and to consider their client's capacity to proceed in the criminal case, including entering a plea or standing trial. It may also raise questions about the defendant's ability to form intent or to act willfully, which may be elements of the offense charged. (I **blogged** <https://civil.sog.unc.edu/incompetent-wards-and-the-sex-offender-registry/> about one such example involving legally incompetent people who are later required to register as sex offenders.)

2. Who makes case decisions: the client, the attorney, or the guardian?

It is unclear that the decision-making authority of a defendant who is found capable of proceeding changes because the defendant has diminished capacity or is legally incompetent and under guardianship. On substantive decisions, the defendant's wishes presumably control. On strategy and tactical decisions, the attorney likely continues to make these decisions in consultation with the client. If the two reach an absolute impasse, the client's decision may control except that an attorney is not required to take unlawful steps or assert frivolous claims at the defendant's behest. *Williams*, 191 N.C. App. 96 (2008) (unlawful); *Jones*, 220 N.C. App. 392 (2012) (frivolous).

What about someone like Greta, an appointed guardian for a legally incompetent person? Generally, a guardian has decision-making authority affecting the incompetent person's life and property; however, it is not clear from G.S. Chapter 35A, our criminal statutes, nor our case law that a guardian has control over matters involving the constitutional rights afforded to the accused, particularly one found capable of proceeding.

3. Can the attorney share confidential client and case information with the guardian?

"Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client." Rules R. 1.14, cmt. [2]. The attorney must strive for as normal an attorney-client relationship as possible. Rules R. 1.14(a). Applying these principles to Derek's case, the attorney should seek Derek's approval before sharing confidential client and case information with Greta.

Even without client approval, if an attorney reasonably believes that a client is (i) at risk of suffering substantial physical or financial harm and (ii) unable to act on their own, the attorney can take protective action (or consult with others who can) and can reveal information necessary to protect the client's interests. Rules R. 1.14(c). For example, if Derek's attorney had information that Derek was being financially exploited, the attorney may share those concerns with Greta so that she may take steps to protect Derek's property. The attorney could not, however, disclose confidential client information to Greta that is not reasonably necessary for protective action (e.g., that Derek used to smoke marijuana in high school).

When pursuing protective action, attorneys need to weigh the benefits and risks of involving a defendant's guardian in conversations about the case. Potential benefits include that the guardian may be able to (i) assist with obtaining housing, medication, treatment, and services for the defendant, (ii) help calm or explain issues to the defendant, (iii) share information that is useful to the defense, e.g., relating to capacity to proceed in the criminal case or mitigation of the charges or for sentencing, or (iv) protect the client from or mitigate collateral consequences related to the criminal action (e.g., if the defendant's public housing or facility placement is in jeopardy because of the criminal charges). Risks of involving the guardian include potential harm to the attorney-client relationship and the possibility the guardian may take action that the attorney disagrees with or did not foresee, e.g., by redisclosing sensitive information about Derek to law enforcement.

If it is necessary to involve others in discussions with the attorney to assist in the representation of a client with diminished capacity, doing so does not void the applicability of the attorney-client evidentiary privilege. *Id.* at cmt. [3]. Imagine that Derek's attorney determines that Greta needs to be present for a discussion with Derek about the risks of entering a plea, so that Greta can ensure Derek understands the information. In that scenario, Greta's presence would not void the attorney-client privilege between Derek and his attorney.

4. May an attorney in this situation disclose information to other third parties (e.g., treatment providers or social services)?

Yes, if reasonably necessary to take protective action; however, the same caution applies. "At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client." *Id.* at cmt. [8]. Also, attorneys must look to the client, and not to others, to make decisions. *Id.* at cmt. [3].

5. What if the client has not been adjudicated incompetent but the attorney is concerned the client is incompetent and needs a guardian?

An attorney is expressly authorized to seek the appointment of a guardian for a client when the conditions regarding diminished capacity and risk of harm are met. Rules R. 1.14(b). A petition for the adjudication of incompetence and appointment of a guardian may be filed by any person or agency. G.S. 35A-1105. An attorney may be one such petitioner.

Some defendants may need guardianship, which, under the right circumstances, may help stabilize a person and increase their access to services. Still, adjudicating someone incompetent and limiting their rights is significant. Even where guardianship is needed, an attorney should first consider whether there are other individuals or agencies (e.g., a responsible relative or social services) who could serve as petitioner, rather than the attorney. This may help preserve the trust between the attorney and client and prevent an adversarial attorney-client relationship.

Conclusion

Representing defendants who are incompetent or otherwise have diminished capacity presents challenges for defense attorneys. As the N.C. State Bar has noted, "[t]he lawyer's position in such cases is an unavoidably difficult one." Rules R. 1.14, cmt. [8]. Attorneys should consider their ethical duties and the defendant's rights and should weigh the risks and benefits of potential actions. Attorneys may reach out to the State Bar for advice after consulting the Rules and any relevant opinions. If you would like to discuss your representation of a legally incompetent client, email me anytime at **Heinle@sog.unc.edu**.

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2025 Spring Public Defender Conference
Criminal Case Update Paper
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Cases covered include published criminal and related decisions from the North Carolina appellate courts and the Fourth Circuit Court of Appeals decided between July 2, 2024, and April 16, 2025. State cases were summarized by Alex Phipps, juvenile delinquency cases were summarized by Jacqui Greene, Fourth Circuit cases were summarized by Phil Dixon, and U.S. Supreme Court cases were summarized by Jeff Welty and Phil Dixon. To view all of the case summaries, go the Criminal Case Compendium. To obtain summaries automatically by email, sign up for the Criminal Law Listserv. Summaries are also posted on the North Carolina Criminal Law Blog.

Warrantless Stops and Seizures

Totality of circumstances justified *Terry* frisk of defendant, and odor of marijuana supported probable cause to search defendant's vehicle

State v. Rowdy, COA24-64, ___ N.C. App. ___; 907 S.E.2d 460 (Oct. 15, 2024*); disc. review granted in part*, ___ N.C. ___; 912 S.E.2d 379 (Mar. 19, 2025). In this Forsyth County case, the defendant appealed his conviction for carrying a concealed weapon, arguing error in denying his motion to suppress a search of his vehicle because the officers lacked probable cause. The Court of Appeals disagreed, finding no error.

In July of 2020, a Forsyth County sheriff's deputy observed the defendant commit a traffic violation by driving into the oncoming traffic lane to go around another car waiting in a left turn lane. The deputy followed the defendant and activated his lights and siren, but the defendant did not immediately pull over. The defendant eventually stopped in an apartment complex known to be a high crime area, and the deputy initiated a traffic stop. During the stop, the deputy, along with another deputy who arrived to assist, smelled marijuana coming from the vehicle, and they asked the defendant to step out of the car. The deputies began questioning the defendant about the smell of marijuana, and the defendant "bladed" his body away from the officers and eventually stopped answering questions, at which point the deputies detained him. One of the deputies conducted a *Terry* frisk and felt an object in his pocket that turned out to be a blunt. After discovering the blunt, the deputies searched the vehicle and found the firearm giving rise to the charge. Before trial, the defendant filed a motion to suppress, arguing that due to the legalization of hemp, the deputies did not have probable cause to frisk him or search his vehicle. The trial court denied the motion, and defendant was subsequently convicted.

The Court of Appeals approached the issue by first considering the defendant's challenged findings of fact, which all related to the odor of marijuana and the blunt discovered after the frisk. The defendant argued that there was no evidence the substance was marijuana, but the court noted his argument "[was] misplaced because the legalization of hemp does not eliminate the significance of the officer's detection of an odor of marijuana for the purposes of determining probable cause." Slip op. at 8. The court turned to two recent decisions, *State v. Little*, COA23-410 (N.C. App. Sept. 3, 2024), and *State v.*

Dobson, COA23-568 (N.C. App. April 16, 2024), to support the conclusion that the odor of marijuana could still support probable cause for a search, especially where the defendant did not claim he possessed legal hemp such as the current case. Additionally, the court noted the defendant's arguments were focused on "policy" and did not question the competency of the evidence before the court. Slip op. at 10-11.

The court moved next to the *Terry* frisk of defendant and rejected the defendant's argument that the deputies lacked reasonable suspicion he was armed and dangerous. Here, the court considered the different factors identified by the trial court to find reasonable suspicion: (i) the defendant failed to pull over when the deputy first activated his lights and siren and pulled into an apartment complex known as a high crime area; (ii) the defendant had previous convictions for narcotics and carrying a concealed gun; and (iii) the defendant's body language when "blading" away from deputies. Under the "totality of the circumstances" standard, the court determined the factors were sufficient to support reasonable suspicion. *Id*. at 16.

Finally, the court rejected the argument that the deputies lacked probable cause for the search of his vehicle after finding the blunt, explaining the search "was lawful and supported by probable cause without the discovery of the blunt[] [because the] odor of marijuana emanating from the vehicle provided probable cause." *Id*. at 17. Similar to the analysis above, the court "follow[ed] well-established precedent" supporting the position that "the odor of marijuana, alone, is sufficient to establish probable cause to search a vehicle." *Id*. at 19. Here, the deputies smelling marijuana represented sufficient evidence for probable cause, regardless of whether the substance was actually hemp or marijuana.

Judge Arrowood concurred by separate opinion to urge the Supreme Court of North Carolina to consider and address the issues presented by the legalization of hemp.

Phil Dixon blogged about the case in part, here.

Officer reasonably believed evidence relating to the crime of arrest would be found within the car; *Gant's* 'reasonable to believe' standard requires less than probable cause; motion to suppress properly denied

U.S. v. Turner, 122 F.4th 511 (Dec. 4, 2024). The defendant's brother came home one evening and noticed his gun was missing. The gun was normally kept in a locked box in the man's bedroom. He called the police to report the theft and informed them that his brother (the defendant) was the only person with knowledge of and access to the weapon. The man also told police that his brother was involved in a gang and that this gang was feuding with another local gang. The responding officer obtained a state court warrant for the defendant's arrest for the theft. The officer also discovered that the defendant was a convicted felon. The next night, the officer received a report that the defendant had carjacked someone using the same type of gun as the one taken. While the officer was trying to obtain a warrant for the carjacking incident, the victim called the officer to report that the car had been returned. The state magistrate refused to issue an arrest warrant for this incident. Around 27 hours later, the same officer received a call of shots fired at a convenience store, which he knew to be in a high crime area. The officer arrived at the store and began approaching when he saw the defendant sitting in a parked car. The officer asked the defendant to exit the car and served the warrant relating to the gun theft, placing the defendant under arrest. The officer frisked the defendant but did not find the gun or other contraband. The officer then placed the defendant in his patrol car, and he and other officers searched the car where the defendant had been sitting. The stolen gun was found in the glove box.

The defendant was charged with possession of firearm by felon and possession of a stolen firearm in the Middle District of North Carolina. He moved to suppress, arguing that the search of the car was illegal. The district court denied the motion, finding that the search was justified as a search incident to the defendant's arrest. Under *Arizona v. Gant*, 556 U.S. 332 (2009), a warrantless search of a car incident to the defendant's arrest is permitted when it is reasonable to believe the car will contain evidence relating to the crime of arrest or when the defendant is unsecured and within reaching distance of the car's interior. The district court found that it was reasonable for the officer to believe that the gun would be inside the car, and that *Gant's* "reasonable to believe" standard required less than probable cause. The defendant pled guilty, reserving his right to appeal.

On appeal, a unanimous panel of the Fourth Circuit affirmed. While neither the Fourth Circuit nor the U.S. Supreme Court has addressed the exact standard of proof for *Gant's* "reasonable to believe" standard, the court agreed with the district court that it was lower than probable cause. For one, the U.S. Supreme Court could have stated that the standard was probable cause but has never done so. "*Gant* permits a vehicular search incident to arrest when it is 'reasonable to believe evidence relevant to the crime of arrest *might* be found in the vehicle.'" *Turner* Slip op. at 8-9 (emphasis in original) (citation omitted). For another, requiring probable cause under this prong of *Gant* would collapse the search incident to arrest exception to the warrant requirement with the automobile exception. "[B]ecause the automobile exception allows for a warrantless search of a vehicle for any contraband or evidence on a showing of probable cause, reading *Gant* to also require probable cause would rend it search-incident-to-arrest exception largely redundant." *Id*. at 9. Without delineating the outer limits of the "reasonable to believe" standard, the court was satisfied that the standard was met on these facts. The officer who encountered the defendant at the convenience store knew the defendant had an outstanding warrant relating to the theft and possession of a missing gun. He also knew the defendant was suspected of using that gun in an apparent carjacking within the last two days. The officer was aware that the defendant was gang-involved, and that the defendant's gang had an ongoing conflict with another gang. The officer was also responding to a report of shots fired when he encountered the defendant in a high crime area. Once the officer frisked the defendant and did not find the weapon, it was reasonable to think that the gun—the very item for which the defendant was being arrested—might be located in the car. For these reasons, the district court correctly denied the motion to suppress.

The defendant prevailed on a separate challenge to the terms of his sentence. The sentence was therefore vacated, and the case was remanded for a new sentencing hearing.

Searches

Trial court's finding that defendant consented to the search of her vehicle did not clearly extend to search of her wallet outside the vehicle, justifying remand

State v. Peters, COA24-475, ___ N.C. App. ___ (Apr. 16, 2025). In this McDowell County case, the defendant appealed after pleading guilty to possession of methamphetamine, arguing error in denying her motion to suppress the evidence found during a warrantless search. The Court of Appeals agreed, vacating and remanding for consideration of whether the defendant clearly and unequivocally consented to the search of her wallet.

In July of 2022, the defendant and a man were living in a camp near Pisgah National Forest when they were approached by Wildlife Resource Commission officers. The officers asked for proof that the

defendant owned the vehicle in the camp, and she provided proof of title. The officers then asked if they could check out the car, to which the man residing with the defendant said yes; this man had been the driver of the vehicle as the defendant did not have a valid license. Due to circumstances unknown, the defendant's wallet ended up on the roof of the vehicle and the officers searched her wallet while looking through the vehicle, finding a bag of methamphetamine. Nothing legally significant was found inside the vehicle, and the defendant came to trial on a charge of possession based on the methamphetamine found in her wallet. At trial, the defendant moved to suppress, arguing that the search of her wallet was unconstitutional, but the trial court denied the motion. The defendant pleaded guilty, reserving her right to appeal the issue.

The Court of Appeals first established that the defendant impliedly consented to the search of her vehicle, based on her failure to object to the search when a third party gave consent, and her actions attempting to facilitate the search by cleaning an area of the vehicle. However, the court noted the distinction between consent to search the inside of the vehicle and consent to search the defendant's wallet, as "[t]he wallet was neither inside nor otherwise attached to the vehicle." *Peters* Slip op. at 6. Because the trial court did not make a determination as to whether the defendant consented to the search of her wallet, "the trial court's findings cannot support its order denying Defendant's motion to suppress." *Id*. at 7. The court then reasoned through the appropriate remedy, concluding that the trial court must determine based on the evidence whether the officer objectively believed that the defendant placing her wallet on the roof represented "giving her clear and unequivocal consent to the officer's search of her wallet." *Id*. at 9.

Defendant abandoned his backpack by leaving it in a publicly accessible hotel stairwell; misidentification of the defendant by cooperating witness did not defeat probable cause where the witness and defendant were communicating in real time and officers corroborated evidence of defendant's involvement in a drug transaction

U.S. v. Mayberry, 125 F.4th 132 (Jan. 7, 2025). A South Carolina highway patrol officer stopped a car for speeding around 4:00 a.m. He ultimately searched the car, leading to the discovery of guns, meth, and $20,000 in cash. A passenger in the car volunteered that he was on his way to a hotel to buy four pounds of meth. The passenger stated that he had bought drugs from the dealer at the hotel before. Officers on scene showed the man a picture of a known drug dealer, and the passenger confirmed that this was the person from whom he expected to buy drugs. The passenger agreed to assist law enforcement with the investigation of the dealer. Officers used the passenger's phone to text the defendant, notifying the defendant that the passenger was on his way to the hotel. Other officers were surveilling the hotel when the defendant arrived. They watched as the defendant exited his car carrying a young child and a red, white, and blue backpack. The defendant was not the same person as the one identified by the car passenger, but his actions indicated that he was the person who was communicating with the car passenger about the meeting via text message. Two officers followed the defendant into the hotel and ran into him on the second floor, placing him under arrest. A third officer entered the hotel through the same door and found the backpack that the defendant had been carrying next to the stairwell door. That officer took the backpack to the parking lot, where a canine alerted to the presence of controlled substances inside the bag. A search of the backpack led to the discovery of more than four pounds of methamphetamine. The defendant waived his *Miranda* rights and spoke to the officers. He acknowledged that he was known by the nickname used by the would-be purchaser (the car passenger). The defendant also consented to a search of his cellphone and admitted that he was at the hotel to sell meth. A later search of the defendant's home led to the discovery of more drugs, guns, ammo, and a scale.

The defendant was charged in the District of South Carolina with various drug distribution, firearms, and conspiracy offenses (among others). He moved to suppress the evidence seized from the backpack, arguing police lacked probable cause to search the bag. The district court denied the motion, finding that the bag had been abandoned when the defendant left it in the stairwell. The defendant later filed a supplemental motion to suppress, contending that the initial tip from the passenger in the speeding car was unreliable based on the car passenger's identification of another person. The district court denied this motion too, finding that the police had probable cause based on the ongoing, real-time texts between the defendant and the officers using the passenger's phone, along with the subsequent corroboration of the planned drug deal by on-scene surveillance officers. The defendant then pled guilty pursuant to a plea bargain, reserving his right to appeal the denial of the suppression, and was sentenced to 414 months in prison. On appeal, a unanimous panel of the Fourth Circuit affirmed.

The court agreed with the district court that the arrest of the defendant was supported by probable cause, despite the cooperating witness's initial misidentification of the defendant. The officers knew at the time that the cooperating passenger possessed drugs and a large amount of cash and was headed to a specific hotel to purchase more drugs. The passenger's phone communicated with the defendant and told him when to enter the hotel, and the officers watched as the defendant then did so. The defendant was the only person in the hallway when officers encountered him, and he was seen carrying a distinctive backpack into the hotel which officers quickly recovered from the stairwell where the defendant had just been. "These facts provided a basis for the officers to conclude that there was a probability that [the defendant] was engaging in criminal activity, namely, that [the defendant] was present at the hotel to engage in a narcotics transaction." *Id*. at 13. The car passenger's misidentification of the defendant as another person could not overcome the observations of the officers watching the defendant and reading the passenger's phone communications with the defendant in real time.

The district court also did not err in finding that the defendant abandoned the backpack. The defendant left it behind a closed door in a common area stairwell that was accessible without the use of a hotel key. The bag was not hidden or protected in any way, and the defendant walked away from the bag and down the hallway without any apparent intent to reclaim it. "So, [the defendant] 'ran the risk that complete and total strangers would come upon the bag.'" *Id*. at 18 (citation omitted). Thus, the district court ruling that the bag was abandoned was correct.

The judgment of the district court was therefore affirmed in all respects.

Use of post-release supervision GPS ankle monitor data by police department was not illegal search

State v. Thomas, COA23-210, ___ N.C. App. ___; 906 S.E.2d 519 (Sept. 3, 2024); *temp. stay allowed,* ___ N.C. ___; 905 S.E.2d 337 (Sept. 23, 2024). In this Wake County case, the defendant appealed his convictions for second-degree murder and assault with a deadly weapon, arguing in part that the trial court erred by denying his motion to suppress the results of GPS tracking from his ankle monitor. The Court of Appeals affirmed the denial of the motion but granted a new trial on other grounds.

In November of 2019, surveillance footage caught a red car at a convenience store where a shooting occurred. An informant linked defendant to being an occupant of the car, and police determined that defendant was under post-release supervision (PRS) and wearing a GPS ankle monitor. A Raleigh police officer accessed the location history of defendant's monitor and found results tying him to the scene of the shooting. Defendant was subsequently indicted for the shooting and came to trial in December of 2021. The jury ultimately returned a verdict of guilty.

Defendant argued "the State exceeded the scope of the search allowed by [G.S.] 15A-1368.4 because the law enforcement officer who accessed the data from his ankle monitor was not his supervising officer under his PRS." *Id*. at 9. The court first established defendant was subject to PRS and outlined the statutory basis under G.S. 15A-1368.4 for his ankle monitor. In particular, the court noted "subsection (e)(13) does not limit the access to electronic monitoring data to the supervisee's post-release supervision officer or any particular law enforcement agency[. . .] a supervisee can be required to 'remain in one or more specified places' at specific times and to 'wear a device that permits the defendant's compliance with the condition to be monitored electronically[.]'" *Id*. at 18. The limitations for warrantless searches of a PRS supervisee's person and vehicle are different than those imposed on electronic monitoring, and the court concluded that "under these circumstances, [the police officer's] accessing the ankle monitor data was not a 'search' as defined by law." *Id*. at 20-21. The court also clarified that "[a]s a supervisee under PRS under [G.S.] 15A-1368.4, Defendant had a lower expectation of privacy than the offenders subject to lifetime SBM under the [*State v. Grady*, 259 N.C. App. 664 (2018)] caselaw." *Id*. at 23. Thus, the trial court correctly denied the motion to suppress.

Daniel Spiegel blogged about the case, here.

Odor and appearance of marijuana provided probable cause to search defendant's vehicle despite the legalization of hemp

State v. Little, COA23-410, ___N.C. App. ___; 905 S.E.2d 907 (Sept. 3, 2024). In this Hoke County case, the defendant appealed the denial of his motion to suppress the evidence seized after a traffic stop, arguing the odor and appearance of marijuana did not support probable cause to search his vehicle. The Court of Appeals disagreed, affirming the denial.

In May of 2020, a Hoke County deputy sheriff stopped the defendant after seeing defendant's truck cross the centerline of the road at least three times. When the deputy approached the defendant's window, he smelled marijuana and saw marijuana residue on the passenger side floorboard. When asked about the marijuana, the defendant said it was from his cousin, but did not claim that it was legal hemp. Officers from the sheriff's office searched the vehicle and found a firearm, bullets, sandwich bags, and $10,000 in cash. The defendant was subsequently indicted for possession of a stolen firearm, possession of a firearm by a felon, and carrying a concealed firearm. He filed a motion to suppress, arguing "the odor or appearance of marijuana, standing alone, after the legalization of hemp was insufficient to establish probable cause." Slip op. at 3. The trial court denied the motion and the defendant pleaded guilty to the charges, reserving his right to appeal the denial.

The Court of Appeals first noted the defendant's argument leaned heavily on the State Bureau of Investigation (SBI) memo considering the Industrial Hemp Act and the "impossibility" of distinguishing legal hemp from illegal marijuana by sight or smell. *Id*. at 5. The court then gave a brief overview of the Industrial Hemp Act and the SBI memo. Defendant argued that the Court of Appeals considered the SBI memo in *State v. Parker*, 277 N.C. App. 531 (2021), and *State v. Teague*, 286 N.C. App. 160 (2022), but the court noted that "neither *Parker* nor *Teague* accorded the Memo the status of binding law." Slip op. at 11.

To establish applicable probable cause requirements for a search of the defendant's vehicle, the court looked to the Fourth Amendment and the plain view doctrine, noting the requirement that it be "immediately apparent" a substance was contraband to justify a search. *Id*. at 13. Applicable precedent provides that the plain view doctrine also includes the plain smell of marijuana, and the N.C. Supreme

Court held (prior to the Industrial Hemp Act) that "the smell of marijuana gives officers the probable cause to search an automobile." *Id*. at 14. The court took pains to explain the requirement that contraband be "immediately apparent" under the plain view doctrine, looking to *Texas v. Brown*, 460 U.S. 730 (1983), for the concept that it was "no different than in other cases dealing with probable cause," despite the phrase's implication of a higher degree of certainty. Slip op. at 15.

Having established the applicable law, the court moved to the facts of the defendant's appeal, noting again that the defendant did not claim the substance in his vehicle was legal hemp or that he was transporting or producing hemp. The court likened the situation to prescription medication, where "[i]t is legal for a person to possess certain controlled substances with a valid prescription . . . [but a] law enforcement officer may have probable cause to seize a bottle of pills in plain view if he reasonably believes the pills to be contraband or illegally possessed." *Id*. at 19. Emphasizing that the issue at hand was not proving beyond a reasonable doubt that the substance was illegal marijuana, the court focused instead on "whether the officer, based upon his training and experience, had reasonable basis to believe there was a 'practical, nontechnical' probability that incriminating evidence would be found in the vehicle." *Id*. at 21 (cleaned up). The court then summarized its reasoning:

> Even if industrial hemp and marijuana look and smell the same, the change in the legal status of industrial hemp does not substantially change the law on the plain view or plain smell doctrine as to marijuana. The issue is not whether the substance was marijuana or even whether the officer had a high degree of certainty that it was marijuana, but "whether the discovery under the circumstances would warrant a man of reasonable caution in believing that an offense has been committed or is in the process of being committed, and that the object is incriminating to the accused." In addition, even if the substance was hemp, the officer could still have probable cause based upon a reasonable belief that the hemp was illegally produced or possessed by Defendant without a license. . . . Either way, the odor and sight of what the officers reasonably believed to be marijuana gave them probable cause for the search. Probable cause did not require their belief that the substance was illegal marijuana be "correct or more likely true than false. A 'practical, nontechnical' probability that incriminating evidence is involved is all that is required." *Id*. at 21-22 (cleaned up).

This conclusion led the court to affirm the denial of the motion to suppress.

Phil Dixon blogged about the case in part, here.

Search warrant was not invalid due to photographs of wrong property because it referenced correct address to be searched; edits made to warrant after issuance to remove references to photographs did not render it invalid

State v. Ellison, COA24-30, ___ N.C. App. ___; 909 S.E.2d 334 (Oct. 15, 2024). In this Watauga County case, the defendant appealed after pleading guilty to larceny and breaking and entering, arguing error in denying his motion to suppress the results of a search of his property. The Court of Appeals found no error.

In December of 2022, a caller reported two chainsaws were stolen from his property and provided law enforcement with trail camera footage of two men taking the chainsaws away in a wagon. Officers

identified the defendant as one of the men and prepared a search warrant for his property at 303 Tanner Road, including a photograph from the front of the property, an aerial photograph, and a description of a single wide mobile home with white siding. When executing the warrant, law enforcement officers realized they had provided photographs of the wrong property, which were of 310 Tanner Road. The officers went to the magistrate, who marked out the warrant's reference to the attached photographs and initialed changes on the search warrant. The officers then searched the property, finding the chainsaws. The defendant subsequently confessed to stealing the chainsaws during an interview.

The defendant first argued that the search warrant failed to identify the property with reasonable certainty. The Court of Appeals disagreed, explaining that while G.S. 15A-246 requires a search warrant to "contain a designation sufficient to establish with reasonable certainty the premises," a search warrant is not invalid simply because the address given differs from the address searched. Slip op. at 9. The court explained the confusion of the two properties was understandable as they were both in the same area and had similar white mobile homes, concluding that the search warrant provided reasonable certainty because it referenced the correct street address to be searched.

The defendant next challenged the probable cause to search his home. The court explained that the defendant's address was taken from his driver's license which was given during a recent traffic stop, and the address was within two miles of the location of the crime. The defendant was caught on the trail camera wearing the same hat he was wearing during the traffic stop, and he was transporting the chainsaws in a child's wagon, indicating he did not travel far. These facts supported probable cause to search the residence. The court denied the defendant's challenge to the descriptions of the stolen property, noting they were adequate to identify the property based on the information provided by the victim.

The court also rejected the argument that the search warrant was improperly amended. The court acknowledged that G.S. Chapter 15A did not address amending warrants, then looked to *Franks v. Delaware*, 438 U.S. 154 (1978), and *State v. Jackson*, 220 N.C. App. 1 (2012), concluding "intentional falsehoods made by law enforcement" may render a warrant invalid, but no intentional falsehood was present here and the warrant still contained the correct address to be searched, regardless of the incorrect photographs. Slip op. at 21.

Finally, the court dispensed with the defendant's argument that the warrant was not signed at the time of issuance, noting that G.S. 15A-246 required the date and time of issuance above the issuing official's signature. The court considered this section in conjunction with G.S. 15A-248, concluding "the purpose of section 15A-246(1) is to provide a record of the time of issuance against which the forty-eight-hour time limit for execution contained in section 15A-248 may be measured against." *Id*. at 23. The court likewise rejected the defendant's argument that the amendments to the search warrant contained information not taken under oath. Here the additional information was "simply that the photographs depicted the wrong address, a fact not bearing on whether probable cause existed to issue the warrant in the first place." *Id*. at 24.

Divided court holds short-term location data shared by Google in response to geofencing warrant did not amount to a search

U.S. v. Chatrie, 107 F.4th 319 (July 9, 2024); *motion for rehearing en banc granted* (Nov. 1, 2024). A bank was robbed in the Eastern District of Virginia, and police were unable to determine a suspect. Security

cameras in the bank showed that the robber possessed a cell phone, and the detective applied for a geofencing warrant to obtain information from Google for a 150-meter area around the bank for the thirty-minute periods of time immediately before and after the robbery. The information obtained as a result ultimately led police to the defendant and he was indicted in federal court for various offenses relating to the armed robbery. He moved to suppress, arguing that the geofencing warrant violated his Fourth Amendment rights. The district court denied the motion. It declined to squarely resolve the Fourth Amendment question, instead finding that the officer was allowed to rely on the geofencing warrant under the good-faith exception. The defendant pled guilty and appealed.

On appeal, the Fourth Circuit undertook a detailed analysis of geofencing warrants. Cell phones operating with Google software at the time of the search warrant in the case had a setting for "Location Services." This is a setting users can choose to activate, whereby Google tracks the movement of the phone. By default, Location Services are turned off. There are user benefits to the service, such as tracking the phone if it is lost, and personalized recommendations based on location. The service also generates advertisement revenue for Google. Users must perform several steps to activate the service, including enabling location sharing, opting in to Location History on a Google account, enabling Location Reporting, and signing into a Google account. Google provides explanatory text about the nature of the location service before a user can activate it. Once the service has been activated, users still maintain some control of the location data. They may edit or delete all or parts of past data collected, and they may pause the service at any time. When activated, the location of the phone is always monitored by Google via GPS tracking, regardless of whether the phone is in use. Android phones have an additional option to enable "Google Location Accuracy," which uses additional data inputs like cell towers and wireless network contacts to further refine the location data. This data is stored by Google for study and use in other applications. Starting in 2016, law enforcement began sending geofencing warrants to Google, whereby Location History data for all users within a set geographic area (the "geofence") over a particular timeframe would be disclosed. Geofence warrants only operate to obtain data from users who have Location History enabled; when the service is not enabled, the location data of the user is not collected by Google. The numbers of these kinds of law enforcement requests grew 1500% from 2017-2018, and another 500% in the following year. Since the time of the search warrant in the defendant's case, Google has amended its policies on geofencing warrants, which the court did not consider.

Google has developed an internal procedure for handling these warrants. First, the warrant must request anonymized data showing the phones within the geofence at the relevant time. Second, law enforcement reviews that data and may request additional information about any of the users identified at step one. Here, unlike in the first step, Google can provide additional information about a given user, including their location both inside and outside the geofence area and over a longer period of time. Google typically will only provide this more detailed information about user locations for a shorter list of users than the greater pool of users identified at step one. Last, Google can provide information that identifies a user by account information, but only once law enforcement has again narrowed the pool of users from the list provided at step two.

A divided panel of the Fourth Circuit affirmed the denial of the motion to suppress, but on different grounds than the district court. Under the third-party doctrine, information voluntarily shared with others is unprotected by the Fourth Amendment, because a person lacks a reasonable expectation of privacy in such information. *U.S. v. Miller*, 425 U.S. 435, 443 (1976). While that rule has sometimes been in tension with evolving technology, it remains good law. In *Leaders of a Beautiful Struggle v. Baltimore Police Department*, 2 F.4th 330 (4th Cir. 2021) (en banc), the court explored the contours of the tension between privacy rights and information voluntarily exposed to others, interpreting the evolution of

precedent to draw a line between "short-term public tracking of public movements—akin to what law enforcement could do prior to the digital age—and prolonged tracking that can reveal intimate details through habits and patterns." *Chatrie* Slip op. at 17 (cleaned up). Although *Beautiful Struggle* did not discuss the third-party doctrine, the sweeping and constant aerial surveillance at issue there intruded upon reasonable expectations of privacy because of the breadth of the otherwise-public information gathered. According to the majority, geofencing warrants like the one here—where only two hours of data from a set time and location were gathered—were different. The information sought and obtained by law enforcement in the current case was much more limited in scope, more akin to traditional public surveillance, and revealed much less private information about the defendant. The defendant also consented to share this information with Google, with Google making it clear to users what data is being collected, how it is being collected, and what options users have to edit, delete, or limit it. This case was distinguishable from *U.S. v. Carpenter*, 585 U.S. 296 (2018), where the cell site location data was shared with the communications company involuntarily by the very nature of the device. Also unlike the cell phone in *Carpenter*, Location History is not an indispensable feature of modern life. Most users of Google phones—about two thirds—choose not to activate Location History. In the words of the court:

> The third-party doctrine therefore squarely governs this case. The government obtained only two hours' worth of Chatrie's location information, which could not reveal the privacies of his life. And Chatrie opted into Location History . . . This means that he knowingly and voluntarily chose to allow Google to collect and store his location information. In doing so, he too the risk, in revealing his affairs to Google, that the information would be conveyed by Google to the Government. *Chatrie* Slip op. at 22.

Because the defendant had no reasonable expectation of privacy in this information, no search was conducted within the meaning of the Fourth Amendment when the government obtained it, and the motion to suppress was properly denied.

Responding to the dissent, the court stressed that *Carpenter* did not overturn the third-party doctrine, and that the majority was simply applying established Fourth Amendment principles. Both the electronic tracking device line of cases and the third-party doctrine line of cases from the U.S. Supreme Court remain important considerations when deciding cases involving searches of digital data. While the information obtained here could certainly reveal some private information about the defendant (and others), this "brief glimpse" into the defendant's life was closely circumscribed to a narrow time frame and did not allow law enforcement to determine his longer-term movements and associations. The court criticized the dissent's suggested multi-factor balancing test approach to resolving the question of whether the defendant had a reasonable expectation of privacy. In the words of the majority:

> Instead of faithfully apply[ing] established principles to the case before us, the dissent would have us depart from binding case law and apply a novel, unwieldy multifactor balancing test to reach the dissent's preferred policy outcome. We decline the invitation. Our Fourth Amendment doctrine compels a clear result here. If one thinks that this result is undesirable on policy grounds, those concerns should be taken to Congress. *Id*. at 35.

In a nearly 70-page dissent, Judge Wynn disagreed. He would have ruled that the geofencing information here was a search within the meaning of the Fourth Amendment and faulted the majority opinion for permitting geofencing information to be disclosed without a warrant.

Jeff Welty blogged about the decision, here.

Search of defendant's vehicle was supported by probable cause based on officer's observation from outside vehicle; trial court improperly revoked defendant's probation without finding of good cause

State v. Siler, 295 N.C. App. 262 (Aug. 6, 2024). In this Chatham County case, the defendant appealed after pleading guilty to trafficking in opium or heroin by possession with a plea agreement to preserve his right to appeal the denial of his motion to suppress. The Court of Appeals affirmed the judgment on the guilty plea, but vacated the judgment that revoked the defendant's probation, and remanded to the trial court for reconsideration.

In July of 2021, the defendant was sitting in the passenger seat of a car parked at a gas station when a law enforcement officer pulled up next to him. The officer was in uniform and in a marked car; while the officer pumped gas into his vehicle, he observed the defendant move an orange pill bottle from the center console to under his seat. The defendant then exited the vehicle, and the officer questioned him about the pill bottle. The defendant denied having any pills, but after further questioning, produced a different pill bottle, and told the officer the pills were Vicodin he received from a friend. The officer then searched the vehicle, finding the orange pill bottle, and lab testing later confirmed the pills were opioids. Unbeknownst to the officer, the defendant was on probation during the encounter. The trial court revoked this probation after the defendant's guilty plea, even though his probationary period had expired, but the trial court did not make any findings of good cause.

Taking up the motion to suppress, the Court of Appeals first noted that the case presented an issue of first impression: "Is a search based on a standard less than probable cause (as authorized by the terms and conditions of probation) valid, where the officer performing the search is not aware that the target of his search is on probation?" Slip op. at 3. However, the court declined to answer this question. Instead, the court concluded that "the evidence of the encounter up to just prior to the search of the vehicle was sufficient to give the officer probable cause to search the vehicle." *Id*. at 8. Because the defendant only pleaded guilty to the charge related to the orange pill bottle in the vehicle, the court avoided exploring the issues related to the Vicodin inside the *other* pill bottle that the defendant offered after questioning.

The court then considered the revocation of the defendant's probation, noting that the State conceded the trial court's error in not making a "good cause" finding. The court noted that "there was sufficient evidence before the trial court from which that court *could* make the required finding" and remanded for reconsideration. *Id*. at 10.

Confrontation Clause

Substitute analyst's opinion testimony based on "testimonial hearsay" in lab report implicated defendant's Confrontation Clause rights under *Smith v. Arizona*

State v. Clark, COA23-1133, ___ N.C. App. ___; 909 S.E.2d 566 (Dec. 3, 2024); *temp. stay allowed*, ___ N.C. ___; 909 S.E.2d 323 (Dec. 20, 2024). In this Avery County case, the defendant appealed his conviction for possession with intent to sell and deliver methamphetamine, arguing his Confrontation Clause rights were implicated because a testifying expert relied on another analyst's statements in a lab report when stating his opinions. The Court of Appeals concluded it was error to allow the opinion testimony, and vacated the defendant's judgment, remanding for a new trial.

In August of 2020, the defendant was searched as a condition of his probation, and officers seized a crystalline substance. The substance was tested by a forensic analyst who determined it was methamphetamine, and the analyst created a lab report for the State. When the defendant came for trial, the original analyst was not available to testify, so the State offered a substitute analyst who based his opinions on the lab report. The substitute analyst did not perform any testing on the crystalline substance himself.

On appeal, the defendant argued that his Confrontation Clause rights were violated because he was unable to cross-examine the original analyst whose lab report formed the foundation of the case against him. The Court of Appeals referenced the recent decision *Smith v. Arizona*, 602 U.S. 779 (2024), where the Supreme Court held that "opinion testimony of a surrogate expert who relies upon the 'testimonial hearsay' statements contained in a lab report or notes prepared by another analyst who tested the substance in question implicates a defendant's right under the Confrontation Clause." Slip op. at 4. The court noted the applicability to the current case, as the substitute analyst relied on lab reports created solely for the trial that were testimonial in nature under *State v. Craven*, 367 N.C. 51 (2013). Slip op. at 8. Because the substitute analyst did not independently test the substance and relied upon the lab report's statements that were "hearsay and testimonial in nature," the defendant's rights under the Confrontation Clause were implicated. *Id*. at 9.

Phil Dixon blogged about this case, here.

Computer-generated phone records were not testimonial in nature and did not implicate the Confrontation Clause

State v. Lester, 387 N.C. 90 (Jan. 31, 2025). In this Wake County case, the Supreme Court reversed the Court of Appeals decision holding the State violated the Confrontation Clause and hearsay rules by admitting exhibits of Verizon phone records. The Supreme Court held that if the records were truly machine generated, they were not hearsay or testimonial in nature and remanded the case for the consideration of the defendant's remaining issues.

In 2022, the defendant came to trial for statutory rape of a child fifteen years or younger. During the State's case, two detectives testified about their investigation, and they referenced exhibits of the defendant's phone records provided by Verizon. The two exhibits in question were a list of "the time, date, and connecting phone number for all calls to and from [defendant's] phone between May and July 2019" and a cover letter stating the records were "true and accurate copies of the records created from the information maintained by Verizon in the actual course of business." Slip op. at 6. The defendant objected to the exhibits, and the State argued the records were admissible under Rule of Evidence 803(6) as business records. The trial court did not admit the records under Rule 803(6), but instead under Rule 803(24), the residual exception, as the trial court felt the State did not lay a proper foundation for business records. In *State v. Lester*, 291 N.C. App. 480 (2023), the Court of Appeals reversed the defendant's conviction, holding that admitting the records was a violation of the defendant's Confrontation Clause rights and the error was prejudicial, justifying a new trial.

Taking up the arguments, the Court explained that the purpose of the Confrontation Clause was to protect against the unreliable nature of out-of-court testimonial statements made by humans, specifically "*ex parte* examinations" offered against the accused. Slip op. at 11. Here, the evidence in question was computer-generated data, and the Court noted this was not the type of evidence contemplated by the Confrontation Clause. After explaining the unique nature of machine-generated

data and why it was more reliable that a human witness's out-of-court statement, the Court held that 'machine-generated raw data, if truly machine-generated,' are 'neither hearsay nor testimonial' under the Confrontation Clause." *Id*. at 17 (quoting *State v. Ortiz-Zape*, 367 N.C. 1, 10 (2013)). The Court emphasized that "we focus here on data produced entirely by the internal operations of a computer or other machine, free from human input or intervention" in contrast to "(1) computer-stored evidence, and (2) human interpretations of computer-produced data." *Id*. at 18. Because the machine-generated data did not implicate the Confrontation Clause in the same way that human interpretations of the data would, the Court determined the Court of Appeals improperly analyzed the admissibility of the exhibits in the current case.

Phil Dixon blogged about this case, here.

First Amendment

Alleged threat of mass violence on educational property was not objectively threatening; social media post was not a "report" within the meaning of false report of mass violence on educational property

In the matter of C.S., COA24-46, ___ N.C. App. ___; 911 S.E.2d 263 (Dec. 31, 2024). The juvenile posted a screenshot of his school's announcement of a three-day spirit week on Snapchat. The juvenile superimposed the following over the screenshot: "THIS IS SOME FUCKING BULLSHIT, IMMA SHOOT UP AL BROWN (for reason that I do not wish to have the police come to my house, it is a joke I do not nor have I ever owned a gun.) Thank you pls don't report me[.]" Snapchat flagged the post as containing a threat of mass violence and the SBI connected the post to the juvenile. The juvenile explained that the post was a joke during his interview with the investigating officer. The juvenile was charged with communicating a threat to commit an act of mass violence on educational property (G.S. 14-277.6) and making a false report concerning mass violence on educational property (G.S. 14-277.5). The trial court denied a motion to dismiss both petitions for insufficient evidence and the youth was adjudicated delinquent on both petitions.

In regard to the charge of communicating a threat of mass violence on educational property, the court found that there was insufficient evidence that the juvenile's post was objectively threatening. A true threat analysis is required to apply G.S. 14-277.6 in accordance with the protections of the First Amendment. A true threat requires both an objectively threatening statement and the subjective intent to threaten a listener or an identifiable group. *In re D.R.F.*, 293 N.C. App. 544, 549. The factors for analyzing a true threat in *State v. Taylor*, 379 N.C. 589 (2021), include both the context of the communication and the negating language of the communication. The context in this case was a post on social media and not a message to any particular person. There was no evidence presented as to how Snapchat flagged the post or that anyone outside of Snapchat, the SBI, and the investigating officer was aware of, reported, or feared the communication. The negating language in the post, including that the juvenile did not own a gun and characterization of the post as a joke, are also factors that indicate that the post was a distasteful "joke" and not objectively threatening. Slip op*. at 13.* No evidence was presented that any student or staff member felt threatened or notified the school of the post. There was also no evidence that the school made any changes to the school day as a result of the post. Evidence that creates "'a suspicion that it would be objectively reasonable' to think Fabian was serious in making his threat… is not 'enough to create an inference to satisfy the State's burden.'" Slip op. at *12*, quoting *In re Z.P.*, 280 N.C. App. at 446. The motion to dismiss for insufficient evidence should have therefore been granted.

In regard to the charge of making a false report of mass violence on educational property, the court again reversed for insufficient evidence. The State must prove that the juvenile was making a report in order to survive a motion to dismiss the charge of making a false report concerning mass violence on educational property. The State did not present substantial evidence that the juvenile made a report. The post was not directed to any specific person, there was no evidence that anyone unrelated to the investigation saw the post, and law enforcement was not aware of any statements about the post made to any individuals. The only evidence was that Snapchat flagged the post and brought it to the attention of law enforcement. Alternatively, it would not have been reasonable for someone to construe the post as a report of a credible threat, especially considering the context and negating language described in the true threat analysis. Considering the evidence in the light most favorable to the State, there was not substantial evidence that the post was a report within the meaning of G.S. 14-277.5.

Prohibition on broadcasting of 'vulgar' speech violated the First Amendment and should have been enjoined

Moshoures v. City of North Myrtle Beach, 131 F.4th 158 (Mar. 13, 2025). A local city ordinance in North Myrtle Beach, South Carolina, criminalizes the broadcasting of "obscene, profane or vulgar language from any commercial property." From 7:01 a.m. to 10:59 p.m., broadcasts of obscene, profane, or vulgar sounds cannot exceed 30 decibels; from 11:00 p.m. to 7:00 a.m., they cannot exceed 50 decibels. Violations of the ordinance are punishable by fines and imprisonment of up to 30 days. A local bar owner sued the city and local officials after he was warned of violating the law. The plaintiff alleged that the ordinance unlawfully restricted his speech in violation of the First Amendment. The district court granted the plaintiff's request to enjoin the ordinance in part. It found that the provisions restricting "obscene" and "vulgar" language were constitutional, because they only applied to speech that would rise to the level of obscenity under *Miller v. California*, 413 U.S. 15 (1973) (defining obscenity under the First Amendment and recognizing it as unprotected speech). As to the ordinance's restriction on "profane" speech, the district court agreed with the plaintiff that it was unconstitutional and ordered the city refrain from enforcing it. The plaintiff appealed, arguing that the district court erred by failing to also enjoin enforcement of the restriction on "vulgar" speech. A unanimous panel of the Fourth Circuit agreed.

Under the ordinance, vulgar speech is defined as "making explicit and offensive reference to sex, male genitalia, female genitalia or bodily functions." *Moshoures* Slip op. at 7 (internal citation omitted). Unlike the definition of "obscene" speech in the ordinance (which tracks the *Miller* definition of obscenity exactly), the definition of "vulgar" speech is broader than "obscene" speech and lacks constitutional carve outs for offensive but constitutional speech, such as offensive speech with "serious literary, artistic, political, or scientific value." *Miller* at 24. The court noted that, under the city's definition of vulgar speech, the hip-hop album "*As Nasty as They Wanna Be*" by 2 Live Crew would qualify, based on the album's explicit references to sex and genitalia. So too would the popular bumper sticker depicting the comic book character Calvin of the *Calvin & Hobbes* series urinating on various logos, as it depicts a "bodily function." These examples illustrate that "vulgar" speech does not necessarily rise to the level of constitutionally obscene speech, "because they do not appeal to 'prurient' interests or depict 'sexual conduct.'" *Moshoures* Slip op. at 10. (citation omitted). The ordinance's prohibition on "vulgar" speech therefore sweeps in some amount of speech protected under the First Amendment.

The court ultimately concluded that the restriction on vulgar speech violates the First Amendment. As a content-based restriction on speech, the city had the burden to demonstrate that its restriction is narrowly tailored and serves compelling governmental interests. It could not do so here. Protection of

minors and the public is a valid governmental interest, as is the interest in preservation of the character of the neighborhood. But the prohibition here was both overly broad, sweeping in things like musical lyrics, and too narrow, in that the City could achieve its stated goals by issuing a content-neutral ban on noise levels across the board at certain times of the day. In the words of the court:

> Policymakers may impose generally applicable time, place, and manner restrictions—including limits on the use of amplified sound—without triggering strict scrutiny so long as they do so 'in a evenhanded, content-neutral manner.' What the city may not do is single out a subset of constitutionally protected speech for special disfavored treatment in public spaces because some (or even most) citizens would prefer not to hear it. *Id*. at 18 (internal citations omitted).

Thus, the judgment of the district court finding the prohibition on vulgar speech permissible was reversed and the matter was remanded for additional proceedings.

Second Amendment

Possession of a firearm by a felon under G.S. 14-415.1 was not facially unconstitutional or unconstitutional as applied to defendant's case

State v. Nanes, COA24-487, ___ N.C. App. ___; 912 S.E.2d 202 (Feb. 19, 2025). In this Wake County case, the defendant appealed his convictions for first-degree murder and possession of a firearm by a felon, arguing (1) G.S. 14-415.1, the statute making possession of a firearm by a felon an offense, was unconstitutional, and (2) error in admitting defendant's own statements. The Court of Appeals held G.S. 14-415.1 was constitutional and found no error.

During August of 2020, defendant shot and killed two victims he had never met, one in Raleigh and another in Cary. The defendant's probation officer recognized a BOLO put out by police, and reported him, leading to his arrest. The defendant had previously been convicted of felony animal cruelty for stealing his parent's dog and decapitating it with a knife. At trial, the State offered statements that the defendant made during a phone call with his mother, where she questioned why he posted a picture of a firearm on social media despite being convicted of a felony. He responded "[t]his is a hard time for our country, and you've got racist black people out here." *Nanes* Slip op. at 18.

In (1), the defendant argued that G.S. 14-415.1 was unconstitutional both facially and as-applied to his situation, pointing to *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024), to support his arguments. The Court of Appeals began with the facial challenge, noting "the State must only show that section 14-415.1 'is constitutional in some of its applications.'" Slip op. at 6 (quoting *Rahimi* at 693). The court acknowledged that G.S. 14-415.1 regulated some conduct covered by the Second Amendment, but concluded the section was "sufficiently analogous to historical laws to show that prohibiting convicted felons from possessing firearms is within the nation's history and tradition of firearm regulation." *Id*. at 6-7. Because G.S. 14-415.1 could be "applied constitutionally to numerous circumstances" the court found no merit in the defendant's facial challenge. *Id*. at 10.

Moving to the as-applied constitutional challenge, the defendant argued his felony did not represent violent crime against a person, and therefore shouldn't justify disarming him. The court again disagreed,

noting that beheading the dog was a violent crime, and "the record reflects Defendant has a history of victimizing others resulting in convictions for: assault on a government official or employee, simple assault, simple assault again, assault inflicting serious injury, assault on a handicapped person, and assault and battery." *Id*. at 11. This led the court to conclude that the defendant had a history of violence towards others, and removing his right to possess a firearm was well within historical tradition. The court also considered the defendant's arguments under Section 30 of the North Carolina Constitution, applying the five-factor framework from *Britt v. State*, 363 N.C. 546, (2009). After performing the analysis, the court concluded "the *Britt* factors undoubtedly weigh in favor of upholding the application of section 14-415.1 against Defendant as he has a demonstrated history of violence, victimizing others, and disregarding the law." *Nanes* Slip op. at 16.

Reconsidering in light of *U.S. v. Rahimi*, the Fourth Circuit again rejects a facial Second Amendment challenge to federal possession of firearm by felon statute

U.S. v. Canada ("*Canada II*"), 123 F.4th 159 (Dec. 6, 2024). In this case from the District of South Carolina, the Fourth Circuit previously rejected the defendant's facial challenge to 18 U.S.C. 922(g)(1), the federal ban on possession of firearms by felons (that decision was summarized here). *U.S. v. Canada ("Canada I")*, 103 F.4th 257 (4th Cir. 2024). The defendant sought review of *Canada I* at the U.S. Supreme Court. The Court vacated that decision and remanded the matter for reconsideration in light of *U.S. v. Rahimi*, 144 S. Ct. 1889 (2024). *Canada v. U.S.,* 145 S. Ct. 432 (Nov. 4, 2024). In *Rahimi*, the U.S. Supreme Court rejected a facial challenge to 18 U.S.C. 922(g)(8), the federal prohibition on possession of firearms by a person subject to a domestic violence restraining order ("DVPO"), finding that the nation had a historical tradition of disarming dangerous people in a manner akin to the temporary restriction on gun possession by those subject to a DVPO (more on *Rahimi* here). Reconsidering the defendant's facial challenge in light of *Rahimi*, the Fourth Circuit determined that its earlier opinion in *Canada I* did not conflict with *Rahimi.* The court therefore reaffirmed and reissued its earlier opinion with minor modifications. According to the court:

> The law of the Second Amendment is in flux, and courts (including this one) are grappling with many difficult questions in the wake of *New York Rifle and Pistol Ass'n., Inc. v. Bruen* 597 U.S. 1 (2022) and *United States v. Rahimi*, 144 S. Ct. 1889 (2024). But the facial constitutionality of Section 922(g)(1) is not one of them. No federal appellate court has held that Section 922(g)(1) is facially unconstitutional, and we will not be the first. *Canada II* Slip op. at 3.

The court assumed without deciding that some applications of Section 922(g)(1) might be unconstitutional *as applied* to a particular set of facts, but rejected the notion that the federal ban on firearm possession by felons was unconstitutional in all respects. The court also determined that it need not decide the exact method of analysis for such Second Amendment challenges. "No matter which analytical path we choose, they all lead to the same destination: Section 922(g)(1) is facially constitutional because 'it has a plainly legitimate sweep' and may constitutionally be applied in at least *some* 'set of circumstances.'" *Id*. at 4 (emphasis in original) (citation omitted).

The defendant also successfully challenged his designation as an Armed Career Criminal at sentencing. The sentence was therefore vacated, and the matter was remanded for resentencing.

Relying on pre-*Bruen* precedent, Fourth Circuit panel rejects case-by-case determination of as-applied Second Amendment challenges to 18 U.S.C. 922(g)(1)

U.S. v. Hunt, 123 F.4th 697 (Dec. 18, 2024). The defendant was convicted of possession of firearm by felon under 18 U.S.C. 922(g)(1) in the Southern District of West Virginia. The defendant's predicate felony was a state conviction for breaking and entering in 2017. On appeal, he argued that the statute violated the Second Amendment, both facially and as applied to the facts of his case. The Fourth Circuit recently rejected the argument that 18 U.S.C. 922(g)(1) was facially unconstitutional, while leaving the question of the possibility of successful as-applied challenges unresolved. *U.S. v. Canada ("Canada II")*, 123 F.4th 159 (4th Cir. 2024) (summarized above). Circuit precedent predating the U.S. Supreme Court's decision in *New York Rifle and Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), held that an as-applied Second Amendment challenge to 18 U.S.C. 922(g)(1) could only succeed if the underlying felony conviction at issue had been pardoned or if the statute of conviction had been deemed "unconstitutional or otherwise unlawful." *Hunt* Slip op. at 2 (citing *Hamilton v. Pallozzi*, 848 F.3d 614, 626 (4th Cir. 2017)). Nothing in *Bruen* or *U.S. v. Rahimi*, 144 S. Ct. 1889 (2024), specifically overruled this earlier circuit precedent, and the court determined that its earlier decision remained good law. In the words of the court:

A panel of this court is bound by prior precedent from other panels and may not overturn prior panel decisions unless there is contrary law from an en banc or Supreme Court decision. We do not lightly presume that the law of the circuit has been overturned. Instead, a Supreme Court decision overrules or abrogates our prior precedent only if our precedent is *impossible* to reconcile with that decision. If it is possible to read our precedent harmoniously with Supreme Court precedent, we must do so. *Hunt* Slip op. at 7 (emphasis in original) (cleaned up).

In the alternative, the court found that the challenge failed on the merits. Under *Bruen* and *Rahimi*, a court must determine whether a challenged law impacts conduct protected by the Second Amendment. If so, the court must determine whether the regulation is "consistent with this Nation's historical tradition of firearm regulation." *Bruen* at 18. The defendant's challenge failed at both steps of the analysis. U.S. Supreme Court case law has stated that Second Amendment protections extend to "law-abiding citizens," and that restrictions on possession of firearms by felons are "presumptively lawful." *District of Columbia v. Heller*, 554 U.S. 570, 626, 627 n.26 (2008). The Court's subsequent decisions in *Bruen* and *Rahimi* reaffirmed this limitation on Second Amendment rights. Thus, possession of firearms by convicted felons is not conduct protected by the Second Amendment.

Assuming for the sake of argument that 18 U.S.C. 922(g)(1) does affect conduct protected by the Second Amendment, there has been a consistent historical tradition disarming both those who act inconsistent with legal norms and those who present a risk of harming others. That tradition covers people who have been convicted of felony offenses. Permanently disarming a felon is a much lesser sanction than the penalties of death and forfeiture that existed at the time of the founding for felony convictions, and those more severe penalties necessarily included disarmament. Colonial laws often required the forfeiture of guns for violations of hunting regulations. Many early legislatures prohibited entire groups of people from firearm possession based on a determination that members of the group acted outside of the norms of the day, such as "non-Anglican Protestants," and those who refused to swear oaths of allegiance. Early laws also categorically banned firearm possession by whole groups of people when members of the group were found to present a risk of danger, such as "religious minorities . . . Catholics, or Native Americans . . ." *Hunt* Slip op. at 16. It was therefore within Congress's power to determine that felons, as a category, were not entitled to possess firearms. Joining the Eighth Circuit on the point, the court further rejected the idea that as-applied Second Amendment challenges to 18 U.S.C. 922(g)(1) must be determined on a case-by-case basis. According to the unanimous court:

> This history demonstrates that there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons. Instead, as here, past conduct (like committing a felony) can warrant keeping firearms away from persons who might be expected to misuse them. *Id*. (citing *U.S. v. Jackson*, 110 F.4th 1120, 1129 (8th Cir 2024)) (cleaned up).

A challenge to a sentencing enhancement was similarly rejected, and the judgment of the district court was affirmed in full.

Pleadings

Instructing the jury on kidnapping under theory of involuntary servitude when indictment alleged kidnapping under theory of sexual servitude represented plain error

State v. Wilson, COA23-1031, ___ N.C. App. ___; 910 S.E.2d 407 (Dec. 31, 2024). In this Beaufort County case, the defendant appealed his conviction for second-degree kidnapping, arguing plain error in the jury instructions for instructing the jury on a theory not alleged in the indictment. The Court of Appeals agreed, vacating and remanding for a new trial on the kidnapping charge.

In 2017, law enforcement began investigating allegations of sexual misconduct by the defendant against his step-granddaughter when she was ten to fourteen years old. These allegations included incidents where the defendant would block the door and force the victim to take pictures or allow him to take pictures of her body before she could leave. At trial, the defendant was charged with first-degree kidnapping and several other charges related to indecent liberties with a child and sexual servitude. Relevant for the appeal, the trial court instructed the jury on the lesser-included offense of second-degree kidnapping "based on a theory of involuntary servitude, not sexual servitude as alleged in the indictment." Slip op. at 3. The defendant did not object to the instructions at trial.

The Court of Appeals noted that the State conceded the error that the jury instructions did not match the indictment, but argued that it did not rise to the level of plain error. Beginning its inquiry, the court first explained that while no specific pattern jury instruction covered second-degree kidnapping under the theory of sexual servitude, North Carolina Pattern Instruction 210.70 covers sexual servitude, and this instruction was given to the jury. The court noted "that the trial court instructed the jury as to sexual servitude and the jury found Defendant not guilty of all four charges tends to indicate that the jury considered the uncharged 'involuntary servitude' to be something different from 'sexual servitude,' contrary to the State's argument on appeal." *Id*. at 8. The court went on to explore the two different theories in the statutes, explaining that "[t]he kidnapping statute specifically refers to other statutes that define both 'sexual servitude' and 'involuntary servitude.'" *Id*. at 11. Here, the trial court provided an instruction on a theory totally separate from what was included in the indictment. Because the defendant was convicted on a theory not indicted, and he was acquitted of the charges related to sexual servitude, "the trial court erred in its jury instructions and that instructional error rises to the level of plain error requiring a new trial on the kidnapping charge." *Id*. at 16.

Capacity to Proceed

Defendant's behavior at trial did not show incompetence despite the nature of her testimony, and trial court did not err by failing to order competency hearing sua sponte

State v. Jones, COA24-241, ___ N.C. App. ___; 909 S.E.2d 373 (Nov. 19, 2024). In this Rowan County case, the defendant appealed her convictions for first-degree arson, larceny of a dog, and attempted first-degree murder, arguing error in not ordering a competency hearing. The Court of Appeals found no error.

The defendant came to trial for the offenses in August of 2023. After the conclusion of State's evidence, defense counsel indicated that the defendant would testify. The trial court examined the defendant before her testimony and she willingly waived her Fifth Amendment privileges. The defendant then testified about hearing voices caused by "voice-to-skull" technology that she blamed on the victim. She recounted spending several hours at the victim's home, trying to light the victim's porch on fire, tampering with the victim's pool, and leading his dog away to her car. On cross-examination, the defendant admitted to using methamphetamine to help her function. The defendant was subsequently convicted.

Considering the competency hearing argument, the Court of Appeals explained that G.S. 15A-1001(a) establishes a statutory right to a competency hearing, but "nothing in the record indicates that the prosecutor, defense counsel, Defendant, or the court raised the question of Defendant's capacity to proceed at any point during the proceedings," meaning the defendant waived her statutory right to a hearing. Slip op. at 6. Despite the statutory waiver, the Due Process Clause requires a defendant to be competent to stand trial. Under applicable precedent, a court must order a competency hearing sua sponte when there is "a bona fide doubt" of the defendant's competency to stand trial. *Id*. at 8. Here, the court did not see substantial evidence of the defendant's incompetence at the time of trial, noting that the defendant only identified evidence of her behavior prior to trial to support her argument that she was incompetent. The court pointed out that the defendant "conferred with her attorney about issues of law applicable to her case" and the record showed her "testimony was responsive and appropriate to the questions, even if her responses indicated that her troubling thoughts led to her actions in this case." *Id*. at 9.

Speedy Trial

Delay of trial for more than six years did not represent speedy trial violation under *Barker* test; photograph from previous bloody incident at house was not prejudicial

State v. Crisp, COA24-2, ___ N.C. App. ___; 910 S.E. 2d 726 (Dec. 31, 2024). In this Cherokee County case, the defendant appealed his conviction for second-degree murder, claiming speedy trial issues and introduction of prejudicial evidence to the jury. The Court of Appeals found no error.

The defendant was arrested in May of 2016 for murdering the victim. That defendant shot the victim was undisputed, so the only issue at trial was whether the shooting was intentional. The defendant finally went on trial for first-degree murder in January of 2023. Before trial, he moved to dismiss on speedy trial grounds, but the trial court denied the motion. During trial, the State offered a photograph

showing a blood-stained area around the house where the shooting happened but later admitted to the trial court that the photograph was from an unrelated 2007 incident and struck the exhibit from the record. The trial court provided a curative instruction to the jury regarding the photograph. The defendant was ultimately convicted of second-degree murder and appealed.

Taking up the speedy trial issues, the Court of Appeals noted the delay was more than a year, triggering the balancing test from *Barker v. Wingo*, 407 U.S. 514 (1972). The four factors for the *Barker* test are "(1) length of the delay, (2) reason for the delay, (3) the defendant's assertion of his right to a speedy trial, and (4) prejudice to the defendant." Slip op. at 3. Here, the court walked through the period of delay, noting that both the defendant and the State bore some responsibility for the lengthy delay in reaching trial. However, the defendant failed to "show that his defense was impaired by the delay" and failed to assert his right to a speedy trial "until approximately one month before the trial was scheduled to start," justifying denial of his motion. *Id*. at 14.

Moving to the photograph, the court noted that the defendant could not demonstrate prejudice as "the photograph did not suggest Defendant had previously been arrested, tried, or convicted of a previous crime, or even that Defendant had previously committed a violent act." *Id*. at 16. The court also held that "the [trial] court's curative instruction was sufficiently clear and cured the jury from any purported prejudice the photograph may have caused." *Id*. at 18.

(1) No speedy trial violation under *Barker* test where delay was primarily due to court backlog; (2) driving with license revoked for impaired driving violation represented malice; (3) no documentation that defendant consented to counsel conceding guilt for misdemeanor violations.

State v. Farook ("*Farook II*"), COA23-1161, ___ N.C. App. ___ (Dec. 31, 2024); *temp. stay allowed*, ___ N.C. ___; 910 S.E.2d 357 (Jan. 24, 2025). In this Rowan County case, the defendant appealed his convictions for felony hit and run inflicting serious injury or death and two counts of second-degree murder, arguing (1) violation of his right to a speedy trial, (2) insufficient showing of malice to support his murder convictions, and (3) ineffective assistance of counsel by conceding guilt without his consent. The Court of Appeals affirmed the denials of the defendant's speedy trial motion and motion to dismiss but reversed and remanded for a hearing on the issue in (3).

In June of 2012, the defendant was driving when he crossed the centerline and hit a motorcycle, killing both the operator and passenger of the motorcycle. A witness saw the defendant get out of his car, look at the wreck, then walk away. The defendant turned himself in two days after the wreck and was placed in jail in June of 2012. He remained in jail until shortly before his trial in October 2018. After being convicted, the defendant appealed in *State v. Farook*, 274 N.C. App. 65 (2020), and the Court of Appeals reversed on speedy trial grounds. The North Carolina Supreme Court then reversed that decision in part and affirmed in part in *State v. Farook*, 381 N.C. 170 (2022). These opinions contain extensive detail of the timeline of the case. After the trial court held a new hearing and denied the defendant's speedy trial motion in October 2022, the defendant again appealed, leading to the current opinion.

In (1), the Court of Appeals began by establishing the speedy trial test from *Barker v. Wingo*, 407 U.S. 514 (1972), and the four applicable factors: "(1) the length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant." Slip op. at 10 (quoting *State v. Spinks*, 277 N.C. App. 554 (2021)). Here, the court noted "there is no question the six-year delay here is presumptively prejudicial and requires we weigh all four *Barker* factors," and proceeded to examine the trial court's order and the defendant's challenged findings of fact and conclusions of law. *Id*. at 12. After

a lengthy examination, the court examined evidence regarding the backlog in the court system, a delay in the state crime lab processing a blood sample, and the defendant shuffling through several attorneys. After weighing the four *Barker* factors, the court concluded "[w]hile the first factor in the *Barker* analysis – length of the delay – shows presumptive prejudice, the State rebutted this presumption with its extensive evidence as to the reasons for the delay, specifically the backlog of the court system in Rowan County during Defendant's trial." *Id*. at 50. Because the collective factors did not weigh in the defendant's favor, the court affirmed the order denying his motion.

Moving to (2), the court explained that the element of malice was the issue in question, and because the defendant did not intentionally kill the victims, the State had to prove malice by showing "defendant had the intent to perform the act of driving in such a reckless manner as reflects knowledge that injury or death would likely result." *Id*. at 53 (quoting *State v. Rich*, 351 N.C. 386 (2000)). The State argued malice here by showing the defendant's license was revoked due to an impaired driving violation at the time of the crash, the defendant drove left of the centerline, and the defendant was slurring his words and smelled of alcohol. The court also looked to testimony that the defendant looked at the victims and then fled the scene instead of rendering aid and did not properly identify himself to a law enforcement officer who spoke to him after the crash (the defendant had changed his name from the one the officer used). Taken together, the court concluded these facts represented malice and the defendant's motion was properly denied.

Reaching (3), the court found an error under *State v. Harbison*, 315 N.C. 175 (1985), as defense counsel conceded guilt in closing arguments by asking the jury to find the defendant guilty of misdemeanor death by motor vehicle instead of the more serious charges. The court looked to the *Harbison* inquiry and noted that the defendant "consented to admission of certain *elements* of the offenses, but his counsel admitted guilt to the *entire* lesser-included offenses." Slip Op. at 61. The court went on to explain "[e]ven if Defendant consented to admission of all the elements of an offense, it is not clear Defendant was aware the consequences of that action would be conceding guilt to the entire offense." *Id*. at 63. As a result, the court remanded for a hearing on whether the defendant knowingly consented to the admission of guilt.

Evidence

Character Evidence

Still images from ATM video were properly authenticated and admitted; lay opinion testimony from officer identifying defendant was properly admitted

State v. Windseth, COA24-718, ___ N.C. App. ___ (March 19, 2025). In this Jackson County case, the defendant appealed his convictions for felony obtaining property by false pretenses and felony identity fraud, arguing error in (1) admitting ATM videos of the defendant that were not properly authenticated, and (2) allowing lay-opinion testimony from an officer identifying the defendant in the videos. The Court of Appeals found no error.

When the defendant's mother went missing in January 2022, the sheriff's office began investigating her disappearance, and they eventually obtained records from Wells Fargo containing videos from ATMs where withdrawals were made from her account. These videos showed the defendant making withdrawals. Later, after the defendant was apprehended, his mother's credit and debit cards were

found on his person. At trial, the State showed stills from these videos, and an officer testified as to the videos and identifying the defendant as the person appearing in them. Defense counsel did not object at trial to the admission of these videos or the identification of the defendant.

Beginning with (1), the Court of Appeals explained that Rule of Evidence 901 governed admitting the videos, and here, the defendant only challenged the admission of the still images from these videos. Although this was a novel question, the court rejected the challenge, noting the State laid adequate foundation for the video extractions and "that the trial court properly authenticated the ATM videos as admissible evidence because their derivative photos were 'nothing more than a series of static images appearing at a given frame rate.'" *Windseth* Slip op. at 8 (quoting *United States v. Clotaire*, 963 F.3d 1288 (2020)).

In (2), the court noted that Rule of Evidence 701 governed the lay testimony, and under *State v. Collins*, 216 N.C. App. 249 (2011), the officer needed some superior level of familiarity with the defendant to justify his testimony identifying the defendant or the testimony would be invading the province of the jury. The court concluded that the evidence here supported the familiarity required by *Collins*, as the officer "had interacted with Defendant on multiple occasions as part of that preexisting investigation" into his mother's disappearance. *Windseth* Slip op. at 10.

Reference to past behavior predicting future behavior in closing argument violated Rule 404(b)

State v. Anderson, 295 N.C. App. 168 (Aug. 6, 2024). In this Cleveland County case, the defendant appealed his convictions for statutory sexual offense with a child and indecent liberties with a child, arguing error in in part that the trial court erred by failing to intervene *ex mero motu* during the prosecutor's closing argument. The Court of Appeals found no prejudicial error.

Defendant came to trial on the charges in January of 2023, after an investigation by the Cleveland County Department of Social Services into allegations that defendant sexually abused his two daughters. During the trial, defendant's two daughters both testified about defendant's actions. Additionally, a pediatrician who examined the two girls testified about statements they made during medical examinations. Defendant's half-brother also testified, and explained that his step-sister had told him about sexual contact between defendant and the half-brother's daughter. The daughter also testified about those events at trial, and a signed statement from defendant that was given in 2009 was admitted into evidence. During closing argument, the prosecutor attempted to describe "404(b) evidence" to the jury, and included the following statement: "The best predictor of future behavior is past behavior." Slip op. at 6.

The court observed that the that the prosecutor's statement here was "the exact propensity purpose prohibited by [Rule of Evidence] 404(b)." *Id*. at 19. Although this statement was improper, the court did not see prejudice to the defendant, as there was ample evidence of guilt, and the defendant did not rebut the presumption that the jury followed the trial court's instructions.

Joe Hyde blogged about the decision, here.

Authentication

Facebook messages were properly authenticated by witness testimony; CAD report of 911 call was properly admitted and excluding content of call was not inconsistent

State v. Davenport, COA24-330, ___ N.C. App. ___; 910 S.E.2d 750 (Jan. 15, 2025). In this Scotland County case, the defendant appealed his conviction for first-degree murder, arguing error in admitting (1) photos of Facebook messages allegedly sent by defendant, and (2) a CAD report of a 911 call. The Court of Appeals found no error.

In December of 2020, the defendant and several family and friends were gathered at home, when a dispute broke out between the defendant and his older brother. The dispute culminated with the defendant pulling a gun and shooting his older brother on the porch. Family members called 911 and the sheriff's office responded, finding the victim dead on the ground. At trial, the victim's daughter testified that she communicated with the defendant through Facebook Messenger because he did not have a phone with service, and she believed the victim also communicated with the defendant that way. The State offered photographs showing a Facebook Messenger conversation between the victim and defendant, and the trial court overruled defense counsel's objections to the authentication of the exhibit. The State also offered a one-page CAD report from a 911 call received two hours after the incident. The trial court allowed this exhibit solely for the purpose of establishing the call occurred, but did not allow discussion of the conversation.

Beginning with (1), the Court of Appeals noted that "the burden to authenticate under Rule 901 is not high—only a prima facie showing is required" and looked to the circumstantial evidence for support that the messages were actually sent to and from the defendant. Slip Op. at 9 (quoting *State v. Ford*, 245 N.C. App. 510, 519 (2016)). The court found sufficient evidence in the testimony of the victim's daughter, as "the use of Facebook Messenger was consistent with Defendant's behavior," and from a deputy who testified how he retrieved the messages from the victim's phone and read several messages that "contained references and information corroborating their authenticity." *Id*. at 11. This led the court to conclude it was not error to admit the Facebook Messenger comments.

Moving to (2), defendant argued "the trial court's decisions to admit the CAD report showing a 911 call had been received approximately two hours after the incident and to exclude the content of the call were inconsistent." *Id*. at 12. The court disagreed, explaining that the defendant objected the CAD report was not relevant, and the standard for relevancy is "relatively lax." *Id*. at 13 (quoting *State v. McElrath*, 322 N.C. 1, 13 (1988)). Here, the CAD report made the fact that an incident occurred in the early morning more likely, and the trial court concluded the actual substance of the call was unfairly prejudicial under Rule 403. The court explained that "these rulings are consistent and show an effort by the trial court to provide jurors with explanatory information . . . while protecting Defendant from undue prejudice." *Id*. at 14.

Facebook messages were properly authenticated as business records by certificate signed by custodian of records under penalty of perjury; messages were nontestimonial business records not subject to the Confrontation Clause

State v. Graves, COA24-308, ___ N.C. App. ___; 907 S.E.2d 470 (Nov. 5, 2024). In this Cabarrus County case, the defendant appealed his conviction for first-degree murder, arguing error in admitting Facebook messages as business records without an affidavit sworn before a notary. The Court of Appeals found no error.

In April of 2021, the victim was shot outside a convenience store by someone in a red vehicle. At trial, the State presented evidence that tied the defendant to the red vehicle and the convenience store. The State also presented evidence that the defendant blamed his recent arrest on the victim and her sister, including Facebook messages saying the victim was responsible for the arrest. These Facebook messages were offered as business records with a "Certificate of Authenticity of Domestic Records of Regularly Conducted Activity" signed by a "Custodian of Records," but the certificate did not include a notarized signature. Slip op. at 3. Instead, the certificate had a declaration signed by the custodian under penalty of perjury. Defense counsel objected to the admission of the messages without a sworn affidavit, but the trial court overruled all objections.

On appeal, the defendant argued that the messages were hearsay not properly authenticated as business records, and that admitting the records violated his Confrontation Clause protections. The Court of Appeals walked through the defendant's objections, dismissing both in turn. Considering the hearsay argument, the court looked to *State v. Hollis*, COA 23-838, 905 S.E.2d 265 (N.C. App. 2024), for the proposition that "an affidavit is valid and authenticated when it is submitted under penalty of perjury" even when the affidavit is not sworn before a notary. Slip op. at 9. The court explained that "[t]he certificate under penalty of perjury fulfills the purpose of authentication." The court then considered the Confrontation Clause issue, holding that "[t]he trial court's decision comports with the general rule that business records are nontestimonial in nature." *Id*. at 13. Because the records were nontestimonial, "[t]he Confrontation Clause does not apply." *Id*. at 14.

Lay and Expert Opinion

Officer's testimony regarding cell tower data was part lay testimony, part expert testimony; improperly admitted expert testimony was harmless under the facts of the case

State v. Lacure, COA 23-975, ___ N.C. App. ___; 910 S.E.2d 443 (Dec. 31, 2024). In this Wake County case, two defendants were indicted for murdering the victim and their cases were consolidated for trial. After both defendants were convicted of first-degree murder, they appealed, arguing in part that the trial court erred by admitting certain evidence. The Court of Appeals found no error with the evidence but reversed on different grounds for resentencing only.

In August of 2019, the victim was shot as he entered his home after being dropped off by a friend. The victim was followed by the two defendants, who were in separate vehicles but coordinating on a facetime call before shooting the victim. They fled in their separate vehicles after the shooting.

The Court of Appeals began with objections to five surveillance videotapes that the defendants argued were not properly authenticated. The court rejected the challenge for all five tapes, noting each tape was introduced by witness testimony, and "[e]ach witness testified to the reliability of the surveillance videotaping systems and that the videos that were at trial accurately depicted the original videos recorded by the surveillance systems." Slip op. at 3.

The court next considered testimony from an officer regarding data from cell towers showing the movement of the defendants on the night of the murder, as defendants argued the officer was not tendered as an expert. Here, no published North Carolina opinion had determined whether this was expert or lay opinion testimony. The court looked to the unpublished *State v. Joyner*, 280 N.C. App. 561 (2021), and the Iowa Supreme Court opinion *State v. Boothby*, 951 N.W.2d 859 (Iowa 2020). After

exploring the applicable caselaw, the court "expressly adopt[ed] the analysis and holding in *Boothby*" when concluding that most of the officer's testimony was lay testimony and admissible. Slip op. at 5. The remaining testimony, while constituting expert testimony, was not prejudicial due to the video evidence previously discussed.

Officer's testimony about whether the accident was intentional was improperly admitted where he did not observe the accident and was not an expert in accident reconstruction

State v. Hunt, COA23-890, ___ N.C. App. ___ (Oct. 15, 2024); *stay allowed*, ___ N.C. ___; 907 S.E.2d 243 (Nov. 12, 2024). In this Robeson County case, the defendant appealed his convictions for assault with a deadly weapon inflicting serious injury without intent to kill and injury to personal property, arguing the admission of expert testimony by a lay witness represented plain error. The Court of Appeals majority agreed, vacating and remanding for a new trial.

The defendant and the alleged victim, his neighbor, had a contentious relationship due to the victim riding his 4-wheeler on the defendant's property without permission and throwing beer cans in the defendant's yard. In January of 2019, the defendant was driving home and struck the victim on his 4-wheeler; testimony differed on whether the victim was riding his 4-wheeler on his own property and whether the defendant intentionally hit the victim. At trial, the law enforcement officer who responded to the accident testified about the scene, and then was asked by the State if he had formed an opinion about whether the act of hitting the victim was intentional. The officer testified that it was his opinion that the act was intentional. The defendant was subsequently convicted and appealed.

The Court of Appeals explained that defense counsel failed to object to the officer's opinion testimony at trial, meaning the review was for plain error. The court then noted that an officer who does not witness an accident is "permitted to testify about physical facts observed at the scene, including the condition of the vehicles after the accident and their positioning," but is not qualified to offer conclusions from those facts. Slip op. at 4. In this case, the State did not present the officer as an expert witness in accident reconstruction, and it was error to allow him to testify about his opinion on the intentional nature of the accident. The court then found that allowing the officer to testify about the central dispute in the case "had a probable impact on the jury" and represented plain error, justifying a new trial. *Id*. at 7.

Judge Stading dissented, and would not have found plain error, exploring the other arguments made by the defendant and recommending a remand to remedy habitual felon and restitution issues.

Testimony from police officer and forensic expert that substance appeared to be marijuana was properly admitted and supported defendant's convictions, despite lack of testing confirming substance was not hemp

State v. Ruffin, COA24-276, ___ N.C. App. ___ (March 5, 2025). In this Martin County case, the defendant appealed his convictions for trafficking in heroin offenses, sale of marijuana, and delivery of marijuana, arguing several errors related to the trial court's admission of testimony regarding the identification of marijuana and errors in sentencing. The Court of Appeals found no error.

In 2021, a confidential informant (CI) contacted the defendant, seeking to buy seven grams of fentanyl "and some marijuana." Slip op. at 3. The defendant quoted prices for both, and the CI paid defendant

and received two bags of the substances. The defendant was arrested shortly after leaving the scene. At trial, the detective who worked with the CI testified based on his training and experience that the plant material appeared to be marijuana. A forensic scientist from the state crime lab also testified about the plant material, concluding it was "plant material belonging to the genus cannabis containing tetrahydrocannabinol [THC]." *Id*. at 4. However, she also testified that the lab lacked the ability to distinguish between marijuana and hemp, and that it was possible the plant material was hemp. The defendant requested and the trial court provided a jury instruction stating that the term marijuana does not include hemp or hemp products. The defendant was subsequently convicted and received consecutive sentences of 70 to 93 months for his offenses.

Taking up the defendant's arguments, the Court of Appeals first addressed whether it was error to allow the detective to testify that the plant material was marijuana as lay opinion testimony. Because the defendant did not object to the testimony at trial, the Court reviewed for plain error. Referencing previous case law, the court noted that a police officer experienced in the identification of marijuana may testify to his visual identification of evidence as marijuana. The defendant pointed to *State v. Ward*, 364 N.C. 133 (2010), to argue that an officer's visual identification is no longer reliable since the legalization of hemp. The Court distinguished *Ward*, noting "the standard for lay opinion testimony under Rule 701— including [the detective's] testimony—is unchanged in light of *Ward*." Slip op. at 9. Subsequent caselaw also supported that "law enforcement officers may still offer lay opinion testimony identifying a substance as marijuana." *Id*. As a result, the court found no error in admitting the testimony.

The court applied the same plain error analysis to the forensic expert's testimony, as the defendant did not object to her testimony either. Because she was testifying as an expert under Rule 702, the court looked to *State v. Abrams*, 248 N.C. App. 639 (2016), to determine if the expert followed reliable procedures for identifying the substance as marijuana. The court was satisfied that the expert followed acceptable procedures as established by previous caselaw, and found the testimony reliable under Rule 702, meaning it was not error to admit her testimony.

The defendant also argued that it was error to deny his motion to dismiss because the State did not provide adequate evidence the substance was marijuana not hemp. The court disagreed, pointing to the testimony of the detective and forensic expert discussed above, as "our courts have consistently affirmed that testimony identifying a substance as marijuana—from a law enforcement officer as well as a forensic expert—is sufficient to take the matter to the jury." *Id*. at 15.

Although the trial court used the appropriate pattern jury instruction, along with an alteration specifically requested by defendant, defendant argued it was error to omit instruction that "marijuana has a Delta-9 THC content in excess of 0.3%, while hemp has a Delta-9 THC content of 0.3% or less." *Id*. at 18. Applying the plain error standard again, the court found no error, as the court held that the instruction given was an accurate statement of the law.

Finally, the court reached the sentencing issues, where the defendant argued he was improperly sentenced for selling and delivering marijuana in the same transaction. The court concluded that any error if it existed was harmless, as "the trial court consolidated those convictions to run *concurrently* with the longer sentence for Trafficking in a Mixture Containing Heroin by Transportation." *Id*. at 20. The defendant also argued that the prosecutor offered improper information that influenced sentencing considerations, as the prosecutor referenced a victim who died and a pending death by distribution charge against defendant. However, "the trial court here expressly rejected the prosecutor's arguments

regarding the separate charges on the Record and affirmatively stated that other charges would be considered in separate proceedings," meaning there was no evidence that the defendant received a sentence based on improper information. *Id*. at 25.

Phil Dixon blogged about the case in part, here.

Relevance and Prejudice

Due process protection against highly prejudicial and irrelevant evidence was clearly established; denial of habeas petition reversed

Andrew v. White, 604 U.S. ___; 145 S. Ct. 75 (Jan. 21, 2025) (per curiam). The petitioner was convicted of first-degree murder in Oklahoma state court and sentenced to death. She was allegedly a part of a conspiracy to murder her estranged husband, along with a man she was dating at the time and another person. The boyfriend eventually confessed that he and another man had killed the victim but denied that the petitioner was involved in the crime. That man was also convicted of the murder and sentenced to death. During the petitioner's trial, the State presented a voluminous amount of irrelevant and salacious evidence relating to the petitioner's private life.

Among other things, the prosecution elicited testimony about Andew's sexual partners reaching back two decades; about the outfits she wore to dinner or during grocery runs; about the underwear she packed for vacation; and about how often she had sex in her car. At least two of the prosecution guilt-phase witnesses took the stand exclusively to testify about Andrew's provocative clothing, and others were asked to comment on whether a good mother would dress or behave the way Andrew had. In its closing statement, the prosecution again invoked these themes, including by displaying Andrew's 'thong underwear' to the jury, by reminding the jury of Andrew's alleged affairs during college, and by emphasizing that Andrew 'had sex on [her husband] over and over and over' while 'keeping a boyfriend on the side.' *Andrew* Slip op. at 2.

The petitioner appealed, arguing that this evidence was so irrelevant and prejudicial that its admission violated due process protections of the state and federal constitutions. A divided state appellate court denied relief and the petitioner sought federal habeas relief based on the same arguments. Federal habeas relief from a state court conviction is only available where the state court "relied on an unreasonable determination of the facts or unreasonably applied clearly established federal law . . ." *Andrew* Slip op. at 5 (*citing* 28 U.S.C. 2254(d)(1)-(2)). The federal district court denied the petition, and the 10th Circuit affirmed that denial, finding that there was no clearly established federal constitutional claim applicable to the due process claim. A divided 10th Circuit acknowledged U.S. Supreme Court precedent stating that a due process remedy was available when extremely prejudicial evidence taints the fundamental fairness of a trial. *Payne v. Tennessee*, 501 U.S. 808, 825 (1991). The 10th Circuit nonetheless found that this was merely a "pronouncement" of the Court, and not a holding in *Payne*. Because a majority of the 10th Circuit panel determined there was no clear federal right at issue, it declined to consider whether the Oklahoma state court had unreasonably applied federal law. A dissenting judge at the 10th Circuit believed the petitioner's trial was fundamentally unfair and would have reversed the denial of the petition.

The petitioner sought review at the U.S. Supreme Court. The Court granted review and determined that the 10th Circuit had erred in finding no clearly established due process protection from unduly

prejudicial evidence. "The legal principle on which Andrews relies, that the Due Process Clause can in certain cases protect against the introduction of unduly prejudicial evidence at a criminal trial was . . . indispensable to the decision in *Payne*." *Andrew* Slip op. at 6. The Court had recognized this protection in cases preceding *Payne*, and this federal constitutional right was clearly established at the time of the petitioner's direct appeal. While the Court has never overturned a conviction based on this rule, "certain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt." *Id*. at 8. The Court therefore remanded the matter to the 10th Circuit for it to consider whether the Oklahoma state appellate court unreasonably applied clearly established federal law as to both the guilt-innocence phase of the trial, as well as to the penalty phase. "The ultimate question is whether a fair-minded jurist could disagree that the evidence 'so infected the trial with unfairness' so to render the resulting conviction or sentence a 'denial of due process.'" *Id*. at 10.

Justice Alito concurred separately. He agreed that due process protects against the admission of extremely prejudicial and irrelevant evidence but expressed no opinion on whether the challenged evidence in the petitioner's case rose to the level of such a violation.

Justice Thomas dissented, joined by Justice Gorsuch. They would have ruled that the due process protection from *Payne* was not clearly established and would have affirmed the 10th Circuit.

Admitting irrelevant and prejudicial text messages and photographs from defendant's phone represented plain error

State v. Hicks, COA20-665-2, ___ N.C. App. ___; 910 S.E. 2d 415 (Dec. 31, 2024); *temp. stay allowed*, ___ N.C. ___; 910 S.E.2d 260 (Jan. 16, 2025). In this Randolph County case, the defendant appealed her conviction for second-degree murder, arguing plain error in admitting two exhibits of the defendant's text message conversations. The Court of Appeals majority agreed, vacating the conviction and granting a new trial.

In June of 2017, the defendant shot a man she had a sexual relationship with in the back inside her home. The relationship between her and the victim was rocky and involved the use of methamphetamine; both parties were also involved in sexual relationships with others. In 2019, the defendant was convicted of second-degree murder, and appealed, arguing error in instructing the jury on the aggressor doctrine among other issues. The Court of Appeals agreed with the aggressor doctrine argument, granting a new trial in *State v. Hicks*, 283 N.C. App. 74 (2022). However, the Supreme Court reversed that holding in *State v. Hicks*, 385 N.C. 52 (2023), remanding to the Court of Appeals for consideration of the defendant's arguments regarding the text messages admitted as Exhibits 174 and 175, leading to the current opinion.

Taking up the exhibits in question, the Court of Appeals first established there was no invited error. After the prosecutor explained to the trial court their intention to provide printed out copies of the text messages to the jury to read along during the testimony, defense counsel said, "I think that's probably a pretty good idea" and indicated the defense might use the same method with their expert. Slip op. at 12. The court explained that "[t]his conversation does not indicate that defense counsel affirmatively requested that the jurors hold copies of State's Exhibits 174 and 175, that the entirety of Defendant's texts be submitted to the jury unredacted, nor that certain graphic images be enlarged." *Id*. at 12-13. The court also highlighted that defense counsel did not stipulate to admitting the two exhibits, meaning this exchange did not represent invited error. Next the court considered several examples of cross-examination by defense counsel, concluding "[d]efense counsel did not address the numerous irrelevant

and prejudicial texts nor the enlarged graphic images that Defendant now challenges on appeal." *Id*. at 18. Finally, the court concluded that defense counsel's request for an additional extraction from the defendant's phone was not invited error, as defense counsel was not trying to introduce all of the contents of the defendant's phone but instead was "seeking to uncover potentially exculpatory evidence." *Id*. at 20.

Having concluded that invited error did not apply, the court turned to plain error in admitting the exhibits, noting that "the analysis is whether, without that evidence, the jury probably would have reached a *different* result." *Id*. at 21 (quoting *State v. Reber*, 386 N.C. 153 (2024)). Exhibit 174 consisted of text messages from the defendant's phone in 2017 and Exhibit 175 was several blown-up photographs of sex acts taken from these text messages. The jury was given printed copies of both exhibits to review during the testimony of a detective, who read portions of the text messages aloud and described some of the photographs. The court noted that many of the text messages in Exhibit 174 were irrelevant and prejudicial, and "the State published text message exchanges to the jury that were grossly prejudicial and carried a high propensity to inflame the emotional reaction of the jurors." *Id*. at 27. The court reached a similar conclusion with the images in Exhibit 175, explaining "[u]nless the jurors were accustomed to looking at pornography, the close-up images of Defendant engaging in sexual activity with a married man only served the purpose of shocking and disgusting the jury." *Id*. at 34.

After determining the prejudicial and irrelevant nature of the text messages and images, and the prejudicial nature of allowing the jury to hold the printed exhibits without any limiting instruction, the court performed the *Reber* analysis by examining the state of the evidence absent the two exhibits. The court concluded "[t]he jurors probably would have acquitted Defendant if the exhibits did not cause them to reach their decision based on passion, namely, a personal revulsion toward Defendant." *Id*. at 43. As a result, the court vacated the conviction and remanded for a new trial.

Judge Murphy dissented and would have held the conflicting evidence would make this a "close case" for the jury, meaning it did not qualify as plain error under *Reber*.

Self-Defense

Defendant was "occupant" in motor vehicle for purposes of castle doctrine, even though he shot the victim after exiting the vehicle

State v. Williams, COA24-50, ___ N.C. App. ___; 911 S.E.2d 286 (Dec. 31, 2024); *temp. stay allowed*, ___ N.C. ___; 910 S.E.2d 259 (Jan. 15, 2025). In this Wake County case, the defendant appealed his conviction for voluntary manslaughter, arguing error in failing to instruct the jury on the Castle Doctrine in G.S. 14-51.2. The Court of Appeals agreed that the defendant was entitled to a Castle Doctrine instruction, reversing the conviction and remanding for a new trial.

In the summer of 2020, the defendant met a woman on Facebook, and they agreed to set up a time to meet. On the agreed day, the couple spent time driving around and returned to the street outside the woman's house. At that point, a man who previously had a relationship with the woman showed up, yelling at the defendant. This led to the defendant leaving his car, a physical altercation, and ultimately the defendant shooting the man in the street and fleeing in his vehicle. In February of 2023, the defendant went on trial for murder. During the trial, the State called the woman and another witness who was present at the time, and both testified about the events leading to the shooting. The defendant

also testified about the events and why he felt it was necessary to shoot the victim. At the charge conference, the trial court denied the defendant's request for a Castle Doctrine instruction under G.S. 14-51.2, as the defendant was not an "occupant" in his motor vehicle when the shooting occurred. Slip op. at 7. The trial court ultimately gave an instruction on self-defense but included the instruction that if the defendant used excessive force in self-defense, he would be guilty of voluntary manslaughter. The defendant was subsequently convicted of voluntary manslaughter and appealed.

The Court of Appeals first explained the difference between common law self-defense and the Castle Doctrine, as the latter provides a defendant "the presumption of justified deadly force," which is rebuttable in certain circumstances. *Id*. at 14-15. Here, there were two issues regarding the defendant's right to an instruction on the doctrine; first, whether the defendant was an "occupant" of a motor vehicle when using force, and second, whether (i) the victim was unlawfully entering or entered the vehicle and (ii) the defendant knew or had reason to believe the unlawful entry was occurring or occurred. *Id*. at 15. The first issue required the court to interpret the language of G.S. 14-51.2, as the term is undefined in the statute. Because the plain language also did not offer a clear answer, the court looked to "the language, object, and spirit of the statutory castle doctrine." *Id*. at 20. After this analysis, the court noted the use of the word "of" and not "within," and arrived at the following interpretation:

> [T]he lawful occupant "of" a home, motor vehicle, or workplace is not bound to become a fugitive from these locations, and therefore is not required to flee or remain in his home, motor vehicle, or workplace until his assailant is upon him. Rather, the lawful occupant, under specific circumstances— including those where he is no longer within the home, motor vehicle, or workplace— may exercise deadly defensive force against his assailant. *Id*. at 24 (cleaned up).

Applying this interpretation to the current case, "where Defendant retreated from his vehicle amidst an enduring attack and exercised deadly force while standing directly next to the driver's side door, and still under attack," the court held that the defendant was an "occupant" for purposes of the statute. *Id*. at 27.

The court then looked to determine if the victim unlawfully entered the vehicle, and if the defendant had the required knowledge of that entry. The court found both of these in the record, as "the Record demonstrates that [the victim], without Defendant's invitation or consent, opened the passenger's side door of Defendant's car and began attacking Defendant, and after Defendant exited his vehicle, [the victim] came around the vehicle and continued to attack Defendant." *Id*. at 29. Because the defendant was an "occupant" of the vehicle and the victim unlawfully entered the vehicle, the defendant was entitled to the Castle Doctrine instruction. The court held the lack of a Castle Doctrine instruction was prejudicial, explaining "because Defendant has shown by competent evidence he was entitled to a statutory castle doctrine instruction, but for the trial court's instructional error, there is a reasonable possibility a different result would have been reached by the jury." *Id*. at 31.

Judge Stroud concurred in the result only and wrote separately to express that the majority engaged in unnecessary statutory interpretation to justify that defendant was an "occupant" under the statute.

Joe Hyde blogged in part about *Williams*, here.

Defendant was not entitled to castle doctrine instruction after pursuing intruder into nearby parking lot and beating him to death

State v. Carwile, COA23-885, ___ N.C. App. ___; 909 S.E.2d 913 (Dec. 17, 2024). In this Lincoln County case, the defendant appealed his convictions for second-degree murder, misdemeanor assault, and misdemeanor communicating threats, arguing (1) plain error in failing to give the jury an instruction on the defense of habitation, and (2) error by refusing to give his requested special jury instruction. The Court of Appeals found no error.

In September of 2018, a masked man approached the defendant's house, grabbed a chainsaw off the defendant's front porch and entered the house, striking defendant with the chainsaw. The defendant fought off the intruder, and their fight continued out into the yard, through a neighbor's yard, and into a nearby car dealership parking lot. By the time they had reached the car dealership, the intruder had dropped the chainsaw and was backing away from the defendant with his hands raised. At this point, the defendant's wife and another man staying at the defendant's home arrived, and all three began beating the intruder. The defendant continued to slam the intruder's head into the concrete and beat him even as the intruder lay motionless on the ground. The intruder died of the injuries sustained from the beating. At trial, the defendant asserted defense of habitation and requested a special jury instruction. The trial court denied to give the requested instruction, and the defendant did not object to the jury instructions given at trial.

For (1), the defendant argued the following Castle Doctrine instructions were necessary: "(a) his fear for his life was presumptively reasonable; (b) an aggressor instruction clarifying that a person is 'not the aggressor while defending their home'; and (c) he was allowed to threaten [the intruder] with lawful force." Slip op. at 5. The Court of Appeals disagreed and reviewed each disputed instruction in turn. In (a), the court looked to G.S. 14-51.2(c), where the General Assembly provided exceptions to the presumption of reasonable fear. The court noted that the intruder had clearly exited the defendant's home, and based on the evidence, had also "discontinued all efforts to unlawfully and forcefully enter" the defendant's home. *Id*. at 9. Resolving (b), the court concluded "the evidence shows Defendant became the aggressor when Defendant continued to pursue [the intruder] after [the intruder] discontinued his efforts to unlawfully and forcefully enter the home and tried to leave." *Id*. at 12-13. Finally, in (c), the court noted that under the facts of this case the defendant was not entitled to use deadly force under the Castle Doctrine and "[t]hus, Defendant's contention that if deadly force is justified, so too is communicating threats fails because Defendant's use of deadly force was *not* justified." *Id*. at 14. The court also dispensed with the defendant's ineffective assistance of counsel claims as he was not entitled to the Castle Doctrine in this case.

Coming to (2), the court noted that the defendant's requested instruction focused on the intruder's use of force and inability to assert self-defense while committing a felony, and attempted to extend *State v. McLymore*, 380 N.C. 185 (2022), "to the conduct of [the intruder], arguing that [the intruder] used impermissible force against Defendant because he was in the process of fleeing a felony when he fled Defendant's home." Slip op. at 20. The court found that this was not supported by legal authority as the intruder "is not a criminal defendant and is not asserting self-defense as an affirmative defense for his conduct." *Id*. Additionally, to the extent the defendant's requested instruction dealt with the defendant's right to self-defense, the jury was properly instructed on that concept, and the court found no error in the instructions as given.

Joe Hyde blogged in part about *Carwile,* here.

Despite conflicting evidence of who was the aggressor in the confrontation, defendant was entitled to self-defense instruction on attempted murder and assault charges

State v. Myers, COA24-435, ___ N.C. App. ___; 909 S.E.2d 378 (Nov. 19, 2024). In this Union County case, the defendant appealed his convictions for attempted first-degree murder, discharging a weapon into an occupied property, and assault with a deadly weapon inflicting serious injury, arguing error in failing to instruct the jury on self-defense. The Court of Appeals agreed, granting a new trial.

In December of 2021, the defendant and two friends stopped at a local store to purchase snacks, and the defendant recognized another man, a purported gang member, from an Instagram video where he threatened to shoot up the defendant's home. The defendant and his friends got into a dispute with this man and another possible gang member, eventually leading to shots being fired. Based on the defendant's testimony, he initially attempted to prevent the gun violence, but after shots were fired, he retaliated, hitting the eventual victim. The defendant cooperated with law enforcement the next day, surrendering his firearm and giving a statement. At trial, defense counsel requested an instruction on self-defense, but the trial court denied the request, as the trial court felt case law precluded giving the instruction in this case.

Taking up the self-defense argument, the Court of Appeals noted that "a defendant who presents competent evidence of self-defense at trial is entitled to a jury instruction on this defense." Slip op. at 6. After establishing the statutory basis for self-defense under G.S. 14-51.3(a) and the applicability of perfect and imperfect self-defense, the court examined the evidence in the light most favorable to the defendant. The court concluded "the evidence is sufficient to support an instruction of at least imperfect self-defense, if not perfect self-defense" and conflicting evidence about the initial aggressor "[must] be resolved by the jury, after being fully and properly instructed." *Id*. at 10.

Crimes

Child Abuse

Trial court properly denied request for lesser included offense of misdemeanor child abuse and instruction on parent's right to administer corporal punishment

State v. Freeman, 295 N.C. App. 209 (Aug. 6, 2024). In this Montgomery County case, the defendant appealed her conviction for felony child abuse resulting in serious physical injury, arguing error in (1) failing to instruct on the lesser included offense of misdemeanor child abuse, (2) denying her motion to dismiss, and (3) failing to instruct on a parent's right to administer corporal punishment. The Court of Appeals found no error.

The charge arose from abuse inflicted on the five-year old son of the defendant's fiancée. After the boy got in a scuffle at his bus stop, the defendant made him run in place for at least 45 minutes. A social worker at the school observed bruises and swelling on his feet, and other bruises on his body. During an interview, the defendant admitted to making the boy run in place for at least 45 minutes "three to four times" during the previous week. Slip op. at 5. At trial, the defendant moved to dismiss the charges for insufficient evidence, and the trial court denied the motion. The defendant did not object to the jury instructions or request an instruction on the lesser-included offense.

Beginning with (1), the Court of Appeals explained that because the evidence was clear as to each element of felony child abuse, the defendant was not entitled to an instruction on the lesser included offense. The court focused on the "serious physical injury" standard to differentiate between the charges, and noted "[i]n totality, the evidence here demonstrated [the boy] experienced 'great pain and suffering' and that his injuries were such that a reasonable mind could not differ on the serious nature of [his] condition." *Id*. at 14.

Moving to (2), the defendant argued insufficient evidence of "serious physical injury" and "reckless disregard for human life." *Id*. at 15. The court disagreed, pointing to the analysis in (1) above, and to the standard from *State v. Oakman*, 191 N.C. App. 796 (2008), that culpable or criminal negligence could constitute "reckless disregard for human life." Here, the defendant's actions represented sufficient evidence of both elements to justify denying the motion to dismiss.

Finally, in (3) the court acknowledged the general rule that a parent, including a person acting in *loco parentis*, is not criminally liable for corporal punishment, but the general rule does not apply when the parent acts with malice. First, the court concluded that the defendant's position as a fiancée of the biological mother did not represent her acting in *loco parentis*. The court then explained that even if defendant was acting in *loco parentis*, "a jury could reasonably infer that Defendant acted with malice; therefore, the absence of a jury instruction on corporal punishment did not prejudice Defendant." *Id*. at 21.

Judge Murphy concurred in (2) and concurred in the result only for (1) and (3).

Driving Offenses

Assault with a deadly weapon inflicting serious injury may serve as the predicate for felony murder when defendant acted with actual intent to commit the act forming the basis of the murder charge; G.S. 20-166 is ambiguous regarding the unit of prosecution, leading the court to apply the rule of lenity and conclude the unit is per crash, not per victim

State v. Watlington, COA23-1106, ___ N.C. App. ___ (Apr. 16, 2025). In this Guilford County case, two defendants, Watlington and Felton, both appealed from judgments entered after a trial where the defendants were tried jointly. Watlington was convicted of first-degree murder and additional felonies related to her attempts to run over multiple people at a gas station after a fight. Felton was convicted of eleven counts of accessory after the fact to Watlington's convictions. The Court of Appeals arrested judgment on three of Watlington's convictions for hit and run and three of Felton's convictions for accessory after the fact to hit and run, but found no error with the other convictions, remanding for resentencing.

One early morning in October of 2019, Felton drove an SUV to a gas station in Greensboro, with Watlington as a passenger. After hitting a parked car, a confrontation ensued between Watlington, Felton, and the car's owner. The argument escalated into a brawl involving multiple people over the course of twenty-five minutes, and testimony showed Felton was the primary aggressor. Around thirty minutes after the confrontation began, Watlington got into the driver's seat of the SUV and backed over a group of people; it took her approximately ten seconds to completely run over the victims. After stopping completely clear of the victims and sitting for eight seconds, Watlington drove forward, running over the same group of people at full speed. Felton watched the entire incident without

stopping Watlington, then stood over the victims yelling at them. One victim died at the scene, and several others sustained serious injuries. The two defendants drove away in the SUV but were apprehended nearby a short time later.

The Court of Appeals took up Watlington's arguments first, beginning with her argument that it was error for assault with a deadly weapon inflicting serious injury to be the predicate felony for her first-degree murder conviction. In *State v. Jones*, 353 N.C. 159 (1994), the Supreme Court held that "[f]or assault with a deadly weapon inflicting serious injury to serve as the predicate felony for a felony murder conviction . . . the individual must have acted with a 'level of intent greater than culpable negligence.'" Slip Op. at 11 (quoting *Jones* at 167). Here, Watlington argued that *Jones* represented a "bright-line rule" that assault with a deadly weapon inflicting serious injury could never be a predicate felony, an argument the court rejected. *Id*. Instead, the court explained that "assault with a deadly weapon inflicting serious injury, as a matter of law, can serve as the predicate felony for a felony murder conviction when the defendant acts with the 'actual intent to commit the act that forms the basis of [the] first-degree murder charge.'" *Id*. at 13 (quoting *Jones* at 166). The trial court properly instructed the jury in this case, and the court noted that sufficient evidence supported the conclusion that Watlington acted intentionally when driving over the victims with the SUV. The court also rejected Watlington's challenge to the jury instruction for felony murder and the lack of an instruction on voluntary manslaughter, finding no errors in the instruction given and no evidence to support an additional voluntary manslaughter instruction.

The court next considered Watlington's argument regarding her multiple hit and run counts and agreed that the structure of the statute did not support all the convictions. G.S. 20-166 "does not clarify whether its unit of prosecution is the conduct of leaving the scene of a crash or the number of victims injured as a result of the crash," resulting in an ambiguity for the court to resolve. *Id*. at 18. Here the court applied the rule of lenity, interpreting the ambiguity in Watlington's favor. The court explained that there were five victims, but only two crashes, one when Watlington backed over the victims and the second when Watlington drove forward over the victims. As a result, Watlington could only be convicted twice, "one conviction for Watlington's conduct of leaving the scene of each crash," and the court arrested judgment on the other three hit and run convictions. *Id*. at 21.

Arriving at Felton's arguments, the court first dispensed with her argument that there was insufficient evidence to support her convictions for accessory after the fact. Here, evidence showed that Felton watched Watlington hit the victims with the SUV, then left the scene with her and took the keys to the SUV, concealing the identity of Watlington as the driver. The court found this evidence sufficient to support Felton's convictions. The court also rejected Felton's challenge to the language of her indictments, finding no fatal variance from the evidence at trial.

Felton argued that she should not be subject to multiple convictions for accessory after the fact; the court rejected this, explaining "the context of [G.S.] 14-7 clearly indicates that the legislature intended the allowable unit of prosecution to be each felony for which the principal committed and the accessory assisted after the fact." *Id*. at 27. The court then considered Felton's argument that she was convicted as accessory after the fact to hit and run for merely leaving the scene. Rejecting this argument, the court pointed to the many other aspects of Felton's culpability after the crashes, including taking the SUV's keys and concealing Watlington's identity as the driver. However, the court arrested judgment on three of Felton's convictions, as it had done for Watlington's hit and run convictions discussed above.

Felton then challenged the jury instructions, arguing they provided a theory of guilt not alleged in the indictments, specifically that she assisted Watlington in attempting to escape. The court noted the circumstantial evidence of Felton possessing the SUV keys and that this did not represent a stand-alone theory of guilt, rejecting Felton's argument. Finally, the court rejected Felton's challenge to the closing argument, noting that law enforcement body cam footage supported the inference that Felton and Watlington were together when apprehended.

Drug Offenses

Defendant's admission that he lived in his parents' home, along with circumstantial evidence, supported conviction of keeping or maintaining a dwelling for controlled substances

State v. Rowland, COA24-274, ___ N.C. App. ___ (March 19, 2025). In this Wake County case, the defendant appealed his convictions including keeping or maintaining a dwelling for the keeping or selling of controlled substances, arguing error in denying his motion to dismiss the keeping or maintaining a dwelling charge. The Court of Appeals disagreed, finding no error.

Raleigh Police received information that the defendant was selling bundles of heroin from his residence and began investigating, resulting in a 2021 search warrant for the home that turned up heroin, firearms, and drug paraphernalia. The residence was owned by the defendant's parents, and in an interview with police, the defendant told them he had lived at the residence "on and off since 2005." *Rowland* Slip op. at 2. At trial, the defendant moved to dismiss the charge, arguing the State did not demonstrate that the dwelling had been kept or maintained over time for the purpose of controlled substances, but the trial court denied the motion.

The Court of Appeals first noted that G.S. 90-108(a)(7) governed the crime in question, and "[w]hile mere *occupancy* of a property, without more, will not support the 'keeping or maintaining' element, 'evidence of *residency*, standing alone, is sufficient to support the element of maintaining.'" *Id*. at 5 (quoting *State v. Spencer*, 192 N.C. App. 143, 148 (2008)). Additionally, residency can be established by the defendant's admission and through circumstantial evidence, both of which were present here. The court concluded that the admission that the defendant resided at his parents' house along with the State's circumstantial evidence showing that the defendant resided in the home represented substantial evidence that the defendant kept or maintained a dwelling for controlled substances.

Circumstances surrounding arrest and discovery of pipe supported conclusion that defendant intended to use the pipe for controlled substances other than marijuana

State v. Bryant, COA24-436, ___ N.C. App. ___ (Apr. 16, 2025). In this Union County case, the defendant appealed his conviction for misdemeanor possession of drug paraphernalia, arguing there was insufficient evidence that he intended to use the paraphernalia, a pipe, for a controlled substance other than marijuana. The Court of Appeals disagreed, finding no error.

The defendant was arrested after an encounter in September 2021 where police officers thought the defendant and his two acquaintances were shoplifting from a local Belk. The officers did not find any store merchandise, but while searching one of the acquaintances, the officers found a medicine bottle with small baggies filled with a brown powder. The defendant ran from the officers, throwing a bottle that also contained the brown powdery substance. When he was detained, officers found a glass pipe,

red straw, and plastic baggies containing power on his person. The brown substance was confirmed to be heroin after testing. The defendant came to trial on charges of felony trafficking in heroin by possession and transporting, as well as the misdemeanor charge. He moved to dismiss the misdemeanor, but the trial court denied the motion, and the defendant was subsequently convicted.

On appeal, the defendant pointed to G.S. 90-113.22, which makes it a misdemeanor offense to "knowingly use, or to possess with intent to use, drug paraphernalia to . . . inject, ingest, inhale, or otherwise introduce into the body a controlled substance *other than marijuana* which it would be unlawful to possess." *Bryant* Slip op. at 5. The defendant argued insufficient evidence to show he intended to use the pipe for a controlled substance other than marijuana. The Court of Appeals noted a lack of controlling authority, but looked to *State v. Gamble*, 218 N.C. App. 456, 2012 WL 380251 (2012) (unpublished), and *State v. Harlee*, 180 N.C. App. 692, 2006 WL 3718084 (2006) (unpublished), for guidance regarding circumstances that supported intent with paraphernalia like crack pipes. The court found similar support here, as the pipe was found in the same pocket of the defendant's pants as the baggies of heroin, and the pipe was visibly charred, showing previous use.

Firearms Offenses

Possession of a firearm by a felon under G.S. 14-415.1 was not facially unconstitutional or unconstitutional as applied to defendant's case; defendant's statements showing racial motivation were properly admitted

State v. Nanes, COA24-487, ___ N.C. App. ___ (Feb. 19, 2025). In this Wake County case, the defendant appealed his convictions for first-degree murder and possession of a firearm by a felon, arguing (1) G.S. 14-415.1, the statute making possession of a firearm by a felon an offense, was unconstitutional, and (2) error in admitting the defendant's own statements. The Court of Appeals held G.S. 14-415.1 was constitutional and found no error.

During August of 2020, the defendant shot and killed two victims he had never met, one in Raleigh and another in Cary. The defendant's probation officer recognized a BOLO put out by police, and reported him, leading to his arrest. The defendant had previously been convicted of felony animal cruelty for stealing his parent's dog and decapitating it with a knife. At trial, the State offered statements from the defendant made during a phone call with his mother, where she questioned why he posted a picture of a firearm on social media despite being convicted of a felony. The defendant responded "[t]his is a hard time for our country, and you've got racist black people out here." *Nanes* Slip op. at 18.

In (1), the defendant argued that G.S. 14-415.1 was unconstitutional both facially and as-applied to his situation, pointing to *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024), to support his arguments. The Court of Appeals began with the facial challenge, noting "the State must only show that section 14-415.1 'is constitutional in some of its applications.'" *Nanes* Slip op. at 6 (quoting *Rahimi* at 693). The court acknowledged that G.S. 14-415.1 regulated some conduct covered by the Second Amendment, but concluded the section was "sufficiently analogous to historical laws to show that prohibiting convicted felons from possessing firearms is within the nation's history and tradition of firearm regulation." *Id*. at 6-7. Because G.S. 14-415.1 could be "applied constitutionally to numerous circumstances" the court found no merit in the defendant's facial challenge. *Id*. at 10.

Moving to the as-applied constitutional challenge, the defendant argued his felony did not represent violent crime against a person, and therefore shouldn't justify disarming him. The court again disagreed, noting that beheading the dog was a violent crime, and "the record reflects Defendant has a history of victimizing others resulting in convictions for: assault on a government official or employee, simple assault, simple assault again, assault inflicting serious injury, assault on a handicapped person, and assault and battery." *Id*. at 11. This led the court to conclude that the defendant had a history of violence towards others, and removing his right to possess a firearm was well within historical tradition. The court also considered the defendant's arguments under Section 30 of the North Carolina Constitution, applying the five-factor framework from *Britt v. State*, 363 N.C. 546, (2009). After performing the analysis the court concluded "the *Britt* factors undoubtedly weigh in favor of upholding the application of section 14-415.1 against Defendant as he has a demonstrated history of violence, victimizing others, and disregarding the law." *Nanes* Slip op. at 16.

Arriving at (2), the court explained "[t]he State's theory of the case was that, because both victims were peaceful individuals whom Defendant had never met that happened to be people of color, the murders were committed out of racial animus on Defendant's part." *Id*. at 18. This made the defendant's comments relevant and probative of his motive for the murders under Rule of Evidence 401. The court then looked to the Rule of Evidence 403 balancing test, concluding the trial court adequately balanced the prejudicial effect with the probative value. The court noted that several of the defendant's statements that were more inflammatory were excluded, and even if it were error to admit the statements, overwhelming evidence supported the defendant's guilt in the matter, meaning he could not demonstrate the jury would have reached a different result without the statement in evidence.

Homicide

Inevitable discovery justified admission of the evidence found after police discovered victim's body during wellness check; conviction for kidnapping was double jeopardy where restraint of the victim led to her suffocation and was not separate and independent from the murder

State v. Moore, COA23-816, ___ N.C. App. ___ (Oct. 15, 2024); *stay allowed*, ___ N.C. ___; 907 S.E.2d 739 (Nov. 20, 2024). In this Cumberland County case, the defendant appealed after his convictions for first-degree murder, first-degree kidnapping, and common law robbery, arguing error in (1) denying his motion to suppress the results of a search of his former residence, (2) denying his motion to dismiss the kidnapping charge because it represented double jeopardy, (3) admitting Rule 404(b) evidence, and (4) excluding some of the defendant's testimony. The Court of Appeals majority found no error in (1), (3) or (4), but in (2) found that the kidnapping charge represented double jeopardy, vacating the sentence for kidnapping.

In August of 2018, police performed a wellness check on the defendant's wife after members of her family reported not hearing from her for a week. When she did not respond, police entered the residence and discovered her bound and cuffed to a bed with trash bags over her head, dead from apparent asphyxiation. The police officers also determined that the defendant had not paid rent for the month and the landlord was preparing to evict them from the residence.

Taking up (1), the Court of Appeals explained that the trial court properly applied the inevitable discovery doctrine in this matter when admitting the evidence obtained from the residence, explaining the victim "would have been inevitably discovered by either her family or by the landlord who had

begun eviction proceedings." Slip op. at 4. The court also noted that the defendant had permanently abandoned the residence, forfeiting his standing to challenge the search.

Moving to (2), the court quoted *State v. Prevette*, 367 N.C. 474 (1986), for the concept that the State must admit "substantial evidence of restraint, independent and apart from the murder" to support a separate kidnapping charge. Slip op. at 6. Here, the facts were similar to *Prevette*, as the victim's "hands, feet, and arms were restrained [and] she could not remove the bags that caused her suffocation" based on the evidence. *Id*. at 5. The court acknowledged that the restraint of the victim's legs and feet did not cause her suffocation but noted that the legs and feet of the victim in *Prevette* were bound as well. Because there was no evidence that the victim was restrained "independently and apart from the murder," the court vacated the defendant's sentence for kidnapping. *Id*. at 7.

Reaching (3), the court noted that the testimony in question dealt with a prior incident where the defendant put his hands around the victim's neck, but because of the overwhelming evidence of the defendant's guilt, he could not demonstrate prejudice from the testimony. In (4), the court found that the defendant failed to "raise his argument as a constitutional issue" and the argument was waived on appeal. *Id*.at 8.

Judge Thompson dissented and would have found restraint of the victim independent and apart from the murder due to the additional restraints present and the evidence that the defendant spent some amount of time smoking cigarettes and drinking coffee while the victim was restrained.

(1) State failed to admit sufficient evidence of premeditation and deliberation for first-degree murder conviction; (2) defendant was not entitled to stand-your-ground instruction because he was on neighbor's property without explicit authorization to be there; (3) evidence of victim's felony convictions were admissible for nonpropensity purposes

State v. Hague, COA 23-734, ___ N.C. App. ___; 905 S.E.2d 798 (Aug. 20, 2024); *stay allowed*, ___ N.C. ___; 905 S.E.2d 338 (Sept. 23, 2024). In this Iredell County case, the defendant appealed his conviction for first-degree murder, arguing error in (1) denying his motion to dismiss for insufficient evidence of premeditation and deliberation, (2) omitting stand-your-ground from the instruction on self-defense, and (3) excluding evidence of the victim's previous felony convictions. The Court of Appeals majority found error in (1) and (3), vacating the defendant's conviction and remanding for a new trial.

In September of 2020, the victim and several other men were dove hunting in a field next to the defendant's land. The victim had permission from the landowner to hunt in the field, and had hunted here for several years, but as a convicted felon he could not legally possess a firearm. The defendant kept a horse rescue farm next to the field, and in 2017 a man hunting with the victim had shot one of the defendant's horses. After that incident, the defendant asked the victim to be more cautious while hunting, and to avoid hunting near the fence line. On the morning of the incident, the defendant heard shooting and went to confront the victim; the defendant was carrying a pistol in his back pocket. After an argument, the victim shoved the defendant to the ground. After that, testimony differed as to whether the victim charged the defendant and the defendant shot him in self-defense, or the defendant shot the victim immediately. At trial, the State moved to exclude discussion of the victim's prior felony convictions, and the trial court granted the motion. The defendant moved to dismiss, arguing lack of evidence showing premeditation or deliberation for the murder, but the motion was denied. The defendant also objected to the proposed jury instruction on self-defense, arguing it did not include an instruction on stand-your-ground law, but the trial court declined to change the instruction.

Taking up (1), the Court of Appeals first outlined the eight factors "which assist in the determination of whether premeditation and deliberation were present." Slip op. at 12. Here, the defendant argued he "did not have a history of arguments, ill will, or serious animosity" towards the victim, and instead "was in fear for his life" as he thought the victim was reaching for a gun. *Id*. at 14. The court's majority agreed with the defendant that there was no evidence of arguments or ill will, and after reviewing the eight factors, concluded this case did not show premeditation and deliberation. The majority highlighted the age difference, as the defendant was 72 years old and the victim was 46, and the conduct of the defendant after the shooting, as he went home, unloaded his firearm, and called law enforcement to report the shooting.

Moving to (2), the court disagreed that a stand-your-ground instruction was justified, as the defendant was not in a place where he had a lawful right to be, the field adjacent to his property. The defendant argued that "absent evidence that he was a trespasser, he had a lawful right to be in the field and there is no reason to assume he was there unlawfully." *Id*. at 21. However, the court looked to G.S. 14-51.3 and caselaw interpreting it, determining that since the defendant was on privately owned property, and he did not admit evidence that he had permission to be there, he had not established a lawful right to be there for stand-your-ground purposes. The court also noted that, even assuming the instruction was error, the defendant could not demonstrate prejudice as the self-defense instruction required the jury to consider the "the proportionality between the degree of force and the surrounding circumstances" before convicting him of first-degree murder. *Id*. at 23.

Reaching (3), the court noted that the trial court excluded evidence of the victim's convictions under Rule of Evidence 404(b) because the defendant did not know the nature of the victim's prior convictions. The majority opinion explained this was error, as the evidence was not being admitted to show the victim's propensity for violence, but instead to show the defendant's state of mind and fear of being harmed. Applying *State v. Jacobs*, 363 N.C. 815 (2010), the majority held that "the evidence presented serves a nonpropensity purpose and such evidence should generally be admissible." *Id*. at 27. After establishing the evidence was admissible, the majority determined that the error was prejudicial, as "[t]he excluded evidence would most certainly have provided the jury with insight into Defendant's state of mind, which [was] essential to his claim of self-defense, and whether Defendant's fear and degree of force was reasonable." *Id*. at 28. The exclusion also required redaction of the 911 call and removed the context from testimony about the victim hunting illegally, which would have been relevant to the jury's deliberation.

Judge Stading concurred in (2) but dissented from the majority's opinion in (1) and (3), and would have held that sufficient evidence supported premeditation and deliberation and that it was not error to exclude the victim's felony status. *Id*. at 32.

Impaired Driving

Trial judge's finding of aggravating factors in violation of the DWI sentencing statute did not automatically entitle a defendant to a new sentencing hearing; G.S. 20-179(a1)(2) does not provide defendant greater protection than required under *Blakely* and requires only harmless error review

State v. King, 119A23, 386 N.C. 601 (Oct. 18, 2024). In this Buncombe County case, the Supreme Court reversed the Court of Appeals decision vacating the defendant's convictions for driving while impaired (DWI) and reckless driving due to errors by the trial court in finding aggravating factors while sentencing.

The Court remanded to the Court of Appeals for a new hearing to determine whether the error was harmless.

In August of 2021, the defendant was convicted in district court of DWI, reckless driving, and possession of marijuana and paraphernalia. The defendant appealed, and at superior court a jury found him guilty of DWI and reckless driving but acquitted him of the other charges. During sentencing, the trial judge found three aggravating factors and no mitigating factors, and sentenced the defendant to a Level III punishment. The Court of Appeals found reversible error, as aggravating factors must be found by a jury under *Blakely v. Washington*, 542 U.S. 296 (2004). The court also noted G.S. 20-179(a1)(2) was amended to prevent trial judges from determining aggravating factors. The majority held that a violation of G.S. 20-179 entitled the defendant to a new sentencing hearing, while the dissenting judge argued the error was harmless, *Blakely* errors only lead to a harmless error review, and defendant was not entitled to not automatic resentencing. The State appealed, leading to the current opinion.

The Supreme Court explained the issue at hand as "whether a trial judge's finding of aggravating factors in violation of the DWI sentencing statute automatically entitles a defendant to a new sentencing hearing." Slip op. at 6. The Court held that "[t]he finding of aggravating factors by a trial judge contrary to [G.S.] 20-179(a1)(2) does not constitute reversible error if the error was harmless." *Id*. at 7. To reach this conclusion, the Court examined the text of the statute, emphasizing that "the provision nowhere states that a violation automatically entitles a defendant to a new sentencing hearing." *Id*. at 8. The Court noted that the current text of the statute was intended to comply with *Blakely*'s requirements but disagreed with the Court of Appeals majority that the General Assembly intended "to provide protection beyond what the Sixth Amendment requires." *Id*. Looking to legislative history and intent, the Court pointed to similar language in the Structured Sentencing Act as evidence that the intent was not to expand protection beyond harmless error review. The Court also overruled *State v. Geisslercrain*, 233 N.C. App. 186 (2014), to the extent that it conflicted with the conclusions in the current opinion. Slip op. at 14-15.

Justice Earls, joined by Justice Riggs, dissented and agreed with the interpretation that G.S. 20-179(a1)(2) provides greater protection than required under *Blakely*, and that even if harmless error were the standard, the defendant was entitled to a new sentencing hearing. *Id*. at 16.

Belal Elrahal blogged about this case, here.

Supreme Court per curiam affirms the Court of Appeals decision regarding exigent circumstances justifying warrantless blood draw

State v. Burris, 198A23, 386 N.C. 600 (Oct. 18, 2024). The Supreme Court per curiam affirmed the Court of Appeals decision *State v. Burris*, 289 N.C. App. 535 (2023). In that decision, the Court of Appeals majority held that denying the defendant's motion to suppress the results of a warrantless blood draw did not represent error because the State established sufficient evidence of exigent circumstances.

Further discussion about the Court of Appeals decision and the applicable legal standard is in this blog post by Prof. Shea Denning.

Stalking

Defendant's course of conduct and actions towards victim supported stalking conviction; no invited error when defense counsel participated in crafting jury instruction but did not affirmatively consent to exclusion of contested provision; limiting instruction for Rule 404(b) evidence not required when no party requests it

State v. Plotz, COA 23-749, ___ N.C. App. ___ (Aug. 20, 2024); *temp. stay allowed*, ___ N.C. ___; 905 S.E.2d 55 (Sept. 9, 2024). Over the course of 2020, the defendant engaged in a series of harassing and intimidating behaviors towards his duplex neighbor, who was a 65-year-old black man. After an argument about yard waste, the defendant placed a letter in the victim's mailbox referencing Section 74-19 of the Winston-Salem ordinances, which requires residents to keep the streets and sidewalks free of vegetation. The defendant began putting milk jugs filled with water in his driveway, with letters written on them that spelled out racial and homophobic slurs. Late at night, the defendant would rev up his truck's engine with the taillights aimed at the victim's bedroom window, and bang on the wall of the duplex which served as the victim's bedroom wall. The victim eventually filed charges against the defendant, leading to his conviction.

On appeal, the defendant first argued error in failing to instruct the jury to the specific course of conduct, which allowed the jury to convict him of stalking under a theory of conduct not alleged in the charging instrument. This led the court to consider whether it was invited error, as defense counsel participated in the discussion of the jury instructions based on the pattern instruction for stalking. After reviewing the relevant caselaw, the court could not establish invited error here. Defense counsel participated in discussion around the jury instructions, but "the specific issue of instructing the jury that its conviction could only be based on the course of conduct alleged in the charging instrument did not arise during the charge conference." Slip op. at 14. The court explained that "when a provision is excluded from the instruction and the appealing party did not affirmatively consent to its exclusion but only consented to the instructions as given[,]" the party's actions do not rise to invited error. *Id*. at 16. The court then moved to plain error review, finding the defendant could not show prejudice as the evidence supported conviction based on the course of conduct alleged in the charging document, and different instructions would not have produced a different result.

The defendant also argued that admitting evidence of conduct not described in the charging document represented the admission of evidence under Rule of Evidence 404(b), and he argued this required a limiting instruction from the trial court. The court disagreed, explaining that the defendant did not request a limiting instruction and "the trial court is not required to provide a limiting instruction when no party has requested one." *Id*. at 21. The defendant then argued error in instructing the jury on theories of guilt under G.S. 14-277.3A that were not in the charging document, and here, in contrast to the issue above, the court found invited error because the defendant "specifically and affirmatively consented to this construction of the charge." *Id*. at 23. The court also pointed out that the defendant could not demonstrate prejudice, as it was unlikely that the jury would find the defendant put the victim at fear of death or serious injury, but not of further harassment.

The defendant also argued ineffective assistance of counsel, pointing to the alleged errors discussed above. The court dispensed with this part of the defendant's argument by noting he could not establish the prejudice necessary to prevail on an ineffective assistance claim. Assuming counsel had objected to the various issues above, the court determined that the same guilty outcome was likely. Finally, the court considered the defendant's argument that the evidence was insufficient to support a conviction, determining that evidence of the defendant's "course of conduct . . . combined with evidence of his other actions towards [the victim]" supported the jury's verdict.

Jury Issues

Substitution of alternate juror during deliberations justified new trial

State v. Thomas, COA23-210, ___ N.C. App. ___; 906 S.E.2d 519 (Sept. 3, 2024). In this Wake County case, the defendant appealed his convictions for second-degree murder and assault with a deadly weapon, arguing in part that the substitution of an alternate juror after deliberation began justified granting him a new trial. The Court of Appeal accepted that argument and granted a new trial.

In November of 2019, surveillance footage caught a red car at a convenience store where a shooting occurred. An informant linked the defendant to being an occupant of the car, and police determined that the defendant was under post-release supervision (PRS) and wearing a GPS ankle monitor. A Raleigh police officer accessed the location history of the defendant's monitor and found results tying him to the scene of the shooting. The defendant was subsequently indicted for the shooting and came to trial in December of 2021. During jury selection, one of the jurors informed the court that he had a scheduled vacation but could serve if the trial concluded before that date. The juror was seated, but due to the trial schedule, the jury was still in deliberations when his scheduled vacation arrived. Neither the State nor the defendant objected when the trial court released the juror and replaced him with an alternate. The jury subsequently returned a verdict of guilty.

The Court of Appeals pointed to *State v. Chambers*, 898 S.E.2d 86 (N.C. App. 2024), as controlling precedent. Under *Chambers*, any substitution of a juror after deliberation violated the defendant's constitutional right to a unanimous verdict. The court noted "[a]lthough the Supreme Court of North Carolina has granted discretionary review of *Chambers*, this Court remains bound by *Chambers* and we are therefore required to grant Defendant's request for a new trial based upon the juror substitution." Slip op. at 8.

Substitution of juror based on her views of the evidence violated the defendant's right to an impartial jury; substitution of the same juror without permitting the defendant to be heard violated the defendant's due process right to be present

U.S. v. Laffitte, 121 F.4th 472 (Nov. 14, 2024). The defendant worked as the CEO of the Palmetto State Bank in South Carolina. Along with former attorney Alex Murdaugh, he conspired to defraud Murdaugh's clients to the tune of around $2 million dollars. The defendant was ultimately charged with wire fraud, bank fraud, and conspiracy, as well as other related offenses. During the first day of jury deliberations, one juror, Juror #93, notified the court that he needed to leave the courthouse to take prescription medicine. In a separate note from the same juror, the juror notified the district court that he was "feeling pressured to change [his] vote." *Laffitte* Slip op. at 5. The word "pressured" was underlined twice. The court informed the parties of the notes and suggested that the juror be replaced with an alternate. The defense requested that the jury be released for the day, while the government preferred that the jury continue deliberating. While this discussion was ongoing, the district court received two more notes from the jury. One of the notes was signed by multiple jurors. It indicated that one member of the jury was "hostile to hearing debate" and was unable to fairly weigh the evidence in the case. *Id*. at 6. The other note was from a single juror, Juror #88, who requested that the court replace her with an alternate juror, because she was "experiencing anxiety and [was] unable to clearly make [her] decision." *Id*. at 6-7. The district court suggested that the court interview Juror #88 on the record but outside the presence of the parties and other jurors. The parties consented to this

arrangement. The juror in question reported to the district court that she had "started to feel very anxious due to the some of the reactions to [her] decision." *Id*. at 9. She also told the judge that she wanted to continue serving as a juror and did not want to be replaced with an alternate. Shortly after those statements, though, she indicated she felt like she could no longer perform her duties as a juror. The court then ordered the juror removed and replaced with an alternate on the court's motion, without giving the parties an opportunity to be heard on the issue.

The district court then proposed following the same procedure with the juror who requested leave to take medication, but that juror had already left the courthouse. The court also excused this juror and informed the parties of the substitutions of the two jurors. Defense counsel did not object to the removal of the juror who needed medication (Juror #93) but lodged an objection to the replacement of the juror with anxiety (Juror #88). The district court informed defense counsel that Juror #88 was incapable of continuing to serve on the jury and had experienced an "emotional meltdown." *Id*. at 11. With the substitution of two alternate jurors, the jury resumed deliberations and quickly reached a verdict. Between the announcement of the verdict and the reading of the verdict in open court, defense counsel again objected to the replacement of the juror experiencing anxiety, noting that defense counsel had agreed only that the court interview the juror and had not consented to the judge's unilateral decision to strike her. The district court was "surprised" by the objection and indicated its belief that the parties had consented to the court's procedure for dealing with the jurors. The jury ultimately convicted the defendant on all counts.

The defendant moved the district court for a new trial, arguing that the substitution of the two jurors outside of his presence and without an opportunity to be heard violated his right to be present under the Due Process Clause. He also argued that the two jurors were replaced for maintaining their beliefs about the strength of the evidence in the case, in violation of his Sixth Amendment right to an impartial jury. The district court held that the defendant waived any objections to the replacement of the jurors and denied the motion for a new trial. The defendant appealed, advancing the same arguments about the juror substitutions.

On appeal, a unanimous panel of the Fourth Circuit agreed with the defendant as to Juror #88 (the one suffering from anxiety) only and ordered a new trial. The court agreed with the district court that the defendant had waived his objection to the replacement of Juror # 93, however. Defense counsel explicitly agreed that Juror #93 could be replaced. Therefore, he could not argue on appeal that the replacement constituted error. The court also found no error occurred when the district court failed to ask the defendant personally about the removal of Juror #93 before ordering the replacement and declined to hold that defense counsel was ineffective based on the attorney's handling of the issue with that juror. As to Juror #88, though, the court held that the district court erred in finding the defendant waived his challenge to the juror's removal. "[W]e conclude that the parties consented to Juror No. 88 being questioned by the district court during the *in camera* interview—not to her sua sponte removal during that interview." *Id.* at 18.

Turning to the merits of the challenge, the court noted that the Sixth Amendment right to an impartial jury requires a unanimous jury verdict. Consistent with that right, a juror cannot be removed based upon their views of the weight or sufficiency of the government's evidence. *United States v. Brown*, 823 F.2d 591, 596 (D.C. Cir. 1987). Several other circuits have followed the reasoning from *Brown*, and the Fourth Circuit formally adopted it here. Most of those circuits use a "reasonable possibility" test to determine whether a juror was removed based on their perception of the merits of the case. Without

deciding the proper standard, the Fourth Circuit determined that the juror was improperly removed under any of the various approaches. According to the court:

Not only did Juror No. 88 indicate that she did *not* want to be replaced, but she reiterated her immediately prior statements that her request for removal was causally linked to her decision, that is, to her view of the case. At that point, under *Brown*, the district court had a variety of choices to protect Laffitte's Sixth Amendment right to an impartial jury: send the juror back to deliberations with instructions that the jury continue to attempt to reach agreement, recess for the evening, or declare a mistrial. The district court did none of them. *Laffitte* Slip op. at 27 (emphasis in original).

That the juror was improperly removed based on her views of the evidence was underscored by the fact that, following her replacement, the jury returned a verdict of guilty in under an hour after having previously deliberated for almost eight hours. The government argued that the juror's fragile emotional state was an independent reason justifying the juror's removal, separate and apart from her views on the case. The court agreed that a juror may be replaced when the juror's emotional state interferes with their ability to participate in the deliberative process but only when the emotional condition of the juror "bears no causal link to the juror's holdout status." *Id*. at 28 (citation omitted). Juror #88 was clear during the in camera interview that her anxiety was related to her decision in the case and the reaction to her decision by other jurors.

The government further argued that any error in the removal of Juror #88 was harmless. The court noted that it was unclear whether improper removal of a juror constituted structural error, requiring reversal without regard to prejudice, or whether the issue was subject to harmless error review. "[W]e are unaware of any court that has decided that issue." *Id*. at 31 (citation omitted). The court declined to resolve this question, instead concluding that the defendant was entitled to a new trial even under the harmless error standard.

The court also agreed with the defendant that the removal of Juror #88 violated his due process right to presence. Both the Fifth Amendment and Rule 43 of the Federal Rules of Criminal Procedure mandate that the defendant has a right to be present during the process of removing a juror. Because that did not happen, the defendant's due process rights were violated. Again, the government could not demonstrate that this error was harmless, and the defendant was entitled to a new trial on these grounds as well.

The defendant's convictions and sentence were therefore vacated, and the matter was remanded to the district court for a new trial.

Sentencing, Probation, and Parole

North Carolina Constitution's Article I, Section 27 prohibition of cruel or unusual punishments did not provide greater protection to defendant than the U.S. Constitution's Cruel and Unusual Punishments Clause

State v. Tirado, 387 N.C. 104 (Jan. 31, 2025). In this Cumberland County case, the Supreme Court majority affirmed an unpublished Court of Appeals decision denying the defendant's constitutional challenge to his sentences of life without parole for murders committed while he was a juvenile.

In August of 1998, the defendant was seventeen years old, and a member of the Crips gang, when he participated in the abduction and robbery of three women; the defendant and the gang killed two of the women, but one woman survived. The defendant was convicted of first-degree murder and sentenced to death, but the sentence was reduced to two consecutive life sentences without parole after the holding in *Roper v. Simmons*, 543 U.S. 551 (2005), that sentencing juvenile offenders to death was unconstitutional. The Supreme Court subsequently held in *Miller v. Alabama*, 567 U.S. 460 (2012), that a mandated life without parole sentence for a juvenile was unconstitutional but permitted sentencing where the trial court had discretion to impose a lesser sentence. The defendant was resentenced in accordance with the *Miller*-fix statute adopted by the General Assembly, resulting in the imposition of two consecutive terms of life without parole in March 2020. The Court of Appeals affirmed the sentences in the unpublished decision *State v. Tirado*, COA20-213 (June 15, 2021), leading to the current opinion.

On appeal, the defendant argued that Article I, Section 27 of the North Carolina Constitution was more protective than the Eighth Amendment to the U.S. Constitution, and his sentences were cruel or unusual punishments and unconstitutional under North Carolina law. The Supreme Court disagreed, explaining that the Cruel or Unusual Punishment clause in the North Carolina Constitution prohibited imposing sentences beyond those authorized by law. The Court reached this conclusion by conducting a historical analysis of the clause along with Article XI, which provides a list of acceptable punishments and has no analogue in the U.S. Constitution. Summarizing the function of these two provisions, the Court noted:

> Because a constitution cannot violate itself, we must construe Article I, Section 27's proscription of cruel or unusual punishments and Article XI's enumeration of acceptable punishments harmoniously. Logically, therefore, the punishments the people sanctioned in Article XI, Sections 1 and 2 are inherently not "cruel or unusual" in a constitutional sense. Accordingly, an act of the General Assembly cannot violate the Cruel or Unusual Punishments Clause by prescribing a punishment allowable under Article XI, Sections 1 and 2, and similarly, judges cannot violate Article I, Section 27, by handing down a sentence in obedience to such an act. Slip op. at 32 (cleaned up).

Although the defendant argued the North Carolina Constitution was more protective, the Court explained that the Eighth Amendment's Cruel and Unusual Punishments Clause provided more protection in modern jurisprudence and concluded the Court of Appeals properly evaluated and decided the defendant's appeal in light of the protections afforded by both.

The Court also determined that the trial court's sentence complied with *State v. Kelliher*, 381 N.C. 558 (2022), as that opinion was released after the defendant's appeal. First the Court noted the defendant's case did not meet the criteria of that opinion because "*Kelliher* applies only to juvenile homicide offenders whom the trial court (1) expressly finds to be neither incorrigible nor irredeemable and (2) sentences to multiple, consecutive terms of life with parole." Slip op. at 43. Then the Court clarified that a portion of the *Kelliher* opinion was obiter dictum, as "the statement requiring the trial court to make an express finding of incorrigibility before sentencing a defendant to life without parole was unnecessary in determining the outcome of the case." *Id*. at 44.

Justice Berger, joined by Justices Barringer and Allen, concurred but wrote separately to express concerns with the *Kelliher* opinion and the precedential weight to which it is entitled. *Id*. at 46.

Justice Earls, joined by Justice Riggs, concurred in the result only and argued that the majority's assertions regarding Article I, Section 27 were unnecessary and should be interpreted as dicta. *Id*. at 50.

Imposition of special sentencing condition preventing educational or vocational classes while imprisoned was error

State v. Lacure, COA 23-975, ___ N.C. App. ___; 910 S.E. 2d 443 (Dec. 31, 2024). In this Wake County case, two defendants were convicted of first-degree murder. Both defendants received sentences of life without parole. The trial court imposed a special sentencing condition that the defendants were not to be permitted to participate in any educational or vocational classes for the first twenty-two years of their sentences. The defendants appealed on several grounds, including the special sentencing condition. On appeal, the State conceded the challenged sentencing condition was error. The court agreed, explaining "[n]owhere in our General Statutes is there language providing a trial judge the authority to restrict a defendant's rights to vocational training or educational classes while incarcerated." *Id*. at 6. Only the North Carolina Department of Corrects has the authority to determine the "privileges and restrictions" on inmates. Because the trial court here exceeded its authority, the special condition limiting access to educational and vocational opportunities was reversed. Other challenges by the defendants were rejected and the trial court's judgment was otherwise undisturbed.

Trial court's failure to consider stipulated mitigating factor justified remand for resentencing

State v. Curtis, COA24-204, ___ N.C. App. ___ (Feb. 19, 2025). In this Wake County case, the defendant appealed after pleading guilty to felony death by vehicle, felony serious injury by vehicle, and driving while impaired, challenging the sentencing he received for his convictions. The Court of Appeals vacated and remanded for resentencing.

In January of 2022, the defendant caused a head-on collision that killed two passengers in the other vehicle and injured several more. Officers found used nitrous oxide containers in the vehicle, and the defendant admitted to also using alcohol and marijuana the evening of the collision. The defendant pleaded guilty pursuant to an agreement that avoided second-degree murder; the State stipulated to a mitigating factor that the defendant "has accepted responsibility for [his] criminal conduct." *Curtis* Slip op. at 3. The defendant waived his right to appeal in the plea agreement. However, along with his appeal in this case, the defendant filed a writ of certiorari, which the Court of Appeals granted to consider this case. The State did not oppose the defendant's writ and conceded that an error was committed.

The defendant argued on appeal that the trial court failed to consider his mitigating factor that he and the State stipulated to in the plea agreement. The Court of Appeals agreed, quoting *State v. Albert*, 312 N.C. 567, 579 (1985), for the proposition that "when the State stipulates to the facts supporting the finding of a mitigating factor, 'the trial court err[s] in failing to find this fact in mitigation.'" *Curtis* Slip op. at 7. The defendant also argued he was entitled to a different trial judge on remand. The court disagreed on that point, noting that the trial judge was not exposed to any prejudicial information beyond the plea agreement, and that the defendant could not demonstrate a risk to his bargained-for agreement if the case was remanded to the same judge. Thus, the court vacated and remanded to the trial court for resentencing.

Trial court's statements during sentencing were accurate reflections of the law and did not indicate punishment for defendant's choice to seek a jury trial

State v. Mills, COA23-1097, ___ N.C. App. ___; 907 S.E.2d 248 (Oct. 15, 2024). In this Rowan County case, the defendant appealed after being convicted of robbery with a dangerous weapon and possession of a firearm by a felon, arguing the trial court improperly considered his choice to have a jury trial in sentencing. The Court of Appeals found no error.

The defendant's matter came to trial in August of 2021; on the day the matter was called, the defendant failed to appear, and the trial court set defendant's bond at $1 million, noting that the defendant had reached his "reckoning day." Slip op. at 2. After the jury returned verdicts of guilty, the trial court addressed the defendant during sentencing regarding his right to a jury trial: "the law also allows me in my sentencing discretion to consider a lesser sentence for people who step forward and take responsibility for their actions. By exercising your right to a jury trial[,] you never ever did that." *Id*. at 3-4. The defendant received sentences within the presumptive range.

Considering the defendant's argument, the Court of Appeals agreed with the State's position that "the trial court's statements were an accurate reflection of the law." *Id*. at 4. The court noted that the pretrial remarks were the result of frustration that the defendant did not appear, and as for the remarks at sentencing, "the [trial] court did not suggest, much less explicitly state, that it was imposing a harsher sentence because Defendant invoked his right to a jury trial." *Id*.at 10. Because the trial court's comments were permissible, the defendant could not demonstrate that he was punished for exercising his right to a jury trial.

Trial court was not required to hold a hearing or make findings of fact when considering the record and making a recommendation on life without parole sentence under G.S. 15A-1380.5

State v. Walker, COA 24-615, ___ N.C. App. ___ (Apr. 16, 2025). In this Wake County case, the defendant appealed the order determining that his sentence of life without parole should not be altered under G.S. 15A-1380.5. The Court of Appeals found no abuse of discretion or error and affirmed the trial court's order.

The defendant was found guilty of first-degree murder in 1999 and received the sentence of life without the possibility of parole. In September of 2023, the defendant requested review of his sentence under G.S. 15A-1380.5. After the trial court reviewed the trial record, the defendant's record from the Department of Corrections, the degree of risk posed to society, and other issues, the trial court determined that the defendant's sentence should not be altered. The defendant subsequently filed a petition for writ of certiorari to appeal this decision, and the Court of Appeals granted certiorari in April 2024.

The defendant argued three issues on appeal: (1) abuse of discretion in failing to make findings of fact to support the denial, (2) error in failing to consider the trial record, and (3) abuse of discretion by not holding a hearing. The Court of Appeals looked to the text of G.S. 15A-1380.5 and caselaw interpreting it to determine the applicable requirements. The court first dispensed with the hearing issue (3), explaining "[o]ur Supreme Court has held that [G.S.] 15A-1380.5 'guarantees no hearing, no notice, and no procedural rights.'" *Walker* Slip op. at 5 (quoting *State v. Young*, 369 N.C. 118, 124 (2016)). Next the court moved to (1), noting the structure of G.S. 15A-1380.5 did not call for an "order" with findings of

fact and conclusions of law, but instead called for a "recommendation," and "[h]ad the legislature intended for findings of fact and conclusions of law to be required it could have chosen to require the reviewing judge to issue orders, rather than recommendations." *Id*. at 6. Finally, the court noted in (2) that the trial court clearly stated it had considered the record, and the court determined the record supported the trial court's conclusion.

Trial court made insufficient findings to support recommendation to parole commission that defendant should not be granted parole under G.S. 15A-1380.5

State v. Dawson, COA23-801, ___ N.C. App. ___ ; 905 S.E.2d 261 (Aug. 6, 2024); *affirmed without precedential value,* ___ N.C. ___. 912 S.E.2d 378 (Mar. 19, 2025). In this Craven County case, the defendant appealed the trial court's recommendation to the parole commission that he should not be granted parole and his judgment should not be altered or commuted. The Court of Appeals vacated the trial court's recommendation and remanded for further proceedings.

The defendant's appeal arose from the former G.S. 15A-1380.5, which was repealed in 1998. That section permitted a defendant sentenced to life without parole to petition for review of their sentence after 25 years served. The Court of Appeals first established that the defendant had a right to appeal the trial court's recommendation to the parole commission under the language of the former statute, concluding it was a "final judgment" and defendant had a right to review for "abuse of discretion." Slip op. at 6. The court then moved to the findings, and lack thereof, in the trial court's order, holding "the findings in the Order are insufficient for us to conduct a meaningful review of the trial court's reasoning." *Id*. at 8. The court vacated the order, remanding so the trial court could either make additional findings or reconsider its recommendation.

State failed to offer evidence that Kentucky felonies were substantially similar to North Carolina offenses for prior record level calculation

State v. Sandefur, COA23-1012, ___ N.C. App. ___; 907 S.E.2d 455 (Oct. 15, 2024). In this Cleveland County case the defendant appealed after being convicted of firearm and drug possession charges and receiving a prior record level V during sentencing. He argued the state improperly classified his two felony convictions from Kentucky. The Court of Appeals agreed, remanding for resentencing.

In March of 2023, the defendant came for trial on charges related to possession of a firearm and methamphetamine. After the jury returned guilty verdicts, the trial court proceeded to sentence the defendant, calculating 16 prior record level felony points. The trial court relied on a worksheet from the State which identified two felony convictions from Kentucky as G and F level felonies, with no further evidence to support they were substantially similar to North Carolina offenses.

Taking up the argument, the Court of Appeals reviewed G.S. 15A-1340.14, noting that the default assumption is an out-of-state felony conviction is equivalent to a Class I felony, and the burden is on the State to show the out-of-state violation is substantially similar to a higher-level felony. Here, the only evidence submitted was a record level worksheet, despite the requirement that "the State must submit to the trial court a copy of the applicable out-of-state statute it claims to be substantially similar to a North Carolina offense." Slip op. at 6. Neither the State nor the trial court conducted any comparative analysis of the violations, and the trial court simply accepted the worksheet with the information

provided, which was error. As a result, the court remanded for resentencing, noting that the State could offer additional information at the resentencing hearing.

Appeals & Post-Conviction

Oral notice of appeal is sufficient if given at any point before the end of the session of criminal superior court; evidence that prisoner struck corrections officer in the face represented "physical injury" for assault inflicting physical injury on an employee of a state detention facility

State v. McLean, 295 N.C. App. 254 (Aug. 6, 2024). In this Rowan County case, the defendant appealed his conviction for assault inflicting physical injury on an employee of a state detention facility, arguing the jury should have been instructed on the lesser included offense of assault on an officer or employee of the State. The Court of Appeals disagreed, finding no error.

In March of 2021, the defendant was confined at Piedmont Correctional Center. He became agitated because he did not receive the personal hygiene items he needed and began discussing the matter with correctional officers. Eventually, a sergeant asked him to leave his cell and walk to a private area to discuss. During the walk, the defendant turned around and struck the sergeant in the face with his fist, leading to a tussle before defendant was subdued. At trial, a video recording of the incident was played for the jury, and the sergeant testified that he was struck "multiple times in the face, around six to ten times." Slip op. at 3. During the charge conference, defense counsel requested the lesser included offense, but the trial court denied the request.

Before taking up the substance of the defendant's appeal, the Court of Appeals discussed the appellate jurisdiction for the case. The defendant gave notice of appeal in open court but gave this notice the day *after* the trial court sentenced him for the offense. The court considered what "at the time of trial" meant for purposes of the appeal. *Id*. at 5. After reviewing relevant precedent and appellate rules, the court concluded that the defendant's appeal was timely because he "provided notice of appeal in open court while the judgment was *in fieri* and the trial court possessed the authority to modify, amend, or set aside judgments entered during that session." *Id*. at 8. Once the court has adjourned *sine die* for the session, the session is concluded, and oral notice of appeal will not be sufficient; only written notice of appeal will be proper at that point.

Moving to the jury instruction, the court noted the distinction between the two offenses was that the "physical injury" element is not present in the lesser offense. The court found the physical injury element was sufficiently satisfied by the evidence showing that the defendant struck the sergeant in the face. Because the State supplied sufficient evidence of each element of the offense, there was no error in omitting the instruction on the lesser included offense.

Phil Dixon blogged about the decision, here.

Error to dismiss habeas petition without evidentiary hearing; petitioner had potentially meritorious ineffective assistance of counsel claims based on unfiled suppression motion and alleged failure of defense counsel to seek a plea bargain

U.S. v. McNeil, 126 F. 4th 935 (Jan. 22, 2025). Police in Fayetteville, North Carolina were patrolling in the defendant's neighborhood and noticed a car stop in front of the defendant's home. Officers saw a woman exit the car and walk to the front of the defendant's house before she stepped out of sight. The officers stopped the car for a "regulatory violation" and asked the occupants about stopping by the defendant's home. The officers searched the occupants and found a small amount of suspected marijuana. The officers then went to perform a knock and talk at the defendant's home. Two juveniles answered the door stated that they were alone. The officers nonetheless walked around the home to the backyard, entered the backyard, and approached an outdoor shed. They knocked on the shed, and, when the defendant answered from within, the officers detected a strong odor of marijuana. This led to a search warrant for the property and the eventual discovery of money, guns, and marijuana. The defendant was charged in the Eastern District of North Carolina with various guns and drug distribution offenses. The defendant pleaded guilty to marijuana distribution and gun charges without a plea agreement. Defense counsel filed no motions in the case other than one continuance motion. The defendant was sentenced to 114 months, and the judgment of the district court was affirmed on direct appeal.

The defendant sought habeas relief, arguing that defense counsel was ineffective for failing to file a motion to suppress and for failing to seek a plea agreement with the government despite repeated instructions by the defendant to do so. The district court dismissed the habeas petition without conducting an evidentiary hearing, finding that there was no potentially meritorious Fourth Amendment issue in the case. It also found that the defendant's statements during the plea colloquy attesting to his satisfaction with defense counsel precluded him from now arguing that his counsel should have sought a plea bargain. The defendant appealed the denial of habeas relief, and a unanimous Fourth Circuit reversed.

It was likely that the defendant had a meritorious suppression motion based on the undisputed facts of the case. "[I]t is clear that the police intruded into McNeil's protected curtilage without a warrant—making that intrusion presumptively unreasonable under the Fourth Amendment." *McNeil* Slip op. at 10. The district court therefore erred in dismissing the ineffective assistance claim based on the failure to pursue suppression without holding an evidentiary hearing.

Regarding the defendant's claim that counsel failed to pursue a plea bargain, the defendant never formally attested to his satisfaction with the services of defense counsel under oath. The district court asked the defendant about his satisfaction with counsel as part of a collective advisement of a group of defendants, but the answers of the defendant at that hearing were unsworn. During the sworn part of his plea colloquy, the district court failed to ask about the defendant's satisfaction with defense counsel. Here too the district court erred in dismissing the habeas petition without a hearing. In the words of the court:

Because McNeil did not make a sworn statement of satisfaction with his lawyer's performance, and because his allegations are not otherwise so palpably incredible, patently frivolous or false as to warrant summary dismissal, we vacate this dismissal, too, and remand for an evidentiary hearing on McNeil's *Strickland* claim. *Id*. at 16-17 (cleaned up).

The judgment of the district court was reversed, and the matter was remanded for additional proceedings.

Sex Offender Registration

State offered adequate evidence to justify defendant's term of SBM despite the lack of high-risk Static-99 score

State v. Belfield, COA24-640, ___ N.C. App. ___ (Feb. 19, 2025). In this Nash County case, the defendant appealed the order imposing a 25-year term of satellite-based monitoring (SBM), arguing error as the defendant was not at high risk to reoffend and did not require the highest level of supervision and monitoring. The Court of Appeals disagreed, finding no error.

In August of 2020, the defendant pleaded guilty to one count of indecent liberties with a child and was sentenced; subsequently the trial court held a SBM hearing and determined that the defendant was subject to SBM. In *State v. Belfield*, 289 N.C. App. 720 (2023) (unpublished), the defendant appealed the SBM order, pointing out that the trial court's order was on form AOC-CR-615, with a box checked indicating the decision was based on additional findings from "the attached form 618." *Belfield* Slip op. at 4 (cleaned up). This was significant as the defendant's Static-99 score was a four, which alone was not "high risk" and did not justify SBM, so the trial court had to consider additional evidence to justify the order. However, the order did not contain the referenced form 618, so the court vacated and remanded for the trial court to make findings of fact regarding the imposition of SBM. In October of 2023, the trial court heard the matter, considering the evidence from the previous SBM hearing and entered new findings, again imposing SBM. The defendant appealed that order, leading to the current decision.

Taking up the defendant's appeal a second time, the Court of Appeals explained that when, as here, a defendant does not have a "high risk" Static-99 score, the State must offer additional evidence, and the trial court must make additional findings, to justify a SBM sentence. The defendant argued that the trial court's additional findings in this case were based upon "the trial court's consideration of improperly duplicative evidence of matters already addressed in Defendant's Static-99 risk assessment." *Id*. at 11. The court disagreed, noting that while "additional findings cannot be based solely on matters already addressed in the Static99 risk assessment," four of the additional findings here were supported by "competent evidence other than that of a defendant's risk assessment" and justified the imposition of SBM. *Id*.

Petitioner properly filed to terminate sex offender registration in North Carolina county where he resided before moving to Florida

In re: Goldberg, COA 23-1015, ___ N.C. App. ___; 907 S.E.2d 405 (Sept. 17, 2024). In this Mecklenburg County case, the petitioner appealed the dismissal of his petition to terminate his sex offender registration for improper venue. The Court of Appeals agreed, reversing and remanding to the trial court for consideration of the petition.

In 2003, the petitioner was convicted of possession of child pornography in South Carolina, where he initially registered as a sex offender. In 2005, he moved to Mecklenburg County and registered as a sex offender in North Carolina. He subsequently moved to Florida, but in November of 2022, he successfully petitioned for removal from the South Carolina sex offender registry. In June of 2022, he filed his petition in Mecklenburg County, as this was the place he last resided in North Carolina. At the hearing, the State argued the trial court did not have jurisdiction under G.S. 14-208.12A, as the statute requires a

petitioner to file "in the district where the person resides" and petitioner resided in Florida. Slip op. at 2. The trial court concluded that the venue was improper and dismissed the petition.

The Court of Appeals first turned to the text of the statute, noting that G.S. 14-208.12A "expressly assigns the proper district for filing a petition for (1) those with in-state convictions (the district of conviction) and (2) those with out-of-state convictions who reside in North Carolina (their district of residence)." *Id*. at 4. The court disagreed with the State's contention that "filing the Petition in Mecklenburg was improper because there is no district in which it can be properly filed." *Id*. at 6. Because the statute does not provide an alternative procedure for registered offenders who move out of state, "for purposes of the North Carolina Sex Offender Registry, Petitioner's residency in North Carolina remains in Mecklenburg County." *Id*. at 8. This led the court to conclude venue in Mecklenburg County was proper and the trial court erred by dismissing the petition.

Trial court improperly required SBM for low-risk range; probation and post-release supervision must run concurrently

State v. Barton, 295 N.C. App. 182 (Aug. 6, 2024). In this Brunswick County case, the defendant appealed after entering guilty pleas to four counts of second-degree exploitation of a minor. The defendant argued error in (1) requiring him to register for satellite-based monitoring (SBM) when he was in the low-risk range, and (2) sentencing him to probation after his post-release supervision was completed. The Court of Appeals agreed, vacating the SBM order without remand, and vacating the probation judgment and remanding to the trial court for further proceedings.

The defendant entered his guilty pleas in May 2023. The trial court entered four judgments; in the first, the defendant was sentenced to 25 to 90 months of imprisonment, followed by the mandatory five years of post-release supervision for a reportable conviction under G.S. 14-208.6. The trial court suspended the active sentences of the other three judgments and imposed 60 months of probation to run consecutively with the first judgment. The trial court specified that "probation is not going to begin to run until the conclusion of his post-release supervision." Slip op. at 2. The trial court then conducted an SBM hearing where evidence of defendant's STATIC-99R score of "1" was admitted, classifying him as "low risk range" for recidivism. *Id*. at 3. Despite the low-risk score and the lack of additional evidence from the State, the trial court ordered five years of SBM, with no additional findings justifying the order. The Court of Appeals granted defendant's petitions for writ of certiorari to consider both issues.

Considering (1), the court explained it was error under *State v. Jones*, 234 N.C. App. 239 (2014), to impose SBM on a low-risk defendant without additional findings. Here the State admitted no evidence and the trial court made no findings justifying the imposition of SBM. The court held this was error, and following the *Jones* precedent, reversed the imposition of SBM without remand.

Moving to (2), the court noted that the structure of G.S. 15A-1346 could permit two different interpretations, as this section does not specifically address whether probation should run concurrently with post-release supervision. The section provides that probation must run concurrently with "probation, parole, or imprisonment," but does not reference post-release supervision, and no previous case had determined "imprisonment" included post-release supervision. *Id*. at 10. This led the court to conclude that "the General Assembly has not clearly stated whether probation can run consecutively with post-release supervision." *Id*. at 12. The court applied the rule of lenity and determined that defendant's "probation must run concurrently with his post-release supervision." *Id*. This necessitated vacating and remanding to the trial court for a new plea agreement or a trial on the matter.