

ADMINISTRATION OF JUSTICE

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2003 LEGISLATION AFFECTING CRIMINAL LAW AND PROCEDURE

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The 2003 legislative session resulted in no major changes in the areas of criminal law and procedure. This bulletin summarizes the legislative changes affecting those areas. It covers criminal offenses, criminal procedure, evidence, domestic violence, juveniles, motor vehicles, law enforcement, sentencing and corrections, court administration, and studies related to criminal law and procedure. The material in this bulletin was compiled from several chapters in the forthcoming School of Government publication entitled North Carolina Legislation 2003. That publication, which records all significant 2003 state legislation, will be posted on the School's web site at: <http://iog.unc.edu/pubs/nclegis/index.html> and can be ordered from the School's publication sales office. Contact information for the publications department is included on the last page of this bulletin. For information on new child care offenses and other new laws affecting juveniles, see Chapter 3, Children and Families, in North Carolina Legislation 2003.

Each ratified act discussed in this bulletin is identified by its chapter number in the session laws and by the number of the original bill. When an act creates new sections in the General Statutes (G.S.), the section number is given; however, the codifier of the statute may change that number later. Copies of the bills may be viewed on the General Assembly's web site at: <http://www.ncleg.net/>.

Criminal Offenses

Assault and Stalking

Assault in the presence of a minor. S.L. 2003-409 (H 926) amends G.S. 14-33 to create an enhanced punishment for individuals who commit certain assaults in the presence of minors. Specifically, anyone who, during an assault or affray and in the presence of a minor, uses a deadly weapon or inflicts serious injury on a person with whom the perpetrator has a personal relationship, must be placed on supervised probation in addition to any other punishment imposed. A second or subsequent such assault must be punished with active time of no less than thirty days, in addition to any other punishment imposed. The wording of the new law creates some uncertainty regarding the permissible punishment for a first offense. For first offenses, S.L. 2003-409 provides that an individual must be placed on supervised probation in addition to any other punishment imposed. Because a defendant who is sentenced to supervised probation cannot also be sentenced to an "active" term, one reading of this provision is that a judge may not impose active time for a first offense. A better interpretation, however, is that the General Assembly did not mean to preclude the possibility of active time and simply meant to provide that if the defendant is not sentenced to active time, he or she must be placed on supervised probation.

For purposes of this provision, *personal relationship* is defined as in G.S. 50B-1(b), and includes current or former spouses, persons of the opposite sex who live or have lived together or who are or have been in a dating relationship, parent-child and grandparent-child relationships, and persons who have a child in common or are current or former household members. *In the presence of a minor* means that the minor was in a position to have observed the assault. A *minor* is any person who is under eighteen years old, resides with or is under the care and supervision of the victim or perpetrator, and who has a personal relationship with the victim or perpetrator. The enhanced sentencing provision becomes effective December 1, 2003, and applies to offenses committed on or after that date.

Assaults and threats on court officers. G.S. 14-16.6 and 14-16.7 criminalize assaults on and threats to court officers. S.L. 2003-140 (H 1048) amends the definition of the term *court officer* as used in these provisions, to include any attorney or other individual employed by or acting on behalf of the Department of Social Services in abuse, neglect, or dependency proceedings as well as any attorney or other individual

appointed pursuant to G.S. 7B-601 or 7B-1108 or employed by the Guardian ad Litem Services Division of the Administrative Office of the Courts. This amendment becomes effective December 1, 2003, and applies to offenses committed on or after that date.

Stalking. G.S. 14-277.3 provides that stalking is punished as a Class A1 misdemeanor, unless specific circumstances require a more severe punishment. S.L. 2003-181 (H 304) amends G.S. 14-277.3 to provide that if a person is convicted of a Class A1 misdemeanor stalking offense and is sentenced to a community punishment, he or she must be placed on supervised probation, in addition to any other punishment imposed. S.L. 2003-181 becomes effective December 1, 2003, and applies to offenses committed on or after that date.

Sexual Assault

Sexual Battery. S.L. 2003-252 (S 912) creates a new Class A1 misdemeanor of sexual battery. Under a new G.S. 14-27.5A, a person is guilty of this offense if, for the purpose of sexual arousal, gratification, or abuse, he or she engages in sexual contact with a victim either by force and against the victim's will or when the victim is mentally disabled or incapacitated or physically helpless, and the perpetrator knows or reasonably should know of this condition. *Sexual contact* means touching the sexual organ, anus, breast, groin, or buttocks of any person or touching another with one's own sexual organ, anus, breast, groin, or buttocks. *Touching* means physical contact with another, whether directly or through clothing. The new law becomes effective December 1, 2003, and applies to offenses committed on or after that date.

Sexual Assaults on Students. S.L. 2003-98 (S 555) amends provisions criminalizing sexual activity and the taking of indecent liberties with students by school personnel. The new law amends G.S. 14-27.7(b) to clarify that a school safety officer who engages in vaginal intercourse or a sexual act with a student at the same school will be punished as a Class G felon, regardless of the officer's age. Before the changes, school safety officers would have been punished as Class G felons only if they were at least four years older than the student. If the age requirement was not met, punishment dropped down to a Class A1 misdemeanor. Similarly, S.L. 2003-98 amends G.S. 14-202.4 to clarify that a school safety officer who takes indecent liberties with a student at the same school will be punished as a Class I felon, regardless of the officer's age. Before the changes, school safety officers would have been punished as

Class I felons for this activity only if they were at least four years older than the student. If the age requirement was not met, punishment dropped down to a Class A1 misdemeanor. S.L. 2003-98 also amends the definition of *same school* to mean a school at which the student is enrolled and the perpetrator is employed, assigned, or volunteers. *School safety officer* is defined to mean a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools. S.L. 2003-98 becomes effective December 1, 2003, and applies to offenses committed on or after that date.

For a discussion of S.L. 2003-408 (S 993), providing for automatic revocation of certificates for teachers and school administrators who are convicted of sex offenses, taking indecent liberties with children and other crimes, see North Carolina Legislation 2003, Chapter 8, Elementary and Secondary Education.

Peeping

Before passage of S.L. 2003-303 (H 408), the peeping statute, G.S. 14-202, made it a Class 1 misdemeanor to peep secretly into a room occupied by a female. S.L. 2003-303 amends this provision, making it gender neutral and prohibiting secret peeping into a room occupied by any person, male or female. S.L. 2003-303 also amends G.S. 14-202 to create the following new felony and misdemeanor peeping offenses:

- Any person who while secretly peeping possesses a device capable of creating a photographic image commits a Class A1 misdemeanor;
- Any person who while secretly peeping uses a device to create a photographic image of another for the purpose of arousing or gratifying any person's sexual desire commits a Class I felony;
- Any person who, without consent, secretly uses a device to create a photographic image of another underneath or through his or her clothing for the purpose of viewing that person's body or undergarments commits a Class I felony;
- Any person who, for the purpose of arousing or gratifying any person's sexual desire, secretly uses or installs in a room any device that can be used to create a photographic image with the intent to capture the image of another without his or her consent commits a Class I felony;

- Any person who knowingly possesses a photographic image that the person knows or has reason to believe was obtained in violation of G.S. 14-202 commits a Class I felony; and
- Any person who disseminates or allows to be disseminated images that the person knows or should have known were obtained as a result of a violation of G.S. 14-202 commits a Class H felony, if the dissemination is without the consent of the person depicted.

The term *photographic image* is defined to mean any photograph or photographic reproduction, still or moving, or any videotape, motion picture, or live television transmission, or any digital image of any individual. The term *room* includes, but is not limited to, bedrooms, restrooms, bathrooms, showers, and dressing rooms. Exceptions are carved out for law enforcement officers discharging or attempting to discharge their duties, Department of Correction and local confinement facility personnel, and certain individuals licensed pursuant to G.S. Chapter 74C, Private Protective Services, or G.S. Chapter 74D, Alarm Systems. The new law provides for enhanced sentences for second or subsequent offenses, contains provisions regarding obtaining psychological evaluations of defendants placed on probation for peeping offenses, and provides that certain peeping convictions may require the sentencing judge to order the defendant to register as a sex offender. Finally, the new law creates a civil cause of action for victims. S.L. 2003-303 becomes effective December 1, 2003, and applies to offenses committed on or after that date.

Arson and Other Burnings

G.S. Chapter 14, Article 15 pertains to arson and other burnings. S.L. 2003-392 (S 661) adds a new G.S. 14-69.3 to that article, making it a Class E felony to commit any felony included in Article 15 that results in serious bodily injury to a firefighter or emergency medical technician. The term *emergency medical technician* includes emergency medical technicians, technician-intermediates, and technician-paramedics.

S.L. 2003-392 also amends G.S. 14-49, creating a new bombing offense involving government buildings. Under the provision, any person who willfully and maliciously damages, aids, counsels, or procures the damaging of any building owned or occupied by the State or any of its agencies, institutions, or subdivisions or by any county, incorporated city or town, or other governmental entity by the use of any

explosive or incendiary device or material is guilty of a Class E felony.

Both changes become effective December 1, 2003, and apply to offenses that occur on or after that date.

Controlled Substances

S.L. 2003-249 (S 694) creates a new G.S. 90-89.1, providing that a controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance in Schedule I (G.S. 90-89). A *controlled substance analogue* is defined, in part, to mean a substance that has a chemical structure or effect similar to or greater than a controlled substance in Schedule I or II (G.S. 90-90). Certain substances are specifically excluded from the definition, including, among others, controlled substances and substances for which there is an approved new drug application or for which certain exemptions are in effect for investigational use. The new law becomes effective December 1, 2003, and applies to offenses committed on or after that date.

Weapons

S.L. 2003-199 (S 33) creates a new G.S. 14-415.24, making valid an out-of-state permit to carry a concealed weapon in North Carolina if the other state honors North Carolina's permits. S.L. 2003-199 also amends G.S. 14-269(a1) to exempt from the offense of carrying a concealed weapon a handgun for which the person has a permit now considered valid under G.S. 14-415.24. These provisions became effective on August 13, 2003.

Escape

G.S. 14-239 makes it a Class 1 misdemeanor for a sheriff, deputy sheriff or, jailer to willfully allow the escape of an individual in his or her custody who has been charged with a crime or sentenced after conviction. S.L. 2003-297 (H 1037) expands the coverage of this provision to include (1) other custodial personnel in the list of individuals subject to the offense, and (2) allowing the escape of individuals who have been committed to the Department of Juvenile Justice and Delinquency Prevention. S.L. 2003-297 becomes effective December 1, 2003, and applies to offenses committed on or after that date. For a discussion of those portions of S.L. 2003-297 pertaining to photographing juveniles in juvenile

detention facilities and the release of photographs to the public if the juvenile escapes, see North Carolina Legislation 2003, Chapter 3, Children and Families.

Rebirthing

S.L. 2003-205 (S 251) was a response, in part, to the death of Candace Newmaker, a North Carolina child, who died in 2000 from a form of attachment therapy called rebirthing. The American Psychological Association does not recognize rebirthing as proper treatment. S.L. 2003-205 creates a new G.S. 14-401.21, making it unlawful to practice rebirthing or related techniques. The new provision makes it unlawful to practice any technique to reenact the birthing process in a manner that includes restraint and creates a situation in which a patient may suffer physical injury or death. A first offense is punished as Class A1 misdemeanor. A second or subsequent offense is punished as Class I felony. The new provision becomes effective December 1, 2003, and applies to offenses committed on and after that date.

Hazing

S.L. 2003-299 (H 1171) amends G.S. 14-35, the provision prohibiting and defining hazing. The amendments redefine the term *hazing* to mean subjecting another student to physical injury as part of an initiation or prerequisite to membership into any organized school group. They also specify that the prohibition on hazing contained in G.S. 14-35 applies to students in attendance at any university, college, or school in the state. Finally, S.L. 2003-299 repeals G.S. 14-36, which had required expulsion of a student convicted of hazing and made failure to expel the student a Class 1 misdemeanor. The new law becomes effective December 1, 2003, and applies to offenses committed on or after that date.

Financial Fraud

Effective March 1, 2004, S.L. 2003-206 (H 357) creates a new G.S. 14-113.24, making it an infraction for individuals who accept credit, charge, or debit cards for the transaction of business to print more than five digits of an account number or the expiration date on a receipt. The new infraction is subject to a fine of up to \$500 per violation, not to exceed \$500 in any month or \$2,000 in any year. Anyone who receives a citation for violating this section is not subject to

penalty if he or she establishes compliance within thirty days. The new infraction applies to machines first used on or after March 1, 2004, but all machines must be in compliance by July 1, 2005. It does not apply to persons who record transactions by hand or by an imprint or copy of a card.

Also effective March 1, 2004, S.L. 2003-206 creates a new G.S. 14-113.25, making it an infraction to sell or offer to sell a device that cannot be programmed or operated to produce a receipt in compliance with G.S. 14-113.24. This infraction is subject to a penalty of up to \$500 per violation.

Unauthorized Sound and Video Recordings

G.S. Chapter 14, Article 58 deals with the pirating of audio and video recordings and live performances. S.L. 2003-159 (H 42) makes various amendments to this article, including:

- Creating a webcasting and Internet service provider exception to G.S. 14-433 (recording of live performances or recorded sounds and distribution of such recordings unlawful in certain circumstances);
- Rewriting G.S. 14-435 (recorded devices to show true name and address of manufacturer); and
- Modifying G.S. 14-437(a), the criminal penalty provision. Under amended G.S. 14-437(a), the general rule is that violations of Article 58 constitute Class 1 misdemeanors. Punishment is elevated to a Class I felony, with a maximum fine of \$150,000, if (i) the offense involves at least 100 unauthorized articles during any 180-day period, or (ii) is a third or subsequent conviction for an offense that involves at least twenty-six unauthorized articles during any 180-day period.

The amendments become effective December 1, 2003, and apply to offenses committed on or after that date.

Pyrotechnics

G.S. Chapter 14, Article 54 pertains to pyrotechnics. S.L. 2003-298 (S 521) makes several changes to this article, primarily affecting the indoor use of pyrotechnics. Additionally, S.L. 2003-298 amends

G.S. 14-415, the provision on criminal penalties for violations. Before the amendments, all violations of Article 54 were punished as Class 2 misdemeanors. Now, violations involving indoor exhibitions are punished as Class 1 misdemeanors. The amendments to G.S. 14-415 become effective December 1, 2003, and apply to offenses committed on or after that date.

Animals and Hunting

Transporting or Breeding Coyotes. S.L. 2003-96 (S 245) makes it a Class 1 misdemeanor to breed coyotes or to transport or attempt to transport live coyotes into the state. Conviction will result in a two-year suspension of a controlled hunting preserve operator license. This provision becomes effective October 1, 2003, and applies to acts committed on or after that date.

Commercial Taking of Turtles or Terrapins. Subject to certain exemptions, S.L. 2003-100 (S 825) prohibits the commercial taking of certain turtles or terrapins until the Wildlife Resources Commission adopts rules to regulate their taking. Violators are guilty of a misdemeanor and will be punished as provided in G.S. 113-135. The new prohibition became effective July 1, 2003, and applies to offenses committed on or after that date.

Importing or Possessing Black-Tailed or Mule Deer. S.L. 2003-344 (H 948) amends G.S. 113-294, creating a new Class 1 misdemeanor that applies to any person who willfully imports or possesses black-tailed or mule deer. The new misdemeanor provision becomes effective October 1, 2003, and applies to acts committed on or after that date.

Regulatory Offenses

Amusement Devices. G.S. Chapter 95, Article 14B contains the Amusement Device Safety Act of North Carolina. S.L. 2003-170 (H 609) makes several changes to the regulations in that Act, including an amendment providing that no person shall operate amusement device equipment while under the influence of alcohol or any other impairing substance or knowingly permit the operation of any device by a person under the influence of an impairing substance. S.L. 2003-170 also creates a new subsection in G.S. 95-111.13, providing that a willful violation of Article 14B resulting in death is a Class 2 misdemeanor, and punishment may include a fine of up to ten thousand dollars. Second or subsequent convictions are punished as Class 1 misdemeanors, and punishment may include

a fine of up to twenty thousand dollars. The amendment to G.S. 95-111.13 becomes effective December 1, 2003, and applies to offenses committed on or after that date. The other changes become effective October 1, 2003.

State Unemployment Tax Dumping. S.L. 2003-67 (S 326) is designed to deter businesses from engaging in state unemployment tax dumping (SUTA dumping), a practice of setting up dummy corporations to avoid state unemployment tax. Effective December 1, 2003, the new law makes it a felony to engage in SUTA dumping.

Securities Fraud. S.L. 2003-413 (S 925) amends various laws pertaining to securities fraud, including: (1) amending the criminal penalties provisions, and (2) creating a new felony obstruction of justice offense for obstruction of an investigation. These changes apply to offenses committed on or after December 1, 2003.

Sexually Explicit Conduct on Alcoholic Beverage Control (ABC) Commission Licensed Premises. S.L. 2003-382 (S 996) was passed in response to a preliminary injunction issued by the United States District Court for the Middle District of North Carolina enjoining the State from enforcing regulations prohibiting sexually explicit conduct on premises licensed by the ABC Commission. In its ruling, the federal court indicated that the regulations likely will be held unconstitutional. S.L. 2003-382 represents an attempt to craft new regulations that will withstand constitutional scrutiny. The law deletes problematic language in G.S. 18B-1005(a) and creates a new G.S. 18B-1005.1, making it a Class 1 misdemeanor for a permittee, agent, or employee to knowingly allow or engage in the following on licensed premises:

- Conduct or entertainment by any person whose genitals are exposed or who is wearing transparent clothing that reveals the genitals;
- Conduct or entertainment that includes or simulates sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any act that includes or simulates the penetration, however slight, by any object into a person's genital or anal opening; or
- Conduct or entertainment that includes fondling of the breasts, buttocks, anus, vulva, or genitals.

The new provision also makes it unlawful for a permittee to fail to superintend the permitted business. Excepted from the new G.S. 18B-1005.1 are persons operating theaters, concert halls, art centers, museums,

or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value. The new provision became effective August 1, 2003.

Uniform Athlete Agents Act. S.L. 2003-375 (S 563) adopts the Uniform Athlete Agents Act (UAAA) as a new Article 8A to G.S. Chapter 78C. Among other things, the UAAA prohibits an athlete agent, with the intent to induce a student-athlete to enter into an agency contract, from: (1) giving any materially false or misleading information or making a materially false promise or representation; (2) furnishing anything of value to a student-athlete before the athlete enters into the agency contract; or (3) furnishing anything of value to any individual other than the student-athlete or another registered athlete agent. Violations of these prohibitions constitute Class I felonies. This UAAA provision is effective December 1, 2003, and applies to acts committed on or after that date.

Unlawful Practice of Pharmacy. The budget bill, S.L. 2003-284 (H 397), contained several substantive provisions. Among them was section 10.8D, which creates a new G.S. 90-85.21B making it a Class 1 misdemeanor for an individual or business to falsely hold him-, her-, or itself out as licensed or registered to practice pharmacy. Effective July 1, 2003.

Criminal Procedure

Order for Arrest After Failure to Appear for Citation

S.L. 2003-15 (S 440) amends the citation statute, G.S. 15A-302, and the order for arrest statute, G.S. 15A-305, to provide that an order for arrest for failure to appear may be issued when an individual fails to appear in court as directed by a citation charging that individual with a misdemeanor. The new provision became effective April 19, 2003.

Bail Bonds

S.L. 2003-148 (S 962) creates a new G.S. 58-71-141, providing that before receiving an appointment, a surety bondsman must submit an affidavit stating that the bondsman does not owe any premium or unsatisfied judgment to any insurer and that the bondsman agrees to discharge all outstanding forfeitures and judgments on bonds previously written. If the bondsman does not satisfy or discharge all

forfeitures or judgments, the former insurer affected must notify, among others, the appointing insurer. Upon receipt of such notification, the appointing insurer must immediately cancel the surety bondsman's appointment. S.L. 2003-148 also creates procedures for reappointment and appeal, and authorizes the Commissioner of Insurance to adopt rules implementing the new requirements. The new provision becomes effective October 1, 2003, and applies to all appointments on or after that date.

DNA Sample

S.L. 2003-376 (H 79) substantially revises G.S. 15A-266.4, the provision requiring that DNA samples be taken from defendants convicted of certain crimes, and G.S. 15A-266.6, the provision setting out procedures for obtaining those samples. As revised, G.S. 15A-266.4 provides that unless a DNA sample has previously been obtained and has not been expunged, a sample must be taken from any defendant who is (1) convicted of any felony, assault on a handicapped person, or stalking or (2) found not guilty of any of those crimes by reason of insanity and been committed to a mental health facility.

For defendants committed to jail, prison, or a mental health facility, samples will be drawn upon intake at those locations. For defendants confined before the statute's effective date, samples will be drawn before parole or release from a mental health facility. Under new procedures for obtaining samples from defendants who are not sentenced to a term of confinement, the sentencing court must order the defendant to report immediately to a location designated by the sheriff. If the sample cannot be taken immediately, the sheriff must notify the court when and where it will be taken, and the court must include this information in its order. If the defendant fails to appear to provide the sample as ordered, the sheriff must notify the court and the court may issue an order to show cause pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The State Bureau of Investigation must provide the sheriff with the materials and supplies necessary to draw samples from defendants not sentenced to terms of confinement and these materials and supplies must be used when taking samples from those defendants. The new law also revises G.S. 15A-266.12, the provision pertaining to the confidentiality of DNA samples. S.L. 2003-376 becomes effective December 1, 2003.

Subpoenas

G.S. 15A-801 and -802 provide that that in a criminal case, a subpoena of a person or to produce documents must be issued and served as provided in Rule 45 of the Rules of Civil Procedure. S.L. 2003-276 (H 785) rewrites Rule 45 to conform it to the comparable federal rule of civil procedure. Although new Rule 45 is not identical to the federal rule, it tracks its form and includes much of the same language as the federal rule. For criminal cases, the method of issuance and service of a subpoena remains unchanged. The new rule requires a party issuing a subpoena to take reasonable steps to avoid an undue burden or expense on the person subject to the subpoena. It sets out procedures (1) for a person subpoenaed to file a written objection to the subpoena or a motion to quash or modify a subpoena; (2) to compel compliance with a subpoena; and (3) for how a person subpoenaed must respond to a subpoena for documents. Finally, it specifies that failure to respond to a subpoena may be punished as contempt and a party's failure to respond may subject that party to sanctions. Effective for actions pending or filed on or after October 1, 2003.

Legal Deadlines

S.L. 2003-337 (H 394) clarifies the law regarding legal deadlines that fall on a Saturday, Sunday, or holiday. For an automatic extension of time to apply because the deadline falls on a holiday, the holiday must be a legal holiday when the courthouse is closed for business. Effective October 1, 2003, and applicable to acts required or permitted by law to be done on or after that date.

Criminal History Records

S.L. 2003-214 (H 1024) adopts the National Crime Prevention and Privacy Compact. The Compact creates a legal framework for interstate and federal-state exchange of criminal history records for noncriminal justice purposes, such as background checks for governmental licensing and employment. The Compact became effective June 19, 2003.

Evidence

Rule 103

S.L. 2003-101 (H 689) makes a substantial change in G.S. 8C-1, Rule 103 of the Rules of Evidence by providing that once a court makes a definitive ruling on the record admitting or excluding evidence, either before or at trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal. Effective for rulings on evidence made on or after October 1, 2003.

Nurse-Patient Privilege

S.L. 2003-342 (H 743) grants nurses a testimonial privilege like the physician-patient privilege. A nurse is not required to testify about any information acquired in rendering professional nursing services if the information was necessary to render those services. However, a judge may override the privilege and compel disclosure if necessary to the proper administration of justice. The new law became effective on October 1, 2003.

Domestic Violence

Protective orders

S.L. 2003-107 (S 630) amends G.S. 50B-1(c) to clarify that protective orders entered by consent of the parties are domestic violence protective orders for all purposes under Chapter 50B. It also amends G.S. 50B-3(b) to clarify that a motion to renew a protective order must be filed before the expiration of the original or previous order, that orders previously renewed also are subject to renewal, and that the court can renew any order for good cause. No new act of domestic violence is required to support a renewal. Effective May 31, 2003.

Firearms in Domestic Violence Cases

S.L. 2003-410 (S 919) provides for the surrender of firearms in domestic violence cases, creates several new firearms felonies that apply in such cases, and amends the Class H firearms felony set out in G.S. 14-269.8.

S.L. 2003-410 creates a new G.S. 50B-3.1, providing that when issuing a 50B emergency or ex

parte order, the court must, if certain factors are found, order the defendant to surrender all firearms, machine guns, ammunition, and permits to purchase firearms and carry concealed firearms. When surrender is ordered, the court must include a term in the protective order prohibiting the defendant from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm. Also created are several new felony offenses related to the surrender procedures. Under G.S. 50B-3.1(i), it is a Class H felony for any person subject to a protective order prohibiting the possession or purchase of firearms to: (1) fail to surrender all items as ordered; (2) fail to disclose all information pertaining to firearms, ammunition, and permits as requested by the court; or (3) provide false information to the court regarding such items. S.L. 2003-410 also amends G.S. 14-269.8 to provide that, in accordance with G.S. 50B-3.1, it is a Class H felony to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, machine gun, ammunition, or permits to purchase or carry concealed firearms when a 50B protective order prohibiting such activity is in place. Finally, G.S. 50B-3.1(k) carves out an official use exemption for violations of G.S. 50B-3.1. S.L. 2003-410 becomes effective December 1, 2003, and applies to offenses committed on or after that date. For more detail regarding the surrender procedures, see North Carolina Legislation 2003, Chapter 3, Children and Families.

Juveniles

Entering Home During Investigation

Effective July 4, 2003, S.L. 2003-304 (S 421) amends G.S. 7B-302 to provide that a social services director or the director's representative may enter a private residence for purposes of a child protective services investigation only

- if the person has a reasonable belief that a child is in imminent danger of death or serious physical injury; or
- with permission of the parent or person responsible for the child's care; or
- if accompanied by a law enforcement officer who has legal authority to enter the residence; or
- pursuant to an order from a court of competent jurisdiction.

Hearsay Evidence Admissible

Effective May 20, 2003, S.L. 2003-62 (H 126) makes clear that the court may consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary to determine the juvenile's needs or the most appropriate disposition, in the following hearings:

- abuse, neglect, and dependency dispositional hearings under G.S. 7B-901;
- abuse, neglect, and dependency review hearings under G.S. 7B-906;
- permanency planning hearings under G.S. 7B-907;
- placement review hearings under G.S. 7B-908; and
- delinquency dispositional hearings under to G.S. 7B-2501.

Motor Vehicles

Rules of the Road

Speeding and speedometers. G.S. 20-123.2 provides that motor vehicles operated on the highway must be equipped with a speedometer which is maintained in good working order. However, a violation of this section is only a \$25 infraction with no driver's license or insurance points assessed. G.S. 20-141 sets forth the speed restrictions and penalties for their violation. Most of these violations are \$100 infractions or misdemeanors that result in both driver's license and insurance points. G.S. 20-141 does not provide an exception for individuals whose speedometer is not working properly. S.L. 2003-110 (H 510) adds a new G.S. 20-141(o), providing that a violation of G.S. 20-123.2 shall be a lesser included offense of a violation of G.S. 20-141. In some cases, this could allow a defendant charged with a speeding offense to plead guilty to a lesser offense which carries a small penalty and no driver's license or insurance points. S.L. 2003-110 is effective December 1, 2003, and prosecutions for offenses committed before the effective date are not abated or affected by its enactment.

Speed-measuring cameras. In recent sessions, many local governments have been authorized to install cameras to help enforcement of red-light violations. S.L. 2003-280 (H 562) authorizes the City of Charlotte to use cameras to detect speeders on fourteen specified roadways. Detailed rules are provided regarding the use of the cameras. The law is effective July 1, 2003 and expires June 30, 2006.

Hit and Run. S.L. 2003-394 (H 963) provides that if a defendant is convicted of a hit and run under G.S. 20-166(a), the Division of Motor Vehicles (DMV) shall revoke the defendant's driver's license for one year. If the court finds that a longer revocation period is appropriate, the DMV must revoke the driver's license for two years. Provision is made for a limited driving privilege, in certain circumstances. Effective for offenses committed on or after December 1, 2003.

Impaired Driving Offenses

Immediate license revocation. G.S. 20-16.5 provides for an immediate driver license revocation in certain DWI cases, typically when the defendant has refused a chemical test or the test shows an alcohol concentration of .08 or more. Usually this is a matter handled by a magistrate, who has been given a revocation report soon after the defendant is arrested and takes or declines a chemical test. However, in cases when a blood test is given, the revocation report may go to the clerk of superior court, who then mails the defendant a revocation order by first class mail. S.L. 2003-104 (S 619) amends G.S. 20-16.5(f) to provide that "a properly executed report ... may include a sworn statement by the charging officer along with an affidavit received directly by the Clerk from the chemical analyst." The effect of this change is that the clerk may revoke a license when the officer fails to forward the chemical analyst's affidavit to the clerk, provided it is received by the clerk directly from the analyst. This act became effective May 31, 2003.

DWI blood test. When a blood test is specified as the type of chemical analysis by the charging officer, only a physician, registered nurse, or other qualified person may withdraw the blood sample, as provided by G.S. 20-139.1(c). S.L. 2003-95 (S 449) amends this subsection to provide that evidence "regarding the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications." The bill does not address the question whether the person withdrawing the blood may be subpoenaed, nor does it limit the application of the act to district court cases. This act becomes effective December 1, 2003.

Law Enforcement

Veterans Administration Police Officers

S.L. 2003-36 (H 24) amends G.S. 15A-406(a) to add Veterans Administration police officers to the list of federal law enforcement officers authorized to enforce criminal laws in North Carolina, as provided in G.S. 15A-406. This law became effective May 14, 2003.

AMBER Alert System

S.L. 2003-191 (H 478) modifies the provisions in G.S. Chapter 143B pertaining to the North Carolina Child Alert Notification System, renaming it the AMBER Alert System. S.L. 2003-191 also modifies the criteria set out in G.S. 143B-499.7 regarding when the system must make efforts to disseminate information on missing children as quickly as possible. Under the amended criteria, the system must do so when:

- the child is 17 years of age or younger;
- the abduction is not known or suspected to be by the child's parent, unless the child's life is suspected to be in danger of injury or death;
- the child is believed to have been abducted or to be in danger of injury or death;
- the child is not a runaway or voluntarily missing; and
- the abduction has been reported to and investigated by a law enforcement agency.

These changes became effective on June 12, 2003.

Sentencing and Corrections

Enhanced Sentences

S.L. 2003-378 (S 693) amends several provisions prescribing enhanced sentences to conform them to decisions by the United States and North Carolina Supreme Courts in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *State v. Lucas*, 353 N.C. 568 (2001), and other cases. Specifically, S.L. 2003-378 amends the firearm enhancement statute, G.S. 15A-1340.16A, to provide that the facts necessary to establish the enhancement must be alleged in the indictment and proved beyond a reasonable doubt at trial, unless the defendant pleads guilty or no contest. Parallel changes are made to G.S. 15A-1430.16B (providing for enhanced punishment for second or subsequent

convictions of Class B1 felonies when the victim is thirteen years of age or younger and there are no mitigating factors) and G.S. 15A-1340.16C (providing for enhanced punishment when the defendant wears or has a bullet-proof vest). S.L. 2003-378 became effective August 1, 2003, and applies to offenses committed on or after that date.

Use of Force and Arrest by Corrections Officers

S.L. 2003-351 (H 497) removes the sunset on the use of force and power of arrest granted to private correctional officers in S.L. 2001-378. This amendment became effective July 27, 2003.

Substance Abuse Treatment

G.S. 15A-1343 sets out the law regarding conditions of probation necessary to help and ensure that defendants will lead law-abiding lives. S.L. 2003-141 (H 352) adds a new subsection to that provision, requiring defendants ordered to residential treatment in the Drug Alcohol Recovery Treatment Program to undergo a screening to determine chemical dependency. If the screening indicates a chemical dependency, the court must order an assessment to determine the appropriate treatment level. The assessment may be conducted before or after the court imposes the condition, but program participation must be based on the results of the assessment. S.L. 2003-141 also repeals G.S. 15A-1351(h), which had allowed sentencing judges to recommend, in their orders of commitment, that defendants be assigned to a Substance Abuse Treatment Unit. Finally, the new law amends G.S. 143B-262.1(h), deleting a court recommendation as one of the factors determining priority admission to the Substance Abuse Program. The new law becomes effective December 1, 2003, and applies to offenses committed on or after that date.

Probation

S.L. 2003-151 (S 93) amends G.S. 15A-1351(a), removing the six-month time limitation on the total of all periods of confinement imposed as an incident of special probation. The only limitation remaining is that such periods may not exceed one-fourth the maximum sentence of imprisonment imposed for the offense. A parallel change is made to G.S. 15A-1344(e) (responses to probation violations). The new law

becomes effective December 1, 2003, and applies to offenses committed on or after that date.

Reimbursement for Prisoners Awaiting Transfer to the State Prison System

The state budget act, S.L. 2003-284 (H 397), set several fees affecting the criminal justice system. Section 16.2 set at \$40 per day the fee that counties are paid by the Department of Correction to house prisoners awaiting transfer to the state prison system. Effective July 1, 2003.

Court Administration and Budget

Jury Lists

S.L. 2003-226 (H 842) is designed to ensure compliance with the federal Help America Vote Act. Among the changes brought about by S.L. 2003-226 are those affecting the rules governing the preparation of the master jury list for each county. Jury systems have a significant problem with the accuracy of the addresses they use to summon jurors—often very high percentages of those summons cannot be served because the addresses are no longer valid. One source of addresses is the list of registered voters for the county. S.L. 2003-226 amends the statutes on jury list preparation to provide for a master list designed to be more accurate and easier to use.

The master list is used to summon jurors for a two-year period (although some urban counties prepare a list every year). Currently the county jury commission must prepare the list using at least the county driver's license and voter registration lists. Those lists must be merged to form the raw list from which the master jury list is determined. The new law requires the DMV, when providing lists of drivers to the jury commissioners, to include registered voters living in the county. The list must eliminate duplicate names and indicate which people are only registered to vote and which names identify people who are only licensed to drive (or are suspended from driving). The list provided to the jury commission is confidential and not subject to the public records law. The jury commission must use the list provided by the DMV; it may add other sources of names, but that entire list must be merged with the list from DMV. The names for the master list must be selected randomly. The jury commission may no longer use samples from separate lists in preparing the master list. That was the method

most often used by counties that prepared the list manually without the use of computers. This change is effective January 1, 2004.

Worthless Check Programs

S.L. 2003-377 (H 1026) makes district attorney worthless check collection programs available statewide under certain circumstances. Effective August 1, 2003.

Budget

Like nearly all state funded activities, the court system budget was cut by S.L. 2003-284 (H 397). The budget directs the Administrative Office of the Courts to make \$3.4 million in nonrecurring cuts in fiscal 2003-04, to make \$1 million in permanent cuts, and to permanently forfeit \$1.5 million in salary reserves. (Salary reserves are funds that become available when a higher paid person is replaced by a lower paid person—for example, if a person paid \$50,000 is replaced by a person making \$30,000, a salary reserve of \$20,000 is created if the agency continues to receive the full \$50,000 for that position.) In effect, the reduction in salary reserves reduces the court system personnel budget by \$1.5 million. Smaller cuts also were made to some programs, and state funding for the arbitration program was substantially reduced.

The only new appropriations establish a reserve of \$450,000 to fund any personnel that are found to be necessary in a study being conducted by the Office of State Personnel, and the cost of establishing a new superior court district in Moore County. Currently Montgomery, Randolph, and Moore comprise superior court district 19B, and there are two superior court judgeships assigned to that district. One judge lives in Moore County and the other lives in Randolph. The budget creates a new district 19D, comprised solely of Moore County. No new judgeships are created; instead the judge who currently resides in Randolph is assigned to District 19B and the judge living in Moore is assigned to the new district 19D. The additional funds necessary to establish the new district will include the costs of the salary differential to upgrade a judge to the position of senior resident judge and to establish a judicial assistant position for that judge—around \$50,000 per year. The district court and prosecutorial districts are not affected by this change.

The budget made some substantive and fee changes that affect criminal law and procedure. Among them are amendments to the following statutes:

- G.S. 7A-455.1: to eliminate the option of making partial payments to pay the \$50 fee that is assessed when an attorney is appointed for an indigent criminal defendant.
- G.S. 7A-38.7: to require that the \$60 fee for mediation of criminal cases assigned to dispute settlement centers be imposed for each mediation in the case. Each center must attach the receipt for the fee to any dismissal form submitted to the district attorney and note the docket number for each case. These

centers receive substantial sums in grants from the state, and these changes are designed to make the reporting by the various centers more uniform and consistent.

Studies

The state budget act, S.L. 2003-284 (H 397), requires several studies, including those on public defender offices (state budget section 13.6) and probation and parole caseloads (section 16.18). Effective July 1, 2003.

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