

2021 Legislation Affecting Criminal Law and Procedure

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Below are summaries of 2021 legislation affecting criminal law and procedure. To obtain the text of the legislation, click on the link provided below or go to the General Assembly's website, www.ncleg.gov. Be careful to note the effective date of each piece of legislation.

- 1) **[S.L. 2021-36 \(H 743\)](#): Altering, destroying, or removing personal identification marks.** Effective for offenses committed on or after December 1, 2021, this act amends G.S. 14-160.1(c) to make alteration, destruction, or removal of permanent identification marks from personal property a Class 1 misdemeanor if the personal property was valued at one thousand dollars (\$1,000) or less at the time of the offense or a Class H felony if the personal property was valued at more than one thousand dollars (\$1,000) at the time of the offense. This punishment likewise applies to knowingly selling, buying, or being in possession of personal property of another on which the permanent identification marks have been altered, defaced, destroyed or removed.

This act also amends G.S. 14-401.4(d) to make willfully removing, defacing, destroying, altering or covering over any manufacturer's number or other distinguishing number or identification mark on any machine or other apparatus a Class 1 misdemeanor if the farm machinery, farm equipment, or farm apparatus was valued at less than \$1,000 at the time of the offense or (2) a Class H felony if the farm machinery, farm equipment, or farm apparatus was valued at \$1,000 or more at the time of the offense.

- 2) **[S.L. 2021-47 \(S 255\)](#): Administration of Justice.** This act made several changes to North Carolina's laws governing the administration of justice.

Order for arrest for failure to appear. Effective for orders and arrests issued on or after June 18, 2021, Section 6 of the act amends G.S. 15A-305 to specify that an order for arrest can only be issued for a defendant's failure to appear as required by a duly executed criminal summons if the summons charged the defendant with a criminal offense.

Court plea exceptions. Effective for pleas received on or after June 18, 2021, Section 7 of the act revises G.S. 15A-1011 to expand the types of cases authorized for pleas to be received outside of open court. This includes written pleas for the types of offenses specified in G.S. 7A-273(2) and G.S. 7A-273(2a) authorized under G.S. 7A-148(a) (including misdemeanor or infractions cases for alcohol offenses, traffic offenses, hunting, fishing, State park and recreation area rule offenses, boating offenses, open burning offenses and littering offenses, and misdemeanor dune or beach buggy county ordinance violations).

Court proceedings by audio/video transmission. Effective for all proceedings occurring on or after June 18, 2021, Section 9 of the act enacts G.S. 7A-49.6 granting a general authorization for judicial officials to conduct proceedings of all types using an audio and video transmission in which the parties, the presiding official, and any other participants can see and hear each other. The law mandates:

- Each party to a proceeding involving audio and video transmission must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.
- In a civil proceeding involving a jury, the court may allow a witness to testify by audio and video transmission only upon finding in the record that good cause exists for doing so under the circumstances.
- A party may object to conducting a civil proceeding by audio and video transmission. If the presiding official finds that the party has demonstrated good cause for the objection, the proceeding must not be held by audio and video transmission. If there is no objection, or if there is an objection and good cause is not shown, the presiding official may conduct the proceeding by audio and video transmission.
- Except as otherwise permitted by law, when the right to confront witnesses or be present is implicated in criminal or juvenile delinquency proceedings, the court may not proceed by audio and video transmission unless the court has obtained a knowing, intelligent, and voluntary waiver of the defendant's or juvenile respondent's rights.
- Proceedings conducted by audio and video transmission shall be held in a manner that complies with any applicable federal and State laws governing the confidentiality and security of confidential information.
- If the proceeding is one that is open to the public, then the presiding official must facilitate access to the proceeding by the public and the media as nearly as practicable to the access that would be available were the proceeding conducted in person.
- If the proceeding is required by law to be recorded, then the audio and video transmission must be recorded in accordance with G.S. 7A-95, G.S. 7A-198, and other laws, as applicable.
- This section is not intended to limit the court's authority to receive remote testimony pursuant to statutes that otherwise permit it.
- All proceedings under this section shall be conducted using videoconferencing applications approved by the Administrative Office of the Courts.

Section 11 of the act repeals language in other statutes relating to authority to conduct specific proceedings using audio or video technology to reflect the new general authorization for judicial officials to conduct any proceeding using audio or video transmission pursuant to G.S. 7A-49.6.

Assignment of emergency judges. Effective June 18, 2021 and expiring July 1, 2022, Section 12 of the act authorizes the Chief Justice of the Supreme Court to expand the active list of emergency superior court judges to no more than 25, notwithstanding the limit of 10 set in G.S. 7A-52(a). This section expands the Chief Justice's authority to include assignment of emergency judges to hold regular or special sessions of court to address case management issues created by the COVID-19 pandemic.

Magistrate conduct. Effective for magistrate conduct on or after October 1, 2021, section 13 of the act enacts G.S. 7A-171.3 to direct the Administrative Office of the Courts (AOC) to prescribe rules of conduct for magistrates, including standards of professional conduct and timeliness, required duties and responsibilities, and methods for ethical decision making. The law requires the AOC to prescribe the rules by October 1, 2021 and requires the rules to be consistent with the US and State constitutions.

Notice of expunction orders. Section 15 of the act amends G.S. 15A-150(b) to specify that expunctions granted pursuant to G.S. 15A-146(a4) (governing cases when charges are dismissed or there are findings of not guilty) are excluded from all clerk of superior court notice provisions of subsection (b). This section also revises G.S. 15A-150(e) to authorize the Administrative Office of the Courts (AOC) to provide notice to State and local agencies of expunctions grants pursuant to G.S. 15A-146(a4).

Service of motions. Effective for motions made on or after July 1, 2021, Section 16 of the act amends G.S. 15A-951(b) and (c), regarding service and filing of motions, to require service upon the attorney or defendant as provided in GS 1A-1, Rule 5 and to require filing proof of service with the court by filing a certificate of service as provided by Rule 5(b1). The act eliminates the existing service requirements that limit service to delivery or mail.

Declarations under penalty of perjury. Effective December 1, 2021, Section 17 of the act enacts G.S. 7A-98 to allow for matters filed electronically pursuant to rules promulgated by the Supreme Court to be supported, evidenced, established, or proved by unsworn declaration in writing, subscribed by the declarant and dated, that the statement is true under penalty of perjury, rather than under oath or affirmation. The law provides that declarations given pursuant to this section shall be deemed sufficient if given in substantially the following form: "I declare (or certify, verify, or state) under penalty of perjury under the laws of North Carolina that the foregoing is true and correct. Executed on (date). (Signature)."

The law further bars using unsworn statements for oral testimony; oaths of office; any statement under oath or affirmation required to be taken before a specified official other than a notary public; any self-proved will or codicil executed pursuant to G.S. 31-11.6; and any real property deed, contract, or lease requiring an acknowledgement pursuant to G.S. 47-17.

Section 17(b) of the act expands G.S. 14-209 to include knowingly and intentionally making a false statement in any unsworn declaration deemed sufficient pursuant to G.S. 7A-98 perjury, a Class F felony.

- 3) **S.L. 2021-68 (H 238): Possession of credit card skimming devices.** Effective for offenses committed on or after December 1, 2021, the act enacts new G.S. 14-113.9(a)(6), which prohibits the knowing possession, sale, or delivery of a skimming device. The new provision does not apply to an employee, officer, or agent of any of the following while acting within the scope of the person's official duties: a law enforcement agency; state or federal court; agency or department of the state, local, or federal government; and a financial or retail security investigator employed by a merchant.

The act also amends G.S. 12-113.8 to add subsection (11), which defines a skimming device as a self-contained device that

- (i) is designed to read and store in the device's internal memory information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a financial transaction card or from another device that directly reads the information from a financial transaction card and
- (ii) is incapable of processing the financial transaction card information for the purpose of obtaining, purchasing, or receiving goods, services, money, or anything else of value from a merchant.

The act amends the existing definition of “scanning device” under G.S. 12-113.8(10) to specifically exclude a skimming device.

- 4) **[S.L. 2021-94 \(H 522\): Service/release of alternate jurors.](#)** Effective for jurors and alternate jurors selected on or after October 1, 2021, this act modifies provisions regulating the service and release of alternate jurors. The act amends G.S. 15A-1215(a) to (1) direct courts to ensure alternate jurors do not discuss the case with anyone until they become a juror or are discharged; (2) permit alternate jurors to become jurors at any time before a verdict is rendered; (3) require that jury deliberations begin anew when an alternate juror becomes a juror; (4) provide that no more than twelve jurors can participate in deliberations; (5) provide that alternate jurors must be discharged at the same time and in the same manner as the original jury.