

## Overcriminalization & Ordinance Violations as Crimes

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Think you can consult the North Carolina General Statutes to know everything that’s been made criminal in North Carolina? Think again. Under state law, counties, cities, towns, and metropolitan sewerage districts have authority to create crimes through local ordinances. G.S. 14-4(a) (providing that, as a general rule, violation of such an ordinance is a Class 3 misdemeanor). Apparently, some local governments don’t realize that when they write ordinance violations they are creating crimes. What makes me say this? A 2018 law ([S.L. 2018-69](#)) required cities and towns that have enacted an ordinance punishable pursuant to G.S. 14- 4(a) to “create a list of applicable ordinances with a description of the conduct subject to criminal punishment in each ordinance” and submit it to certain Committees of the General Assembly by December 2018. At least one town reported that its ordinances don’t create any crimes, but that statement is contradicted by the town’s own Code of Ordinances which creates a host of crimes including curfew violations. (Want to check? The submissions are [here](#)).

One argument made in the national conversation about overcriminalization is that too many minor activities are made criminal and that it’s not efficient, effective, or fair to address this activity through the criminal justice system. Additionally it is argued that many low-level crimes—such as panhandling and sleeping in public places—criminalize poverty and homelessness when those issues should be treated as social needs. There is a lot more to the debate about overcriminalization but I’ll stop there. In trying to get a sense as to how big an issue this is for North Carolina, I decided to look at how many and what types of ordinance violations are charged as crimes in North Carolina. I realize that ordinance violations aren’t the only offenses that warrant examination; I’m just starting with ordinance crimes. There may be a better way to do this—and please chime in if you know one—but I looked at the NC Administrative Office of the Courts (NC AOC) 2018 “Tally” report. This report lists all criminal and infraction charges brought in 2018, along with other information, such as number of convictions obtained. Criminal charges clearly based on ordinance violations include:

**Table 1: Ordinance Charges & Convictions**

Offense Code	Description	GS Number	Charge Total	Conviction Total
8599	Local Ordinance-Free Text	[Nothing Listed]	2435	602
8521	Solicit Alms/Beg For Money	Local Ordinance	1690	440
4184	Open Container Alcohol Viol	Local Ordinance	1585	325
8517	Fail Provide Proof Fare Pay	Local Ordinance	1066	9
8543	Discharge Firearm in City	Local Ordinance	794	136
8508	City/Town Violation(M)	Local Ordinance	581	468
8506	Urinate in Public	Local Ordinance	529	111
4132	Poss/Cons Beer/Wine Public St	Local Ordinance	411	88
8504	Noise Ordinance Violation	Local Ordinance	370	133
8510	Leash Law Violation	Local Ordinance	208	87
8535	Curfew Violation	Local Ordinance	176	34
8541	Sleep in Public Place	Local Ordinance	161	60
4183	Consume Alc/Malt City/Co Prop	Local Ordinance	111	34
8540	Trespass or Sleep in Park Viol	Local Ordinance	106	9

8518	No City Dog Tags	Local Ordinance	93	1
8530	Defrauding Taxi Driver	Local Ordinance	86	24
4134	Poss/Con Beer/Wine Unauth Prem	Local Ordinance	85	46
8514	Littering Beer/Wine Container	Local Ordinance	80	13
8544	Possess Firearm on City Prop	Local Ordinance	60	6
8536	Loitering	Local Ordinance	54	22
4138	Possession Alcoholic Beverage	Local Ordinance	50	16
8538	Obstruct Pedestrian Sidewalk	Local Ordinance	41	8
8529	Fail Provide Proof Proper Fare	Local Ordinance	30	3
4164	Consume Beer/Wine Underage	Local Ordinance	27	5
8570	Barking Dog	Local Ordinance	27	4
8516	Illegal Dumping	Local Ordinance	24	4
8505	Loiter for Drug Activity	Local Ordinance	20	1
8511	Screeching Tires	Local Ordinance	12	1
8546	Carelessness with Fire	Local Ordinance	12	1
8522	Peddle License Violation	Local Ordinance	10	2
6251	Hunt from State Road	Local Ordinance	6	5
8507	Beach Strand Violation	Local Ordinance	3	3
8537	Graffiti Viol	Local Ordinance	2	0
4110	Allow Illegal Consumption Alc	Local Ordinance	1	0
<b>TOTAL</b>			10,946	2,701

Note that I excluded ordinance violations listed as infractions. I also excluded ordinance violations that appeared to relate to the operation or parking of vehicles, which under G.S. 14-4(b) are infractions.

Other charges appear on the Tally report that could be ordinance violations. They include:

**Table 2: Possible Ordinance Charges & Convictions**

Offense Code	Description	GS Number	Charge Total	Conviction Total
5099	Public Order-Free Text	[None Listed]	8403	401
9999	Other-Free Text	[None Listed]	4005	1329
5399	Public Peace—Free Text	[None Listed]	674	243
4199	Liquor-Free Text	[None Listed]	474	96
<b>TOTAL</b>			13,556	2,069

When charging crimes, “free text” is used when a specific NC AOC-created offense code can’t be found for the crime and thus no corresponding charging language populates the charging instrument in the computer system. In these instances whoever is charging uses “free text” to craft his or her own charging language. When creating the second table, I did not include many “free text” offenses that appeared to relate to statutory crimes, such as “Fraud-Free Text,” “Larceny-Free Text,” and “Weapon Offense-Free Text.”

There is a lot to unpack here and I’m still sifting through the Tally report. I offer several quick observations.

- The tables do not list all conduct made criminal by local ordinances; they simply list criminal charges brought in 2018 for criminal ordinance violations and convictions obtained.
- The 2018 Tally includes 2,712,294 total charges statewide. As a percentage ordinance violations are not a huge part of that total. But they do account for *at least* 10,946 total charges (Table 1).
- Some of the activity charged as criminal ordinance violations--such as “Barking Dog,” and “Screeching Tires”--might be subject to the challenge that it shouldn’t be criminal. Remember, a Class 3 misdemeanor is a *crime*. An arrest for such an offense creates a criminal record. And an arrest and/or criminal conviction record carries a host of collateral consequences that can prevent the defendant from getting a job, obtaining housing, and the like. And of course there are the costs and fines that accompany convictions; these costs can be quite high and can create their own set of problems for people of limited means. If policy makers are interested in regulating this type of conduct, one alternative is making it a non-criminal infraction. The General Assembly already has made that policy decision with respect to certain ordinance violations; as noted above under G.S. 14-4(b), violation of an ordinance regulating the operation or parking of vehicles is by law an infraction. Alternatively, if policy makers decide that this type of conduct should not be regulated at all (either as a crime or an infraction) they can reconsider or limit the delegation of authority to create crimes in G.S. 14-4(a).
- Some of the activity charged as criminal ordinance violations seems to relate to poverty and homelessness, such as begging for money and urinating and sleeping in public, and may be subject to the challenge that criminalizing that activity criminalizes poverty, at least in some circumstances.
- Some of the activity appears to be covered by existing state statutory crimes. For example:
  - “Trespass . . . In Park Viol” may be covered by G.S. 14-159.12 (first degree trespass; Class 2 misdemeanor at the low end), or G.S. 14-159.13 (second-degree trespass; Class 3 misdemeanor).
  - “Defrauding Taxi Driver” may be covered by G.S. 14-100 (obtaining property by false pretenses; Class H felony at the low end).
  - “Consume Beer/Wine Underage” may be covered by G.S. 18B-302(b) (consumption of alcohol by underage person; Class 3 misdemeanor at the low end).
  - “Illegal Dumping” and “Littering Beer/Wine Container” may be covered by G.S. 14-399 (littering; Class 3 misdemeanor at the low end).
  - “Obstruct Pedestrian Sidewalk” may be covered by G.S. 14-444 (intoxicated and disruptive in public; covers, among other things, interfering with access to or passage across a sidewalk; Class 3 misdemeanor).
  - “Loiter for Drug Activity” may be covered by, among other crimes, attempt to violate G.S. 90-95(a)(1) (sale or delivery of a controlled substance; Class H felony at the low end) or G.S. 90-95(a)(3) (possession of a controlled substance; Class 3 misdemeanor at the low end).
  - “Graffiti Viol” may be covered by G.S. 14-127 (injury to real property; Class 1 misdemeanor); G.S. 14-127.1 (graffiti vandalism; Class 1 misdemeanor at the low end); G.S. 14-132 (defacing a public building, statute or monument; Class 2 misdemeanor); or G.S. 14-160 (injury to personal property; Class 2 misdemeanor at the low end).
  - “Allow Illegal Consumption Alc.” may be covered by G.S. 18B-302(a) (selling alcohol to underage persons; Class 1 misdemeanor) or G.S. 18B-302(a1) (giving alcohol to underage persons; Class 1 misdemeanor).
  - “Public Order” and “Public Peace” may be covered by, among other provisions, G.S. 14-288.4 (disorderly conduct, various offenses; Class 2 misdemeanor at the low end); G.S. 14-132 (disorderly conduct in a public building; Class 2 misdemeanor); G.S. 14-281.1

(throwing objects at sporting events; Class 3 misdemeanor); G.S. 14-33 (affray; Class 2 misdemeanor at the low end); G.S. 14-288.2 (riot, including a misdemeanor version); or G.S. 14-288.5 (failure to disperse on command; Class 2 misdemeanor).

- “Carelessness with Fire” may be covered by G.S. 14-140.1 (failure to keep watch over a fire; punished as a fine-only infraction).

Assuming these ordinances are valid, see G.S. 160A-174 (city ordinance is inconsistent with state law when the elements of an offense defined by it “are identical to the elements of an offense defined by State . . . law”); *State v. Tenore*, 280 N.C. 238 (1972) (county ordinance was void where a state statute dealt with identical conduct), these potential areas of overlap raise a bunch of questions, such as: If a statutory offense already applies, is criminalization through an ordinance needed? Does overlap between ordinances and statutes create unnecessary complexity in state criminal law? When the penalties for ordinance crimes (which only apply in certain areas) don’t mesh with penalties for the same activity under statutory provisions (which apply statewide), might that lead to inconsistent application of the law that undermines the justice system? Does regular use of a lower level ordinance crime suggest that a lower level version of the offense may be needed in the criminal code?

- The largest category of charges is the generic “Local Ordinance—Free Text” (2,435 charges). “City/Town Violation (M)” (581 charges) is similarly vague. Without any detail regarding the type of conduct underlying these charges, it’s hard to make an assessment regarding them other than to note their number. I think that getting more information would require getting case numbers and pulling actual case files. If you have ideas on that, let me know.
- The 2018 Tally cautions that “[c]onviction rates can't be calculated from this report.” It is, however, interesting to look at the number of reported charges and convictions. Overall, the report lists 10,946 charges for criminal ordinance offenses and 2,701 convictions for those crimes. By contrast, misdemeanor larceny, the most charged non-traffic misdemeanor in 2018 lists 43,908 charges and 18,820 convictions.

I look forward to your thoughts on this. I’ve already been asked for a county-level breakdown of these charges; I’m working on that.