

PUBLIC LAW FOR THE PUBLIC'S LAWYERS
2017 LEGISLATIVE UPDATE
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CRIMINAL JUSTICE AND THE COURTS

Delinquents

[Section 16D.4 of S.L. 2017-57 \(S257\) Justice Reinvestment Act](#)

Section 16D.4 of S.L. 2017-57 does the following:

- Raises the age of juvenile jurisdiction to include 16 and 17 year olds, except in the case of A-G felonies.
- Provides a victim an opportunity to request review of a decision not to file a juvenile petition.
- Increases the information available on juveniles to law enforcement and for court proceedings.
- Authorizes school-justice partnerships statewide to reduce school based referrals to the juvenile court system.
- Requires regular juvenile justice training for law enforcement officers.
- Provides for gang assessments and enhanced sentencing for offenses committed as part of criminal gang activity.
- Establishes the Juvenile Jurisdiction Advisory Committee.

This section has various effective dates. Please see the full summary for more detail.

Drinking

[S.L. 2017-87 \(S155\) ABC Omnibus Legislation](#)

S.L. 2017-87 makes a variety of amendments to the laws governing alcoholic beverages. Some of the provisions included in this act include:

- Creating a spirituous liquor special event permit to allow distilleries to conduct free tastings.

- Allowing certain alcoholic beverages to be auctions by licensed auctioneers.
- Authorizing local governments to allow permittees to sell alcoholic beverages beginning at 10:00AM on Sunday.

For a complete explanation of these and the additional changes contained in the act, please see the full summary of the act.

Except as otherwise stated in the full summary of this act, the act became effective June 30, 2017.

Don't do it!

[S.L. 2017-89 \(H 98\) Criminal offense/Vandalize fire & EMS equipment](#)

S.L. 2017-89 creates the specific criminal offense of intentionally damaging equipment used for fire-fighting or emergency medical services. This act is effective December 1, 2017, and applies to offenses committed on or after that date.

[Section 16B.3 of S.L. 2017-57 \(S 257\) Protect hospital security personnel.](#)

Section 16B.3 of S.L. 2017-57 provides a Class I felony for an assault or affray causing physical injury on hospital security personnel who are discharging or attempting to discharge their official duties.

This section becomes effective December 1, 2017, and applies to offenses committed on or after that date.

[S.L. 2017-162 \(H 384\) Increase penalties/Organized retail theft](#)

S.L. 2017-162 expands the organized retail theft statutes and addresses gift cards and merchandise cards in existing law. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

[S.L. 2017-31 \(H 225\) Attempted is lesser included](#)

S.L. 2017-31 clarifies that attempted robbery with a dangerous weapon is a lesser included offense of robbery with a dangerous weapon by explicitly stating that if evidence is sufficient to prove robbery with a dangerous weapon, it is also sufficient to support a conviction of attempted robbery with a dangerous weapon.

This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

[S.L. 2017-194 \(H 138\) Revise gang laws](#)

S.L. 2017-194 makes changes to the laws governing criminal gang activity to create criteria for classification of criminal gang membership, create a sentencing enhancement for certain crimes committed by gang members, and increase the penalties for certain gang-related offenses.

This act becomes effective December 1, 2017 and applies to acts committed on or after that date.

[S.L. 2017-151 \(S 548\) Strengthen human trafficking laws/Studies](#)

S.L. 2017-151:

- Increases the felony level for human trafficking.
- Requires licensure of establishments providing massage and bodywork therapy services.
- Makes it a Class 1 misdemeanor to employ any unlicensed person to provide massage and bodywork therapy services to the public for which licensure is required.
- Requires massage and bodywork therapists to obtain a statewide privilege license.
- Directs the Department of Health and Human Services to study the feasibility of providing human trafficking training to health care providers, emergency medical providers, and relevant first responders.

This act has various effective dates. Please see the full summary for more detail.

[Section 17.4 of S.L. 2017-57 \(S257\) Strengthen human trafficking laws](#)

Section 17.4 of S.L. 2017-57 requires public-awareness signs containing information about the National Human Trafficking Resource hotline to be displayed at specified establishments and locations. This section became effective June 28, 2017.

[S.L. 2017-30 \(H 125\) Threaten weapon included in First Degree Rape](#)

S.L. 2017-30 expands the offense of first-degree forcible rape to include having vaginal intercourse with a person by force and against that person's will while threatening to use a dangerous or deadly weapon.

This act becomes effective December 1, 2017 and applies to offenses committed on or after that date.

[Section 16.6 of S.L. 2017-57 \(S257\) Expand crime victims' services](#)

Section 16.6 of S.L. 2017-57 provides up to three thousand dollars (\$3,000) for counseling services to the immediate family of certain victims of violent crime. This section became effective June 28, 2017.

Domestic Violence

[S.L. 2017-93 \(H 399\) Stop images taken without consent from dissemination](#)

S.L. 2017-9 amends the criminal law that prohibits the disclosure of private images. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

[S.L. 2017-92 \(H 343\) Enforcement of domestic violence protective order on appeal](#)

S.L. 2017-92 clarifies that a valid protective order which has been appealed to the appellate division is enforceable in the trial court during the pendency of the appeal. This act becomes effective October 1, 2017.

[S.L. 2017-94 \(S 600\) Britny's Law: Intimate partner violence homicide](#)

S.L. 2017-94 creates a rebuttable presumption of premeditation, elevating a homicide to a first degree murder, if there is malice and the defendant has a certain prior conviction involving the same victim. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

[S.L. 2017-22 \(S 53\) Law enforcement authority/Custody of child](#)

S.L. 2017-22 amends the laws regarding the temporary modification of child-custody in certain circumstances that present a substantial risk to the child. This act became effective October 1, 2017, and applies to orders for temporary custody on or after that date.

Defendants

[S.L. 2017-101 \(H 224\) Warrant check of inmates in custody](#)

S.L. 2017-101 clarifies the requirement created in S.L. 2015-48 for courts to attempt to determine if a defendant has any outstanding warrants. This act is effective December 1, 2017, and applies to orders entered on or after that date.

Section 18B.5 of S.L. 2017-57 (S257) Digital forensics included in court costs

Section 18B.5 of S.L. 2017-57 creates a \$600 court cost in criminal cases payable to the appropriate crime laboratory for the performance of digital forensics, including the seizure, forensic imaging, and acquisition and analysis of digital media.

This section became effective June 28, 2017.

S.L. 2017-147 (S388) Incapacity to proceed

S.L. 2017-147 requires reports ordered by courts of a criminal defendant's capacity to proceed to be released to clinicians at the program where the defendant is receiving capacity restoration and to clinicians designated by the Secretary of Health and Human Services; and creates a workgroup to evaluate the process and impact of capacity determination. This act became effective July 20, 2017.

S.L. 2017-16 (S 547) Restitution remission/Notice and hearing requirement

S.L. 2017-16 requires notice and the opportunity for the district attorney and victim to be heard before a judge may order restitution to be remitted. This act becomes effective December 1, 2017 and applies to orders for remission entered on or after that date.

Section 18B.6 of S.L. 2017-57 (S257) Fee waiver

Section 18B.6 of S.L. 2017-57 provides that no court may waive or remit all or part of any court costs or fines without providing notice and an opportunity to be heard to all government entities directly affected.

This section becomes effective December 1, 2017, and applies to all cases arising on or after that date.

S.L. 2017-195 (S 445) Expungement process modifications

Effective December 1, 2017, S.L. 2017-195 makes modifications to the various expunction statutes as follows:

- Standardizes the filing procedures for expunction.
- Authorizes prosecutors to access certain records of expunction.
- Allows certain expunged criminal acts to be considered in calculating prior record levels during sentencing for subsequent offenses if the expunction is granted on or after July 1, 2018.
- Reduces the waiting period for certain types of expunctions.
- Makes other modifications to the expunction process.

Drugs

[S.L. 2017-115 \(H 464\) Revise schedule of controlled substances](#)

S.L. 2017-115 amends the classification of controlled substances and creates a Task Force on Sentencing Reforms for Opioid Drug Convictions. The classification changes become effective December 1, 2017, and apply to offenses committed on or after that date and the task force provision became effective July 18, 2017.

[S.L. 2017 \(H229\) S.38 Conditional discharge for possession of paraphernalia](#)

In 2014, the General Assembly enacted G.S. 90-113.22A, which separated the possession of marijuana paraphernalia from the possession of all other drug paraphernalia but failed to add the new separate offense to the statute authorizing conditional discharge. This section would correct the citation, continuing to allow possession of marijuana paraphernalia to be eligible for conditional discharge. This provision became effective July 12, 2017.

Driving

[S.L. 2017-95 \(H 21\) Driver instruction/Law enforcement stops](#)

S.L. 2017-95 requires the Division of Motor Vehicles (DMV) to consult with the State Highway Patrol, the Sheriff's Association, and the Association of Chiefs of Police in including law enforcement traffic stop procedures and descriptions of appropriate driver interactions with law enforcement officers within its driver license handbook. It also requires the Department of Public Instruction (DPI) to incorporate these topics into the driver education curriculum offered at public high schools.

[S.L. 2017-191 \(H 84\) Drivers' license/Deaf or hard of hearing designation](#)

S.L. 2017-191 directs the Division of Motor Vehicles (DMV) to develop a voluntary driver's license designation for persons who are deaf or hard of hearing, and requires training for law enforcement on the designation and on recognizing and appropriately interacting with persons who are deaf or hard of hearing.

The act becomes effective January 1, 2018.

[S.L. 2017-96 \(H 27\) Clarify expiration of vehicle registration](#)

S.L. 2017-96 clarifies the expiration date and lawful use grace period for a vehicle registration renewed by a new registration plate, instead of a sticker.

This act became effective July 12, 2017.

[S.L. 2017-188 \(S 55\) School bus cameras/Civil penalties](#)

S.L. 2017-188 authorizes counties to impose a civil penalty on the owner of a vehicle that is recorded unlawfully passing a stopped school bus by a school bus safety camera, as long as the driver is not criminally prosecuted and no injury or death occurred. Failure to pay the civil penalty will prevent the owner from registering the vehicle with the Division of Motor Vehicles (DMV). Counties enacting the ordinance must maintain records of all violations resulting in imposition of a civil penalty and provide them upon request to the North Carolina Child Fatality Task Force and the General Assembly. Local school boards may contract with private vendors to install and operate the school bus safety cameras. The act's vehicle registration provision becomes effective July 25, 2018, and applies to payment delinquencies reported to the DMV on or after that date. The remainder of the act became effective July 25, 2017.

Devices

[S.L. 2017-166 \(H 469\) Regulation of fully autonomous vehicles](#)

S.L. 2017-166 regulates fully autonomous vehicles and makes various changes to various existing motor vehicle laws to account for the operation of fully autonomous vehicles on the roadways of this State without a human driver.

This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

[S.L. 2017-179 \(H 128\) Prohibit drone use over prison/jail](#)

S.L. 2017-19 creates multiple criminal offenses, and exceptions, related to operating an unmanned aircraft system (UAS) near local confinement facilities or State or federal correctional facilities. This act also directs the Division of Aviation of the Department of Transportation to petition the Federal Aviation Administration to designate these facilities as fixed site facilities, and to develop the guidelines for facility boundary notices.

This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

[S.L. 2017-160 \(H337\) Unmanned aircraft systems law revisions](#)

S.L. 2017-160: (1) clarifies that State laws applicable to unmanned aircraft systems (UAS) include model aircrafts generally; (2) repeals a State law limitation on the use of special imaging technology on unmanned aircraft systems; (3) exempts unmanned aircraft systems used by emergency management agencies for emergency management purposes from certain State law restrictions; (4) aligns State law permitting requirements for commercial operation of unmanned aircraft systems with federal law; and (5) exempts model aircraft used for hobby or recreational purposes from State testing and permitting requirements.

This act became effective July 21, 2017, except for the emergency management agencies' UAS exception, which becomes effective December 1, 2017.

Department of Public Safety

[S.L. 2017-186 \(S 344\) Combine Adult Correction & Juvenile Justice](#)

Parts I through III of S.L. 2017-186 statutorily combine the Division of Adult Correction and the Division of Juvenile Justice into one division within the Department of Public Safety to make the statutes consistent with the fact that those divisions have been operating as a single Division of Adult Correction and Juvenile Justice. These parts become effective December 1, 2017.

Part IV exempts the coverage of eyeglasses from the services that will be covered by Prepaid Health Plans under Medicaid transformation and allows payment for eyeglasses to continue under existing arrangements.

Except as otherwise indicated, the act became effective July 25, 2017.

[Section 16B.4 of S.L. 2017-57 \(S257\) Lieutenant Governor executive protection detail](#)

Sec. 16B.4 of S.L. 2017-57 creates within the North Carolina Highway Patrol a three-officer Lieutenant Governor Executive Protection Detail which must protect the Lieutenant Governor and his immediate family and perform duties as assigned by the Lieutenant Governor relating to his protection.

This section became effective June 28, 2017.

Disqualification

[Section 32.1 of S.L. 2017-57 \(S257\) Criminal record checks for the Department of Revenue](#)

Sec. 32.1 of S.L. 2017-57 directs the Department of Public Safety, upon request, and for a fee, to provide criminal histories to the Department of Revenue for its prospective employees, employees, and contractors, subject to the conditions of this section.

This section became effective July 1, 2017.

[S.L. 2017-140 \(H550\) Establish new nurse licensure compact](#)

S.L. 2017-140 enacts and makes North Carolina a member state in the new nurse licensure compact. It also repeals the current nurse licensure compact and replaces it with the new version.

This act will become effective the earlier of December 31, 2018, or the enactment of the new compact by the 26th state. The Board must report to the Revisor of Statutes when 26 states have enacted the compact.

[S.L. 2017-189 \(S 599\) Excellent educators for every classroom](#)

The act authorizes a superintendent, prior to suspending a teacher who is incarcerated or in custody without pay, to provide written notice of the charges, an explanation of the basis for the charges, and an opportunity to respond in writing, rather than meeting with the teacher in person. Additionally, it requires local boards of education to report to the SBE when a teacher's resignation was related to criminal history, regardless of whether dismissal proceedings had begun or the teacher had resigned without permission. The same requirement applies to charter and regional schools.

Do it!

[Section 26 of S.L. 2017-158 \(H236\) Pro bono legal services](#)

Section 26 of S.L. 2017-158 provides that the prohibition against the private practice of law otherwise applicable to magistrates, full-time district attorneys, full-time assistant district attorneys, full-time public defenders, full-time assistant public defenders, clerks, deputy or assistant clerks of court, registers of deeds, deputy or assistant registers of deeds, and sheriffs or deputy sheriffs, does not apply to pro bono legal services sponsored or organized by a professional association of lawyers or a nonprofit corporation that is statutorily permitted to render legal services.

This act became effective July 21, 2017.

Deer and Ducks

[S.L. 2017-182 \(H 559\) Outdoor heritage enhanced](#)

S.L. 2017-182 expands Sunday hunting with firearms by removing certain restrictions on Sunday hunting on private land, allowing Sunday hunting on game lands, and allowing migratory bird hunting on Sunday subject to the rules of the Wildlife Resources Commission (WRC). WRC may not authorize Sunday hunting of migratory birds prior to March 1, 2018, and must complete a study examining biological and resource management impacts, economic impacts, and social impacts associated with hunting migratory birds on Sunday by March 1, 2018. The law now requires any county ordinance prohibiting hunting on Sunday to be approved by a majority of voters in a county-wide referendum.

The portion of the law pertaining to ordinances prohibiting Sunday hunting becomes effective October 1, 2017. The remainder of S.L. 2017-182 became effective July 25, 2017.

CIVIL AND GOVERNMENTAL

S.L. 2017-57 (S257) State employee raises

Salary Increases for Most State-funded Employees. The net General Fund budget includes approximately \$12 billion, excluding agency receipts and other sources of funds, in FY 2017-18 to support the salaries of over 248,600 full-time equivalent (FTE) State-funded positions in State agencies, the University of North Carolina (UNC) system, community colleges, and Local Education Agencies (LEAs). Notable compensation increases provided in the Appropriations Act include:

- \$181 million to provide a \$1,000 salary increase to most State employees and non-certified personnel in LEAs.
- \$102 million to increase salaries for teachers and instructional support personnel paid according to the teacher salary schedule.
- \$18.4 million to complete the third and final phase of Correctional Officer custody-based salary increases.
- \$35.4 million to increase salaries for School-Based Administrators (Principals/Assistant Principals).

Section 35.18A of S.L. 2017-57 (S257) Special annual leave bonus

Any person who is (i) a full-time, permanent employee of the State, a community college, or a local board of education on July 1, 2017, and (ii) eligible to earn annual leave shall have a one-time additional three days of annual leave credited on July 1, 2017. The leave is accounted for separately and has no expiration date, but is subject to the carry forward limitations and must be used before separation or retirement.

S.L. 2017-199 (H719) Improve security/Upper level/Parking Lot 65

S.L. 2017-199 makes all of the parking spaces in the upper level of Parking Deck 65 under the Halifax Street Mall part of the "State legislative buildings and grounds" for purposes of allocation by the Legislative Services Commission. The act also gives the Legislative Services Commission the exclusive authority to assign parking spaces in Lot 7 of the State Government Parking Complex. The act became effective July 31, 2017.

[Sections 35.21\(c\) and 35.21\(d\) of S.L. 2017-57 \(S257\) Reduce long-term unfunded health care liabilities](#)

Section 35.21(c) amends the definition of "retired employee (retiree)" in the general definitions for the State Health Plan to include retired teachers, state employees, and members of the General Assembly who (i) are receiving monthly retirement benefits from the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Legislative Retirement System, or the Optional Retirement Programs and (ii) earned contributory retirement service in one of these retirement systems prior to January 1, 2021, and did not withdraw that service, so long as the retiree is enrolled.

Section 35.21(d) makes conforming changes to the categories of eligibility for the State Health Plan to apply the amended definition of "retired employee (retiree)."

These provisions become effective January 1, 2021.

[Section 20.5 of S.L. 2017-108 \(S615\) Agreements requiring agricultural producers to transfer funds to pay employee's union dues are invalid](#)

Section 20.5 amends G.S. 95-79. The section provides that agreements requiring an agricultural producer to transfer funds to a labor union or labor organization for the purpose of paying an employee's membership fee or dues are invalid and unenforceable against public policy in restraint of trade or commerce in the State of North Carolina.

This section became effective July 12, 2017, and applies to agreements and settlements entered into, renewed, or extended on or after that date.

[S.L. 2017-203 \(S407\) Employee misclassification/IC changes](#)

S.L. 2017-203 enacts the Employee Fair Classification Act that formally creates the Employee Classification Section (Section) within the Industrial Commission. The Section is authorized to receive complaints of employee misclassification, investigate complaints, coordinate investigations by other State agencies, exchange information among State agencies, and report the results of these investigations. The act also requires State occupational licensing boards to include on every application for a license: (1) a certification that the applicant has read a notice statement on employee misclassification and (2) disclosure, by the applicant, of any investigations for employee misclassification. The provisions dealing with employee misclassification become effective December 31, 2017. The act also requires the Industrial Commission to adopt rules for the utilization of opioids and pain management treatment and exempts the Industrial Commission from a fiscal note requirement to allow rules to be implemented more quickly. These provisions became effective August 11, 2017.

[S.L. 2017-3 \(H100\) Restore partisan elections for District and Superior Court](#)

S.L. 2017-3 provides that elections of superior court and district court judges are to be conducted in a partisan manner.

This act is effective with respect to primaries and elections held on or after January 1, 2018.

S.L. 2017-7 (H239) Reduce Court of Appeals to 12 Judges

S.L. 2017-7:

- Reduces the Court of Appeals from 15 to 12 judges by abolishing the first three seats that become vacant on or after January 1, 2017, prior to expiration of the incumbent's term.
- Provides an appeal of right directly to the North Carolina Supreme Court from orders regarding class action certification and orders terminating parental rights or denying a motion or petition to terminate parental rights.
- Permits review by the North Carolina Supreme Court before determination by the Court of Appeals when the subject matter is important in overseeing the jurisdiction and integrity of the court system.

The provisions of the act allowing appeals of right directly to the Supreme Court from orders relating to the termination of parental rights becomes effective January 1, 2019, and applies to appeals filed on or after that date. The remainder of the act became effective April 26, 2017.

S.L. 2017-6 (S68) Bipartisan Board of Elections and Ethics Enforcement

S.L. 2017-6 consolidates the functions of elections, campaign finance, lobbying, and ethics under one quasi-judicial and regulatory agency by creating the North Carolina Bipartisan State Board of Elections and Ethics Enforcement. Except as otherwise provided, the act became effective May 1, 2017.

S.L. 2017-18 (S24) Allow restaurants to use outdoor grills

S.L. 2017-18 allows food establishments to use outdoor grills for food preparation if certain conditions are met.

This act became effective May 24, 2017.

OTHER BILLS OF NOTE

[S.L. 2017-159 \(H310\) Wireless communication infrastructure siting](#)

S.L. 2017-159:

- Amends the laws relating to regulation by cities of wireless infrastructure siting with regard to collocation of small wireless facilities on city utility poles in public rights-of-way.
- Authorizes cities to assess fees on wireless providers for occupation of rights-of-way if the city charges other communications service providers or publicly, cooperatively, or municipally owned utilities for similar uses of the rights-of-way.
- Authorizes cities to charge wireless providers for collocation of a small wireless facility on city utility poles a rate of \$50 per pole per year.
- Authorizes the North Carolina Department of Transportation (NCDOT) to issue permits to wireless providers for collocation of wireless facilities on State rights-of-way.

This act became effective July 21, 2017.

[S.L. 2017-138 \(H436\) Local Government/Regulatory Fees](#)

S.L. 2017-138 establishes a uniform authority for system development fees to be charged by a publicly operated water or sewer system, or both, effective October 1, 2017, applying to system development fees imposed on or after that date. The act also clarifies that the statute of limitations is three years for repayment of an unlawful fee, charge, or exaction imposed by a local unit of government, applying to claims accrued or pending prior to and after July 20, 2017.

[S.L. 2017-74 \(H243\) Strengthen Opioid Misuse Prevention \(STOP\) Act](#)

S.L. 2017-74 makes the following changes to the laws governing the prescribing of controlled substances:

- Extends the statewide standing order for opioid antagonists to allow practitioners to prescribe an opioid antagonist to any governmental or nongovernmental agency (effective July 1, 2017).
- Designates certain Schedule II and III drugs as "targeted controlled substances" and makes changes to the laws governing the prescribing of those substances.
- Clarifies the allowable funds for syringe exchange programs.
- Makes changes to the statutes governing the Controlled Substance Reporting System (CSRS) database.

- Amends language in the 2015 budget to facilitate the interstate connectivity of the CSRS database (effective July 1, 2017).

S.L. 2017-4 (H142) Reset of S.L. 2016-3

S.L. 2017-4 does the following:

- Repeals S.L. 2016-3 and S.L. 2016-99.
- Preempts regulation of access to multiple occupancy restrooms, showers, or changing facilities by any State or local government, except in accordance with an act of the General Assembly.
- Prohibits a local government from enacting or amending an ordinance regulating private employment practices or regulating public accommodations. This section expires December 1, 2020.

This act became effective March 30, 2017.

S.L. 2017-192 (H589) Competitive Energy Solutions for North Carolina

S.L. 2017-192 amends various laws related to energy policy, including reform of the State implementation of PURPA, the creation of a competitive bidding process for new renewable energy facilities, and the enactment of the Distributed Resources Access Act to authorize leasing of third-party owned solar development.

This act has various effective dates. Please see the full summary for more detail.

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