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2002 LEGISLATION AFFECTING CRIMINAL LAW AND PROCEDURE

➤Jessica Smith

The 2002 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, victim assistance and domestic violence, motor vehicles, law enforcement, sentencing and corrections, collateral consequences, 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 2002. That publication, which records all significant 2002 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.

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

Incest

Prior to enactment of S.L. 2002-119 (H 1276), individuals who were charged with and convicted of incest were punished less severely than individuals who were charged with and convicted of statutory rape. When the incest was between a grandparent and grandchild, parent and child, stepchild or adopted child, or brother and sister, it was punished as a Class F felony. When the incest was between an uncle and niece or aunt and nephew, it was punished as a Class 1 misdemeanor. Statutory rape carries harsher punishments. Statutory rape is punished as a Class B1 felony when (1) the defendant is at least 12 years old and the victim is less than 13 years old and at least four years younger than the defendant and (2) the defendant is at least 6 years older than the victim and the victim is 13, 14, or 15 years old. Statutory rape is punished as a Class C felony when the defendant is more than 4 but less than 6 years older than the victim and the victim is 13, 14, or 15 years old. H 1276 states that its purpose is to eliminate a "loophole" created by the disparity in punishments between incest and statutory rape. However, when the age requirements were satisfied, individuals who had sexual intercourse with children who were related to them could have been charged with statutory rape and, if convicted, subject to the harsher punishments that apply to that offense. By increasing the punishments for incest to bring them in line with those for statutory rape, the new law merely eliminates the possibility that individuals who have sexual intercourse with children who are related to them can be charged with incest and, if convicted, receive a lesser punishment than if they were charged with and convicted of statutory rape.

Effective for offenses committed on or after December 1, 2002, the new law repeals G.S. 14-179 (incest between uncle and niece and nephew and aunt) and amends G.S. 14-178 (incest between certain near relatives), renaming it "Incest." Under the amended provision, a person commits incest if he or she engages in sexual intercourse with his or her grandparent or grandchild, parent, child, stepchild or legally adopted child, brother or sister of whole or half blood, or uncle, aunt, nephew or niece. Punishments for incest are increased as follows:

- A person is guilty of a Class B1 felony if the person commits incest against a child under 13 years old and the person is at least 12 years old and is at least 4 years older than the child when the incest occurs *or* the person commits incest against a child who is 13, 14, or 15 years old and the person is at least 6 years older than the child when the incest occurs.
- A person is guilty of a Class C felony if the person commits incest against a child who is 13, 14, or 15 and the person is more than 4 but less than 6 years older than the child when the incest occurs.
- In all other cases of incest, the parties are guilty of a Class F felony.

Finally, H 1276 adds a new provision stating that no child under the age of 16 is liable for incest if the other person is at least 4 years older than the child when the incest occurs.

Rape and Sex Offenses

Section 2 of the technical corrections bill, S.L. 2002-159 (S 1217), replaces the term "mentally defective" as used in G.S. 14-27.3 (second-degree rape), G.S. 14-27.5 (second-degree sexual offense), and G.S. 14-27.1 (definitions for the Article on rape and other sex offenses) with the term "mentally disabled." It makes the same change in G.S. 15-144.1 (essentials for bill of rape) and G.S. 15-144.2 (essentials for bill of sex offense). The amendments are effective December 1, 2002, and apply to offenses committed on or after that date. The changes will require modifications in the charging language and jury instructions for these offenses.

Tax Fraud and Related Offenses

Filing False Tax Documents. G.S. 105-236(9a) provides that any person who willfully aids, assists in, procures, counsels, or advises the preparation, presentation or filing of false tax documents is guilty of a Class H felony. S.L. 2002-106 (S 1218) amends that provision, increasing the punishments when the defendant is an income tax preparer. It provides that if the person who commits the offense is:

- An income tax return preparer and the amount of taxes fraudulently evaded on returns filed in one year is $100,000 or more, the person is guilty of a Class C felony.
- An income tax return preparer and the amount of taxes fraudulently evaded on returns filed

in one year is less than $100,000, the person is guilty of a Class F felony.
- Not an income tax return preparer, the person is guilty of a Class H felony.

Although certain exceptions apply, an income tax return preparer is defined in G.S. 105-228.90(b)(4) as any person who prepares for compensation, or who employs others to prepare for compensation, any tax return or refund claim.

The statutory changes take effect on December 1, 2002, and apply to acts committed on or after that date.

Failing to Remit Funds. S.L. 2002-106 creates a new subsection in G.S. 105-236 making it a Class F felony to receive money from a taxpayer with the understanding that the money is to be remitted to the Secretary to pay taxes and willfully fail to remit the funds. The new subsection becomes effective December 1, 2002, and applies to acts committed on or after that date.

Disclosure of Tax Information. S.L. 2002-106 adds an exception to G.S. 105-259(b), the provision prohibiting a state officer, employee, or agent from disclosing tax information acquired during employment. The new exception allows for disclosures to law enforcement agencies of information concerning the commission of an offense discovered by the Department of Revenue during a criminal investigation of the taxpayer. The new disclosure exception became effective on September 6, 2002.

Government Computer Offenses

Unlawful Access to Government Computers. Article 60 of Chapter 14 of the General Statutes pertains to computer-related crime. The offenses in this article cover, among other things, unlawfully accessing and damaging computers. S.L. 2002-157 (H 1501) creates a new section in Article 60 with harsher penalties for unlawful access to government computers. New G.S. 14-454.1 makes it a Class F felony to willfully access or cause to be accessed any government computer for the purpose of:

- Devising or executing any scheme or artifice to defraud; or
- Obtaining property or services by means of false or fraudulent pretenses, representations, or promises.

The new provision makes it a Class H felony to willfully and without authorization access or cause to be accessed any government computer for any purpose other than those set forth above. Punishment for the same acts with regard to computers not owned, operated, or used by governmental entities is set forth in G.S. 14-454 and remains a Class G felony or Class 1 misdemeanor, depending on the dollar amount of damage caused. The new law also provides that it is a Class 1 misdemeanor to willfully and without authorization access or cause to be accessed any educational testing material or academic or vocational testing scores or grades that are in a government computer. However, it appears that such access already was punished as a Class 1 misdemeanor under G.S. 14-454(b).

Definitions. The new law defines "government computer" to mean any computer, computer program, computer system, computer network, or any part thereof, that is owned, operated, or used by any state or local governmental entity. The phrase "access or cause to be accessed" is defined, as in G.S. 14-454, to include introducing, directly or indirectly, a computer program (including a self-replicating or self-propagating computer program) into a computer, computer program, computer system, or computer network.

Damaging a Government Computer. S.L. 2002-157 amends G.S. 14-455 (damaging computers, computer programs, computer systems, computer networks, and resources), adding a new subsection making it a Class F felony to willfully and without authorization alter, damage, or destroy a government computer. Punishment for the same acts with regard to computers not owned, operated, or used by governmental entities remain a Class G felony or Class 1 misdemeanor, depending on the dollar amount of damage caused.

Denying Government Computer Services. Denial of computer services to an authorized user is prohibited under G.S. 14-456 and punished as a Class 1 misdemeanor. S.L. 2002-157 adds a new section G.S. 14-456.1 making it a Class H felony to willfully and without authorization deny or cause the denial of government computer services. Although the new section defines "government computer service" to mean "any service provided or performed by a government computer," neither the new section nor G.S. 14-456 define the term "service." Nor is the term defined in the North Carolina case law. In its broadest interpretation, the term "service" would include all functions performed by government computers, thus giving wide application to the new felony. In a narrower interpretation, the term might be deemed to apply only to functions that provide assistance or benefit, such as a government web site offering forms to the public or a direct deposit system for government benefits. Like G.S. 14-456, the new provision expressly applies to a denial of services

effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or self-propagating computer program) into a computer, computer program, computer system, or computer network. Thus, it covers computer viruses.

Exceptions. S.L. 2002-157 creates a new section G.S. 14-453.1, including exceptions to the prohibitions in Article 60. Specifically, it provides that Article 60 does not apply to or prohibit:

- Any terms or conditions in a contract or license related to a computer, computer network, software, computer system, database, or telecommunication device; or
- Any software or hardware designed to allow a computer, computer network, software, computer system, database, information, or telecommunication service to operate in the ordinary course of a lawful business or that is designed to allow an owner or authorized holder of information to protect data, information, or rights in it.

Jurisdiction. S.L. 2002-157 adds a new jurisdictional provision in G.S. 14-453.2 providing that any offense under Article 60 committed by the use of electronic communication may be deemed to have been committed where the electronic communication was originally sent or where it was originally received in North Carolina.

Effective Date. The new law becomes effective December 1, 2002, and applies to offenses committed on or after that date.

Defrauding Drug and Alcohol Screening Tests

Effective for acts committed on or after December 1, 2002, S.L. 2002-183 (S 910) creates several new offenses regarding defrauding drug and alcohol screening tests. New G.S. 14-401.20 makes it unlawful to:

- Sell, give away, distribute, or market urine or transport urine into North Carolina with the intent that it be used to defraud a drug or alcohol screening test; or
- Attempt to foil or defeat such a test by the substitution or spiking of a sample or the advertisement of a sample substitution or other spiking device or measure; or
- Adulterate a urine or other bodily fluid sample with the intent to defraud such a test; or
- Possess adulterants that are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding such a test; or
- Sell adulterants with the intent that they be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding such a test.

First offenses are punished as Class 1 misdemeanors. Second or subsequent offenses are punished as Class I felonies.

Fraudulent Financial Transactions

Forgery. G.S. 14-119(a) prohibits only making, forging, or counterfeiting of instruments or securities with intent to injure or defraud. Violation is a Class I felony. S.L. 2002-175 (H 1100) amends G.S. 14-119(a) to cover possession of counterfeit instruments as well. Amended G.S. 14-119(a) provides that it is a Class I felony to forge or counterfeit any instrument or possess any counterfeit instrument, with the intent to injure or defraud any person, financial institution, or governmental unit. A new subsection in G.S. 14-119 creates a Class G felony for transporting or possessing five or more counterfeit instruments with the intent to injure or defraud any person, financial institution, or governmental unit. Finally, the law amends the definitions of terms used in these offenses as follows:

- "Counterfeit" is defined to mean to "manufacture, copy, reproduce, or forge an instrument that purports to be genuine, but is not, because it has been falsely copied, reproduced, forged, manufactured, embossed, encoded, duplicated, or altered."
- "Financial institution" is amended to expressly state that it includes both foreign and domestic institutions.
- "Governmental unit" is amended to include foreign jurisdictions.
- "Instrument" is amended to include currency.

Financial Transaction Card Theft. G.S. 113.9 criminalizes financial transaction card theft. S.L. 2002-175 (H 1100) adds a new subsection to that provision stating that a person is guilty of financial transaction card theft when he or she, with intent to defraud:

- Uses a scanning device to access, read, obtain, memorize, or store information

encoded on another person's financial transaction card; or
- Receives the encoded information from another person's financial transaction card.

The term "scanning device" is defined to include a scanner, reader, or any other device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on a financial transaction card.

Financial Identity Fraud. Article 19C in Chapter 14 of the General Statutes pertains to financial identity fraud. G.S. 14-113.20 criminalizes financial identity fraud and provides that it is a felony to knowingly obtain, possess, or use identifying information of another person without their consent with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name, or for the purpose of avoiding legal consequences. S.L. 2002-175 (H 1100) amends that provision in several respects. Specifically, it:

- Makes it apply when the identifying information belongs to any person, living or dead;
- Removes the requirement that the perpetrator act without the victim's consent;
- Expands the criminal intent to include the intent to obtain anything of value, benefit, or advantage; and
- Includes the following items within the meaning of the term "identifying information" — biometric data, fingerprints, passwords, and parent's legal surname prior to marriage.

H 1100 also creates a new G.S. 14-113.20A entitled "Trafficking in Stolen Identities." This section makes it unlawful to sell, transfer or purchase the identifying information of another person with the intent to commit financial identity fraud, or to assist another person in committing financial identity fraud. Violation is a felony, punishable as provided in G.S. 14-113.22 (see below). The exceptions that apply to G.S. 114-113.20 apply to the new offense as well.

H 1100 also amends G.S. 14-113.22, the provision on punishment for violations of Article 19C, as follows:

- Before the amendments, violation of G.S. 14-113.20 (financial identity fraud) was punished as a Class H felony unless the victim suffered arrest, detention, or conviction as a result of the offense, in which case, it was a Class G felony. Under the H 1100 amendments, such violations are now punished as Class G felonies unless one of two exceptions applies. The offense becomes a Class F felony if (1) the victim suffers arrest, detention, or conviction as a proximate result of the offense, or (2) the person is in possession of the identifying information pertaining to three or more separate people.
- A violation of the new offense created in G.S. 14-113.20A for trafficking in stolen identities is punished as a Class E felony.
- The amendments provide that the court may order a person convicted under G.S. 14-113.20 (financial identity fraud) or G.S. 14-113.20A (trafficking in stolen identities) to pay restitution pursuant to Article 81C of Chapter 15A of the General Statutes (restitution) for financial loss caused by the violation.

Civil Action. Finally, H 1100 amends Article 43 of Chapter 1 of the General Statutes (civil procedure; nuisance and other wrongs) by adding a new G.S. 1-539.2C providing that any person whose property or person is injured by reason of an act made unlawful by Article 19C may sue for civil damages and an injunction. If the identifying information of a deceased person is used in violation of Article 19C, the deceased person's estate may sue.

Effective Date. The provisions of H 1100 become effective December 1, 2002, and apply to offenses committed on or after that date.

Regulatory Offenses

Emissions Violations. S.L. 2002-4 (S 1078) adds a new section to Article 21B of Chapter 143 of the General Statutes imposing limits on the emission of certain pollutants from coal-fired generating units. Effective June 20, 2002, this law creates the following new criminal offenses for violation of its emission limitations:

- Any person who negligently violates any classification, standard, or limitation in the new section shall be guilty of a Class 2 misdemeanor and may be subjected to a fine not to exceed $15,000 per day of violation, provided that the fine shall not exceed a cumulative total of $200,000 for each period of 30 days during which a violation continues.
- Any person who knowingly and willfully violates the new emissions limitations shall

be guilty of a Class H felony and may be subjected to a fine not to exceed $100,000 per day of violation, provided that the fine shall not exceed a cumulative total of $500,000 for each period of 30 days during which a violation continues.

- Any person who knowingly violates the new emissions limitations and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class C felony and may be subjected to a fine not to exceed $250,000 per day of violation, provided that the fine shall not exceed a cumulative total of $1,000,000 for each period of 30 days during which a violation continues.

Cigarette Sales. G.S. 14-401.18 prohibits sales of certain packages of cigarettes. Effective January 1, 2003, S.L. 2002-145 (H 348) amends that section, creating a new Class A1 misdemeanor. The new misdemeanor applies to any person who sells or holds for sale a package of cigarettes that violates federal laws governing the submission of ingredient information to federal authorities pursuant to 15 U.S.C. § 1335a, federal laws governing the import of certain cigarettes pursuant to 19 U.S.C. § 1681 and 19 U.S.C. § 1681b, or any other provision of federal law or regulation.

False Statements to the North Carolina Small Business Contractor Authority. S.L. 2002-181 (S 832) creates the North Carolina Small Business Contractor Authority (Authority) to foster economic development and the creation of jobs by providing financial assistance to financially responsible small businesses. The Authority is authorized to, among other things, guarantee and provide loans to eligible businesses. The new law provides that it is a Class 2 misdemeanor to knowingly make or cause to be made false statements or reports to the Authority. S.L. 2002-181 becomes effective January 1, 2003, and applies to offenses committed or after that date. The new law is scheduled to expire on June 30, 2006.

Local Bills

Pitt County Hunting. S.L. 2002-142 (H 1651) provides that in Pitt County it is unlawful to:

- Hunt with a firearm from, on, or across the right-of-way of any public road or highway.
- Hunt while under the influence of an impairing substance.
- Hunt with a firearm within 300 feet of any residence or occupied building without the permission of the owner or lessee of the land.
- Hunt or discharge a firearm on or across posted land without the permission of the owner or lessee of the land.
- Release dogs on, or to allow them to run on, posted land without the permission of the owner or lessee of the land.

Violations are punishable as Class 3 misdemeanors. Notwithstanding G.S. 15A-1340.23 (punishment limits for each class of offense and prior conviction level) violations are punishable by a fine of up to $250. A second or subsequent violation involving hunting while under the influence is punishable by a fine of at least $250 and a 12-month loss of hunting privileges.

The new law is enforceable by law enforcement officers of the Wildlife Resources Commission, sheriffs and deputy sheriffs, and other peace officers with general subject matter jurisdiction. It is effective November 1, 2002, and applies to offenses committed on or after that date.

Criminal Procedure

Criminal Process

Electronic Repository. S.L. 2002-64 (H 1583) directs the Administrative Office of the Courts (AOC) to create an electronic repository for criminal process allowing for the creation, signing, issuing, entering, filing, and retaining of criminal process in electronic form. The electronic repository must allow for the tracking of criminal process, remote access to criminal process, and the printing of electronic criminal process on paper. Although this law becomes effective January 1, 2003, the provisions regarding the electronic repository cannot be implemented until the AOC puts such a repository in place. Currently, no such system exists. Once the repository is in place, any criminal process may be created, signed, issued, and filed in electronic form and retained in the electronic repository. Also, any criminal process that was first created in paper form may be filed in electronic form and entered in the repository. When electronic criminal process from the repository is printed in paper form, it will have the same effect as the original. Thus, it will be possible to validly serve a person with a printed copy of any electronic criminal process from the repository. The rules regarding service of a printed copy of electronic process in the repository are: service must occur within

24 hours after the process was printed; the date, time, and place of service must be entered in the electronic repository; and if service is not made within 24 hours, that fact must be recorded in the electronic repository and the paper copies must be destroyed (although the process may be reprinted at a later time).

Facsimile Transmissions Constitute Originals. Effective January 1, 2003, S.L. 2002-64 provides that a signed "document" printed through a facsimile machine constitutes an "original." The law defines the term "document" to include any pleading, criminal process, subpoena, complaint, motion, application, notice, affidavit, commission, waiver, consent, dismissal, order, judgment, or other writing intended in a criminal or contempt proceeding to authorize or require an action, to record a decision, or to communicate or record information. The term does not include search warrants. Thus, when the law becomes effective, defendants validly may be served with faxed copies of any criminal process.

Electronic Signatures. Effective January 1, 2003, S.L. 2002-64 defines a "signature" to mean any symbol executed with the intent to authenticate a document. It provides that a document may be signed "by the use of any manual, mechanical or electronic means that causes the individual's signature to appear in or on the document." Thus, the law clarifies that as long as a document contains a printed "signature," it need not be signed by hand.

Recall of Process. Effective January 1, 2003, S.L. 2002-64 provides for the recall of criminal process, other than a citation, that has not been served on a defendant. Under the new law, a warrant or criminal summons must be recalled by the judicial official who issued it when that official determines that there was no probable cause supporting its issuance. It also provides that an order for arrest may be recalled for good cause by any judicial official of the trial division in which it was issued. Good cause is defined to include, without limitation, the fact that:

- A copy of the order for arrest has been served on the defendant; or
- All charges on which the order for arrest is based have been disposed; or
- The person named as the defendant in the order for arrest is not the person who committed the charged offense; or
- It has been determined that grounds for the issuance of an order for arrest did not exist, no longer exist, or have been satisfied.

The disposition of all charges on which the process is based automatically recalls that process. Also, the law provides for a means to recall paper and electronic criminal process.

Bioterrorism Preparedness

Effective October 1, 2002, S.L. 2002-179 (H 1508) adds a new Article 22 to Chapter 130A of the General Statutes entitled "A Terrorist Incident Using Nuclear, Biological, or Chemical Agents." The new law gives the state health director broad authority to respond to a suspected terrorist attack, including among other things, authority to limit the movement of contaminated people or animals and to limit access to certain areas. Other sections of the new law amend provisions in Chapter 130A of the General Statutes and deal with, among other things, health officials' quarantine and isolation authority.

Detention in Designated Area. S.L. 2002-179 amends G.S. 15A-401(b) to allow law enforcement officers to detain a person arrested for violating an order limiting freedom of movement or access in an area designated by the state health director or local health director. The person may be detained in the area until the initial appearance.

Pretrial Release. S.L. 2002-179 creates a new section, G.S. 15A-534.5, providing that if a judicial official conducting an initial appearance finds by clear and convincing evidence that a person arrested for violating an order limiting freedom of movement or access poses a threat to the health and safety of others, the judicial official shall deny pretrial release and shall order the person to be confined in an area or facility designated by the judicial official. The pretrial confinement terminates when a judicial official determines that the confined person does not pose a threat to the health and safety of others. These determinations shall be made only after the state health director or local health director has made recommendations to the court.

Action in Superior Court. The health officials' power to restrict movement or access may be exercised without court approval for 10 days. If the health officials determine that the 10-day limitation is inadequate, they must file an action in superior court to gain approval for an extension, which can be up to 30 days. Any person affected by such an order may file an action in superior court to review the health officials' determination.

Criminal History Background Checks

Effective October 9, 2002, S.L. 2002-147 (H 1638) authorizes the Department of Justice to provide criminal record checks to certain state and local agencies, divisions, boards, commissions, and units, such as the ALE Division and the boards of law and dental examiners.

Victims and Domestic Violence

Assistance Program for Victims of Rape and Sex Offenses

Part 3A of Article 11 of Chapter 143B of the General Statutes establishes an assistance program for victims of rape and sex offenses. Effective December 1, 2002, Section 18.6 of the Budget Bill, S.L. 2002-126 (S 1115) makes the following changes to that Part, indicating that they are designed to comply with the Federal Violence Against Women Act:

- Amends the provision on eligibility for assistance in G.S. 143B-480.2 to provide that sexual assault victims or victims of attempted sexual assault are eligible for assistance under the program if the sexual assault or the attempted sexual assault is reported to a law enforcement officer within five days of occurrence or if a forensic medical examination is performed within five days of the assault or attempted assault. The Secretary of Crime Control and Public Safety may waive either five-day requirement for good cause. The term "sexual assault" refers to first-degree rape, second-degree rape, first-degree sexual offense, second-degree sexual offense, or statutory rape. Consistent with this amendment, the Budget Bill also deletes the subsection stating that assistance will not be provided unless the rape or offense was reported within 72 hours. The effect of these changes is to expand coverage of the program to include statutory rape and to lengthen the time for reporting.
- Amends the provisions regarding eligible expenses, amount of assistance, and payment.

Approving Abuser Treatment Programs

G.S. 50B-3 allows the judge in issuing a civil domestic violence protective order to require a party to attend and complete an abuser treatment program approved by the Department of Administration. G.S. 15A-1343(b1)(9a) sets out a similar provision as a condition for probation of a defendant who is responsible for acts of domestic violence. S.L. 2002-105 (H 1534) transfers the authority for approving abuser treatment programs from the Department of Administration to the Domestic Violence Commission and specifically authorizes the Commission to adopt rules, subject to the Administrative Procedure Act, for the approval of abuser treatment programs. The rules must establish a consistent level of performance from providers of programs and ensure that approved programs enhance the safety of victims and hold those who perpetrate acts of domestic violence responsible.

Address Confidentiality

Generally. Often victims of domestic violence, sexual assault, or stalking relocate to hide from their assailants but can be found at their new location through public records, such as school registration or court records. Effective January 1, 2003, S.L. 2002-171 (H 1402) enacts a new Chapter 15C of the General Statutes establishing an address confidentiality program for victims of domestic violence, sexual offense, and stalking. The law's stated purpose is to enable the state and its agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual offense, or stalking, to enable interagency cooperation in providing address confidentiality for such victims, and to enable the state and its agencies to accept a program particpant's use of an address designated by the Attorney General as a substitute address. To do this, the law creates a program in the Attorney General's Office under which the Attorney General designates a substitute address for a participant and acts as the participant's agent for purposes of service of process and receiving and forwarding first-class, certified, or registered mail.

Application. An individual wishing to participate in the program must file a signed, dated, and verified application with the Attorney General. The following individuals may apply:

- An adult.
- A parent or guardian acting for a minor who lives with the parent of guardian.
- A guardian acting for an incapacitated individual.

Certification. When an application is properly completed, the Attorney General must certify the applicant as a program participant and issue an address confidentiality program authorization card. Generally, applicants are certified for four years. Certifications may be withdrawn, renewed, and, in certain specified circumstances, canceled by the Attorney General.

Civil Penalty for False Information. Anyone who knowingly provides false information in an application will be de-certified from the program and liable for a civil penalty, not to exceed $500.00.

Use of Addresses by Government Agencies—Generally. The participant is responsible for asking that agencies use his or her substitute address. Unless some exception applies, when a participant submits a valid program authorization card to an agency, the agency must accept the participant's substitute address when creating a new public record. Although an agency may request that the Attorney General waive the program's requirements, the Attorney General's response to the request is not subject to review. The term "agency" is defined broadly to include every elected or appointed state or local public office, public officer, or official, institution, board, commission, bureau, council, department, authority, or other unit of government of the state or of any local government, or unit, special district, or other political subdivision of state or local government.

Exceptions for Certain Agencies. The law carves out exceptions for certain uses by boards of elections, registers of deeds, and local school administrative units as well as uses in connection with certain tax-related functions.

Public Record Status. Unless otherwise provided, a participant's actual address and telephone number maintained by an agency or the Attorney General is not a public record.

Disclosure by Attorney General Prohibited. The Attorney General may not disclose a participant's actual address or telephone number except when:

- The information is requested by a law enforcement agency for official use.
- The information is required by a court order.
- Upon request by an agency to verify the participation of a participant.
- The Attorney General has granted a waiver request.
- The program participant is required to disclose his or her actual address in connection with a registration required by Article 27A of Chapter 14 of the General Statutes (sex offender and public protection registration programs).

Criminal Disclosures. Anyone who makes a disclosure in violation of new Chapter 15C is guilty of a Class 1 misdemeanor and shall be assessed a fine not to exceed $2,500.

Additional Time for Action. Whenever state law provides a participant a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper, and the notice or paper is served upon the participant by mail pursuant to new Chapter 15C, five days must be added to the prescribed period. The law makes a similar change to the rules of civil procedure.

Motor Vehicles

Toll Roads

S.L. 2002-133 (H 644) authorizes the construction and operation of toll roads and bridges. To manage the projects, it establishes a new body, the North Carolina Turnpike Authority. The new law specifies that the roads and bridges constructed under this authority are "highways" and "public vehicular areas." Thus, the rules of the road, drivers license laws and other motor vehicle laws apply on them.

Graduated Driver License Changes

In 1997, the legislature, at the urging of the Child Fatality Task Force, enacted a graduated drivers license system. Under that system, young drivers must go through a progression of increasingly looser restrictions before they may drive unaccompanied at any time. The middle level of that progression restricts drivers under 18 to driving between 5 a.m. and 9 p.m., unless they are accompanied by a supervising driver. S.L. 2002-73 (H 1546), which was also proposed by the task force, modifies that restriction to include a requirement that the driver not transport more than one passenger under age 21, unless he or she is transporting siblings or people with whom he or she shares a residence. A violation of this restriction is an infraction punishable by a monetary penalty as provided in G.S. 20-176. A violation is not negligence per se or contributory negligence, does not result in drivers license or insurance points, and is not admissible in any action except a prosecution under this section.

In a related change, section 30 of S.L. 2002-159 (S 1217) amends the statutes dealing with provisional licensees and learners permits. Some of those licenses and permits expire on the driver's eighteenth birthday. When that happens on a weekend or state holiday, the driver may not be able to obtain a regular license without a break in the license's coverage. This act extends the license for five additional work days in that situation.

Two-wheeled Mobility Devices

As new types of vehicles have become available for use, the motor vehicle laws have been adapted to provide regulation of the use of them. S.L. 2002-98 (S 1144) is an example. Recently, people who have to walk long distances have begun using two-wheeled, upright devices to aid them in their travels. Postal workers and law enforcement officers walking a beat are typical users. This act defines Electric Personal Assistive Mobility Devices as "self-balancing non-tandem two-wheeled device[s], designed to transport one person, with a propulsion system that limits the maximum speed . . . to 15 miles per hour or less." The devices are not vehicles and thus are not subject to the vast majority of regulations in the motor vehicle law. The devices are subject to a new set of regulations applicable only to them. The regulations generally treat people on the devices as pedestrians, but there are some special rules. The devices may be operated on highways with speed limits of 25 miles per hour or less, sidewalks, and bicycle paths. Municipalities may regulate, but not prohibit, the use of the devices.

Mopeds

Mopeds (bicycles with small motors) are treated as vehicles and subject to many rules of the road, such as the driving while impaired statutes. Until now, a moped has been defined, in part, as a vehicle that cannot exceed the speed of 20 miles per hour on a level surface. S.L. 2002-170 (H 1516) raises that speed to 30 miles per hour.

Open Container Sunset

In 2000, the legislature made it an infraction for any person to possess, in a vehicle that is being driven, an opened container containing any alcoholic beverage. This law was scheduled to expire on September 30, 2002. S.L. 2002-25 (H 1488) extends that sunset date four years to September 30, 2006.

Driving Without Reclaiming License

G.S. 20-28 makes it a crime to drive with a revoked license. Individuals driving with one special kind of revocation, the immediate pretrial revocation for those who "flunk" a breath or blood test when charged with impaired driving (designated as a "civil revocation"), receive a reduced punishment if convicted of driving while license revoked. The reduced punishment occurs if the person drives after the minimum revocation period for the civil revocation has ended. (A civil revocation can last indefinitely if the person fails to turn in his or her license or fails to the pay the applicable costs of court.) In 1983, when G.S. 20-16.5, the civil revocation statute, was enacted, those minimum periods were 10 and 30 days, depending on when and how the license was revoked. Those periods were extended to 30 and 45 days several years ago, but the special punishment section in G.S. 20-28 was not changed to reflect those longer periods. The technical corrections bill, S.L. 2002-159 (S 1217), amends G.S. 20-28 to make its minimum periods the same as those in the civil revocation statute, 30 and 45 days.

Law Enforcement

DENR Special Peace Officers

G.S. 160A-288 allows the head of any law-enforcement agency to provide temporarily assistance to another agency in enforcing state law. S.L. 2002-111 (S 1262) creates a new G.S. 113-28.2A providing that special peace officers employed by the Department of Environment and Natural Resources are officers of a "law enforcement agency" for purposes of G.S. 160A-288, and that the department has the same authority as a city or county governing body to approve cooperation between law enforcement agencies under that section.

North Carolina Child Alert Notification System

Section 18.7 of the budget bill, S.L. 2002-126 (S 1115), establishes the North Carolina Child Alert Notification System—NC CAN (Amber Alert) within the North Carolina Center for Missing Persons. NC

CAN is to provide a statewide system for the rapid dissemination of information about abducted children. Section 18.7 also amends G.S. 143B-499.1 (dissemination of missing persons data by law-enforcement agencies) to require that if a report of a missing person involves a missing child and the report meets the criteria established pursuant to NC CAN, the law enforcement agency shall notify the center as soon as possible of the relevant data about the missing child.

Sentencing and Corrections

Offender Supervision Compact; Transfer of Convicted Foreign Nationals

Effective October 23, 2002, S.L. 2002-166 (H 1641) authorizes the Governor to execute, on behalf of North Carolina and with any other state, the revised Interstate Compact for the Supervision of Adult Offenders. Effective one year later, H 1641 repeals Article 4A in Chapter 148 of the General Statutes (out-of-state parolee supervision), the prior compact. Effective January 1, 2003, H 1641 allows North Carolina to transfer convicted foreign nationals pursuant to a treaty between the United States and a foreign country.

IMPACT Program

Effective August 15, 2002, Section 17.18 of the budget bill, S.L. 2002-126 (S 1115), terminated the IMPACT boot camp program.

Reimbursement for Transferred Safekeepers

G.S. 162-39 governs the transfer of prisoners when necessary for safety, to avoid a breach of the peace, or to provide sufficient and adequate housing for prisoners. Previously, when a prisoner was transferred to a unit of the state prison system, the county from which the prisoner was transferred was not required to reimburse the state for maintaining a prisoner who was a resident of another state or county at the time he or she committed the crime for which the prisoner was imprisoned. Section 17.1 of the budget bill, S.L. 2002-126 (S 1115), removes that limitation on reimbursement, requiring counties transferring safekeepers to reimburse the Department of Correction regardless of the prisoner's residency.

Electronic Monitoring Costs

Section 17.10 of the budget bill, S.L. 2002-126 (S 1115), creates a new section G.S. 148-10.3 providing that a state or local agency requesting electronicmonitoring of pretrial or sentenced offenders shall reimburse the Department of Correction for the costs of service.

Collateral Consequences

Sex Offender Registration

Reporting of Changes in Academic and Educational Employment Status. S.L. 2002-147 (H 1638) amends provisions in the sex offender registration laws to conform them with federal requirements. The amendments, which focus on the reporting of changes in academic and educational employment status, do the following:

- Require additional information regarding academic and educational employment status to be obtained on registration forms;
- Provide that registrants report changes in academic or educational employment status;
- Make it a Class F felony to fail to inform the registering sheriff of changes in academic or educational employment status; and
- Require the Division of Criminal Statistics to notify, among others, law enforcement units at institutions of higher education of reported changes in academic or educational employment status.

The law became effective October 9, 2002, and applies to people convicted on or after that date of an offense requiring them to register as a sex offender.

Court Administration

Appellate Courts Elections—Public Financing

In passing a public financing measure for its appellate courts, North Carolina became the first state to do so for its judicial races. The measure, S.L. 2002-158 (S 1054), provides public financing for contested primaries and general elections for the North Carolina Supreme Court and Court of Appeals, beginning with the 2004 elections.

Under the new law, candidates may elect not to participate in public financing. Those who elect to participate must raise a specified amount from at least 350 contributors. The amount is keyed to the filing fee, which is currently 1% of the base salary for the office being sought. A participating candidate must raise at least 30 times the filing fee. The amount under current salary levels is a little more than $30,000. The candidate may not raise more than twice that amount, and the maximum contribution that may be received to raise these qualifying funds is $500.

The amounts allocated to candidates vary based on the office sought. Court of appeals candidates receive 125 times the filing fee for contested general elections (at current levels around $137,000) and supreme court candidates receive 175 times the fee (around $200,000). The candidates do not receive any funds for primaries unless a candidate who elects not to participate in the public financing spends or raises more than the maximum amount to qualify for public funds. In that case, "rescue funds" are provided to the participating candidates.

Rescue funds also are provided to candidates in a general election who are competing with nonparticipating candidates who spend or raise more than the maximum public contributions paid to participating candidates.

The funds come from two principal sources: lawyers who voluntarily contribute an additional $50 when they pay their business license tax and funds designated by individual taxpayers on their tax returns. Each taxpayer may designate $3 to go to the fund; the designation does not affect the taxpayer's tax bill.

Effective January 1, 2003, S 1054 amends G.S. 163-278.13 (limitation on contribution) to prohibit contributions of more than $1,000 for nonparticipating candidates, except for close family members, who may contribute $2,000 each.

Nonpartisan Elections

Superior court elections were switched from partisan to nonpartisan in the 1998 election. District court elections became nonpartisan in the 2002 elections. S.L. 2002-158 makes the appellate races nonpartisan, beginning in the 2004 elections. In the judicial department, only the clerk of court and the district attorney now run in partisan elections.

The act also directs the State Board of Elections to publish a Judicial Voter Guide for appellate court races. The guide must explain the functions of the appellate courts, describe the relevant election laws, and contain specified information about each candidate. The guide is to be distributed to as many voters as possible, either by mailing to all residences or by some other method that is similarly effective at reaching voters.

Before they can be enforced, all the election law changes must be reviewed for compliance with the Voting Rights Act of 1965 by the United States Department of Justice or by a federal court in the District of Columbia.

Magistrates' Jurisdiction

S.L. 2002-159 (S 1217), the technical corrections bill, amends G.S. 7A-273(2) to allow the Conference of Chief District Court Judges to add the littering crime found in G.S. 14-399(c1) to the waiver list so that a person charged with that offense can waive appearance and trial and plead guilty before a magistrate or clerk of court. Formerly, only littering offenses under G.S. 14-399(c) could be added to the list. A violation of G.S. 14-399(c) is a Class 3 misdemeanor; that subsection prohibits a person from intentionally or recklessly littering on any property in an amount not exceeding 15 pounds and not for commercial purposes. A violation of G.S. 14-399(c1) is classified as an infraction; that subsection prohibits littering in the same amount but eliminates the requirement that the littering be done intentionally or recklessly. The Conference of Chief District Court Judges did not add G.S. 14-399(c1) to the waiver list for 2003 but may revisit the issue for 2004. Thus the only littering offense that is subject to waiver of trial before a magistrate or clerk continues to be G.S. 14-399(c).

Court Budget Matters

The budget approved for the Judicial Department by the 2001 legislature was $305.5 million. The final budget approved in the 2002 session (S.L. 2002-126 (S 1115)) was $294.6 million. The final cuts in the courts budget were not as severe as those included in the version of the budget that passed the Senate. Among the Senate items not included in the final budget was a proposal to eliminate the retirement system for judges, clerks, and district attorneys; under the Senate proposal all future benefits would accrue under the teachers and state employee's retirement system.

The most significant reductions in the 2002 budget affecting the court system include:

- A requirement that the AOC eliminate five magistrate positions. No county with less than five magistrates may lose a magistrate.
- An 80% reduction in the budgeted funds for payment of retired judges, and a prohibition on the use of retired judges at the appellate courts. This reduction may not result in an 80% reduction in the use of retired judges, since other funds may be used to pay those judges. However, a significant reduction is likely given the other pressures on the judicial budget. The AOC Director has indicated that this reduction reflects both a need to cut costs and a feeling that the court system has not been using the current full-time judges as effectively as possible.
- Suspension of "automatic rotation" of superior court judges until July 2003. This provision directly implicates two specific constitutional provisions in Art. IV, Sec. 11 of the North Carolina Constitution. The first provides that the Chief Justice of the Supreme Court "shall make assignments of Judges of the Superior Court." The second provides that the "principle of rotating Superior Court Judges among the various districts is a salutary one and shall be observed." Both these provisions suggest that the power of the legislature to suspend rotation of superior court judges is limited.
- Transfer of the Sentencing Services Program from the AOC to the Office of Indigent Defense Services (IDS) for administrative oversight. The program was also cut by 33% to reflect a narrower focus for the program. IDS is to report to the legislature by January 1, 2003, on its reorganization of the program.
- Authorization of the establishment of a public defender's office in the 21st Judicial District (Forsyth County). The responsibility to establish the office lies with IDS.
- In one of the rare increases in funding, IDS received an additional $4.9 million to pay attorneys fees owed by that office for fiscal 2001-02 that were not paid due to insufficient funds. However, these funds are not a continuing part of IDS's budget; they were allotted during this fiscal year only.
- Court costs were increased in many areas. The most significant are a $10 increase in the General Court of Justice Fee, the doubling of the fee paid when a person is required to perform community service (from $100 to $200), the partial elimination of the exemption from court costs for those charged with seat belt or motorcycle helmet violations (they must pay $50 in costs), an expunction fee of $65, increase of the monthly fee for probation supervision from $20 to $30, and an appointment fee of $50 for all people who have lawyers appointed for them in criminal cases because they are indigent. The fees raise over $15 million in new revenue. The most common fee, for criminal district court, is now a minimum of $100.
- Finally, no court officials received cost of living raises. For judges, this was the second year in which they received no raises. Magistrates, deputy clerks, and assistant clerks will receive any step increases to which they are entitled under their pay plans established by statute.

Studies

S.L. 2002-180 (S 98), the 2002 studies bill, authorizes the Legislative Research Commission to study:

- Jail safety standards.
- How federal law affects the distribution of national criminal history record check information requested for nursing homes, home care agencies, adult care homes, assisted living facilities, and area mental health, developmental disabilities, and substance abuse services authorities, and the problems federal restrictions pose for effective and efficient implementation of state-required criminal record checks.

Finally, S 98 establishes that the House Select Study Committee on Video Gaming Machines to study the following:

- The federal and state regulation of video gaming machines.
- The problems associated with the operation of video gaming machines in North Carolina.
- The difficulties associated with the enforcement of state video gaming laws.
- The most appropriate law enforcement agency to enforce state video gaming laws.
- The effect of the decision in Helton v. Good, 208 F. Supp. 2d 597 (W.D.N.C. 2002), on state video gaming laws.

- The potential impact that a ban on video gaming machines would have on the casino operations of the Eastern Band of the Cherokee Indians.
- The feasibility of levying a fee on video gaming machines and using the revenue to enforce current state video gaming laws.

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