

North Carolina Sheriffs' Association

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Weekly Legislative Report

June 2, 2017

Much of the action at the General Assembly this week was in the House, rather than in the Senate. A group of House members have been working for several weeks or months on an omnibus gun law changes bill. Almost 20 bills have been introduced this session that make changes in various gun laws. All of them were evaluated by this group of House members and the changes desired by the group working on the bill consolidated them into House Bill 746, Omnibus Gun Changes. The bill was approved in the House Judiciary IV Committee on Wednesday and was approved by the House Finance Committee on Thursday. Earlier in the day on Thursday it was rumored that the bill might be considered Thursday night after the House finished considering the State budget bill. However, it was eventually announced that the House leadership intends to allow the full House to vote on this bill on Wednesday, June 7th. While that is the current plan, it certainly could change.

Senate Bill 257, Appropriations Act of 2017, originally contained the Senate version of the State budget. Several weeks ago, the Senate version was sent to the House and this week the House removed the contents of the bill and replaced it with their own version. They also approved the bill in the House Appropriations Committee and the House Pensions and Retirement Committee. Then on Thursday, the House spent most of the day and until the late evening considering this legislation. After tentatively approving it on Thursday night, the House reconvened at 12:05 AM on Friday and, in less than an hour, gave final approval to their version of the State budget bill and sent it to the Senate.

Now that the House and the Senate have each drafted their own versions of the State budget bill, they will spend the next few weeks negotiating with each other to resolve the differences between the two bills. As reported previously, their goal will be to agree on a final version of the State budget bill and send it to Governor Roy Cooper prior to the new fiscal year starting on July 1st.

The Senate concluded their work on Thursday and the House finished shortly after midnight on Friday morning, and both are scheduled to return to Raleigh on Monday afternoon.

BILL STATUS

HOUSE BILL 21, Driver Instruction/Law Enforcement Stops, as amended, would require the Division of Motor Vehicles, in consultation with the State Highway Patrol, the North Carolina Sheriffs' Association and the North Carolina Association of Chiefs of Police, to include in the driver license handbook a description of law enforcement procedures during traffic stops and the

actions that a motorist should take during a traffic stop, including appropriate interactions with law enforcement officers. These materials would be required to be taught in the driver education curriculum.

[HOUSE BILL 110](#), [DOT/DMV Changes – Megaproject Funding](#), previously passed the House but was defeated by the Senate and is no longer eligible for further consideration in this session of the General Assembly.

[HOUSE BILL 125](#), [Threatened Weapon Inc. in First-Degree Rape](#), has passed the General Assembly and has been sent to Governor Roy Cooper for his signature. The bill would include as an element in the offenses of first-degree forcible sexual offense and first-degree forcible rape the use, threatened use, or display of dangerous or deadly weapons in the commission of the crime. Currently, the law addresses employing or displaying the weapon in each of these offenses. This law would be effective December 1, 2017 and would apply to offenses committed on or after that date.

[HOUSE BILL 225](#), [Attempted Robbery is Lesser Included](#), has been approved by the General Assembly and sent to Governor Roy Cooper for his signature. This bill would clarify that attempted robbery with a dangerous weapon is a lesser included offense of robbery with a dangerous weapon. The bill would make evidence that is sufficient to support a conviction for robbery with a dangerous weapon sufficient to support a conviction for attempted robbery with a dangerous weapon. This law would be effective December 1, 2017 and would apply to offenses committed on or after that date.

[HOUSE BILL 399](#), [Stop Images Taken W/O Consent From Dissemin](#), as amended, would modify the crime of “disclosures of private images.” Currently, an offender commits this crime if, for the purpose of humiliating or harassing a person, they disclose the image of another person’s private parts, or the image of a person engaged in sexual activity, under circumstances in which the offender should know the depicted person has a reasonable expectation of privacy (for example, the depicted person was in a personal relationship with the offender). This bill would remove the requirement that the depicted person have a reasonable expectation of privacy. Instead, the crime would require that the offender obtained the image without the consent of the depicted person, or under circumstances that the depicted person expected the images to remain private.

An “image” would be defined as a photograph, film, videotape, recording, live transmission, digital or computer-generated visual depiction, or any other reproduction that is made by electronic, mechanical, or other means.

[HOUSE BILL 487](#), [Nat. Guard Reemployment Rights/Definitions](#), has passed the House and passed the Senate with an amendment. The bill will be sent back to the House for consideration of the amendment. As amended, the bill would clarify that an employer has an obligation to reemploy any National Guard member who has been released from active duty after having been called into service by the governor of a state. In addition, the bill would allow National Guard members to terminate a lease agreement upon 30 days written notice if: (1) the Guard member has a change in duty station; (2) is discharged or released from duty; or (3) is deployed for a

period of 90 days or more. Also, a Guard member's family would be allowed to terminate a lease agreement if the Guard member dies while on active duty.

[HOUSE BILL 590](#), [Interior Design Profession Act](#), has passed the House and will be sent to the Senate for consideration. The bill would require all interior designers to be registered with the North Carolina Department of Insurance and would make it a Class 2 misdemeanor to engage in interior design without being registered.

[HOUSE BILL 684](#), [Sex Offender Registry Fee](#), has passed the House and will be sent to the Senate for consideration. This bill, as amended, would require a sex offender to pay a registration fee of \$90 when the offender is initially registered on the sex offender registry. The fee would be paid to the sheriff of the county where the sex offender resides. The bill would also require each registered sex offender to pay an annual registration fee of \$90 to the sheriff of the county where the offender resides on the anniversary of the sex offender's initial registration date each year that the offender is required to register. The registration fees could be used by the Sheriff's office "only to offset the costs associated with the registration of sex offenders."

The sheriff would be required to maintain a list of all sex offenders who do not pay their registration fees, and the sheriff would provide this information to the Attorney General at the end of each calendar year. The bill would allow, but not require, the Attorney General to pursue a civil lawsuit against the sex offender for nonpayment of registration fees. If the Attorney General chooses to pursue a civil lawsuit to recover past due registration fees, the Attorney General must bring the civil lawsuit within 10 years of the date the registration fees were due.

Further, a sex offender petitioning to be removed from the registry would also have to demonstrate that the initial registration fee and all subsequent annual registration fees have been paid before the sex offender could be removed from the registry. Currently, certain sex offenders may petition to be removed from the sex offender registry after 10 years if: (1) removal from the registry complies with federal law; (2) the sex offender has not been arrested for a new sex crime that would require sex offender registration; and (3) the court is satisfied that the sex offender is not a threat to public safety.

[HOUSE BILL 716](#), [CMVs/Use of Platoons](#), as amended, would provide that the laws regulating the distance between motor vehicles traveling on the road would not apply to a commercial motor vehicle traveling within a "platoon" on any roadway where the Department of Transportation has authorized travel by platoon through a traffic ordinance. A platoon would mean a group of individual commercial motor vehicles traveling in a unified manner through the use of an electronically interconnected braking system.

[HOUSE BILL 746](#), [Omnibus Gun Changes](#), as amended, would make a number of changes to North Carolina's firearms laws. It does not propose any changes to the pistol purchase permit law. Among the changes included are:

1. A new concealed weapons statute would be created and would provide that any person who is a citizen of the United States and at least 18 years old would be able to carry a concealed handgun in the State without a permit. An individual would not

have this authority to carry a concealed handgun if he/she is disqualified under certain criteria (generally the same criteria currently set out in North Carolina law that would prohibit an individual from receiving a concealed handgun permit). A person carrying a concealed handgun would have to carry valid identification with them and disclose to a law enforcement officer that the person is carrying a concealed handgun when the person is approached or addressed by the officer. Any person unlawfully carrying a concealed handgun when the person does not meet the criteria for carrying a concealed handgun would be guilty of a Class 2 misdemeanor for a first offense and a Class H felony for a second or subsequent offense.

2. The bill would prohibit a person from carrying a concealed handgun on another person's private property if notice is given prohibiting the carrying of a handgun on the property. This restriction on carrying handguns on private property would not however, apply to law enforcement officers or licensed bail bondsmen while performing their official duties.
3. A new statute would be created regulating the carrying of firearms or other deadly weapons in the State Capitol Building, the Executive Mansion, and the Western Residence of the Governor. This statute would make it unlawful for any person to possess or carry, whether openly or concealed, any firearm or other deadly weapon in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings. This restriction would not apply to the categories of individuals currently allowed to carry concealed weapons under G.S. §14-269(b), such as law enforcement officers, district attorneys, district and superior court judges, magistrates, and clerks of court. The Governor and the Governor's immediate family would be able to possess firearms in the Executive Mansion or the Western Residence of the Governor.
4. A new statute regulating weapons in courthouses would also be created. This statute would make it unlawful for a person to possess or carry, whether openly or concealed, a firearm or any other deadly weapon in any building housing any court of the General Court of Justice. Those individuals currently allowed to carry concealed firearms under G.S. §14-269(b) would not be subject to this restriction. Additionally, a district attorney or assistant district attorney would be able to carry a concealed weapon while in a courtroom.
5. A new statute would be created regulating weapons at picket lines or demonstrations at health care facilities. This statute would make it unlawful for any person participating in, affiliated with, or present as a spectator at any picket line or demonstration at health care facilities to possess or have access to a firearm or other dangerous weapon. Again, those individuals currently allowed to carry a concealed firearm under G.S. §14-269(b) would not be subject to this restriction. Additionally, a person would be able to seek a permit to carry a dangerous weapon at a picket line or demonstration from the sheriff or police chief of the locality where the event is to take place.

6. This bill would also modify the State's concealed handgun permit statutes to provide that the State of North Carolina, via the sheriffs, shall continue to make a concealed handgun permit available to any person who applies for and is eligible to receive a concealed handgun permit. The rationale for keeping the concealed handgun permit is that it is often convenient to have a concealed handgun permit for the purpose of reciprocity when traveling in another state, to make the purchase of a firearm more efficient, or for various other reasons.
7. All company police officers would have the authority, if authorized by their superior officer, to carry a concealed weapon statewide. Currently, company police officers do not have this authority.
8. Campus police officers would have the authority to carry concealed weapons statewide, if authorized by their campus police agency and by the sheriff of the county where the campus police agency is located. Currently, campus police officers do not have this authority.
9. Currently, State correctional officers, State probation or parole officers and North Carolina law enforcement officers, who have been retired two years or less, are exempt from taking the firearms safety and training course for purposes of applying for a concealed handgun permit. This bill would allow State correctional officers, State probation or parole officers and North Carolina law enforcement officers retired for five years or less to be exempt from taking the firearms safety and training course.
10. The bill would also make changes to the criteria for the denial of a concealed handgun permit based on mental illness. Before a sheriff could deny or revoke a concealed handgun permit due to a mental illness, the bill would require the applicant or permittee to have a current diagnosis and ongoing mental disorder under the Diagnostic and Statistical Manual of Mental Disorders. If the applicant or permittee has such a diagnosis, the sheriff would then have to determine if the diagnosis would prevent the safe handling of a handgun. Currently, sheriffs evaluate any available mental health evaluations and mental health orders of applicants and permittees to determine if the applicant or permittee suffers from a "physical or mental infirmity" that prevents the safe handling of a handgun. This proposed change has the potential to allow individuals with serious mental illnesses who have not yet been diagnosed to be eligible for a concealed handgun permit.
11. Currently an applicant for a concealed handgun permit must sign a release requiring disclosure to the sheriff of "any records concerning the mental health or capacity of the applicant." This bill would change this requirement to only require the disclosure of records concerning an applicant's "current diagnosis and ongoing mental disorder under the Diagnostic and Statistical Manual of Mental Disorders" or records showing that the applicant has been or is currently "adjudicated by a court to be a danger to self or others due to mental illness or lack of mental capacity." This

proposed change has the potential to reduce the information a sheriff receives about an applicant's mental health background.

12. The bill would also require sheriffs who choose to schedule appointments for concealed handgun permit applicants, to schedule an in-office appointment for an applicant within 15 business days from the date the applicant informs the sheriff that the applicant possesses all documentation necessary for the application.
13. The sheriff would also be required to issue or deny the concealed handgun permit within 90 calendar days of the application, regardless of whether or not all of the application background materials, such as mental health records, have been submitted to and reviewed by the sheriff. If the sheriff has not received the required records concerning the mental health or capacity of the applicant after 45 days of the request, the bill would require the sheriff to request the records again.
14. The bill would increase the cost for a concealed handgun permit from \$80 to \$81, and the extra \$1 increase would be added to the \$45 that currently goes to the Department of Public Safety for the costs of State and federal criminal history record checks.
15. Legislators, legislative employees and retired law enforcement officers with concealed handgun permits, and current sworn law enforcement officers would be able to carry a concealed handgun on the premises of the State legislative buildings and grounds. The Legislative Services Commission would be able to adopt a rule requiring the Chief of the General Assembly Police to be notified by these individuals before carrying a handgun on the premises.
16. Weapons would be able to be possessed, either concealed or not concealed, at school extracurricular activities if the person is not a participant in, or chaperone, or spectator of the activity and the activity is conducted in a public place such as a restaurant, public park or museum.
17. Weapons would also be able to be possessed by a person in a vehicle on a road crossing educational property.

A person with a valid concealed handgun permit would also be able to possess a handgun on public school property, other than an institution of higher education such as colleges and universities, in a place used both as a school and a religious institution (church), so long as the handgun is possessed and carried on school property outside of school operating hours.

18. This bill would eliminate the requirement that the applicant for a pistol purchase permit provide the sheriff with a signed and notarized release for mental health orders. The bill would instead require any holder of a mental health order (such as clerks of court) to provide such court orders directly to the sheriff upon the sheriff's request.

19. Defendants convicted of crimes involving the use of a firearm would not be able to have the firearm returned to them after their conviction of the crime.
20. The common law offense (a crime developed by the courts as opposed to the General Assembly) of "going armed to the terror of the people" would be written into the General Statutes in North Carolina. This new statute would restate the current common law that makes it a Class 1 misdemeanor for a person to go armed on the public highways with a dangerous weapon (for example a firearm) for the purpose of terrifying others. This bill would also clarify that a person would not be guilty of going armed to the terror of the people based only on the fact that a person is possessing or carrying a handgun.
21. Finally, the State Board of Education, in consultation with law enforcement agencies and firearms associations, would be required to develop a firearm education course to be offered as an elective at the high school level. The State Board of Education, in consultation with the Wildlife Resources Commission, the Division of Marine Fisheries and the Wildlife Management Institute, would also be required to develop a course on the North American Model for Wildlife Conservation that would be offered as an elective at the high school level.

This bill passed the House Judiciary IV Committee and the House Finance Committee and it was announced that it would be voted on by the full House on Wednesday, June 7th.

[SENATE BILL 53](#), [Law Enforcement Authority/Custody of Child](#), has passed the General Assembly and has been signed into law by Governor Roy Cooper. This bill will require a court, whenever it issues a temporary child custody order in North Carolina that requires a law enforcement officer to take physical custody of a minor child, to also issue a warrant to take physical custody of the minor child. A warrant to take physical custody of a child is enforceable throughout the State. When issuing a warrant to take physical custody of a child, a court may, but would not be required to, authorize law enforcement officers to enter private property to take custody of the child. An officer executing a warrant to take physical custody of a child does not incur criminal or civil liability for serving the warrant within the scope of the terms set out by the court in the warrant. This law is effective October 1, 2017 and applies to orders for temporary custody on or after that date. **The North Carolina Sheriffs' Association SUPPORTS this bill.**

[SENATE BILL 155](#), [Economic and Job Growth for NC Distilleries](#), has passed the Senate with amendments and will be sent to the House for consideration. As amended, the bill would expand when and where alcoholic beverages could be sold and consumed in the State.

The bill would allow the holder of a distillery permit to sell spirituous liquor in closed containers for delivery outside the State. Additionally, the holder of a distillery permit would be able to obtain a spirituous liquor special event permit that would allow the distillery to give free tastings of its liquors at trade shows, conventions, balloon races, and similar events approved by the North Carolina Alcoholic Beverage Control Commission.

Similarly, an auction firm or auctioneer licensed by the North Carolina Auctioneers Commission

would be able to obtain a permit to sell wine and spirituous liquors at auctions.

Finally, restaurants would be able to sell alcoholic beverages before noon on Sundays (beginning at 10:00 AM) subject to approval by the unit of local government where the restaurant is located.

[SENATE BILL 257](#), [Appropriations Act of 2017](#), as amended, has passed the House and has been sent to the Senate for consideration. Those items of interest to the criminal justice community include:

1. The State Board of Education, in consultation with the Department of Health and Human Services, would be required to develop a youth suicide awareness and prevention program and protocol for public school personnel, which would include school resource officers. The employees would be required to attend the training within 12 months of employment at a public school, and every two years thereafter.
2. \$2.4 million, disbursed over two consecutive years, would be appropriated to the Department of Health and Human Services, Division of Central Management and Support, to improve the security and functionality of the North Carolina Controlled Substances Reporting System ("CSRS"). The CSRS is used by medical practitioners and pharmacists to identify individuals that misuse controlled substances, and to avoid the overprescribing of controlled substances such as opioids.
3. \$25,000 a year for two years (2017-2019) would be appropriated to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, to be used to buy opioid antagonists to be given at no charge to North Carolina law enforcement agencies.
4. Alcohol Law Enforcement ("ALE"), which currently is a branch of the State Bureau of Investigation, would be relocated as a separate Division of the Department of Public Safety. The Director of the Division of Alcohol Law Enforcement would have the sole authority to make personnel decisions regarding employees within the new ALE Division.

Also, the law enforcement jurisdiction of ALE agents would be modified. Currently, ALE agents may arrest for any criminal offense at any time, although their primary responsibility is the enforcement of alcoholic beverage control ("ABC") and lottery laws. This bill would retain ALE agents' authority to enforce any criminal law and would modify their primary responsibility to also include enforcement of controlled substance offenses.

5. The State Capital Police, which currently is a section of the State Highway Patrol, would be relocated as a separate Division of the Department of Public Safety. The transfer of personnel to or from the State Capital Police, or changes to its current authorized budget, would be prohibited until after the State Capital Police is transferred from the State Highway Patrol to the Department of Public Safety.

6. Funds previously appropriated to the Department of Public Safety in 2015 for body-worn or dashboard video camera grants would be required to be used to provide “matching grants” to local and county law enforcement agencies, which would be administered by the Governor’s Crime Commission. The maximum grant amount would be \$100,000, and the receiving law enforcement agency would have to match dollar for dollar the amount of the grant. The grant recipient would also be required to have in place appropriate policies and procedures for the use of dashboard or body-worn cameras, and for the proper storage of images recorded with these devices.
7. The State Capitol Police would be authorized to contract with State agencies to provide security services in the buildings occupied by those agencies.
8. The Department of Justice and the Department of Public Safety would be prohibited from using federally forfeited assets for new personnel positions, new projects, and acquisitions of real property and repair of buildings without having the prior approval of the General Assembly.
9. The Lieutenant Governor Executive Protection Detail would be created to protect the Lieutenant Governor and his family. The Commander of the State Highway Patrol would be required to appoint to this Detail three State Highway Patrol troopers selected by the Lieutenant Governor.
10. The Department of Public Safety would continue to pay the sum of \$40 per day as reimbursement to counties for the cost of housing backlogged convicted inmates for the Division of Adult Correction and Juvenile Justice (“DACJJ”) who were sentenced to imprisonment in DACJJ. **The North Carolina Sheriffs’ Association SUPPORTS this reimbursement fee.**
11. The State Highway Patrol would be designated an eligible public safety answering point (“PSAP”) for purposes of applying to the 911 Board for a grant.
12. State inmates employed in the “Prison Industry Enhancement Program” (a program where private employers employ inmates on-site at a prison to make goods) would be eligible to receive workers’ compensation benefits for an injury suffered while working in the Program. This would not apply to State inmates held in county jails pursuant to the Statewide Misdemeanant Confinement Program who are injured while working in county work programs.
13. The North Carolina Department of Justice would be prohibited from hiring sworn personnel to fill vacant positions in the North Carolina State Crime Laboratory. However, current employees of the North Carolina State Crime Laboratory that have maintained their sworn status would be allowed to continue their employment at the Laboratory.
14. The North Carolina Criminal Justice Education and Training Standards Commission would be required to authorize specialized instructor training courses at the Samarcand

Training Academy, which is operated under the Department of Public Safety. Currently, the North Carolina Justice Academy is the only State entity authorized to provide specialized instructor training for law enforcement officers, with the exception of the North Carolina State Highway Patrol, which provides specialized driver instruction.

The bill would allow for specialized instructor training courses at the Samarcand Training Academy on the following topics: (i) Specialized Firearms Instructor Training; (ii) Specialized Driver Instructor Training; (iii) Specialized Subject Control Arrest Techniques Instructor Training; (iv) Specialized Physical Fitness Instructor Training and (v) Specialized Explosives and Hazardous Materials Instructor Training.

15. Local law enforcement agencies would be required to inventory their Sexual Assault Evidence Collection Kits (“SAECKs”), and to report to the North Carolina State Crime Laboratory the total number of SAECKs in their custody or control. In addition to the total number of SAECKs, local agencies would be required to report the number of SAECKs that: (i) are associated with a case that has been resolved in court; (ii) were not submitted for testing by the agency because the suspect admitted to the sexual act; (iii) were not submitted for testing by the agency because the allegations were determined to be unfounded; and (iv) are not associated with an identifiable victim. The report would be due no later than January 1, 2018, and the North Carolina State Crime Laboratory would be required to report these findings to the Joint Legislative Oversight Committee on Justice and Public Safety no later than April 1, 2018.

16. In all criminal convictions where digital forensics was performed by the North Carolina State Crime Laboratory, such as an analysis of a computer, the district or superior court judge would be required to include in the court costs a payment of \$600, which would be provided to the Department of Justice for use by the State Crime Laboratory.

Also, in all criminal convictions where an expert witness employed by the North Carolina State Crime Laboratory provided testimony at trial relating to digital forensics analysis, the district or superior court judge would be required to include in the court costs a payment of \$600, which would be provided to the Department of Justice for use by the State Crime Laboratory. This \$600 fee for expert witness trial testimony would be in addition to the \$600 digital forensics testing fee described above.

Additionally, before a court could waive court costs in any case, the court would have to enter a written order showing just cause why the court costs should be waived. This court order must be supported by findings of fact and conclusions of law.

17. In all criminal convictions where digital forensics was performed by a local government crime laboratory facility, such as the analysis of a computer, the district or superior court judge would be required to include in the court costs a payment of \$600 if the court finds that the digital forensics performed by the local government crime laboratory is equivalent to the digital forensics work performed by the North Carolina State Crime Laboratory. The payment of the \$600 lab fee would be submitted to the general fund of the local law enforcement unit to be used for local crime laboratory purposes.

Additionally, in all criminal convictions where an expert witness employed by a local government crime laboratory facility provides testimony at trial relating to digital forensics analysis, the district or superior court judge would be required to include in the court costs a payment of \$600, which would be submitted to the general fund of the local law enforcement unit to be used for local crime laboratory purposes. This \$600 fee for trial testimony would be in addition to the \$600 digital forensics testing fee described above.

18. Probation or parole officers would be eligible for the law enforcement officer's special separation allowance but probation or parole officers would not be entitled to the 5% contribution into the Supplemental Retirement Income Plan.
19. The North Carolina State Bureau of Investigation ("SBI") special investigative fund would be reduced by \$120,000 for the Fiscal Year 2017-2018. The bill would, however, appropriate \$120,000 to the SBI for the Fiscal Year 2017-2018, to be used for Operation Drop Box. This program allows private citizens to discard their unused prescription medications at a designated location.

The **Weekly Legislative Report** is provided at no charge as a service to the sheriffs, criminal justice community and citizens of North Carolina.

North Carolina Sheriffs' Association, Inc.

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