
FINAL LEGISLATIVE REPORT

2020

North Carolina Sheriffs' Association



North Carolina Sheriffs' Association
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NORTH CAROLINA SHERIFFS' ASSOCIATION

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The 2020 “Short Session” of the North Carolina General Assembly convened on April 28, 2020 and adjourned on June 26, 2020.

During the 2019 - 2020 Session of the General Assembly, 1,236 House bills and 870 Senate bills were introduced, for a total of 2,106 new legislative bills available for consideration. Of the eligible legislative bills, 371 of them were enacted into law. Governor Roy Cooper signed 272 bills, allowed 4 to become law without his signature, and vetoed 25 bills. None of the Governor’s vetoes were overridden by the General Assembly, although 11 overrides that were attempted.

Some bills are enacted into law by the General Assembly and do not go to the Governor for signature. For example, “local” bills (which are those that affect 14 or fewer counties) and bills authorizing a vote on an amendment to the North Carolina Constitution do not go to the Governor for his signature.

This Final Legislative Report of the North Carolina Sheriffs’ Association summarizes bills of interest to sheriffs, sheriffs’ office personnel and other criminal justice professionals that have been enacted into law this Session. For specific details about the legislative bills summarized below, please review the actual legislation. Any of the legislation introduced or considered by this year’s General Assembly is available on the General Assembly’s website: www.ncleg.net.

The General Assembly will reconvene on September 2, 2020 to take up a limited number of issues, such as the allocation of any additional COVID-19 federal or State relief funds and any necessary appointments, nominations, and filling of vacancies. The General Assembly only intends to be in session until September 3rd when they will adjourn sine die (i.e. for good) until the next session in 2021.

If any other bills of interest to the criminal justice community are enacted into law then, we will publish a Special Legislative Report with the details.

HOUSE BILLS

[HOUSE BILL 85](#), [Emissions/Lee, Onslow & Rockingham Counties](#), amends G.S. 143-215.107A to remove Lee, Onslow and Rockingham counties from the requirement for motor vehicle emissions testing under North Carolina’s emissions testing program.

Currently, motor vehicle emissions testing is only required in the following counties: Alamance, Buncombe, Cabarrus, Cumberland, Davidson, Durham, Forsyth, Franklin, Gaston, Guilford,

Iredell, Johnston, Lee, Lincoln, Mecklenburg, New Hanover, Onslow, Randolph, Rockingham, Rowan, Union and Wake.

The removal of Lee, Onslow and Rockingham counties from the State's emissions testing program is effective on January 1, 2021 or the first day of a month that is 60 days after the United States Environmental Protection Agency approves the changes in this emissions testing program, whichever date occurs later.

[HOUSE BILL 307](#), [Mod. Utility Vehicle Classification](#), amends G.S. 20-4.01 to include the definition of "modified utility vehicle" within our motor vehicle laws.

A modified utility vehicle, now defined in G.S. 20-4.01(27), means a four-wheeled motor vehicle that is manufactured for off-road use with an engine displacement greater than 2,400 cubic centimeters, an overall length of 142 inches (11.8 feet) or greater, an overall width of 58 inches (4.8 feet) or greater, an overall height of 70 inches (5.8 feet) or greater, a maximum speed capability of 40 miles per hour or greater, and that does not require an operator or passenger to straddle a seat.

Modified utility vehicles are commonly used on farms to haul feed, hay, and supplies as well as at schools, where they are used to transport water jugs, sports equipment and occasionally, athletes. All-terrain vehicles and golf carts are not included in this definition.

The bill also amends G.S. 20-121.1 to allow the use of modified utility vehicles on streets and highways where the posted speed limit is 55 miles per hour or less.

Amended G.S. 20-121.1 also requires modified utility vehicles to be insured and registered with the North Carolina Division of Motor Vehicles and they must be equipped with the common safety features associated with a motor vehicle, such as headlamps, stop lamps, turn signal lamps, tail lamps, windshield wipers, speedometer, and seat belts.

Effective: October 1, 2020

[HOUSE BILL 308](#), [Regulatory Reform Act of 2020](#), amends G.S. 14-258.1, effective August 1, 2020, to clarify that a sheriff or other person in charge of a local confinement facility may authorize inmates to use a mobile telephone or other wireless communications device (such as a tablet) that has been approved for use by inmates by the sheriff or other person in charge of the local confinement facility.

Currently, the Division of Adult Correction and Juvenile Justice of the North Carolina Department of Public Safety is authorized to approve the use of a mobile telephone or other wireless communications device (such as a tablet) by inmates in our State prisons.

The bill also amends G.S. 116-40.5, effective July 1, 2020, to allow campus law enforcement agencies that are part of a teaching hospital to enforce the criminal laws on the premises of any other facility owned or leased by the teaching hospital that is within the hospital's health network.

These provisions were requested by Vidant Health, which owns and operates numerous doctors' offices and health care facilities in Eastern North Carolina.

The bill does NOT expand the jurisdiction of the campus law enforcement officers beyond the premises of the teaching hospital's remote facility, whether that facility is a hospital facility or a doctor's office. Therefore, the jurisdiction of campus police in this remote facility scenario does NOT include public roads or highways passing through the facility or to any property immediately adjoining the facility or doctor's office.

Nothing in the amendment to G.S. 116-40.5 changes the authority of campus law enforcement agencies now operating on the premises of a teaching hospital. Currently, those agencies are authorized to enforce the criminal laws on the premises of the teaching hospital and on public roads or highways passing through the premises of the hospital.

Finally, the bill extends to March 1, 2021 the temporary emergency video notarization and emergency video witnessing provisions summarized below in this Final Legislative Report in Senate Bill 704 that would have expired on August 1, 2020.

[HOUSE BILL 425](#), Implement Conner's Law, appropriates \$1.2 million in nonrecurring funds from the Statewide Misdemeanant Confinement Fund to the North Carolina Department of State Treasurer for the 2020-2021 fiscal year for the payment of death benefits provided under Conner's Law (SL 2019-228).

The Statewide Misdemeanant Confinement Fund is a fund that supports the housing of certain prison inmates in sheriffs' jails to alleviate overcrowding in our State prison system. These funds are appropriated from reserves contained in the Statewide Misdemeanant Confinement Fund and will not impact the operation of the Statewide Misdemeanant Confinement Program.

Conner's Law increases the punishment for anyone convicted of assault with a firearm on a law enforcement officer, probation officer or parole officer, or for an assault with a deadly weapon against other emergency responders. Conner's Law also provides an extra \$100,000 death benefit for the spouse, dependents, or dependent parents of a first responder that is murdered in the line of duty.

Effective: July 1, 2020

[HOUSE BILL 511](#), North Carolina First Step Act, amends G.S. 90-95(h) to allow a judge in a drug trafficking case to reduce fines and impose a sentence lower than the applicable mandatory minimum prison term only if ALL of the following findings of fact are made by the court:

1. That imposition of the mandatory minimum prison term would result in substantial injustice.
2. That the defendant accepted responsibility for the criminal conduct.
3. That the defendant has agreed to participate in drug treatment.

4. That the defendant has not been convicted of a prior felony drug conviction and did not use violence or a firearm or other deadly weapon in the commission of the drug trafficking offense.
5. That the defendant is being sentenced solely for trafficking or conspiracy to commit trafficking as a result of possession of a controlled substance.
6. That there is not substantial evidence that the defendant has ever engaged in the sale, manufacture, delivery, or transport for the purpose of sale of a controlled substance or that the defendant has ever had the intent to sell, manufacture, deliver, or transport for the purpose of sale a controlled substance.
7. That the defendant has provided reasonable assistance in the identification, arrest, or conviction of any accomplices, accessories, or co-conspirators.
8. That the defendant is being sentenced for trafficking or conspiracy to commit trafficking for possession of an amount of a controlled substance that is not of a quantity greater than the lowest category for which a defendant may be convicted for trafficking of that controlled substance.

Amended G.S. 90-95(h) requires the court to conduct a hearing prior to imposing a sentence lower than the applicable mandatory minimum prison term and the district attorney must be allowed to present evidence at this hearing, including evidence from the investigating law enforcement officer, other law enforcement officers or from witnesses with knowledge of the defendant's conduct.

Finally, G.S. 90-95 is amended to require the North Carolina Administrative Office of the Courts to publish an annual report, beginning on December 1, 2021, of all drug trafficking convictions from the previous year that have had sentences modified from the mandatory minimum sentence pursuant to the above provisions.

Effective: December 1, 2020 and applies to sentences ordered on or after that date.

[HOUSE BILL 593](#), JCPC/Detention/CAA and Other Fees, makes various changes to our General Statutes related to: (1) the confinement of juveniles; (2) "safekeepers" under the Statewide Misdemeanant Confinement Program; (3) the North Carolina Sex Offender Registry; and (4) to funding the North Carolina Criminal Justice Education and Training Standards Commission.

Criminal Justice Standards Commission Funding

The bill amends G.S. 7A-304, effective December 1, 2020, to provide an additional \$1.00 in court costs funding to the North Carolina Criminal Justice Education and Training Standards Commission. This increases from \$2.00 to \$3.00 the amount of court costs allocated to the Commission.

“Raise the Juvenile Age” Changes

In addition, the bill amends various provisions in our General Statutes to ensure that NO juvenile under the age of 18 is confined in a county jail unless an agreement exists between the county jail and the Division of Adult Correction and Juvenile Justice (DACJJ) of the North Carolina Department of Public Safety.

Those items of interest to the criminal justice community regarding “Raise the Juvenile Age” changes include:

1. Amends G.S. 7A-109.3 to require district and superior court commitment orders for persons under the age of 18 to be forwarded to a detention facility approved by DACJJ as a facility that can provide for the secure confinement and care of juveniles. The bill requires the order to be forwarded within 48 hours of entry of the sentence.
2. Amends G.S. 15-6 to prohibit any person under the age of 18 from being imprisoned in a county jail unless the county jail has been approved by DACJJ as a facility that can provide for the secure confinement and care of juveniles.
3. Amends G.S. 15A-521 to prohibit any person under the age of 18 from being held in a county jail pending trial unless the county jail has been approved by DACJJ as a facility that can provide for the secure confinement and care of juveniles.

Amended G.S. 15A-521 requires DACJJ staff to make all transfers to and from court so long as the juvenile remains in custody pending trial.

If the juvenile being held reaches the age of 18 while awaiting trial, the bill requires DACJJ to transfer the juvenile back to the custody of the sheriff in the county where the charges arose.

4. Amends G.S. 15A-1301 to require a court, when entering an order of commitment to imprison a juvenile, to commit the juvenile to a detention facility that has been approved by DACJJ as a facility that can provide for the secure confinement and care of juveniles.
5. Amends G.S. 15A-1343 to require any person under the age of 18 that receives a “quick dip” (short period of confinement for violating a condition of probation) that is imposed by the court to serve that period of confinement in a detention facility that has been approved by DACJJ as a facility that can provide for the secure confinement and care of juveniles.
6. Amends G.S. 15A-1343.2 to require any person under the age of 18 that receives a quick dip that is imposed by a probation officer to serve that period of confinement in a detention facility that has been approved by DACJJ as a facility that can provide for the secure confinement and care of juveniles.
7. Amends G.S. 15A-1344 to require any person under the age of 18 that is confined for a felony or misdemeanor probation violation, or when serving a split sentence as a modification of probation, to serve that period of confinement in a detention facility that

has been approved by DACJJ as a facility that can provide for the secure confinement and care of juveniles.

8. Amends G.S. 15A-1351 to require any person under the age of 18 that is serving a period of confinement under a split sentence, including for driving while impaired, to serve that period of confinement in a detention facility that has been approved by DACJJ as a facility that can provide for the secure confinement and care of juveniles.
9. Amends G.S. 15A-1352 to require any person under the age of 18 that is serving a period of confinement for a misdemeanor, including driving while impaired, to serve that period of confinement in a detention facility that has been approved by DACJJ as a facility that can provide for the secure confinement and care of juveniles.
10. Amends G.S. 153A-218 to prohibit any person under the age of 18 from being held in a local confinement facility (such as a county jail) unless there is an agreement between the local confinement facility and DACJJ for the housing of juveniles at the facility.

Effective: August 1, 2020 and applies to offenses committed, sentences imposed, and any other orders of imprisonment issued on or after that date.

SMCP Safekeepers

The bill also makes technical changes to our General Statutes to ensure “safekeepers” transferred under the Statewide Misdemeanant Confinement Program (SMCP) to a State prison facility for care are processed the same as safekeepers sent from county jails that are not part of SMCP.

Those items of interest to the criminal justice community regarding SMCP safekeepers include:

1. Amends G.S. 148-19.3 to clarify that all medical invoices for health care services provided to SMCP safekeepers are to be submitted by the out-of-prison health care provider (i.e. external hospital or doctor) directly to the Inmate Medical Costs Management Plan (Plan) through the North Carolina Sheriffs’ Association.

The Plan is then required to review and negotiate all invoiced charges for medical services provided to ANY safekeepers to avoid overpayment by the county for medical care and to reduce overall health care service costs.

2. Amended G.S. 148-19.3 also clarifies that in the event an out-of-prison health care provider submits an SMCP safekeeper invoice to the North Carolina Department of Public Safety (DPS) in error, DPS is required to forward the invoice to the Plan within three days of receipt of the invoice. Once medical invoices are processed by the Plan, all unreimbursed charges (those not covered by Medicare, Medicaid or the inmate’s personal health insurance) will be documented and presented by the Plan to the county directly for payment.
3. Amends G.S. 148-32.1 to limit the initial time period a SMCP safekeeper will stay in the custody of the DACJJ to a period of 30 days. DACJJ is required to have their medical or

mental health professionals conduct an assessment of the prisoner during this 30-day period and to make recommendations as to whether the prisoner should remain in the custody of the DACJJ or be returned to the county.

To have the safekeeper order extended beyond the initial 30-day period, the sheriff is required to provide the DACJJ assessment and any other relevant information to a district or superior court judge, who will make a determination as to whether the safekeeper should remain in DACJJ custody beyond the initial 30-day period.

If the court decides to extend the SMCP safekeeper order beyond the initial 30-day period, the court must set a date certain to have the matter brought back to court for further review. In the event the order is extended, DACJJ is required to conduct another assessment of the prisoner prior to the next scheduled hearing.

Effective: July 1, 2020 and applies to all SMCP safekeepers transferred on or after that date.

North Carolina Sex Offender Registry - *Grabarczyk v. Stein, et al.*

Finally, the bill addresses an issue created by the federal court case of *Grabarczyk v. Stein, et al.* No. 5:19-CV-48-BO, which without legislative action would have removed many sex offenders from the North Carolina Sex Offender Registry (SOR) who were placed on the SOR due to an out-of-state conviction or a federal conviction that is “substantially similar” to a North Carolina crime that would require registration on the SOR.

The bill amends Chapter 14 to ensure the following sex offenders are required to register in North Carolina if their out-of-state or federal crime is substantially similar to a North Carolina crime requiring registration:

1. Those sex offenders who are members of the class identified in *Grabarczyk v. Stein*.
2. Those sex offenders who are not members of the class identified in *Grabarczyk v. Stein* but are on the SOR as of August 1, 2020 because they have a substantially similar out-of-state conviction or federal conviction requiring registration.
3. Those sex offenders who will come on the SOR after August 1, 2020 because they have a substantially similar out-of-state conviction or federal conviction requiring registration.

The bill enacts new G.S. 14-208.12B, which provides the following judicial review and notice requirements for the classifications of sex offenders identified above:

1. The bill requires the North Carolina State Bureau of Investigation, in consultation with the North Carolina Attorney General, to provide all district attorneys with a list of sex offenders who are members of the class identified in *Grabarczyk v. Stein* that reside in a county in that district attorney’s district.

The bill requires the district attorney, or the Attorney General if requested by the district attorney, to review the files of these sex offenders for a preliminary determination of

substantial similarity to a North Carolina crime requiring registration. If the reviewing agency determines substantial similarity exists, the agency is required to notify the sex offender and the sheriff of the county where the sex offender resides.

The agency may then petition the court for judicial review of the registration to avoid the sex offender from being removed from the SOR.

2. The bill also requires the North Carolina Department of Public Safety to notify every sex offender that is on the SOR on August 1, 2020 based upon a substantially similar out-of-state or federal conviction of their right to seek judicial review of their registration requirement.

The bill requires the sex offender to request judicial review within 30 days in the county where the sex offender resides and the sex offender is required to give notice of the petition to the sheriff and the district attorney within three days of filing the petition.

3. For sex offenders coming on the SOR that are not a part of the above-referenced lawsuit and are not already on the SOR as of August 1, 2020, the bill requires the sheriff to notify the sex offender of their right to seek judicial review if the sheriff determines the person must register based upon a substantially similar out-of-state conviction or federal conviction that requires registration in North Carolina.

Methods of acceptable notice by the sheriff include in-person notice or notice by registered or certified mail (among others).

Once notified, the sex offender has the option to file a petition for judicial review within 30 days in the county where the sex offender resides. If the sex offender files a petition for judicial review, the sex offender is required to give notice of the petition to the sheriff and the district attorney within three days of filing the petition.

Finally, the bill requires the petition to be calendared at the next regularly scheduled term of superior court and at that first setting, the sex offender will be advised of the right to have counsel present or appointed if he or she cannot afford an attorney.

4. In all cases involving the judicial review of sex offenders required to register based upon a substantially similar out-of-state or federal conviction, the judicial review will be by a superior court judge presiding in the district where the sex offender resides and will be limited to a determination of whether or not the person's out-of-state conviction or federal conviction is substantially similar to a North Carolina crime that requires registration.
5. Finally, the State has the burden of showing that the out-of-state or federal conviction is for a crime that is substantially similar to a North Carolina crime that requires registration.

Effective: August 1, 2020 and applies to any individual notified of the right to contest registration on or after that date.

[HOUSE BILL 902](#), P&C Changes/Glob. Tranp./Prison Pilot, transfers \$1.8 million in nonrecurring funds from the Statewide Misdemeanant Confinement Fund to the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice (DACJJ), for the 2020-2021 fiscal year for the development and administration of a Prison Software Management Pilot Program to be implemented at Bertie Correctional Institution and Pasquotank Correctional Institution.

These funds are appropriated from reserves contained in the Statewide Misdemeanant Confinement Fund and will not impact the operation of the Statewide Misdemeanant Confinement Program.

The purpose of the Prison Pilot Program is to provide equipment and software upgrades to the State Prison Management Information Systems and to deploy a mobile inmate tracking system. This will enable the creation of a new shared database platform to replace the current OPUS System. The bill directs DACJJ to begin operating the Prison Pilot Program by October 15, 2020.

Effective: July 1, 2020

[HOUSE BILL 1043](#), Pandemic Response Act, establishes the “Coronavirus Relief Reserve” and “Coronavirus Relief Fund,” which will be used to maintain and distribute federal funds received by the State to aid in the COVID-19 recovery.

The bill requires the State Controller to transfer, to the extent federal funding becomes available, \$1,275,988,029 in nonrecurring funds for the 2019-2020 fiscal year to the Coronavirus Relief Fund, which will be administered by the North Carolina Office of State Budget and Management (OSBM) for COVID-19 recovery efforts.

Of these anticipated federal funds (and assuming the proposed uses below are allowable under federal guidelines):

1. OSBM is required to allocate \$50 million to various entities listed in the bill to purchase personal protective equipment (PPE) and other health care supplies (such as ventilators) that will be used by health care providers and first responders, such as law enforcement officers, in responding to the COVID-19 pandemic.

Of these funds, 25% must be allocated to the North Carolina Department of Public Safety, Division of Emergency Management, to meet the PPE needs of the North Carolina State Highway Patrol and the North Carolina National Guard. Any remaining funds for PPE will be allocated among entities the Division of Emergency Management deems essential to the State's response to COVID-19.

2. OSBM is required to allocate \$70 million for operational needs across State government, which may include allocating a portion of these funds to pay for overtime costs in State prisons and juvenile facilities, providing COVID-19 testing for employees of the North Carolina Department of Public Safety, Division of Prisons, and for purchasing emergency hygiene and sanitation supplies to assist with COVID-19.

3. Provided the North Carolina Department of Health and Human Services (DHHS) meets certain criteria set out in the bill, OSBM is required to allocate \$25 million to DHHS for use by the agency to increase the capacity for COVID-19 diagnostic testing and antibody testing throughout the State.
4. OSBM is required to allocate \$400,000 in nonrecurring funds to the North Carolina Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for the purchase of units of opioid antagonist to prevent overdose deaths.

Effective: May 4, 2020

[HOUSE BILL 1062](#), Beaufort County/Animal Services Records, is a local act that exempts from public records any personal identifying information held by the Beaufort County animal services agency related to an individual who voluntarily surrendered ownership of an animal to an animal shelter, an individual who adopted a shelter animal, or an individual to whom a shelter animal has been placed through a foster program. However, the bill would allow Beaufort County, in its discretion, to disclose personal identifying information related to the county animal services agency that is not a public record.

This bill ONLY applies to Beaufort County.

Effective: June 10, 2020

[HOUSE BILL 1063](#), Fund VIPER Tower Hardware Upgrades, appropriates \$19.8 million in nonrecurring funds from the Coronavirus Relief Fund for allocation to the North Carolina Department of Public Safety for the 2020-2021 fiscal year for hardware and software upgrades to the Voice Interoperability Plan for Emergency Responders (VIPER).

Effective: July 1, 2020

[HOUSE BILL 1064](#), GSC Clarifying Bingo License Statute, amends G.S. 14-309.7, G.S. 14-309.11, and G.S. 14-309.14 to make the Alcohol Law Enforcement Division of the North Carolina Department of Public Safety responsible for issuing bingo licenses, annual or semiannual bingo game limited occasion permits, and beach bingo licenses.

Currently, the North Carolina State Bureau of Investigation is responsible for the issuance of these licenses and permits until the effective date listed below.

Effective: October 1, 2020 and applies to applications submitted on or after that date.

[HOUSE BILL 1157](#), Abolish Coroner in Various Counties, is a local act that abolishes the office of coroner in Montgomery, Avery, Bladen and Hoke counties.

Effective June 17, 2020, the office of coroner in Montgomery County is abolished.

Effective January 1, 2021, the office of coroner in Avery, Bladen, and Hoke counties is abolished.

However, any coroner elected in the 2018 or 2020 general election in these counties will be allowed to finish the remainder of their current term. If a vacancy in the office of coroner should occur following the 2018 or 2020 general election in these counties, a new coroner may be appointed to fulfill the remainder of the term.

This bill ONLY applies to Montgomery, Avery, Bladen and Hoke counties.

Yadkin County will be the only county remaining to have an office of coroner once the counties listed above have their office of coroner abolished pursuant to the effective dates noted above and the fulfillment of any remaining terms of office.

[HOUSE BILL 1187](#), [Raise the Age Funding](#), appropriates \$10.4 million in nonrecurring funds from the Statewide Misdemeanant Confinement Fund to the North Carolina Department of Public Safety for the 2020-2021 fiscal year for construction and renovation projects at the following youth detention centers:

1. \$2.7 million is appropriated for renovations at the Perquimans Youth Detention Center.
2. \$5.7 million is appropriated for renovations at the C.A. Dillon Youth Development Center in Granville County.
3. \$2 million is appropriated for construction projects at the Youth Development Center in Rockingham County.

The Statewide Misdemeanant Confinement Fund is a fund that supports the housing of certain prison inmates in sheriffs' jails to alleviate overcrowding in our State prison system. These funds are appropriated from reserves contained in the Statewide Misdemeanant Confinement Fund and do not impact the operation of the Statewide Misdemeanant Confinement Program.

Effective: July 1, 2020

SENATE BILLS

[SENATE BILL 232](#), [Repeal Death Invest Conf/Masks/Health & Safety](#), amends G.S. 14-12.11 to permanently authorize a person to wear a mask in public and on private premises (such as in a shopping mall) for the purpose of ensuring the physical health or safety of the wearer or others.

The bill requires the person wearing a mask for health or safety reasons to remove the mask upon the request of a law enforcement officer during a traffic stop (including at a checkpoint or roadblock) or criminal investigation.

Previously, the ability of the general public to wear a mask in public for health and safety reasons was temporary in nature and would have expired on August 1, 2020.

Effective: July 10, 2020

[SENATE BILL 315](#), North Carolina Farm Act of 2019-20, amends G.S. 20-150 by enacting new subsection (e1) to prohibit and make it an infraction for a driver of a vehicle to overtake and pass, in the same direction of travel, self-propelled farm equipment (such as a tractor) when the farm equipment is making a left turn or is signaling that it intends to make a left turn.

Effective: December 1, 2020 and applies to offenses committed on or after that date.

[SENATE BILL 361](#), Healthy NC, amends G.S. 122C-263.1 to authorize licensed marital therapists and licensed family therapists to perform the first examination of a respondent subject to an Involuntary Commitment (IVC) petition to determine whether or not the respondent should be involuntarily committed due to mental illness or substance use disorder, provided the person completes a certification course through the North Carolina Department of Health and Human Services (DHHS) and becomes certified by that agency to conduct the first examination in an IVC case.

Currently, in addition to licensed physicians and psychologists, certain clinical social workers, nurse practitioners, licensed professional counsellors, and physician assistants are authorized to conduct the first examination in an IVC case if they obtain the DHHS training and are certified by DHHS to perform this examination.

Effective: October 1, 2020

[SENATE BILL 379](#), Retirement Systems Admin. Changes, amends Section 5(b) of Session Law 2017-128, which was signed into law on July 20, 2017, to make permanent the option of sheriffs to transfer their sick leave accrued under the Local Governmental Employees' Retirement System to the Sheriffs' Supplemental Pension Fund, so that the sick leave will count towards the sheriffs' eligible service under the Sheriffs' Supplemental Pension Fund.

Previously, this option was set to expire ("sunset") on July 1, 2022 and would not be available unless exercised prior to that date.

Effective: October 1, 2020 and applies to all elections to have sick leave transferred to the Sheriffs' Supplemental Pension Fund on or after that date.

[SENATE BILL 562](#), The Second Chance Act, makes various changes to the State's expungement laws.

Those items of interest to the criminal justice community include:

1. Enacts G.S. 15A-145.8, effective December 1, 2019 [this retroactive date is not a typographical error], to allow for the expunction of a misdemeanor or Class H or I felony conviction if the crime was committed before December 1, 2019 and was committed by a person after their sixteenth birthday but before the person's eighteenth birthday.

Newly enacted G.S. 15A-145.8 requires the petition for expungement to be filed in the county of conviction and the petition may be filed by either the person convicted of the crime or the district attorney. If the petition for expungement is filed by the person convicted of the crime, the district attorney must be served with notice of the petition and must be given an opportunity to be heard prior to any expungement order being entered by the court.

To qualify for this expungement, the person is required to have completed any active sentence, period of probation, or post-release supervision that may have been ordered by the sentencing court and the person must not have any outstanding restitution owed for the offense that is being expunged.

This new expungement provision does not apply to motor vehicle law violations (including impaired driving) or to offenses requiring registration as a sex offender under North Carolina's Sex Offender Registry laws.

Finally, this new expungement provision for misdemeanor or Class H or I felony offenses committed before December 1, 2019 is enacted to ensure juveniles that were convicted of these offenses are treated the same as juveniles being charged with these offenses after December 1, 2019. For juveniles committing these offenses after December 1, 2019, their cases will be heard in juvenile court (unless transferred to superior court) and therefore the crime will not appear on a criminal record but will instead be considered an adjudication of delinquency if the juvenile is found to have committed the crime.

2. Amends G.S. 15A-146, effective December 1, 2020, to remove the requirement that a court conduct a hearing prior to entering an order of expungement for criminal charges that are dismissed or where there is a finding of not guilty. In addition, amended G.S. 15A-146 allows a person with a prior felony conviction to obtain an expungement of any criminal charge that is dismissed or where there is a finding of not guilty.

Previously, when a petition for expungement was filed based upon charges being dismissed or based upon a finding of not guilty, a court was required to conduct a hearing prior to entering an order for expungement and any person convicted of a felony would not qualify for the expungement.

3. The bill also amends G.S. 15A-146, effective December 1, 2021, to create a new category of automatic expunction "by operation of law" of any dismissal or finding of not guilty occurring on or after this date for any misdemeanor or felony charges, excluding a felony charge that is dismissed pursuant to a plea agreement.

Therefore, the bill allows for an unlimited number of expungements based on the charges being dismissed or the defendant being found not guilty on or after December 1, 2021.

Amended G.S. 15A-146 allows an arresting agency to maintain investigative records relating to the criminal charge that is automatically expunged "by operation of law" due to a dismissal or finding of not guilty.

Finally, this new category of automatic expungement by operation of law for dismissals or findings of not guilty on or after December 1, 2021 will not have an expungement order signed by a judge. The North Carolina Administrative Office of the Courts is required to develop the procedures by which these records will be expunged automatically without review by a court.

Currently, a judge reviews petitions for expungements and, if granted by the court, the law enforcement agencies listed on the expungement order signed by the judge are required to expunge from their records any information related to the criminal charge. The bill does not modify this provision of law for all other types of expungements.

4. The bill amends G.S. 15A-151 and G.S. 15A-151.5, effective December 1, 2020, to allow prosecutors and law enforcement agencies to access these expunged records through the North Carolina Administrative Office of the Courts (AOC). The North Carolina Sheriffs' Education and Training Standards Commission and the North Carolina Criminal Justice Education and Training Standards Commission would also have access to these expunged records through AOC for purposes of determining whether a person is qualified to hold certification through either Commission.
5. Finally, the bill amends G.S. 15A-145.5, effective December 1, 2020, to allow for the expungement of more than one nonviolent misdemeanor conviction after a seven-year waiting period if the person has had no further misdemeanor or felony convictions (excluding traffic violations) during that seven-year period.

Currently, a person may obtain an expungement for one nonviolent misdemeanor conviction after a five-year waiting period with no further misdemeanor or felony convictions occurring during that five-year waiting period. In addition, current law also provides for the expungement of one nonviolent felony.

[SENATE BILL 681](#), [Agency Policy Directives/2019-2021](#), amends G.S. 17C-20 to change the definition of "eligible county" as it applies to the Criminal Justice Fellows Program. This amendment allows individuals from counties with a population less than 125,000 to apply for the Program.

Previously, only those applicants from counties with less than 75,000 people qualified to receive loan forgiveness through the Program.

The Criminal Justice Fellows Program was created to increase the recruitment of criminal justice professionals by providing loan forgiveness to qualified individuals that earn an Applied Associate Degree in Criminal Justice. The Program is administered by the North Carolina Criminal Justice Standards Division.

Effective: July 1, 2020 and applies to Program recipients selected on or after that date.

[SENATE BILL 704](#), COVID-19 Recovery Act, contains numerous provisions enacted into law to assist in the State's recovery during the COVID-19 pandemic.

Those items of interest to the criminal justice community include:

1. The Division of Public Health and the Division of Health Service Regulation within the North Carolina Department of Health and Human Services (DHHS), in conjunction with the North Carolina Division of Emergency Management within the North Carolina Department of Public Safety (DPS), is required to develop a plan for creating and maintaining a State stockpile of personal protective equipment (PPE) and testing supplies that can be used by health care providers and first responders, including law enforcement, for the purpose of responding to the COVID-19 pandemic and any future health emergency.

The bill requires DHHS and DPS to submit this stockpile plan to the Joint Legislative Oversight Committee on Health and Human Services and the Joint Legislative Oversight Committee on Justice and Public Safety by July 1, 2020.

2. The bill temporarily modifies G.S. 122C-266 and G.S. 122C-285 of the State's Involuntary Commitment (IVC) laws to allow the first and second examination of a respondent to determine whether or not the respondent should be involuntarily committed due to mental illness or substance use disorder to occur via "telehealth" instead of an examination in the physical presence of the commitment examiner.

Telehealth is defined as the use of two-way, real-time interactive audio and video where the respondent and commitment examiner can hear and see each other. Therefore, telehealth may now be utilized even when the commitment examiner and respondent are located at the same facility or at different facilities.

These temporary provisions will expire 30 days after Executive Order No. 116 is rescinded. Executive Order No. 116 is the Governor's Declaration of a State of Emergency.

Currently, the first examination to determine whether the respondent will be involuntarily committed due to mental illness may be conducted in person, or if the respondent and examiner are in different geographic locations, via telemedicine. The first examination to determine whether the respondent will be involuntarily committed due to substance use disorder must occur in person. In addition, currently the second examination to determine whether the respondent will be involuntarily committed due to mental illness or substance use disorder must occur in person and may not be conducted via telemedicine.

3. The bill temporarily enacts G.S. 10B-25 to allow for emergency video notarization so long as certain criteria are met, including:
 - (i) The participants must use video conference technology, which must allow the notary and the principal to interact in real-time, with clear audio and video capabilities so the notary can see the face of the principal and the

identification provided by the principal, such as a valid driver's license.

- (ii) The principal must verbally identify each document that is to be notarized and is also required to sign each document so the notary can observe the signing through the video conference technology.
- (iii) The principal must submit the signed documents to the notary the same day via electronic means, such as by email or facsimile.
- (iv) No portion of the emergency video notarization process can be prerecorded.
- (v) Both the notary and principal must be physically present in the State of North Carolina.

This authorization for emergency video notarization expires on August 1, 2020 at 12:01 a.m. However, House Bill 308, which is summarized above in this Final Legislative Report, further extends these provisions until March 1, 2021.

Currently, State law does not allow a notarial act to be carried out through video conference technology.

4. The bill temporarily enacts a new Article 3 in Chapter 10B of our General Statutes that allows for emergency video witnessing of a record so long as certain criteria are met, including:
 - (i) The participants must use video conference technology, which must allow the principal signer and the attesting witness to interact in real-time, with clear audio and video capabilities.
 - (ii) The principal signer must sign the record so that the attesting witness can observe the signing through video conference technology, and the attesting witness must thereafter immediately sign the record while the principal signer is still able to interact in real-time.
 - (iii) The record must contain a statement indicating that the record was witnessed by one or more witnesses physically located in the State of North Carolina and must also list the county in which each witness and principal signer was physically located.

This authorization for emergency video notarization expires on August 1, 2020. However, House Bill 308, which is summarized above in this Final Legislative Report, further extends these provisions until March 1, 2021.

Currently, State law does not allow for the witnessing of records through video conference technology.

5. The bill temporarily amends G.S. 14-12.11 to authorize a person to wear a mask in public and on private premises (such as in a shopping mall) for the purpose of ensuring the physical health or safety of the wearer or others. The bill requires the person wearing a mask for health or safety reasons to remove the mask upon the request of a law enforcement officer during a traffic stop (including at a checkpoint or roadblock) or criminal investigation.

This authorization expires on August 1, 2020. However, Senate Bill 232, which is summarized above in this Final Legislative Report, makes this authorization permanent.

Currently, the wearing of a mask in public is limited to circumstances such as celebrating Halloween, for protection while engaging in a trade, or for protection while operating a motorcycle.

6. The bill temporarily allows search warrants and other judicial orders issued following a court hearing held by remote audio or visual transmission to be signed by a judicial official using an electronic signature.

This authorization expires on August 1, 2020.

Currently, a judicial official is authorized to use an electronic signature when issuing a search warrant.

7. The bill requires the North Carolina Division of Motor Vehicles (DMV) to extend for a period of five months (from the date the credential is set to expire) the validity of various credentials issued by DMV that would expire on or after March 1, 2020 and before August 1, 2020.

This includes but is not limited to a driver's license, commercial driver's license, learner's permit, identification card, vehicle registration and a handicapped placard.

This extension is effective retroactively to March 1, 2020 and applies to expirations occurring on or after that date.

8. The bill temporarily amends G.S. 35A-1109 to modify the service requirements in adult guardianship proceedings when the respondent is located at a facility that limits access due to a public health emergency.

Under these circumstances, the bill allows the sheriff to effectuate service by delivering a copy of the initial notice of hearing and petition to a person employed by the facility that has apparent authority to receive documents for residents at the facility.

This change to the service requirement expires on August 1, 2020.

Currently, service of petitions for adult guardianship proceedings must be made in person to the respondent.

9. The bill temporarily amends G.S. 74C-3 and G.S. 148-5.5 to expand the authority of security guards and patrol professionals that are licensed by the North Carolina Private Protective Services Board. The bill allows security guards and patrol professionals to provide security services at State prisons, such as monitoring the movement and exit and entry of individuals into the facility, manning security towers and providing perimeter security patrols.

The bill requires a security guard or patrol professional to first obtain training on State prison policies, including policies on the use of force, prior to providing any security services at a State prison.

Once a security guard or patrol professional receives this training, the person is vested with the same authority to detain and use necessary force as allowed by State policy to prevent contraband in the facility or to prevent prisoner escape.

These provisions expire on August 1, 2020.

10. The bill amends G.S. 130A-143, effective May 4, 2020, to authorize the State Health Director or a local health director to release confidential personal health information related to a communicable disease, such as a person testing positive for COVID-19, to a law enforcement official for officer safety and the safety of the public.

Prior to this bill becoming law, the State Health Director or a local health director could release this information to a 911 call center, but release of this information by a health director to law enforcement was limited to circumstances related to enforcement of the public health laws (such as assisting in enforcing a quarantine order) or where an officer was potentially exposed to a communicable disease.

11. The bill temporarily modifies State law related to certain return to work restrictions for retirees of the Teachers' and State Employees' Retirement System (TSERS) and the Local Governmental Employees' Retirement System (LGERS) so certain retirees can return to work on a part-time, temporary or interim basis during the COVID-19 pandemic without jeopardizing retirement benefits.

The bill institutes a one month rather than the current six-month separation requirement for retirement to become effective under TSERS for employees who retired on or after October 1, 2019 and before April 1, 2020, **if** the retiree returns to a position that is needed due to the COVID-19 pandemic. This determination must be made by the Retirement Systems Division of the Department of State Treasurer.

For those TSERS employees eligible to return to work between March 10, 2020 and August 1, 2020, that time will not be considered "work" for purposes of the current six-month separation requirement.

In addition, the bill does not classify earnings received between March 10, 2020 and August 1, 2020 for COVID-19 related work as true "earnings" under TSERS or LGERS

so long as certification is made by the employing agency to the Retirement Systems Division that the work is needed due to the COVID-19 pandemic. This means that any earnings received during this period will not count towards the annual earnings limitation that must not be exceeded by retirees returning to work part-time. The earnings limitation for 2020 according to the retirement system is \$34,340.

Finally, the bill provides that a retired law enforcement officer's Special Separation Allowance (SSA) benefit is not jeopardized if the officer is returning to work between March 10, 2020 and August 1, 2020 so long as the employing agency documents that the work is needed due to the COVID-19 pandemic.

These temporary provisions for retirees returning to work for the COVID-19 pandemic expire on August 1, 2020.

12. The bill enacts G.S. 166A-19.24 in our State emergency management statutes, effective May 4, 2020, to allow a public body to conduct remote meetings when the Governor or legislature declares a state of emergency which restricts the number of people allowed to gather in public. Only those public bodies within the declared emergency area are authorized to hold remote meetings while the state of emergency remains in effect.

Enacted G.S. 166A-19.24 requires the public body to follow various requirements set out in the bill when conducting remote meetings, including but not limited to requiring:

- (i) Proper notice of the remote meeting.
- (ii) Notice of how the public can access the remote meeting.
- (iii) Each member participating to identify themselves when communicating for roll call, while participating in deliberation, and when voting.
- (iv) Roll call voting for every vote taken.
- (v) Streaming the meeting live online with a telephonic option for the public.

Newly enacted G.S. 166A-19.24 allows public bodies to conduct public hearings during a remote meeting so long as the above requirements are met and the public body allows written comments on the subject of the public hearing to be submitted from the time the hearing is noticed to 24 hours following the meeting.

Finally, newly enacted G.S. 166A-19.24 authorizes public bodies to conduct quasi-judicial proceedings at remote meetings only when: (1) the right of the individual to a hearing and decision occur during the emergency; (2) all persons subject to the quasi-judicial hearing are given notice and consent to the remote proceeding; and (3) all due process rights of the parties are protected.

These newly enacted provisions apply throughout the duration of any declaration of emergency issued by the Governor or legislature that is in effect on or after that date.

13. The bill authorizes the North Carolina Department of Health and Human Services, Forensic Tests for Alcohol Branch, to provide an extension on permits set to expire for certain chemical analysts that administer breath alcohol tests since in-person instruction may not be possible during the COVID-19 pandemic. This allowance is retroactive to March 10, 2020 and expires on January 1, 2021.
14. The bill temporarily allows the chief district court judge in the district where the order was entered to modify an order of confinement or imprisonment in a local confinement facility, with the consent of the District Attorney, to prevent the defendant from violating the judgment if the defendant is unable to serve the period of confinement because of restrictions implemented at the confinement facility to prevent the spread of COVID-19.

This could occur, for example, when a jail does not accept inmates with periods of weekend confinement in order to avoid the potential spread of COVID-19.

This authority to modify an order of confinement or imprisonment in a local confinement facility expires on August 1, 2020.

[SENATE BILL 739](#), Personal Delivery Device/PDD/Delivery Robots, amends G.S. 20-4.01 to include the definition of “personal delivery device” (PDD) within our motor vehicle laws. A PDD, now defined in G.S. 20-4.01(28a), means an electronically powered device intended for transporting cargo that is equipped with automated driving technology that enables device operation with or without the remote support and supervision of a human, and that does not exceed a weight of 500 pounds, excluding cargo, a length of 40 inches (3.3 feet), and a width of 30 inches (2.5 feet).

The bill also enacts G.S. 20-175.7 and G.S. 20-175.8, which specify that only business entities (such as a corporation or limited liability company) may operate a PDD in a pedestrian area, such as a sidewalk, at 10 miles per hour or less, or on the shoulder of a highway at 20 miles per hour or less.

An operator of a PDD is defined as any person that is 16 years of age or older that is responsible for the monitoring and operation of the PDD, and is authorized by the business entity that owns the PDD to operate the device.

PDDs may not be operated on a highway with a speed limit greater than 35 miles per hour and may only be operated on a highway in order to cross a highway or to travel along a highway when there is no available or accessible sidewalk.

Newly enacted G.S. 20-175.8 also creates several other requirements for the operation of a PDD, including:

1. Requiring that the device must be monitored by an operator who is able to exercise remote

control over the device.

2. Requiring that all traffic and pedestrian control devices and signs are obeyed.
3. Requiring the device to yield the right of way to all human pedestrians.
4. Requiring that the device not unreasonably interfere with any vehicle or pedestrian.
5. The device must not transport hazardous materials as defined under federal law.
6. The device must be equipped with a marker clearly stating the contact information of the owner.
7. The device must be equipped with a breaking system allowing the device to come to a controlled stop.
8. The device must be equipped with front and rear lights when operating at night that are visible from at least 500 feet on all sides of the device.

Newly enacted G.S. 20-175.8 makes it an infraction for the operator of a PDD to violate any of these provisions.

The bill also enacts G.S. 20-175.9, which permits local governments to regulate the time and place of the operation of PDDs, and G.S. 20-175.10, which requires PDDs to be insured.

Finally, the bill amends G.S. 20-286(10) to specify that PDDs are not included in the term “motor vehicle” unless they exceed a weight of 750 pounds, excluding cargo, exceed a length of 40 inches (3.3 feet) when not linked with other devices, and exceed a width of 36 inches (3 feet).

Therefore, the motor vehicle laws, such as the requirement to have a driver’s license to operate the device, do not apply to PDDs that are within the specifications described above.

Effective: July 1, 2020

[SENATE BILL 866](#), [Additions to 2020 Appointments Bill](#), makes numerous appointments to State commissions and boards. Among those of interest to the criminal justice community are:

The President Pro Tempore of the Senate appoints:

1. Effective September 1, 2020, Sheriff Larry M. Pierce of Wayne County is appointed to the Domestic Violence Commission for a term expiring on August 31, 2022.
2. Effective January 1, 2021, Chief Jeffrey H. Ledford of Cleveland County is appointed to the 911 Board for a term expiring on December 31, 2024.

The Speaker of the House of Representatives appoints:

1. Effective September 1, 2020, Sheriff Hans Miller of Onslow County is appointed to the Domestic Violence Commission for a term expiring on August 31, 2022.

The **Final 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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