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EMAIL TO: All Sheriffs
FROM: Eddie Caldwell
Executive Vice President and General Counsel
North Carolina Sheriffs' Association
SENT: April 5, 2020
SUBJECT: Chief Justice Beasley Issues Order Regarding Various Court
Matters - April 2, 2020

On April 2, 2020, Chief Justice Cheri Beasley of the Supreme Court of North Carolina issued another Order with various Emergency Directives that are designed to minimize the spread of COVID-19. The Emergency Directives contained in this order were effective immediately and expire on May 1, 2020, but may be extended. For your convenience, a copy of the Chief Justice's Order is attached to this email.

Emergency Directive 1 states that all superior court and district court proceedings and proceedings before the clerks of superior court will be rescheduled for a date after June 1, 2020 unless the proceeding is necessary to preserve due process (such as first appearances and bond motions), is an emergency proceeding (such as a petition for a domestic violence protective order), is carried out remotely, or is allowed by the senior resident superior court judge because the proceeding can be carried out without endangering public health.

Emergency Directive 2 requires the clerk of superior court to post a notice at the entrance to every court facility directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. Any such person should contact the clerk of superior court by telephone or other electronic means for further instructions.

Emergency Directive 3 authorizes judicial officials throughout the State to conduct proceedings by remote audio and video transmissions **IF ALL** parties consent to the use of remote technology.



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Post Office Box 20049 • Raleigh, N.C. 27619-0049 • Telephone: (919) SHERIFF (743-7433)

Fax: (919) 783-5272 • E-mail: ncsa@ncsheriffs.net • www.ncsheriffs.org

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Emergency Directive 4 may have a direct impact on Sheriffs' office personnel working at a courthouse. This directive provides that attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded.

Emergency Directive 5 impacts the **concealed handgun permit** application procedure. It provides that documents filed in any court proceeding that are required to be submitted under oath can, while this Order is in effect, be submitted without an oath being taken before a notary public, clerk of court or other official authorized to administer oaths.

This provision applies as long as the document contains a statement in substantially the following language: "I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true." And then the document with the statement must be signed by the person making the affirmation.

Therefore, this provision applies to AOC-SP-914, RELEASE OF PHYSICAL AND MENTAL HEALTH, SUBSTANCE ABUSE AND CONFIDENTIAL COURT RECORDS FOR CONCEALED HANDGUN PERMIT, which is filed by the clerk of court in a Special Proceedings file.

Emergency Directives 6 & 7 do not involve matters related to Office of Sheriff duties or other law enforcement duties.

Impact on Processing and Issuing Gun Permits: The Chief Justice's Order does not alter the requirement that sheriffs continue, as required by law, processing and issuing pistol purchase permits and concealed handgun permits. We previously sent information to you on the statutory duties of the sheriff requiring processing and issuance of these permits. A copy of the Association's March 27, 2020 email to sheriffs on this topic is attached for your reference.

Writs for Possession of Property: The Chief Justice's Order does not make specific reference to the execution of Writs for Possession of Property that have been (or will be) issued by the courts. We previously sent information to you on the issue of whether or not sheriffs possess the legal authority to stop executing court ordered Writs for Possession of Property during a declared state of emergency. A copy of the Association's March 20, 2020 email to sheriffs on this topic is attached for your reference

There are clear statutory mandates for the sheriff to execute a valid Writ for Possession of Property, which "shall" be served within 5 days after its receipt by the sheriff. Because the actions of a sheriff who fails to serve a writ as mandated by statute could be viewed as failing to perform a duty mandated by our General Statutes, you may wish to consult with your own legal advisor or county attorney prior to making a decision to stop executing Writs for Possession of Property that have been issued and ordered by the courts.

Email to All Sheriffs
Chief Justice Beasley Issues Order Regarding Various Court Matters - April 2, 2020
April 5, 2020
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If you have any questions or need any additional information, please do not hesitate to contact Matthew Boyatt, NCSA Deputy General Counsel, at mboyatt@ncsheriffs.net or 919-459-6467.

Thanks....Eddie C.



Edmond W. (Eddie) Caldwell, Jr.

Executive Vice President and General Counsel

North Carolina Sheriffs' Association, Inc.

Post Office Box 20049

Raleigh, North Carolina 27619-0049

Telephone: (919) 459-1052

Fax: (919) 783-5272

Email: ecaldwell@ncsheriffs.net

Webpage: www.ncsheriffs.org

North Carolina Sheriffs' Association

Proudly Serving the Sheriffs and Citizens of North Carolina since 1922

**ORDER OF THE CHIEF JUSTICE
OF THE SUPREME COURT OF NORTH CAROLINA**

On 13 March 2020, I issued an [order with two emergency directives](#) affecting the North Carolina Judicial Branch in response to the emerging public health threat posed by the COVID-19 outbreak. On 19 March 2020, I issued another [order extending time and periods of limitation](#) for documents and papers due to be filed and acts due to be done in the trial courts.

On 27 March 2020, Governor Roy Cooper issued Executive Order 121 directing all individuals in the state to stay in their place of residence subject to limited exceptions. North Carolina's courts are a critical government function and are therefore exempt from the order. Nevertheless, we are directed, to the extent practicable, to maintain social distancing requirements, including "facilitating online or remote access by customers if possible."

Additional emergency directives under N.C.G.S. § 7A-39(b)(2) are now necessary to reduce the spread of infection and to ensure the continuing operation of essential court functions.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

Emergency Directive 1

All superior court and district court proceedings, including proceedings before the clerks of superior court, must be scheduled or rescheduled for a date no sooner than 1 June 2020, unless:

- a. the proceeding will be conducted remotely;
- b. the proceeding is necessary to preserve the right to due process of law (e.g., a first appearance or bond hearing, the appointment of counsel for an indigent defendant, a probation hearing, a probable cause hearing, etc.);
- c. the proceeding is for the purpose of obtaining emergency relief (e.g., a domestic violence protection order, temporary restraining order, juvenile custody order, judicial consent to juvenile medical treatment order, civil commitment order, etc.); or
- d. the senior resident superior court judge, chief business court judge, or chief district court judge determines that the proceeding can be conducted under conditions that protect the health and safety of all participants.

The examples provided above are not exhaustive.

This emergency directive does not apply to any proceeding in which a jury has already been empaneled.

Emergency Directive 2

The clerks of superior court shall post a notice at the entrance to every court facility in their county directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. A person who has likely been exposed to COVID-19 and who has business before the courts shall contact the clerk of superior court's office by telephone or other remote means, inform court personnel of the nature of his or her business before the court, and receive further instruction. For purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

- a. has travelled internationally within the preceding 14 days;
- b. is experiencing fever, cough, or shortness of breath;
- c. has been directed to quarantine, isolate, or self-monitor;
- d. has a known exposure to COVID-19;
- e. has been diagnosed with COVID-19; or
- f. resides with or has been in close contact with any person in the abovementioned categories.

Emergency Directive 3

Judicial officials throughout the state are hereby authorized to conduct proceedings by remote audio and video transmissions, notwithstanding any other North Carolina statutory or regulatory provision.

Judicial officials who conduct a remote proceeding pursuant to this directive must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process. To this end:

- a. A remote proceeding may not be conducted without the consent of each party.
- b. If a criminal defendant's right to confront witnesses or to be present is implicated by the proceeding that is to be conducted, then the defendant must waive any right to in-person confrontation or presence before that proceeding may be conducted remotely.
- c. If the proceeding is required by law to be conducted in a way that maintains confidentiality, then confidentiality must be maintained in the remote proceeding.

- d. If the proceeding is required by law to be recorded, then the remote proceeding must be recorded.
- e. Each party to a remote proceeding must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.

The authorization in this emergency directive does not extend to proceedings that involve a jury.

Nothing in this emergency directive prevents judicial officials from conducting in-person proceedings consistent with Emergency Directive 1.

Emergency Directive 4

Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.

Emergency Directive 5

When it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind to be filed in the General Court of Justice be verified, or that an oath be taken, it shall be sufficient if the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

“I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.

(Signed) _____”

This emergency directive does not apply to wills to be probated, conveyances of real estate, or any document that is not to be filed in the General Court of Justice.

Emergency Directive 6

Notwithstanding the manner of service described in Rule 5 of the Rules of Civil Procedure, service required by Rule 5 may be made electronically on a party or a party’s attorney as follows:

If the party has consented in writing to service by electronic mail (“email”), then service may be made on the party by email to an address that is either included in the consent or is otherwise on record with the court in the case. The email must be timestamped before 5:00 P.M. Eastern Time on a regular business day to be

considered served on that day. If the email is timestamped after 5:00 P.M., then service will be deemed to have been completed on the next business day.

If the attorney has consented in writing to service by email, then service may also be made on the attorney by email to an address that is either included in the consent or is otherwise on record with the court in the case. The email must be timestamped before 5:00 P.M. Eastern Time on a regular business day to be considered served on that day. If the email is timestamped after 5:00 P.M., then service will be deemed to have been completed on the next business day.

If one or more persons are served by email, then the certificate of service shall show the email address of each person so served.

Nothing in this emergency directive is intended to modify electronic service in the North Carolina Business Court, which continues to be governed by Business Court Rule 3.

Emergency Directive 7

For all monies owed pursuant to a judgment or order entered by a court prior to 6 April 2020 in a criminal or infraction case with a payment due date on or after 6 April 2020 and before or on 1 May 2020, the date by which payment must be made is hereby extended 90 days. Nonpayment of monetary obligations in such cases shall not be deemed a willful failure to comply, and the clerks of superior court are directed not to enter or report a failure to comply as a result of nonpayment during the 90-day extension period.

The clerks of superior court also are directed not to enter or report, until after the expiration of this order, a failure to comply for a criminal or infraction case with a payment due date before 6 April 2020 where the 40th day following nonpayment falls on or after 6 April 2020 and before or on 1 May 2020.

If a court enters a judgment or order on or after 6 April 2020 and before or on 1 May 2020 in a criminal or infraction case, then the payment due date must be at least 90 days after the date of entry of the judgment or order, and the installment fee of N.C.G.S. § 7A-304(f) shall not be assessed until after the due date has passed.

Monetary obligations owed pursuant to a term of probation which is scheduled to end within 30 days after the date that this order is issued are excluded from the operation of this emergency directive.

* * *

**Expiration of this Emergency Order and
Guidance to Judicial System Stakeholders**

Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order are effective immediately and expire on 1 May 2020.

Nevertheless, given the current severity of the COVID-19 outbreak, I fully expect to extend these directives for an additional 30-day period. Accordingly, judicial system stakeholders should plan for these directives to last through the month of May 2020.

These emergency directives are crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public.

I encourage all court officials to liberally grant additional accommodations to parties, witnesses, attorneys, and others with business before the courts, as they deem appropriate.

Issued this the 2nd day of April, 2020.



Cheri Beasley
Chief Justice
Supreme Court of North Carolina



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Carteret County

SHERIFF HUBERT A. PETERKIN
Hoke County

EMAIL TO: All Sheriffs
FROM: Eddie Caldwell
Executive Vice President and General Counsel
North Carolina Sheriffs' Association
SENT: March 27, 2020
SUBJECT: Does a Sheriff Have the Authority to Suspend Processing and
Issuance of Pistol Purchase Permits and Concealed Handgun
Permits Because of a Declared State of Emergency?

Questions have arisen about whether or not current State law allows a sheriff to cease processing and issuing pistol purchase permits, concealed handgun permits, or both because of a declared state of emergency, such as the coronavirus pandemic.

For the reasons stated below, we can find no legal authority authorizing a sheriff to stop processing and issuing the following permits because of a declared state of emergency, because the processing and issuance of these permits are mandated by statute:

- (1) Pistol purchase permits.
- (2) New concealed handgun permits.
- (3) Renewal concealed handgun permits.

Note: In various statutes cited below, emphasis (bold/underline) has been added as appropriate to assist the reader.

A. Pistol Purchase Permits

Article 52A of Chapter 14 of our General Statutes governs the pistol purchase permitting process. North Carolina sheriffs are required to issue these permits to qualified applicants within their respective jurisdictions. **Article 52A does not grant to the sheriff the authority to suspend processing or issuing pistol purchase permits because of a declared state of emergency.**

G.S. § 14-403 provides: "The sheriffs of any and all counties of this State **shall issue** to any person, firm, or corporation in any county a permit to purchase or receive any weapon mentioned in this Article [i.e. pistol] from any person, firm, or corporation offering to sell or dispose of the weapon."



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G.S. § 14-404 further provides: “Upon application, and such application must be provided by the sheriff electronically, the sheriff **shall issue** the permit to a resident of that county” when the sheriff has completed the criminal background check and has made a determination that the applicant does not have a disqualifying criminal conviction, is of good moral character and is obtaining the permit for protection, target shooting, collection or hunting.

As part of the mandatory criminal background check, G.S. § 14-404(a)(1) requires that the “sheriff **shall** determine the criminal and background history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, by conducting a check through the National Instant Criminal Background Check System (NICS), and by conducting a criminal history check through the Administrative Office of the Courts.”

Pursuant to G.S. § 14-404(e): “There shall be no limit as to the number or frequency of permit applications....” G.S. § 14-404(f) also requires that: “Each applicant for a license or permit shall be informed by the sheriff **within 14 days of the date of the application** whether the license or permit will be granted or denied and, if granted, the license or permit **shall be immediately issued** to the applicant.”

There is nothing in Article 52A that gives the sheriff the discretion to stop processing applications for pistol purchase permits or to otherwise delay issuance of the permit to a qualified applicant beyond the statutorily mandated 14-day deadline that is in G.S. § 14-404(f). Furthermore, we can find no legal authority elsewhere in the General Statutes or in case law that authorizes the sheriff to not follow the mandatory provisions in Article 52A because of a declared state of emergency.

B. Concealed Handgun Permits

Article 54B of Chapter 14 governs the concealed handgun permitting process. G.S. § 14-415.14(a) provides: “The sheriff shall make permit applications readily available at the office of the sheriff or at other public offices in the sheriff’s jurisdiction.” In addition, G.S. § 14-415.12(a) provides: “The sheriff **shall issue** a permit to an applicant if the applicant qualifies....”

G.S. § 14-415.15(a) states the sheriff “**shall either issue or deny the permit**” within “**45 days after receipt**” of both the items required of the applicant (such as the fee, application, safety course certificate, signed release and fingerprints) and the mental health records of the applicant. As part of the permitting process, G.S. § 14-415.13 requires the applicant to submit a full set of fingerprints to the sheriff and the fingerprinting must be “administered by the sheriff.”

Article 54B does not grant to the sheriff the authority to suspend the processing or issuance of concealed handgun permits because of a declared state of emergency. There is nothing in Article 54B that gives the sheriff the discretion to stop processing or issuing concealed handgun permits. We can find no legal authority elsewhere in the General Statutes or in case law that authorizes the sheriff to not follow the mandatory provisions in Article 54B because of a declared state of emergency.

C. Concealed Handgun Permit Renewals

Concealed handgun permit renewals are governed by G.S. § 14-415.16. All that is required for a renewal is: (1) submission of a renewal form; (2) submission of an affidavit stating the applicant remains qualified; and (3) payment of fees.

Additionally, G.S. § 14-415.16(d) provides that no fingerprints are required for a concealed handgun permit renewal application if the applicant's fingerprints have previously been placed into the Automated Fingerprint Identification System (AFIS).

We believe the analysis for concealed handgun permit renewals is the same as described above in Section B for new concealed handgun permits.

We can find no legal authority elsewhere in the General Statutes or in case law that authorizes the sheriff to not follow the mandatory provisions regarding the renewal of a concealed handgun permit because of a declared state of emergency.

D. Governor Cooper's Executive Orders and County State of Emergency

It has been suggested that various local emergency orders and Governor Cooper's Executive Orders No. 117 and No. 120 may authorize the sheriff to stop processing and issuing pistol purchase permits, concealed handgun permits, or both. Specifically, some of these local emergency orders and the Governor's Executive Orders recommend that local government officials "take appropriate precautions to maintain the health of the general public and their employees who are required to perform their official duties in a manner that brings them in contact with the general public by putting in place appropriate public health measures, such as social distancing, use of reasonable personal protective equipment, and offering reasonable accommodations to employees who provide services to the public with consideration for their health."

Of critical importance, there is no State law that allows a local emergency order to supersede the statutory requirements contained in Chapter 14 of our General Statutes.

Furthermore, while the powers of the Governor, including issuance of Executive Orders, during a declared state of emergency are broad, they do not include the authority to supersede the statutory requirements contained in Chapter 14 of our General Statutes. This is best summarized by Norma Houston, Lecturer in Public Law and Government, at the UNC-CH School of Government, who has advised:

The Governor's emergency powers under Chapter 166A, while broad, do not include the blanket authority to override a state statute. The Governor, with concurrence of the Council of State, is authorized to waive "a provision of any regulation or ordinance." (G.S. § 166A-19.30(b)(4)). A statute is not a "regulation" or "ordinance." Thus, by Executive Order, the Governor cannot suspend or waive a provision of statute unless such authority is specifically granted as to a specific statute (there is one specific grant of such authority under G.S. § 166A-19.30(a)(5) regarding Articles 1, 4, and 7 of Chapter 113A of the General Statutes for certain enumerated purposes), or the statute in question itself grants authority for flexibility for modification without legislative action. **No such authority is granted for any provisions of Chapter 14.** (Emphasis added.)

While local emergency orders and the Governor's Executive Orders encourage social distancing and other protective health measures, they do not and cannot legally direct law enforcement officials to cease providing services that are required by our General Statutes. In fact, Section 2 of Executive Order 120 itself directs local governments to continue to perform functions required by State and federal law:

Section 2. Mandatory Local Government Operations

- a. Consistent with my authority under N.C. Gen. Stat. §§ 166A-19.30(c)(1) and (c)(2), and to the extent that local government functions are required under state and federal law, I hereby direct the appropriate local government agencies and officials to continue to exercise their responsibilities, including but not limited to local county Department of Social Services ("DSS") offices, Health Departments, Registers of Deeds, and other local government functions that are required to protect lives and property.
- b. Notwithstanding Section (a) of this Section, local government must take appropriate precautions to maintain the health of the general public and their employees who are required to perform their official duties in a manner that brings them in contact with the general public by putting in place appropriate public health measures, such as social distancing, use of reasonable personal protective equipment, and offering reasonable accommodations to employees who provide services to the public with consideration for their health. (Emphasis added.)

Note: Some counties have enacted [and the Governor may eventually enact] a "stay at home" provision in their emergency order that prohibits persons from movement or travel about public places including streets, roadways, etc. and that requires persons to remain in their household or residential living unit, except for purposes of certain specified "essential activities," such as grocery or pharmacy shopping, medical appointments, etc. These provisions may restrict persons from coming to the sheriff's office to apply for either a pistol purchase permit, a concealed handgun permit, or both, unless that is ultimately determined to be an "essential activity." Of course, for pistol purchase permits and renewal of concealed handgun permits, the application paperwork can be submitted to the sheriff's office via U.S. Mail, and the permit can be returned to the applicant via U.S. Mail. For sheriff's offices with the capability, those applications could also be submitted electronically on-line.

It has also been suggested that the sheriff can stop processing pistol purchase permits, concealed handgun permits, or both, because the sheriff utilizes the clerk of court to conduct the necessary criminal history searches of applicants and the clerk of court cannot or will not perform this service. G.S. § 14-404(f) requires a sheriff to either issue or deny the pistol purchase permit "**within 14 days of the date of application**" and there are no exceptions in the law to this deadline. Regarding concealed handgun permits, G.S. § 14-415.15(a) states the sheriff "**shall either issue or deny the permit**" within "**45 days after receipt**" of the required items and there are no exceptions in the law to this deadline. The sheriff could choose to conduct the criminal history searches independently through alternate electronic databases such as the Criminal Justice Law Enforcement Automated Data Services (CJLEADS) instead of through a clerk of court.

Furthermore, it has been suggested that the sheriff has the authority to simply postpone accepting applications for pistol purchase permits, concealed handgun permits, or both, presumably to avoid processing and issuing the permits during a declared state of emergency. There is no State law that allows the sheriff to refuse to accept applications for pistol purchase and concealed handgun permits or to otherwise delay receipt of applications in order to artificially extend the statutorily mandated 14 day deadline.

Again, G.S. § 14-404(e) states: “There **shall be no limit** as to the number **or frequency of permit applications** . . .” and G.S. § 14-404(f) requires that: “Each applicant for a license or permit **shall be** informed by the sheriff **within 14 days of the date of the application** whether the license or permit will be granted or denied and, if granted, the license or permit **shall be immediately issued** to the applicant.” Additionally, with respect to concealed handgun permit applications, G.S. § 14-415.13 states: “A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit.” G.S. § 14-415.14 further states: “The sheriff **shall** make permit applications **readily available** at the office of the sheriff **or at other public offices** in the sheriff’s jurisdiction.”

We can find no legal authority elsewhere in the General Statutes or in case law that authorizes the sheriff to not follow the mandatory provisions regarding processing and issuance of pistol purchase permits, concealed handgun permits, or both, merely by refusing to accept applications because of a declared state of emergency.

Finally, some have suggested that the sheriff has the authority to prohibit persons from entering the sheriff’s office to be fingerprinted so long as it is pursuant to a continuity of operations plan that is in place to deal with the COVID-19 pandemic. There is no State law that allows the sheriff to stop processing and issuing concealed handgun permits based upon an internal continuity of operations plan or any other policy or plan adopted by the sheriff. Furthermore, the General Statutes contemplate that these gun permit processing activities can occur at a sheriff’s office or at any other location. G.S. § 14-415.14(a) authorizes the sheriff to “make permit applications readily available at the office of the sheriff or at other public offices in the sheriff’s jurisdiction.”

E. Constitutional Considerations

If a sheriff ceases to process pistol purchase permits, concealed handgun permits, or both during a declared state of emergency, it is possible that a deprivation of rights claim under Title 42, Section 1983 of the United States Code could be brought for infringement of an individual’s constitutional right to possess firearms. Sheriffs should be aware that prior to 2012, during a declared state of emergency, several General Statutes allowed restrictions and prohibitions to be imposed on the “possession, transportation, sale, purchase, storage and use of dangerous weapons and substances, and gasoline.” “Dangerous weapons,” under these former statutes, included firearms such as handguns, rifles, and shotguns.

Those General Statutes, as they applied to firearms, were held unconstitutional in the federal court case in the Eastern District of North Carolina of *Bateman v. Perdue*, 881 F.Supp.2d 709 (2012). As a result, the North Carolina General Assembly amended those General Statutes effective October 1, 2012 (recodified as G.S. § 166A-19.31) to address this issue.

G.S. § 166A-19.31(b)(4) provides that ordinances enacted by counties or cities during a state of emergency may include prohibitions and restrictions: “Upon the possession, transportation, sale, purchase, storage, and use of gasoline, and dangerous weapons and substances, **except that this subdivision does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition.**” (emphasis added.)

By discontinuing the processing and issuing of pistol purchase permits, concealed handgun permits, or both, even during a declared state of emergency, a sheriff could be exposed to civil liability for infringing on constitutionally protected rights.

F. Statutes Governing Removal from Office, etc. and the Sheriff's Bond

G.S. § 128-16 provides that the sheriff "shall be removed from office by the judge of the superior court, resident in or holding the courts of the district where said officer is resident upon charges made in writing, and hearing thereunder, for the following causes:

- (1) For willful or habitual neglect or refusal to perform the duties of his office.
- (2) For willful misconduct or maladministration in office."

An action to remove the sheriff "may be filed upon the relation of any five qualified electors of the county in which the person charged is an officer, upon the approval of the county attorney of such county, or the district attorney of the district, or by any such officer upon his own motion. It shall be the duty of the county attorney or district attorney to appear and prosecute this proceeding." G.S. § 128-17. While we could find no court cases on this point related to a sheriff, the actions of the sheriff could be viewed as failing to perform a duty mandated by our General Statutes.

G.S. § 14-230(a) provides that "[i]f any clerk of any court of record, **sheriff**, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense." A successful prosecution under this statute must show injury to the public. See *State v. Anderson*, 196 N.C. 771 (1929). While we could find no court cases on this point related to a sheriff, the actions of the sheriff could be viewed as failing to perform a duty mandated by our General Statutes.

Finally, G.S. § 162-8 provides that a sheriff must furnish a bond. A claim could be filed against the sheriff's bond for the sheriff's failure to make "the due execution and return of process, the payment of fees and moneys collected, and the faithful execution of his office as sheriff."

Therefore, we recommend sheriffs consult with their own legal counsel or county attorney prior to making the decision to stop processing and issuing pistol purchase permits, concealed handgun permits, or both.

G. Fingerprinting for Other Purposes

Sheriffs have asked about other circumstances in which they are required to administer fingerprints. Fingerprinting in certain specified situations is mandatory and may not be suspended, even during a declared state of emergency. In addition to the mandatory fingerprinting for concealed handgun permit applications, we have identified the following mandatory fingerprinting:

- (1) Pursuant to G.S. § 15A-502, it "**shall be the duty** of the **arresting** law enforcement agency" to fingerprint individuals who have been charged with: (a) a felony, (b) domestic criminal trespass or other criminal offense involving domestic violence, (c) impaired driving misdemeanor offenses, or (d) possession of a controlled substance.

- (2) Pursuant to G.S. § 15A-502, it “**shall be the duty** of the **arresting** law enforcement agency” to fingerprint individuals who have been charged with the misdemeanor offense of assault, stalking, or communicating a threat if the person is under a domestic hold pursuant to G.S. § 15A-534.1.
- (3) In addition, pursuant to G.S. § 7B-2102, a law enforcement officer or agency “**shall fingerprint**” juveniles who have committed more serious offenses that do not qualify for diversion in juvenile court. This applies to juveniles 10 years of age or older who commit non-divertible offenses, who are in the physical custody of law enforcement or the Division of Adult Correction and Juvenile Justice, and where a complaint has been prepared for filing against the juvenile. [Note: This statute does not specify which law enforcement officer or agency must do the fingerprinting, but it appears to intend for the fingerprinting to be done by the officer or agency that takes the juvenile into custody.]
- (4) The sheriff **shall** fingerprint persons who are placed on the North Carolina Sex Offender Registry. Pursuant to G.S. § 14-208.7(b)(4), the sheriff is required to take the fingerprints of a sex offender “**at the time of registration.**” This requirement is mandatory.

There are no exceptions in the law to the fingerprinting requirements in paragraphs (1) through (4) above, and we can find no legal authority elsewhere in the General Statutes or in case law that authorizes the sheriff to not follow these mandatory fingerprinting requirements.

There are no other circumstances we are aware of at this time that require the sheriff to administer fingerprints. There are various discretionary scenarios where a sheriff may or may not choose to administer fingerprints. An example of this are the fingerprinting services offered by some sheriffs to the general public for occupational licensing or for employment purposes. These statutes do not require a sheriff’s office to conduct the fingerprinting service. For example, under G.S. § 58-33-48, applicants for an insurance producer’s license must provide fingerprints that are certified by an authorized law enforcement officer. Other examples include applications for licenses to practice in healthcare (e.g., G.S. § 143B-949); applications for an ABC permit (G.S. § 18B-902); and applications for public adjuster insurance licenses (G.S. § 58-33A-15).

Notably, none of these statutes mandate that any one specific law enforcement agency, such as a sheriff’s office, provide the fingerprinting service. **Therefore, a sheriff may decide to offer or suspend fingerprinting services for the general public in these discretionary scenarios.**

If you have any questions regarding these issues, do not hesitate to contact Matthew Boyatt, NCSA Deputy General Counsel, at mboyatt@ncsheriffs.net or at 919-459-6467.

Thanks....Eddie C.



Edmond W. (Eddie) Caldwell, Jr.

Executive Vice President and General Counsel

North Carolina Sheriffs' Association, Inc.

Post Office Box 20049

Raleigh, North Carolina 27619-0049

Telephone: (919) 459-1052

Fax: (919) 783-5272

Email: ecaldwell@ncsheriffs.net

Webpage: www.ncsheriffs.org

North Carolina Sheriffs' Association

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EMAIL TO: All Sheriffs
FROM: Eddie Caldwell
Executive Vice President and General Counsel
North Carolina Sheriffs' Association
SENT: March 20, 2020
SUBJECT: G.S. 42-36.2 - Execution on Writ for Possession of Property ---
Impact of the Coronavirus Pandemic

The Issue

G.S. § 42-36.2(a), regarding execution on a Writ for Possession of Property, provides that the sheriff **shall** execute the writ "no more than five days from the sheriff's receipt thereof" (emphasis added).

In consideration of the coronavirus pandemic, there have been discussions about whether or not a sheriff can voluntarily decide to not comply with this General Statute and not execute the writ within 5 days as required by the statute.

While everyone recognizes the predicament likely faced by tenants being evicted during the coronavirus pandemic, the landlord has followed proper legal process and has obtained from the court a Writ for Possession of Property. Therefore, the law of North Carolina requires that the sheriff **shall** execute the writ "no more than five days from the sheriff's receipt thereof" (emphasis added).

The Sheriff's Legal Obligation

We are not aware of and have not found any legal authority in the General Statutes or in case law that authorizes the sheriff to fail to follow this statute, nor any legal authority in the General Statutes or in case law that authorizes the sheriff to fail to follow any other General Statute.

The Landlord's Option to Stop Execution of the Writ for Possession of Property

The person who does have the authority to stop the execution of the Writ for Possession of Property in a summary ejection court case is the landlord. G.S. § 42-36.2(a)(2) provides that the sheriff shall remove the tenant's property within the 5 day time period **unless**: "the landlord, or his authorized agent, signs a statement saying that the landlord does not want to eject the tenant because the tenant has



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paid all court costs charged to him and has satisfied his indebtedness to the landlord.”

Upon receipt of such a statement from the landlord, the sheriff shall return the writ unexecuted to the issuing clerk of court and shall make a notation on the writ of his reasons. The sheriff shall attach a copy of the landlord's statement to the writ. If the writ is returned unexecuted because the landlord signed such a statement, the clerk shall make an entry of satisfaction on the judgment docket.

The Governor's Executive Orders

We are not aware of and have not found any legal authority for the Governor to authorize or direct a sheriff to fail to follow this statute. No such authority is contained in the recent Governor's Executive Orders No. 117 and No. 118. Also, no such authority can be found in the General Statutes that authorize issuance of the Governor's Executive Orders.

The Order of the Chief Justice of the Supreme Court of North Carolina

On March 19, 2020, the Chief Justice entered an Order that provides, in pertinent part:

Extension of Time and Periods of Limitation Pursuant to N.C.G.S. § 7A-39(b)(1)

I order that all pleadings, motions, notices, and other documents and papers that were or are due to be filed in any county of this state on or after 16 March 2020 and before the close of business on 17 April 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely filed if they are filed before the close of business on 17 April 2020.

I further order that all other acts that were or are due to be done in any county of this state on or after 16 March 2020 and before the close of business on 17 April 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely done if they are done before the close of business on 17 April 2020.

After much thoughtful analysis and discussion among Association attorneys and several sheriffs' office legal advisors, two different reasonable interpretations of the Chief Justice's Order have been identified. Since there is no legal process or mechanism for us to clarify the intent or determine the correct scope of the Chief Justice's Order, **both potential interpretations are attached at the end of this message**. Either of them, or neither of them, may ultimately be determined by our courts to be a correct interpretation of the Chief Justice's Order. We are sharing this email with the staff of Governor Cooper and Chief Justice Beasley so they are aware of the various interpretations.

Trial Court Judges

Although nothing has been documented in writing, some sheriffs have advised that they asked their local trial court judges if the judges could or would enter an Order authorizing the sheriff to not comply with the requirement in G.S. § 42-36.2(a), regarding execution on a Writ for Possession of Property, that provides that the sheriff shall execute the writ “no more than five days from the sheriff's receipt thereof (emphasis added). Those sheriffs report that their judges advised that neither the judge nor the sheriff had any authority to authorize non-compliance with the mandatory provision of the statute.

Accountability of the Sheriff

G.S. § 162-8 provides that a sheriff must furnish a bond. A claim could be filed against the sheriff's bond for the sheriff's failure to make "the due execution and return of process, the payment of fees and moneys collected, and the faithful execution of his office as sheriff."

G.S. § 128-16 provides that the sheriff "shall be removed from office by the judge of the superior court, resident in or holding the courts of the district where said officer is resident upon charges made in writing, and hearing thereunder, for the following causes:

- (1) For willful or habitual neglect or refusal to perform the duties of his office.
- (2) For willful misconduct or maladministration in office."

An action to remove the sheriff "may be filed upon the relation of any five qualified electors of the county in which the person charged is an officer, upon the approval of the county attorney of such county, or the district attorney of the district, or by any such officer upon his own motion. It shall be the duty of the county attorney or district attorney to appear and prosecute this proceeding." G.S. § 128-17.

How an action under this statute might end up and how the Chief Justice's order could impact any such hearing is unknown at this point. Therefore, as is always the case where the actions of a sheriff could be viewed as failing to perform a duty mandated by our General Statutes, we recommend you consult with your own legal advisor or county attorney prior to making the decision to stop executing Writs for Possession of Property that have been ordered by the courts.

Alternative Interpretation A

It has been suggested that the part of the Chief Justice's Order, in the second paragraph, that provides that "all other acts....shall be deemed to be timely done if they are done before the close of business on 17 April 2020" should be interpreted to mean that sheriffs do not have to comply with the 5 day deadline clearly specified in G.S. § 42-36.2 for execution of a Writ for Possession of Property.

This order was issued pursuant to G.S. § 7A-39(b)(1), which states in pertinent part: "the Chief Justice may by order entered pursuant to this subsection extendthe time period or period of limitation within which pleadings, motions, notices, and other documents and papers may be timely filed and other acts may be timely done in civil actions, criminal actions, estates, and special proceedings...."

If G.S. § 7A-39(b)(1) could, by this Order, extend the time period for execution on all Writs for Possession of Property until April 17, 2020, then it must be concluded that this Order also extended the time period and deadlines until April 17, 2020 for the following additional mandatory actions:

1. --- Mandatory domestic violence arrests would be extended from being immediate until April 17, 2020. G.S. § 50B-4.1(b) --- A law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of

- domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. § 50B-3(a)(9).
2. --- An arrested domestic violence defendant would be held in custody, instead of a maximum of 48 hours, until April 17, 2020. G.S. § 15A-534.1(b). A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section.
 3. --- Instead of being held within 96 hours of arrest, the first appearance for arrested defendants would be continued until April 17, 2020. G.S. § 15A-601(c). Unless the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be held within 96 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first.
 4. --- Instead of a law enforcement officer taking an arrested defendant for an Initial Appearance before a magistrate “without unnecessary delay,” the officer would not have to take the defendant for an Initial Appearance until April 17, 2020. G.S. § 15A-511(a) (1). A law-enforcement officer making an arrest with or without a warrant must take the arrested person without unnecessary delay before a magistrate as provided in G.S. § 15A-501.
 5. --- For Involuntary Commitment (IVC) respondents, instead of an officer taking the respondent for a First Examination “without unnecessary delay,” the officer would have until April 17, 2020 to do so. G.S. § 122C-263(a). Without unnecessary delay after assuming custody, the law enforcement officer or the individual designated or required to provide transportation pursuant to G.S. § 122C-251(g) shall take the respondent to a facility or other location identified by the LME/MCO in the community crisis services plan adopted pursuant to G.S. § 122C-202.2 that has an available commitment examiner and is capable of performing a first examination in conjunction with a health screening at the same location, unless circumstances indicate the respondent appears to be suffering a medical emergency in which case the law enforcement officer will seek immediate medical assistance for the respondent.
 6. --- For Involuntary Commitment (IVC) respondents, instead of the respondent getting a physician’s examination within 24 hours of arrival at a 24-hour facility, the examination would be delayed until April 17, 2020. G.S. § 122C-266(a). Except as provided in subsections (b) and (e), within 24 hours of arrival at a 24-hour facility described in G.S. § 122C-252, the respondent shall be examined by a physician.

There are numerous other General Statutes with similar deadlines. It seems unlikely that the Chief Justice’s Order would be intended to or be found to extend all of the above deadlines and all other deadlines in the General Statutes to April 17, 2020. And, if the Chief Justice’s Order was intended to do so, undoubtedly the Order could have precisely said so and left nothing to interpretation or speculation.

Alternative Interpretation B

Authority of the Chief Justice

The General Assembly, in G.S. § 42-36.2, has set the deadline by which the sheriff shall execute on a valid Writ for Possession of Property as five (5) days. While the Chief Justice has no direct authority to overrule the General Assembly as to a matter of statutory law, it is also possible to interpret that the General Assembly has delegated, in times of emergency, authority to the Chief Justice under G.S. § 7A-39(b)(1) to issue orders, such as the Order issued on March 19, to suspend compliance with deadlines imposed by the statutes as to processes which fall under the authority of the Courts.

Effect of the Order

The Order only has to do with timing. It does not otherwise relieve a sheriff from any of his/her duties and responsibilities, nor does it abrogate the sheriff's responsibilities upon expiration of the Order's covered time. The Chief Justice's Order very-nearly mirrors the language as to what is allowed under Her Honor's statutory authority in G.S. § 7A-39(b)(1). Her Honor's Order indicates that it intends to cover all "*acts that were or are due to be done.*" In essence, one interpretation is that the Order is setting a new due date for legal acts required under law.

Does the Order apply to the execution of a Writ for Possession of Property?

Breaking down the language, it certainly may. Here's why:

- A. The summary ejectment process contained in G.S. § 42 is very clearly a "*civil action.*"
- B. The next question is whether the execution by the sheriff of a Writ for Possession of Property is incorporated within the "*other acts*" referenced in the Chief Justice's Order. The phrase "other acts" does not appear to be a term of art, as it is not defined in Chapter 7A (which outlines the role of the Judicial Branch), it appears nowhere in the NC Rules of Civil Procedure, nor is it defined in the Criminal Procedure Act. Based on this, we must give those words the best interpretation possible based on their plain meaning. Based on the plain meaning of the term "*other acts,*" in the context of the judicial function, it is reasonable to interpret that one such "act" would be the sheriff's execution of a Writ for Possession of Property as required under G.S. § 42-36.2.

Sheriff as an Officer of the Courts

How does this apply to sheriffs? Under G.S. § 162-14, the sheriff has a duty to execute civil processes and "*make due return*" of those processes. When the sheriff serves a Writ for Possession of Property, he/she is acting as an officer of the court in advancing the interests of a civil plaintiff in possession of real property. This duty is one which the sheriff alone can perform and the Chief Justice's Order in no way alleviates the sheriff from his/her obligation to perform that duty. Instead, the Order can be interpreted to allow the sheriff additional time in which to have performed that duty in a timely fashion. So, rather than five (5) days, the sheriff would have until April 17 to execute on the writ of possession and still be within the time allowed by G.S. § 42-36.2 to have validly executed the writ of possession.

The Chief Justice's Order is not a mandate

The Chief Justice's Order can be interpreted as to allow the sheriff discretion as to when "due to be done" may occur... which, in this case, is no later than April 17. This interpretation does not mean that Writs for Possession of Property received between now and April 17 are invalid in any

Email to All Sheriffs

G.S. 42-36.2 - Execution on Writ for Possession of Property --- Impact of the Coronavirus Pandemic

March 20, 2020

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way. Nothing in the Chief Justice's Order would seem to prevent a sheriff from doing "business as usual." If a writ is received that otherwise appears to be valid for service, it can certainly be served, as normal, within the guidelines of the statutes. What the Order may apparently give to sheriffs is the ability to use some discretion in deciding, on a case-by-case basis, whether or not the writs should be served on the normal schedule, or perhaps delayed for service until closer to April 17 based on the health crisis we are facing statewide. At this point, without any further Orders from the Chief Justice, it appears that April 17 is a hard deadline. This may mean that if a sheriff were to delay service based on this Order, Writs for Possession of Property may need to begin being served in advance of the April 17 deadline to avoid having to serve a great number on one day.

As always, if you have any questions or need any additional information, please call me at 919-459-1052.

Thanks....Eddie C.



Edmond W. (Eddie) Caldwell, Jr.

Executive Vice President and General Counsel

North Carolina Sheriffs' Association, Inc.

Post Office Box 20049

Raleigh, North Carolina 27619-0049

Telephone: (919) 459-1052

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