

North Carolina Sheriffs' Association

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Weekly Legislative Report

May 1, 2020

The House and Senate reconvened as scheduled at 12 PM on Tuesday and immediately began introducing numerous legislative bills, primarily related to the COVID-19 pandemic. While a few other bills were introduced and assigned to the appropriate committee, almost all of the activity focused on the COVID-19 legislation.

By Thursday, the Senate had passed a 53 page bill and sent it to the House for consideration and the House had passed a 98 page bill and sent it to the Senate for consideration.

There was initial speculation that the House and Senate would quickly agree on how to resolve the differences between their two positions and that both bills would be considered on Friday with appropriate amendments, would be approved by the legislature and then sent to Governor Roy Cooper for his expected signature into law.

However, the meeting of the House Committee on Rules that was scheduled to take up the Senate bill at 9 AM on Friday morning was cancelled via a notice that went out at 10:20 PM on Thursday. And, the Senate Appropriations Committee that was scheduled to consider the House bill at 10 AM on Friday was cancelled via a notice that went out at 10:45 PM on Thursday.

It was announced late on Thursday evening that continuing negotiations would occur today (Friday) with hopes that an agreement could be reached, be voted on by the House and Senate on Saturday, and then be sent to Governor Roy Cooper for his signature. At this time, it is unclear if that success will be achieved today and tomorrow, or if the General Assembly will continue negotiations throughout the weekend and come back into session next week to finalize the pending COVID-19 legislation.

BILLS OF INTEREST

[HOUSE BILL 1037](#), COVID-19 Health Care Working Group Policy Rec., would expand the State's ability to implement health and safety measures to respond to the COVID-19 pandemic.

Among those items of interest to the criminal justice community, the bill would require 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), to develop a plan for creating and maintaining a State stockpile of personal protective equipment (PPE) and testing supplies that would 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 would require 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.

The bill would also temporarily modify the State's Involuntary Commitment (IVC) laws to allow the first and second examination of a respondent to determine whether the respondent should be involuntarily committed due to mental illness or substance use disorder to occur via "telehealth" instead of the commitment examiner being physically present with the respondent for the examination.

Telehealth would be 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 could be utilized even when the commitment examiner and respondent are located at the same facility or at different facilities.

Under current State law, 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.

The use of "telehealth" for the first and second examination in an IVC matter would automatically expire sixty days after Executive Order No. 116 is rescinded, or December 31, 2020, whichever is earlier. **Introduced by Representative P. Jones and assigned to the Committee on Rules, Calendar, and Operations of the House.**

[HOUSE BILL 1038](#), [Omnibus COVID-19 Response Funds](#), would make various allocations of federal funds received to assist during the COVID-19 pandemic. The bill would establish the "Coronavirus Relief Reserve" and "Coronavirus Relief Fund," which would be used to maintain and distribute federal funds received by the State to assist with responding to COVID-19.

The bill would require the State Controller to transfer \$1,635,567,029 in nonrecurring funds for the 2019-2020 fiscal year to the Coronavirus Relief Fund, which would be administered by the North Carolina Office of State Budget and Management (OSBM).

Of these anticipated federal funds:

1. OSBM would be 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 opioid antagonist to prevent overdose deaths.

2. OSBM would be required to allocate \$50 million to the North Carolina Department of Health and Human Services and the Division of Emergency Management within the North Carolina Department of Public Safety to purchase personal protective equipment (PPE) and other health care supplies (such as ventilators) that would be used by health care providers and first responders, such as law enforcement officers, in responding to the COVID-19 pandemic.
3. OSBM would be required to allocate \$25 million to the North Carolina Department of Health and Human Services which would be used by that agency to increase the capacity for COVID-19 diagnostic testing and antibody testing throughout the State.
4. OSBM would also be required to allocate \$80 million for operational needs across State government, which would 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.

Introduced by Representative Lambeth and assigned to the Committee on Rules, Calendar, and Operations of the House.

[HOUSE BILL 1043](#), Pandemic Response Act, would make various temporary and permanent changes to State law to assist with the response to the COVID-19 pandemic and future similar states of emergency. The bill has passed the House and has been sent to the Senate for consideration.

Those items of interest to the criminal justice community include:

1. The bill would require the North Carolina Department of Health and Human Services and the North Carolina Department of Public Safety to develop a plan for creating and maintaining a State stockpile of personal protective equipment (PPE).

These provisions are substantially similar to those contained in [HOUSE BILL 1037](#), which is summarized above in this Weekly Legislative Report.

2. The bill contains provisions that would temporarily modify the State's Involuntary Commitment (IVC) laws. Section IIIF of the bill would allow the first and second examination of a respondent to determine whether the respondent should be involuntarily committed due to mental illness or substance use disorder to occur via "telehealth" instead of the commitment examiner being physically present with the respondent for the examination. These provisions would automatically expire sixty days after Executive Order No. 116 is rescinded, or December 31, 2020, whichever is earlier.

Section 5.15 of the bill would also allow the first and second examination of a respondent to determine whether the respondent should be involuntarily committed due to mental illness or substance use disorder to occur remotely via "telemedicine" (instead of

telehealth). These provisions would automatically expire on August 1, 2020.

Both Sections IIF and 5.5 of the bill accomplish the same thing by allowing a first and second examination of a respondent to determine whether the respondent should be involuntarily committed due to mental illness or substance use disorder to occur via remote technology whether or not the respondent and commitment examiner are located at the same facility or at different facilities.

3. The bill would establish the Coronavirus Relief Reserve and Coronavirus Relief Fund, which would be used to maintain and distribute federal funds received by the State to aid in the COVID-19 recovery.

These funding provisions are similar to those contained [House Bill 1038](#), which is summarized above in this Weekly Legislative Report.

4. The bill would allow for emergency video notarization so long as certain criteria are met. The bill would require the use of video conference technology, which would 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.

The principal would be required to verbally identify each document that is to be notarized and would be required to sign each document so the notary can observe the signing through the video conference technology. Finally, the principal would be required to submit the signed documents to the notary the same day via electronic means, such as by email or facsimile.

The bill would prohibit any portion of the emergency video notarization process from being prerecorded and would require both the notary and principal to be physically present in the State of North Carolina.

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

This authorization for emergency video notarization would be temporary in nature and would expire on August 1, 2020 at 12:00 a.m.

5. The bill would also allow for emergency video witnessing of a record so long as certain criteria are met. The bill would require the use of video conference technology, which would allow the principal signer and the attesting witness to interact in real-time, with clear audio and video capabilities.

In order for the witnessing to be considered "in person," the bill would require the principal signer to 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.

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

This authorization for emergency video witnessing would be temporary in nature and would expire on August 1, 2020.

6. The bill would 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 would require the person wearing a mask for health or safety reasons to remove the mask upon the request of a law enforcement officer.

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

7. The bill would allow 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 would expire on August 1, 2020.

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

8. The bill would require the North Carolina Division of Motor Vehicles (DMV) to extend for a period of six 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 does not apply to the requirement that a vehicle owner maintain financial responsibility (insurance) on a vehicle.

9. The bill would temporarily 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 would allow 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 would expire on August 1, 2020.

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

10. The bill would temporarily expand the authority of security guards and patrol professionals that are licensed by the North Carolina Private Protective Services Board. The bill would

allow 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 would require 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 would be 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 temporary provisions would expire on August 1, 2020.

11. The bill would modify our public health law to allow 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.

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

12. The bill would temporarily modify 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 would institute 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 would 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 would 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 would 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 would provide that a retired law enforcement officer's Special Separation Allowance (SSA) benefit would not be 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 changes for retirees temporarily returning to work for the COVID-19 pandemic would expire on August 1, 2020.

13. The bill would enact a new section in our emergency management statutes to allow a public body to conduct remote meetings when the Governor or legislature declares a state of emergency which would restrict the number of people allowed to gather in public. Only those public bodies within the declared emergency area would be allowed to hold remote meetings while the state of emergency remains in effect.

The public body would be required to follow various requirements set out in the bill when conducting remote meetings, including but not limited to: (1) providing proper notice of the remote meeting and notice of how the public can access the remote meeting; (2) requiring each member participating to identify themselves when communicating for roll call, while participating in deliberation, and when voting; (3) requiring roll call voting for every vote taken; and (4) streaming the meeting live online with a telephonic option for the public.

The bill would also allow 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 24 hours before the meeting.

Finally, the bill would allow 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 were given notice and consented to the remote meeting, and (3) all due process rights of the parties are protected.

Currently, meetings of public bodies are open to the public and citizens are allowed by law to attend these meetings in-person unless the public body goes into closed session.

14. The bill would allow 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 would be retroactive to March 10, 2020 and would expire on August 1, 2020.
15. The bill would allow 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 periods of weekend confinement in order to avoid the potential spread of COVID-19.

This authority of a chief district court judge to modify an order of confinement or imprisonment in a local confinement facility would expire on August 1, 2020.

Introduced by Representative Bell.

[SENATE BILL 704](#), [COVID-19 Recovery Act](#), contains numerous provisions that would assist in the State's recovery during the COVID-19 pandemic. The bill has passed the Senate and has been sent to the House for consideration.

Those items of interest to the criminal justice community include:

1. The bill would establish the Coronavirus Relief Reserve and the Coronavirus Relief Fund.

These funding provisions are similar to those contained in [House Bill 1043](#), which is summarized above in this Weekly Legislative Report.

2. The bill would require the North Carolina Division of Motor Vehicles (DMV) to extend for a period of six 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.

These provisions are substantially similar to those contained in [House Bill 1043](#), which is summarized above in this Weekly Legislative Report.

3. The bill would temporarily modify the State's Involuntary Commitment (IVC) laws related to the second examination of a respondent by a commitment examiner. The bill would allow the 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.

These IVC provisions are substantially similar to those contained in [House Bill 1037](#) and [House Bill 1043](#) that relate to the second examination of a respondent, which is summarized above in this Weekly Legislative Report.

Currently, State law requires the respondent's second examination to be conducted in the physical presence of the commitment examiner.

4. The bill would allow for emergency video notarization and emergency video witnessing.

These provisions are substantially similar to those contained in [House Bill 1043](#), which is

summarized above in this Weekly Legislative Report.

5. Finally, the bill would allow a public body to conduct remote meetings when the Governor or legislature declares a state of emergency which would restrict the number of people who could gather in public.

These provisions are substantially similar to those contained in [House Bill 1043](#), which is summarized above in this Weekly Legislative Report.

Introduced by Senators Brown, Harrington, B. Jackson, J. Alexander, T. Alexander, Ballard, Berger, Blue, Britt, Bryan, Burgin, Chaudhuri, Clark, Daniel, D. Davis, J. Davis, deViere, Edwards, Fitch, Ford, Foushee, Gallimore, Garrett, Gunn, Hise, Horner, Johnson, Krawiec, Lowe, Marcus, McInnis, Murdock, Newton, Perry, Peterson, Rabon, Robinson, Sanderson, Sawyer, Searcy, Smith, Steinburg, Tillman, Waddell, Wells and Woodard.

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