

North Carolina Sheriffs' Association

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Weekly Legislative Report

May 22, 2020

The General Assembly resumed the 2020 Session this week. Various committee meetings were held by both the House and Senate.

Earlier this year there was speculation that the work beginning this week would continue to focus on the response to the COVID-19 pandemic and that the legislative issues related to other matters would be postponed until later in the summer. That procedure has changed and the legislature began this week with its regular “short session,” during which it will prepare a State budget and deal with other pending legislation that is determined by legislative leadership to be a priority, or non-controversial.

Activity at the State Legislative Building and the Legislative Office Building is much different now that we are experiencing the COVID-19 pandemic. Everyone who enters the building is having their temperature checked, House committee meetings are being held on-line, building occupancy is reduced and the normal “hustle and bustle” of activity in the hallways, public areas and legislators’ offices is significantly reduced. Some people are wearing a facemask and some are not.

The House and Senate adjourned for the Memorial Day weekend and will return on Tuesday, May 26, 2020.

BILLS OF INTEREST

[HOUSE BILL 1073](#), NC Freedom to Work Act, would prohibit criminal prosecution for any violation of Executive Order Nos. 118, 120, 121, 131 and 135 issued by Governor Roy Cooper, or for any other Executive Order issued by the Governor after April 23, 2020 during the COVID-19 pandemic.

Although the bill title implies it only covers restrictions related to the right to work, as written the bill would prohibit criminal prosecution of any restriction contained in these Executive Orders, such as the prohibition on mass gatherings.

The bill would also limit the penalty for violating an Executive Order to a civil penalty. Currently, it is a Class 2 misdemeanor to violate an Executive Order.

Finally, the bill would prohibit criminal enforcement of the violation of any local emergency order that mirrors or exceeds the limitations ordered by Governor Cooper in the above Executive Orders.

Introduced by Representatives McNeely, Sasser, Hanig and Jarvis, and assigned to the House Committee on Commerce.

[HOUSE BILL 1076](#), PPE for Working Inmates and Prison PPE Report, would require the Division of Adult Correction and Juvenile Justice (DACJJ) within the North Carolina Department of Public Safety to provide personal protective equipment (PPE) to inmates that are working in a State prison or that are working for Correction Enterprises. In addition, the bill would require DACJJ to provide PPE to all other inmates in State prisons, to the extent possible.

The bill would require DACJJ to report to the Joint Legislative Oversight Committee on Justice and Public Safety the amount of PPE distributed to inmates during the COVID-19 pandemic no later than October 1, 2020.

Finally, the bill would appropriate to DACJJ \$100,000 in nonrecurring funds for the 2020-2021 fiscal year for the purchase of PPE and for inmate medical costs caused by the COVID-19 pandemic. **Introduced by Representatives Alston, Morey and Hawkins, and assigned to the House Committee on Appropriations.**

[HOUSE BILL 1077](#), Ban the Box for COVID-19 State of Emergency, would prohibit a public employer, such as the State of North Carolina or any city or county agency, from asking about or considering an applicant's criminal history until after a conditional offer of employment has been made to the applicant. Therefore, no initial application for employment with a public employer would be able to contain a question or inquiry regarding the applicant's criminal history.

The bill would also provide that a public employer could not deny employment to an applicant based on the person's criminal history unless the crimes are "substantially related" to the qualifications, functions, or duties of the position.

In addition, the bill would require a public employer who denies employment due to a criminal history to notify the applicant of the denial and allow the applicant the opportunity to contest the accuracy of the criminal record or to show that the applicant has since been rehabilitated.

This bill does not appear to apply to law enforcement agencies and does not apply to the position of a law enforcement officer or any position in a prison, jail, or detention center.

Finally, if enacted into law, these provisions would expire when Governor Cooper rescinds the current declaration of a state of emergency, or on March 1, 2021, whichever occurs first. **Introduced by Representatives Alston, Morey and Hawkins, and assigned to the House Committee on Regulatory Reform.**

[HOUSE BILL 1085](#), Front Line State Employee Hazard Pay/Funds, would require hazard pay for mandatory State employees during an epidemic or pandemic. A mandatory State employee would be defined as an employee with a permanent, probationary, or time-limited appointment who is required to report to a designated worksite, excluding a personal residence, particularly when all other employees were restricted from coming to the workplace.

Mandatory employees would include, but not be limited to State employees in positions that directly impact: (1) public health and patient care; (2) public safety; (3) operation of critical infrastructure and facilities; (4) operation and safety of sensitive research labs; and (5) the care of persons or property for whom the State has a duty to continue to serve. State employees designated as mandatory would have to be notified of their designation and the requirement to continue to work during an epidemic or pandemic.

The bill would make it the responsibility of each State agency head to consult with local, State, and public health officials and to predetermine and designate mandatory operations and mandatory employees to staff the operations even when isolation, quarantine, and social distancing are public health control measures that may be required to protect the public health during a communicable disease epidemic or pandemic.

The bill would require mandatory employees to work during an epidemic or pandemic. If conditions required a mandatory employee to remain at a work site for an extended period, the agency would be required to provide adequate food and housing to the employee.

A mandatory employee would be excused from work if he or she is: (1) high-risk; (2) subject to public health control measures, such as a quarantine order; or (3) required to care for a member of his or her family who is isolated, quarantined, or ill or who requires the employee's care due to closure of a public or private school, day care center, or elder care facility.

In addition, each State agency would be required to maintain a list of mandatory employees (including their position) and would also be required to develop an alternative plan for personnel in the event a mandatory employee is unable to work.

Mandatory employees would be granted hazard pay of at least one and a half times (1 ½) their current pay or an equivalent ratio in compensatory time for hours worked, up to 40 hours per work week. Compensatory time gained in the capacity of a mandatory employee would have to be used within 24 months of being awarded and could not be transferred to another State agency and could not be paid out at the expiration of the 24 months.

The bill would authorize State agency heads to approve other compensation based on availability of funds, operational needs of the agency and in consideration of the duties being performed.

Finally, the bill would appropriate to the Office of State Budget and Management \$5 million for the 2020-2021 fiscal year to fund hazard pay for State employees that meet the criteria summarized above. **Introduced by Representatives Hunt, Harrison, Fisher and Autry, and assigned to the House Committee on Appropriations.**

[HOUSE BILL 1097](#), Superseding Orders/Domestic Violence, would clarify that any subsequent order entered by a court related to child custody, child and spousal support, and possession of property that contains similar provisions to a previous Domestic Violence Protective Order would supersede (i.e. override) the similar provisions in the earlier DVPO order.

This could occur, for example, in divorce and alimony proceedings or in child welfare proceedings where a judge later modifies similar provisions from an earlier DVPO. **Introduced by Representatives John, Rogers, Morey and Brewer, and assigned to the House Committee on Judiciary.**

[HOUSE Bill 1098](#), [Misdemeanors/Mandate First Appearances](#), would require any defendant charged with a misdemeanor under a magistrate's order or criminal process and held in custody on that charge to be brought before a district court judge for a first appearance. The bill would also clarify that this first appearance is not a critical stage of the proceedings, which means the judge could conduct the first appearance even without an attorney being present for the defendant.

Currently, only those defendants who are charged with crimes under a magistrate's order or criminal process having original jurisdiction in superior court (i.e. those charged with felonies) are required to have a first appearance before a district court judge. **Introduced by Representatives John, Rogers, Morey and Brewer, and assigned to the House Committee on Judiciary.**

[HOUSE BILL 1100](#), [Relief for Business/Religious Orgs/COVID-19](#), would prohibit the imposition of criminal liability on any business or religious organization that does not follow any restriction contained in a local order or any Executive Order issued by the Governor due to the COVID-19 pandemic so long as the business or religious organization makes "reasonable efforts" to maintain and enforce social distancing within the premises of the business or religious organization while operating.

The bill would also prohibit any law enforcement entity from closing a business or religious organization for failure to follow any restriction contained in an Executive Order so long as the business or religious organization makes "reasonable efforts" to maintain and enforce social distancing within the premises of the business or religious organization while operating.

The protection against criminal liability if social distancing is enforced by the business would not apply to businesses that operate video gaming machines unless the business sells other goods or services and is able to operate only those portions of the business that do not involve the use of the video gaming machines. **Introduced by Representatives Kidwell, K. Hall, Setzer and Speciale, and assigned to the House Committee on Judiciary.**

[HOUSE BILL 1106](#), [Judicial Discretion of FTA Release Conditions](#), would provide judicial officials with the discretion to decide whether or not to require the execution of a secured appearance bond when imposing conditions of pretrial release on a defendant who has failed to appear on one or more of the charges the defendant is being held on.

Currently, judicial officials must require the execution of a secured appearance bond in an amount that is at least double the previous secured or unsecured bond where the defendant has failed to appear on one or more of the charges the defendant is being held on.

Finally, the bill would no longer require judicial officials to mandate the execution of a secured appearance bond when imposing house arrest with electronic monitoring as a condition of pretrial release. Currently, a secured appearance bond is required when imposing house arrest with

electronic monitoring as a condition of pretrial release. **Introduced by Representatives John, Rogers, Zachary and Brewer, and assigned to the House Committee on Judiciary.**

[HOUSE BILL 1111](#), [Sunshine Amendment](#), would submit a proposed amendment to the North Carolina Constitution to the voters to decide if the North Carolina Constitution should be amended to include provisions that would allow for the inspection and copying of public records that are made or received by the State or local governments in connection with official business, and would also allow for the meetings of State and local public bodies to be publicly noticed and open to the public.

Currently, there are public records laws and open meetings laws that are contained in Chapter 132 and Chapter 143 of the North Carolina General Statutes. **Introduced by Representatives Setzer and Ross, and assigned to the House Committee on State and Local Government.**

[HOUSE BILL 1142](#), [Benefit Parity for EMS/TSERS/LGERS](#), would make various changes to the Teachers' and State Employees' Retirement System (TSERS) and the Local Governmental Employees' Retirement System (LGERS) that would provide emergency medical services (EMS) personnel with the same retirement benefits as sworn law enforcement officers.

“EMS personnel” would mean any full-time EMS personnel employed by the State or any local government and would include emergency medical services nurse practitioners, emergency medical services physician assistants, emergency medical technicians (EMTs), emergency medical dispatchers, emergency medical responders, mobile intensive care nurses, paramedics and rescue squad workers.

EMS personnel would be eligible to earn the same 30-year retirement benefit and 25-year retirement benefit option as is currently provided to sworn law enforcement officers under the TSERS and LGERS retirement systems. This means EMS personnel retiring under TSERS would use the current percentage of 1.82% of their average final compensation, multiplied by years of credible service, to calculate their retirement pay. EMS personnel retiring under LGERS would use the current percentage of 1.85% of their average final compensation, multiplied by years of credible service, to calculate their retirement pay.

The bill would also provide State and local EMS personnel with the Special Separation Allowance (SSA) that is provided to sworn law enforcement officers when they retire. To qualify for the SSA, the person must have completed 30 or more years of creditable service or attained 60 years of age and completed 25 or more years of creditable service.

In addition, the person must have completed at least five years of continuous service as EMS personnel immediately preceding a service (non-disability) retirement and must have a minimum of at least 50% of membership service as EMS personnel. Finally, the person must not have attained 62 years of age.

Like the SSA for sworn law enforcement officers, the SSA for retiring State and local EMS personnel would be equal to 0.85% of the annual equivalent of the base rate of compensation most recently applicable to the person, multiplied by the total number of years of creditable service.

The SSA benefit would be paid in monthly installments and would cease when the person reached 62 years of age. The SSA benefit would also cease if the person dies before the age 62 or if the person is reemployed in a position within the same retirement system from which the person retired.

The bill would also allow, but not require, any State or local government employer to offer a lump sum payout of an EMS personnel's Special Separation Allowance if the person chooses to take a reduced retirement, such as the 25 year retirement option. The lump sum payout by the employer would not be able to exceed the total amount of money the person would normally receive in Special Separation Allowance payments had the person stayed for a full 30-year retirement.

Finally, the bill would make State and local EMS personnel eligible for the 5% employer contribution to the Supplemental Income Plan, also known as the 401(k) plan, that is available for sworn law enforcement officers. **Introduced by Representative Logan, and assigned to the House Committee on Pensions and Retirement.**

[HOUSE BILL 1143](#), Modify Tax on Marijuana Products, would allow patients with certain diagnosed chronic or debilitating diseases or medical conditions (such as cancer, glaucoma, celiac disease, migraine headaches and diabetes) to lawfully possess or use cannabis (marijuana). The patient would have to obtain a registry identification card from the North Carolina Department of Health and Human Services to lawfully use the marijuana.

The bill would also allow individuals to apply for a license to become a medical cannabis center, producer of medical cannabis or a producer of cannabis-infused products, which would be issued by the North Carolina Department of Agriculture and Consumer Services and would allow for the sale of marijuana and cannabis-infused products to qualified patients and qualified caregivers.

These licenses to produce and sell marijuana would have to be renewed annually and could not be issued to individuals who have been convicted of certain felony offenses within the five years preceding the date of application for the license. In addition, certain felony drug convictions would be a complete bar to obtaining a license to produce and sell marijuana.

A medical cannabis center, producer of medical cannabis and producer of cannabis-infused products would be required to provide information about themselves and the person(s) to whom the center or producer distributes the marijuana on a quarterly basis and would also be required to submit 10% of their gross revenue to the North Carolina Department of Agriculture and Consumer Services.

The bill would make it a Class 2 misdemeanor for an individual to make false representations to a law enforcement officer relating to the person's medical use of marijuana in order to avoid arrest or prosecution for the drug. **Introduced by Representative Montgomery, and assigned to the Committee on Rules, Calendar, and Operations of the House.**

[HOUSE BILL 1145](#), Farming Modernization Act, would appropriate to the Office of State Budget and Management \$50 million in nonrecurring funds for the 2019-2020 fiscal year from the

Coronavirus Relief Fund, which would be allocated to the Department of Agriculture and Consumer Services to provide grants to eligible farmers impacted by the COVID-19 pandemic.

These funds would be used by eligible farmers to convert their current farming production to the production of medical marijuana.

The transfer of these funds is dependent on the enactment into law of legislation that greatly expands the use of medical marijuana in this State, such as House Bill 1143, which is summarized above in this Weekly Legislative Report. **Introduced by Representative Montgomery, and assigned to the House Committee on Agriculture.**

HOUSE BILL 1149, Police Notice of Person w/IDD in Vehicle, would require the North Carolina Division of Motor Vehicles (DMV), in consultation with the North Carolina State Highway Patrol and the North Carolina Department of Public Safety, to develop a driver's license designation that may, upon request, be granted to a person with an intellectual or developmental disability (IDD).

The bill would require DMV to place a unique symbol on the front of the driver's license with no further descriptors. This symbol would also be placed in the electronic record associated with the person's driver's license. In addition, if requested by the person with an IDD, DMV would be required to enter the driver's license symbol and a descriptor in any electronic record of any motor vehicle registered in the same name as the person with the IDD.

Finally, both the North Carolina Sheriffs' Education and Training Standards Commission and the North Carolina Criminal Justice Education and Training Standards Commission would be required to establish training standards for law enforcement officers regarding IDD identifiers and recognizing and appropriately interacting with people with IDD. **Introduced by Representatives Hawkins, White and Ball, and assigned to the House Committee on Judiciary.**

HOUSE BILL 1157, Montgomery Cty/Repeal Coroner Office, would abolish the office of the coroner in Montgomery County. Since this bill applies to fewer than 15 counties, it is considered a local bill and therefore does not require the signature of the Governor to become law. This local bill would become law if approved by the General Assembly.

Currently, only Avery, Bladen, Hoke and Yadkin counties have a county coroner. All other counties have abolished this office. **Introduced by Representative Brewer, and assigned to the House Committee on State and Local Government.**

SENATE BILL 740, Front Line State Employee Hazard Pay/Funds, is identical to House Bill 1085, which is summarized above in this Weekly Legislative Report. **Introduced by Senators Peterson and Garrett, and assigned to the Committee on Rules and Operations of the Senate.**

SENATE BILL 748, Expand Mixed Beverage Sale During Pandemic, would authorize the Chairman of the North Carolina Alcoholic Beverage Control (ABC) Commission to allow mixed beverage permittees, such as bars and restaurants, to sell and deliver mixed alcoholic beverages for consumption off premises.

The bill would allow for these off premises mixed beverage sales provided the mixed beverage is in a sealed container that requires removal for consumption, is ordered with food items and is limited to two mixed beverages per meal or food item ordered.

These provisions would be temporary and would automatically expire when Executive Order No. 116, Governor Cooper's declaration of a state of emergency, expires or is rescinded. **Introduced by Senators Peterson and Chaudhuri, and assigned to the Committee on Rules and Operations of the Senate.**

[SENATE BILL 756, Funding for Emerg. Judges and Clerk Needs](#), would appropriate \$7.7 million in nonrecurring funds for the 2020-2021 fiscal year from the General Fund to the North Carolina Administrative Office of the Courts to hire additional emergency judges to assist with the backlog of court cases resulting from the COVID-19 pandemic, to purchase laptops to allow court system personnel to work remotely and to hire temporary staff to assist clerks of court with the management of backlogged cases. **Introduced by Senator Nickel, and assigned to the Senate Committee on Appropriations/Base Budget.**

[SENATE BILL 774, Prison Social Distancing and Reopening](#), would require the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice (DACJJ), to develop a plan for the release of community offenders, due to the COVID-19 pandemic, who are either: (1) serving a sentence for a "nonviolent crime" [which is not defined in the bill]; (2) suffering from a medical diagnosis that compromises the offender's immune system; (3) near release, or (iv) are juveniles.

The bill would appropriate to DACJJ \$10 million in nonrecurring funds for the 2020-2021 fiscal year to be used for electronic monitoring services, community corrections staffing, and other costs associated with the release of offenders into the community due to COVID-19.

In addition, the bill would require DACJJ to develop a plan regarding future response efforts to an emergency related to COVID-19.

Finally, the bill would require DACJJ to develop a proposal and cost analysis for the contracted use of Odom Correctional Institution as a detention center for United States Immigration and Customs Enforcement (ICE) to house ICE detainees taken into custody in North Carolina.

The bill would require DACJJ to submit the response effort plan and the Odom Correctional proposal to the Joint Legislative Oversight Committee on Justice and Public Safety no later than September 1, 2020. **Introduced by Senators Smith and Foushee, and assigned to the Committee on Rules and Operations of the Senate.**

[SENATE BILL 777, Restraint Prohibition and I WILL Act](#), would prohibit the use of physical or mechanical restraints on a prisoner or detainee known to be pregnant, including during labor, delivery, transport to a medical facility, during the postpartum period or during postpartum recovery unless the prisoner presents herself as an "extraordinary circumstance" that requires the use of restraint. If restraints are used, the type of restraints would have to be used in the least restrictive manner necessary.

Extraordinary circumstance would be an individualized determination by staff that restraints are necessary to prevent the prisoner or detainee from injuring herself or others when she cannot reasonably be restrained by other means, including through the use of additional personnel.

The bill would prohibit the use of leg restraints or waist restraints on any prisoner or detainee who is in labor, regardless of the circumstances.

In the event restraints are used on a prisoner or detainee known to be pregnant, the bill would require the head of the correctional institution, or their designee, to make written findings within 10 days as to the extraordinary circumstances that required the use of restraints.

This bill would apply to any unit of the State prison system and to any local confinement facility, juvenile detention facility, and any other entity under the control of a State or local law enforcement agency with the power to lawfully detain or restrain a person. **Introduced by Senator Smith, and assigned to the Committee on Rules and Operations of the Senate.**

[SENATE BILL 779](#), PPE for Working Inmates and Prison PPE Report, is identical to [House Bill 1076](#), which is summarized above in this Weekly Legislative Report. **Introduced by Senators Murdock, Waddell and Peterson, and assigned to the Committee on Rules and Operations of the Senate.**

[SENATE BILL 800](#), Law Enforcement & Teacher Protection Act, would require the State Controller to establish the Law Enforcement & Teacher Protection Reserve in the General Fund. Among other things, this Reserve would be used to address shortfalls in public safety funding and education funding.

The bill does not appropriate funds for transfer to the Law Enforcement & Teacher Protection Reserve. Rather, the bill would require the transfer of any unused funds remaining in the Coronavirus Relief Reserve to the Law Enforcement & Teacher Protection Reserve prior to the State Controller closing the Coronavirus Relief Reserve.

The Coronavirus Relief Reserve was created through the enactment of [House Bill 1043](#), 2020 COVID-19 Recovery Act, which was signed into law by Governor Roy Cooper on May 4, 2020. **Introduced by Senators Brown, Harrington and B. Jackson, and assigned to the Senate Committee on Appropriations/Base Budget.**

[SENATE BILL 805](#), Capital Appropriation – Raise the Age/DPS, would appropriate from the State Capital and Infrastructure Fund to the Office of State Budget and Management a “sum sufficient” in nonrecurring funding for the 2020-2021 fiscal year to assist with the implementation of key provisions of the Juvenile Justice Reinvestment Act (“raise the age”), which came into effect December 1, 2019.

The bill would require these appropriated funds to be used for renovations to the Perquimans Youth Detention Center, to complete construction of the Youth Detention Center in Rockingham County and to create more juvenile detention beds in Moore County. **Introduced by Senators Brown,**

Harrington and B. Jackson, and assigned to the Senate Committee on Appropriations/Base Budget.

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

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