

North Carolina Sheriffs' Association

Proudly Serving the Sheriffs and Citizens of North Carolina since 1922



Weekly Legislative Report

May 8, 2020

In a rare Saturday session on May 2, the General Assembly enacted legislation designed specifically to address the COVID-19 pandemic. The portions of the bills that are relevant to law-enforcement are summarized below.

Legislative leaders announced that they would not be back in session for business until May 18, at which time they are expected to consider more COVID-19 related legislation.

Between May 2 and May 18, the General Assembly, once every three days, has what is referred to as a “skeleton” session. A few members (usually a handful) convene to open and close the day’s session without transacting any business as a way to avoid adjourning the entire Session.

The next edition of the NCSA Weekly Legislative Report will be published on Friday, May 22 after the General Assembly reconvenes for business.

BILLS OF INTEREST

[HOUSE BILL 1056](#), WC/COVID-19/Cover Essential Workers, would expand the diseases and conditions considered occupational diseases under current workers’ compensation law to include “coronavirus infection contracted by a covered person.”

Covered persons would include law enforcement officers, jailers, prison guards, firefighters, emergency medical technicians, or paramedics employed by a State or local government, including volunteer firefighters and health care workers.

The bill would also create a rebuttable presumption in favor of these covered persons that their exposure to coronavirus was the result of performing their duties of employment. Currently, a rebuttable presumption does not exist for any occupational disease.

These provisions would be available for claims filed on or after the date the bill becomes effective. **Introduced by Representative Richardson and assigned to the House Committee on Health. The North Carolina Sheriffs’ Association SUPPORTS this bill.**

[HOUSE BILL 1057](#), WC/COVID-19 Front Line Coverage/Funds, would expand the diseases and conditions considered occupational diseases under current workers’ compensation law to include “pandemic infection contracted by a covered person.”

Covered persons would include law enforcement officers, jailers, prison guards, firefighters, emergency medical technicians, or paramedics employed by a state or local government, including volunteer firefighters and health care workers.

Covered persons would also include any employee required to work during a pandemic for a business declared essential by executive order of the Governor or by order of a local government authority, including food service, retail, and other essential personnel.

The bill would also create a rebuttable presumption in favor of covered persons that their exposure to a pandemic infection was the result of performing their duties of employment.

These provisions would be available for claims filed on or after the date the bill becomes effective. In addition, the bill would allow certain local government employees (including law enforcement officers and detention officers) and state correctional officers to be credited by a local government employer for any sick leave or vacation leave taken as a result of required compliance with a quarantine related to exposure to the coronavirus. **Introduced by Representatives Jackson, Boles, Setzer and R. Smith, and assigned to the House Committee on Health. The North Carolina Sheriffs' Association SUPPORTS this bill.**

[HOUSE BILL 1059](#), [State of EM./Religious Occupancy Exempts](#), would exempt religious organizations (such as a church) from mass gathering limitations put in place by a Governor during a declared state of emergency. The bill would prohibit a Governor from limiting gatherings of any religious organization or any entity controlled by a religious organization from meeting inside a building within the declared emergency area that is used as a place of worship.

The bill would allow the Governor to request that a religious organization limit occupancy of a building within the declared emergency area that is used as a place of worship during a state of emergency to 20% of the building's certificate of occupancy, but the bill would not require the religious organization to comply with this request.

Currently, mass gathering limitations ordered by a Governor during a declared state of emergency apply equally to religious organizations as it does to other groups that congregate. **Introduced by Representatives Kidwell, Setzer, Saine and K. Hall, and assigned to the House Committee on Judiciary.**

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

The bill would apply only to Beaufort County. Since the 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. Rather, this local bill would become law when approved by the General Assembly.

Introduced by Representative Kidwell.

[HOUSE BILL 1063](#), Fund VIPER Tower Hardware Upgrades, would appropriate \$19 million in nonrecurring funds to the North Carolina Department of Public Safety for the 2020-2021 fiscal year for hardware and software upgrades to the Voice Interoperability Plan for Emergency Responders (VIPER). **Introduced by Representatives McNeill, Boles and Davis.**

[SENATE BILL 710](#), Strengthening DWI laws, would create the new criminal offense of “Revoked Driving Felony Death by Vehicle.” A person would commit this offense if the person (1) unintentionally caused the death of another person; (2) while engaged in a violation of State law (other than driving while impaired) or a local ordinance applying to the operation of a motor vehicle or regulation of traffic; (3) when the commission of such offense was the proximate cause of the death; and (4) at the time of the offense the person’s driver’s license was revoked for an impaired driving license revocation.

This offense would be punished as a Class F felony. A person convicted of this offense would be sentenced to a minimum active term of no less than twelve (12) months in prison, which could not be suspended.

The bill would require that upon conviction of this offense, the North Carolina Division of Motor Vehicles would be required to revoke the registration of all vehicles registered in the convicted person’s name.

Finally, the vehicle registration revocation would remain in effect and no other vehicle could be registered in the convicted person’s name until the person’s driver’s license was restored. **Introduced by Senators Edwards, J. Davis and Sawyer, and assigned to the Committee on Rules and Operations of the Senate.**

[SENATE BILL 712](#), NC Freedom to Work Act, would prohibit criminal prosecution for any violation of Executive Order No.s 118, 120, 121 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, social distancing, etc.

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 Senators Daniel, Sawyer and Ford.**

BILL STATUS

[HOUSE BILL 1043](#), Pandemic Response Act, which is summarized in the May 1, 2020 Weekly Legislative Report, has been approved by the General Assembly and has been signed into law by Governor Roy Cooper with an effective date of May 4, 2020.

The bill has been amended to rename the bill the “2020 COVID-19 Recovery Act.” The bill, as amended, does not contain the numerous provisions summarized in the May 1, 2020 Weekly Legislative Report, with the exception of the establishment of the Coronavirus Relief Reserve and Coronavirus Relief Fund.

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

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

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

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

2. OSBM is required to allocate \$70 million for operational needs across State government, which may include allocating a portion of these funds to pay for overtime costs in State prisons and juvenile facilities, providing COVID-19 testing for employees of the North Carolina Department of Public Safety, Division of Prisons, and for purchasing emergency hygiene and sanitation supplies to assist with COVID-19.
3. Provided the North Carolina Department of Health and Human Services (DHHS) meets certain criteria set out in the bill, OSBM is required to allocate \$25 million to DHHS for use by the agency to increase the capacity for COVID-19 diagnostic testing and antibody testing throughout the State.
4. OSBM 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.

[SENATE BILL 704](#), COVID-19 Recovery Act, which is summarized in the May 1, 2020 Weekly Legislative Report, has been approved by the General Assembly and has been signed into law by Governor Roy Cooper with an effective date of May 4, 2020.

The bill has been amended to include the following additional items of interest to the criminal justice community:

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

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

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

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

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

3. The bill temporarily allows for emergency video notarization so long as certain criteria are met. The bill requires the use of video conference technology, which must allow the notary and the principal to interact in real-time, with clear audio and video capabilities so the notary can see the face of the principal and the identification provided by the principal, such as a valid driver's license.

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

The bill prohibits any portion of the emergency video notarization process from being prerecorded and requires 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 expires on August 1, 2020 at 12:01 a.m.

4. The bill enacts a new Article 3 in Chapter 10B of our General Statutes that allows for emergency video witnessing of a record so long as certain criteria are met. The bill requires the use of video conference technology, which must 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 requires 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.

Previously, State law did not allow for the witnessing of records through video conference technology.

The emergency video witnessing provisions are effective May 4, 2020.

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

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

This authorization expires on August 1, 2020.

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

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

This authorization expires on August 1, 2020.

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

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

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

8. The bill temporarily modifies the service requirements in adult guardianship proceedings when the respondent is located at a facility that limits access due to a public health emergency. Under these circumstances, the bill allows the sheriff to effectuate service by delivering a copy of the initial notice of hearing and petition to a person employed by the facility that has apparent authority to receive documents for residents at the facility.

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

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

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

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

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

These provisions expire on August 1, 2020.

10. The bill modifies 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.

Prior to this bill becoming law, the State Health Director or a local health director could release this information to a 911 call center, but release of this information by a health director to law enforcement was limited to circumstances related to enforcement of the

public health laws (such as assisting in enforcing a quarantine order) or where an officer was potentially exposed to a communicable disease.

These provisions are effective May 4, 2020.

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

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

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

In addition, the bill does not classify earnings received between March 10, 2020 and August 1, 2020 for COVID-19 related work as true "earnings" under TSERS or LGERS so long as certification is made by the employing agency to the Retirement Systems Division that the work is needed due to the COVID-19 pandemic. This means that any earnings received during this period will not count towards the annual earnings limitation that must not be exceeded by retirees returning to work part-time. The earnings limitation for 2020 according to the retirement system is \$34,340.

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

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

12. The bill enacts 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 restricts the number of people allowed to gather in public. Only those public bodies within the declared emergency area authorized to hold remote meetings while the state of emergency remains in effect.

The public body must 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 allows public bodies to conduct public hearings during a remote meeting so long as the above requirements are met and the public body allows written comments on the subject of the public hearing to be submitted from the time the hearing is noticed to 24 hours following the meeting.

Finally, the bill allows public bodies to conduct quasi-judicial proceedings at remote meetings only when (1) the right of the individual to a hearing and decision occur during the emergency, (2) all persons subject to the quasi-judicial hearing are given notice and consent to the remote proceeding, and (3) all due process rights of the parties are protected.

These provisions are effective May 4, 2020 and apply throughout the duration of any declaration of emergency issued by the Governor or legislature that is in effect on or after that date.

13. The bill temporarily allows the chief district court judge in the district where the order was entered to modify an order of confinement or imprisonment in a local confinement facility, with the consent of the District Attorney, to prevent the defendant from violating the judgment if the defendant is unable to serve the period of confinement because of restrictions implemented at the confinement facility to prevent the spread of COVID-19. This could occur, for example, when a jail does not accept periods of weekend confinement in order to avoid the potential spread of COVID-19.

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

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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