

North Carolina Sheriffs' Association

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Weekly Legislative Report

February 26, 2021

While things began as a slow start largely due to COVID-19, activity at the General Assembly has increased in earnest this week. Committees have begun hearing and considering a larger volume of bills, a process necessary to get those bills closer to a vote in their respective chambers.

A committee of interest to almost everyone in the criminal justice community, Appropriations, Justice and Public Safety, began their meetings this week with a general overview of the budget process for agencies seeking and receiving funds from this committee. Meetings of this committee and other Appropriation subcommittees will likely continue for several weeks. These meetings will be introductory in nature and will provide both returning members and new members with an overview of the various budget provisions for which their committee has jurisdiction.

In addition, as legislators settle into the session many are speaking to fellow members about ideas for potential legislation. Some members are also speaking with lobbyists or interested parties to get input prior to filing bills.

This process of drafting bills, discussing them with others, and getting them prepared for introduction will continue for the next several weeks. As the session progresses, more and more bills will be introduced in advance of the bill introduction deadlines that will come in the spring.

The House and Senate adjourned on Thursday and will return on Monday, March 1, 2021.

BILLS OF INTEREST

[HOUSE BILL 123](#), Misdemeanors/Mandate First Appearance, 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. If a defendant being held on a felony does not make 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. If enacted into law, this requirement would also apply to defendants unable to make bail on misdemeanor charges. **Introduced by Representatives John, Rogers, Richardson and A. Jones, and assigned to the House Committee on Judiciary 3.**

[HOUSE BILL 134](#), 2nd Amendment Protection Act, would make the following changes to our State's firearms laws:

1. The bill would allow anyone with a concealed handgun permit to carry a concealed handgun on the premises of a place of religious worship when the place of worship is also located on the grounds of a nonpublic school (such as a private church school). However, the bill would allow for the carrying of a concealed handgun on the premises of the school grounds only when the premises is NOT being used for curricular, extracurricular or any school-sponsored activities (such as on weekends or during holidays). Finally, the bill would prohibit the carrying of a concealed handgun on the premises of the school grounds, even with a valid concealed handgun permit, if the owner or person in legal control of the property has posted that firearms are prohibited on the premises.

Currently, a person may not carry a concealed handgun on any school property even if that property is a mixed-use property containing both a school and a place of religious worship, regardless of whether or not school activities are taking place.

2. The bill would require a sheriff to waive the requirement to take a firearms safety and training course upon the renewal of a concealed handgun permit if the person applies to renew the permit no more than 60 days after the permit expires. Currently, a sheriff has the discretion to waive the firearms safety and training course if the person applies for a renewal within 60 days after the expiration date of the concealed handgun permit.

In addition, if the permittee applies to renew a concealed handgun permit between 61 days and 180 days after expiration, the bill would also require the sheriff to waive the requirement of taking another full firearms safety and training course if the permittee completes a "refresher" course.

Note: The bill does not create a grace period for an expired concealed handgun permit. Therefore, a person would still be prohibited from carrying a concealed handgun once the permit has expired, and until such time as the sheriff renews the permit.

3. The bill would allow a civilian employee of a law enforcement agency with a concealed handgun permit to carry a concealed handgun in a law enforcement facility or correctional facility so long as the person has been designated in writing by the agency head to carry the handgun. The agency head would be allowed to rescind this authorization at any time.

Currently, civilian employees may not carry a concealed handgun inside a law enforcement facility or a correctional facility, even with a valid concealed handgun permit.

4. Finally, the bill would allow emergency medical personnel to carry a concealed handgun while on duty if they are being deployed to provide tactical medical support for law enforcement during an emergency situation, such as a SWAT operation.

The bill would require the emergency medical personnel to first obtain specialized training before carrying a concealed handgun in this scenario, which would include training on firearms safety, use of firearms systems and use of deadly force.

Introduced by Representatives McNeely, Saine, Adams and Carter, and assigned to the House Committee on Judiciary 4.

[HOUSE BILL 143](#), Swain County Sheriff Vacancies, would amend G.S. § 162-5.1 to add Swain County to those counties listed in G.S. § 162-5.1. G.S. § 162-5.1 requires that upon a vacancy in the Office of Sheriff, such as due to death or retirement, the board of county commissioners must first consult with the county executive committee of the political party of the outgoing sheriff and must elect the person selected by the executive committee to fill the vacancy.

Currently, a vacancy in the Office of Sheriff in Swain county would be filled by the board of county commissioners without the input of the county executive committee of the political party of the outgoing sheriff. This bill applies **ONLY** to Swain County. **Introduced by Representative Clampitt, and assigned to the House Committee on Local Government.**

[HOUSE BILL 145](#), Property Protection Act/DVPO, would authorize a judge when entering an emergency or ex parte domestic violence protective order (DVPO) to require the defendant to surrender all firearms (including machine guns) and ammunition in the care, custody, possession, ownership or control of the defendant to the sheriff or to a federally licensed firearms dealer. The bill would require the court to include on the face of the order specific instructions on how the defendant may retrieve the property at the expiration of the order, and would also require the order to state it is a Class H felony for the defendant to possess, purchase, or receive or attempt to possess, purchase, or receive a firearm or ammunition while the order remain in effect.

Currently, if a court orders the surrender of firearms and ammunition pursuant to an emergency or ex parte DVPO order, the court is required to order the property surrendered to the sheriff. The bill does not modify the current requirement that a defendant also surrender to the sheriff any pistol purchase permit(s) the defendant possesses, in addition to any concealed handgun permit.

If the court orders the surrender of all firearms and ammunition in the care, custody, possession, ownership or control of the defendant to a firearms dealer, the bill would give the defendant the option to either sell the firearms and ammunition surrendered to the firearms dealer or to enter into an agreement with the firearms dealer for the storage of the property surrendered. The defendant would be required to notify the sheriff within two business days of being served with the emergency or ex parte DVPO order of the defendant's intent to either sell or store the property ordered surrendered.

In addition, the bill would require the firearms dealer to notify the sheriff within 24 hours of the receipt of any firearms and ammunition from the defendant pursuant to the court order and would

also require the firearms dealer to provide the sheriff with record of the property surrendered.

The firearms dealer would be prohibited from releasing the surrendered property to the defendant without a court order and would also be prohibited from transferring the surrendered property to any person the firearms dealer knows or reasonably should know would give the defendant access to the property.

However, the bill would allow the defendant to retrieve the property surrendered to the federally licensed firearms dealer if the emergency or ex parte DVPO has expired and the court has NOT entered a permanent protective order (typically a one-year DVPO).

The bill would also authorize a firearms dealer to file a motion with the court to sell the firearms and ammunition surrendered to the firearms dealer in the event the defendant does not file a motion for the return of the property within 30 days of the court order granting the return of the property or if the defendant fails to pay all storage fees within this 30-day period. The bill does not change current State law that authorizes the sheriff to file such a motion for the sale of stored firearms and ammunition ordered surrendered to the sheriff.

Finally, the bill would cap the storage fees a sheriff could charge a defendant when a court orders the surrender of all firearms and ammunition to the sheriff. The bill would limit the storage fees to no more than \$10 per month and the bill would clarify that the sheriff must store the items in a manner designed to reasonably ensure the items do not deteriorate or are damaged. **Introduced by Representatives Adams, Kidwell, McNeill and Turner, and assigned to the House Committee on Judiciary 2.**

[HOUSE BILL 148](#), SBI Emergency Pen Register/Trap and Trace, would modify State law to allow a law enforcement officer to obtain a court order to track the GPS coordinates of a telecommunications device (such as a cell phone) to aid in the location of a person at risk of physical harm, and to allow the North Carolina State Bureau of Investigation (SBI) to obtain this information without an initial court order under special emergency circumstances, such as a runaway child or missing person. Under these emergency circumstances, the SBI agent would be required to seek the court order described above within 48 hours of accessing the data. **Introduced by Representatives McNeill, Hurley, C. Smith and Greene.**

[HOUSE BILL 151](#), Req Active Time Felony Death MV/Boat, would require a period of continuous confinement of one-fourth the maximum sentence of imprisonment imposed for a conviction of felony death by motor vehicle or felony death by impaired boating. **Introduced by Representatives Pittman, C. Smith, Hanig and Kidwell, and assigned to the House Committee on Marine Resources and Aqua Culture.**

[HOUSE BILL 165](#), DOT Legislative Changes, would allow the North Carolina Department of Transportation (DOT) to enter into an agreement for the placement of automatic license plate readers in any existing DOT right-of-way at the request of a State or local law enforcement agency. The bill specifies that DOT would not be required to purchase any additional right-of-way for this purpose or to enter into agreements where doing so would impact the integrity of highway infrastructure or public safety.

The bill would also require the North Carolina Division of Motor Vehicles (DMV) to offer renewals of handicapped credentials, such as a handicapped placard, both in person and online at the DMV's website. Currently, the DMV does not offer an online renewal option.

Finally, the bill would require the DMV to deny, revoke, suspend, or cancel a commercial vehicle license, commonly referred to as a "CDL," for any individual who has used a commercial motor vehicle in the commission of a felony involving human trafficking. The person would be barred for life from operating a commercial motor vehicle in the State of North Carolina. **Introduced by Representative B. Jones.**

[HOUSE BILL 167](#), [U.S. Army Special Forces Reg. Plate](#), would require the North Carolina Division of Motor Vehicles to produce a "United States Army Special Forces" registration plate that also bears the insignia of the United States Army Special Forces. This registration plate would be issuable to members and veterans of the United States Army Special Forces. **Introduced by Representative Rogers.**

[HOUSE BILL 171](#), [Burden of Proof – Challenge to Candidacy](#), would change the burden of proof in a challenge to a candidate seeking elective office, such as a candidate running for sheriff. The bill would require the challenger to carry the burden of proof unless the challenge is based on residency. In a residency challenge, the bill would allow the panel hearing the challenge to require either the candidate or the challenger to present evidence as to where the candidate resides but would not assign the burden of proof to the candidate. Currently, once any type of challenge is filed, the candidate has the burden of proof to prove the allegation is false. **Introduced by Representatives Clampitt, C. Smith, Miller and Moffitt.**

[HOUSE BILL 173](#), [Separate Divs-Juv Justice and Adult Corr.](#), would separate the Division of Adult Correction and Juvenile Justice (DACJJ) of the North Carolina Department of Public Safety into two separate divisions. The bill would establish the Division of Adult Correction of the North Carolina Department of Public Safety and would also establish the separate Juvenile Justice Division of the North Carolina Department of Public Safety. Currently, Juvenile Justice is a separate Section within DACJJ and is not operating as a separate division within the Department of Public Safety.

Finally, the bill would appropriate to the Juvenile Justice Division \$990,000 in recurring funds for the 2021-2023 fiscal biennium to provide funding for seven full-time positions in the Juvenile Justice Division. **Introduced by Representatives McNeill, Boles and C. Smith.**

[HOUSE BILL 183](#), [Juv. Court Counselors/Sensitivity Training](#), would clarify that all personnel of the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice must receive minority sensitivity training annually. Currently, juvenile court counselors and "other Division personnel" are required to receive this training.

The bill would also remove the juvenile court's authority to assign "any other duties as the court may direct" to a juvenile court counselor. Currently, a juvenile court counselor, among other duties, is required to secure or arrange for any information concerning a case that the court may

require before, during, or after the hearing. **Introduced by Representatives McNeill, Carter, Greene, and Richardson.**

[SENATE BILL 134](#), [Concealed Carry/Emergency Medical Personnel](#), is identical to [House Bill 48](#), which is summarized in the February 5, 2021 Weekly Legislative Report. The bill would allow emergency medical personnel to carry a concealed handgun while on duty if they are being deployed to provide tactical medical support for law enforcement during an emergency situation, such as a SWAT operation. The bill would require the emergency medical personnel to first obtain specialized training before carrying a concealed handgun in this scenario, which would include training on firearms safety, use of firearms systems and use of deadly force.

These provisions for emergency medical personnel are also identical to those contained within [House Bill 134](#), which is summarized above in this Weekly Legislative Report. **Introduced by Senators Perry, Britt and McInnis, and assigned to the Committee on Rules and Operations of the Senate.**

[SENATE BILL 155](#), [Highway Cleanup Act of 2021](#), is identical to [House Bill 100](#), which is summarized in the February 19, 2021 Weekly Legislative Report. The bill would increase the monetary fines associated with littering to discourage this conduct. **Introduced by Senators Craven, Proctor and Lazzara, and assigned to the Committee on Rules and Operations of the Senate.**

BILL STATUS

[HOUSE BILL 7](#), [Protect City Employees from Retaliation](#), which is summarized in the January 29, 2021 Weekly Legislative Report, has been amended to require city councils to adopt an ordinance that would establish a procedure for employees to report: (1) violations of State or federal law, rule, or regulation, or city ordinance; (2) fraud; (3) misappropriation of federal, State, or city resources; (4) any activity that poses a substantial and specific danger to public health and safety; or (5) gross mismanagement, including the gross waste of public monies or the gross abuse of authority. The ordinance must also prohibit retaliation against any employee for reporting or intending to report any of the types of misconduct previously described.

The bill, as amended, would also clarify that disciplinary action may be taken against an employee who makes a report that the employee knows or has reason to know is inaccurate.

[SENATE BILL 43](#), [Protect Religious Meeting Places](#), which is summarized in the February 5, 2021 Weekly Legislative Report, would allow for the carrying of a concealed handgun on the premises of school grounds only when the premises is NOT being used for curricular, extracurricular or any school-sponsored activities (such as on weekends or during holidays) if the person carrying the concealed handgun possesses a valid North Carolina concealed handgun permit.

The bill has been amended to clarify that a school may prohibit the carrying of a concealed handgun on the premises of school grounds, even when school is not in session, by posting a conspicuous notice that states the carrying of a concealed handgun is prohibited.

[SENATE BILL 52](#), Sex Offender Residence Restriction/Clarify, which is summarized in the February 5, 2021 Weekly Legislative Report, has passed the Senate and has been sent to the House for consideration.

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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