

North Carolina Sheriffs' Association

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Weekly Legislative Report

March 5, 2021

As the long session rolls into the month of March, bills are still being filed and committee meeting calendars are getting lengthier. At Tuesday's meeting of the Joint Appropriations Committee on Justice and Public Safety, Todd Ishee, Commissioner of Prisons, and Timothy Moose, Chief Deputy Secretary of the Division of Adult Correction and Juvenile Justice of the North Carolina Department of Public Safety, gave a summary of the landmark settlement agreement reached in the case of the North Carolina State Conference of the NAACP v. Roy Cooper. The lawsuit originated over concerns about the spread of COVID-19 in North Carolina State prison facilities.

Commissioner Ishee and Chief Deputy Secretary Moose made statements and answered questions from legislators. Commissioner Ishee informed legislators that the settlement requires 3500 prisoners to be released from the Division of Adult Correction over the next 180 days. The settlement agreement also outlines that 1500 of those prisoners will be released within 90 days.

According to the information presented, the parties settled on the release of 3500 prisoners based on guidance from the United States Centers for Disease Control Prevention, the North Carolina Department Health and Human Services and the Health Director within the Division of Adult Correction and Juvenile Justice.

According to Commissioner Ishee, each of the 3500 prisoners slated to be released were already scheduled for release during 2021, but their release timeline has been accelerated. Some of the individuals released may have committed a crime against a person. Commissioner Ishee told the legislators the Division plans to follow all procedures currently in place for the release of a prisoner whose conviction involved a victim with rights under the Crime Victims' Rights Act.

The House and Senate adjourned on Thursday and will return on Monday afternoon.

BILLS OF INTEREST

[HOUSE BILL 170](#), North Carolina CROWN Act, would prohibit any State or unit of local government, such as a sheriff's office or police department, from denying or refusing employment, or discharging any person with a "protective hairstyle." Protective hairstyles would be defined to include, but not be limited to hairstyles such as bantu knots, braids, locks and twists.

Currently, a person's hairstyle is not deemed a protected classification (such as race, disability, etc.) under State or federal law. If this bill is enacted into law, law enforcement agencies, such as

a sheriff's office, would be prohibited from terminating employment for an employee's refusal to comply with agency appearance standards that prohibit, for example, hair to be kept in a manner that would interfere with the wearing of an agency issued helmet (such as riot gear) or hat. **Introduced by Representatives K. Smith, Logan, Alston and A. Baker, and assigned to the House Committee on Judiciary 2.**

[HOUSE BILL 189, Second Amendment Preservation Act](#), would create a new law within Chapter 14 of the North Carolina General Statutes that would declare certain federal laws, acts, executive orders, administrative orders, court orders, rules or regulations an infringement on a law-abiding citizen's constitutional right to keep and bear arms.

Among others, the bill would make invalid in the State of North Carolina any federal law imposing a tax, levy, fee or stamp imposed on firearms, firearm accessories or ammunition. Currently, federal law requires a person to pay for and obtain a federal tax stamp to lawfully possess certain firearms and firearm accessories, such as a machine gun or suppressor for a handgun. If enacted into law and challenged in court, it is unlikely that this provision within the bill would be held valid because a state law cannot override federal law regulating firearms and firearm accessories.

The bill would also prohibit any federal law, act, executive order, administrative order, court order, rule or regulation that would require the registering or tracking of firearms, firearm accessories or ammunition in this State, or the tracking of any law-abiding citizen possessing these items, or that would forbid possession, ownership, use, or transfer of a firearm, firearm accessory or ammunition by a law-abiding citizen. The bill defines a law-abiding citizen as a person who is not otherwise precluded under State law from possessing a firearm but does not include anyone who is not legally present in the United States or North Carolina.

Finally, the bill would impose on law enforcement agencies and courts in this State a "duty to protect" law-abiding citizens from any of the federal acts set out in the bill considered to be an encroachment on a law-abiding citizen's right to keep and bear arms. The bill does not describe what duties are imposed on law enforcement agencies and the courts and does not establish the authority by which law enforcement agencies and State courts would intervene on behalf of a citizen. **Introduced by Representatives Kidwell, Hanig, Goodwin and Adams, and assigned to the House Committee on Judiciary 3.**

[HOUSE BILL 192, COVID Response/Supplemental Spending 2020-2021](#), would appropriate additional funding to assist in the State's recovery during the COVID-19 pandemic. Of interest to the criminal justice community, the bill would appropriate to the North Carolina Department of Public Safety \$50 million in nonrecurring funds for the 2020-2021 fiscal year to be used for hazard pay for State front-line employees, such as correctional officers and State law enforcement officers who work in conditions that put them at increased risk of exposure to COVID-19. **Introduced by Representatives Reives, Adcock, Harris and Lofton, and assigned to the Committee on Rules, Calendar, and Operations of the House.**

[HOUSE BILL 194, Federal Court Official/Concealed Carry](#), would add to the categories of individuals currently allowed to carry concealed weapons under G.S. § 14-269(b) (such as law enforcement officers, district attorneys and district and superior court judges) the following

individuals: federal judges, including federal magistrate judges, and United States attorneys or United States assistant attorneys.

The bill would authorize these individuals to carry a concealed handgun in areas such as State courthouses so long as the individual has a valid North Carolina concealed handgun permit and the individual secures the weapon in a locked compartment when the weapon is not on the person of the federal judge or United States attorney. **Introduced by Representative Torbett, and assigned to the House Committee on Judiciary 2.**

[HOUSE BILL 195](#), Criminal Falsification of Medical Records, would create three new criminal offenses for the willful destruction, alteration, or falsification of medical records. The bill would make it a Class H felony for a health care provider to willfully destroy, alter, or falsify a medical record for the purpose of concealing the commission of an error by the health care provider in providing medical services that caused injury to or death of a patient.

It would be a Class I felony for a health care provider to willfully destroy, alter, or falsify a medical record for the purpose of unlawfully obtaining money or any other thing of value.

Finally, it would be a Class A1 misdemeanor for a health care provider to willfully destroy, alter, or falsify a medical record for the purpose of concealing any material fact whatsoever that is related to a potential claim, such as information that could lead to the filing of a lawsuit. **Introduced by Representative Pless, and assigned to the House Committee on Health.**

[HOUSE BILL 196](#), 2021 COVID-19 Response & Relief, would modify various temporary and permanent provisions enacted during the 2019-2020 session of the General Assembly to assist with the response to the ongoing COVID-19 pandemic and would also appropriate federal COVID-19 relief funds received by the State.

Of interest to the criminal justice community, the bill would extend to December 31, 2021 the temporary authorization of emergency video notarization and emergency video witnessing so long as the video notarization and video witnessing process meet certain criteria.

The temporary authorization for emergency video notarization and emergency video witnessing expired on March 1, 2021. Therefore, under current State law, a notarial act or witnessing of a notarial act may not be carried out through video conference technology.

The bill has passed the House and has been sent to the Senate for consideration. **Introduced by Representatives Faircloth, Bumgardner, K. Hall and Strickland, and assigned to the Committee on Rules, Calendar, and Operations of the House.**

[HOUSE BILL 197](#), NC Constitutional Carry Act, would make various changes to our State's firearm laws. The changes of interest to the criminal justice community include:

1. A new concealed weapons statute would be created and would provide that any person who is a citizen of the United States and at least 18 years old would be able to carry a concealed handgun in this State without a permit. An individual would not have this authority to

carry a concealed handgun if the person is disqualified under certain criteria (generally the same criteria currently set out in North Carolina law that would prohibit an individual from receiving a concealed handgun permit). Any person unlawfully carrying a concealed handgun would be guilty of a Class 2 misdemeanor for a first offense and a Class H felony for a second or subsequent offense.

2. The bill would modify current North Carolina law regulating the carrying of firearms into establishments where alcoholic beverages are sold and consumed and into assemblies where a fee is charged for admission. The bill would allow anyone to carry a concealed handgun into the establishment or assembly if the person is lawfully able to carry a concealed handgun under the criteria set out in paragraph 1 above and the property is not posted prohibiting the carrying of concealed handguns. Those individuals currently authorized to carry concealed firearms under G.S. §14-269(b) would be exempt from these prohibitions.
3. The bill would modify current North Carolina law regulating weapons at parades and funeral processions. The bill would allow anyone to carry a concealed handgun at a parade or funeral procession if the person is lawfully able to carry a concealed handgun under the criteria set out in paragraph 1 above and the parade or funeral procession is not posted prohibiting the carrying of concealed handguns. Those individuals currently authorized to carry concealed firearms under G.S. §14-269(b) would be exempt from these prohibitions.
4. This bill would also modify the State's concealed handgun permit statutes to provide that the State of North Carolina shall continue to make a concealed handgun permit available to any person who applies for and is eligible to receive a concealed handgun permit. The rationale for keeping the concealed handgun permit is that it is often convenient to have a concealed handgun permit for the purpose of reciprocity when traveling in another state or to make the purchase of a firearm more efficient.
5. Company police officers would have the authority, if authorized by their superior officer, to carry a concealed weapon statewide. Currently, company police officers do not have this authority.
6. Finally, campus police officers would have the authority to carry concealed weapons statewide, if authorized by their campus police agency and by the sheriff of the county where the campus police agency is located. Currently, campus police officers do not have this authority.

Introduced by Representatives Kidwell, Hanig, Goodwin and Setzer, and assigned to the House Committee on Judiciary 3.

[HOUSE BILL 200](#), Lifetime Concealed Handgun Permit, would eliminate the requirement that a person renew their North Carolina issued concealed handgun permit and would instead make a concealed handgun permit permanent. Currently, a concealed handgun permit is valid for a period of 5 years and must be renewed at that time if the permittee wishes to maintain the permit.

In addition, the bill would require a person with a concealed handgun permit to notify the sheriff of the county in which the person resides of a change in permanent address within 30 days of the address change. Currently, the person must notify the sheriff that issued the concealed handgun permit of a change in permanent address within 30 days of the change.

The bill would require the sheriff to provide the North Carolina State Bureau of Investigation with the change in permanent address information received by the sheriff for inclusion in the SBI's statewide system. Currently, when a person receives their concealed handgun permit, the information collected by the sheriff to process the application for the permit is submitted to the SBI by the sheriff for inclusion in the SBI's statewide system that is accessible to law enforcement officers and clerks of court.

Finally, the bill would not change the sheriff's authority to revoke a concealed handgun permit for certain violations of law. The bill would add a provision to the statute allowing a sheriff to revoke a concealed handgun permit if the person is no longer a resident of North Carolina. Currently, a sheriff can revoke a concealed handgun permit for fraudulently obtaining a permit or intentionally misrepresenting information in the application process; for misuse of the permit (such as lending it to another person); for doing an act or the existence of a condition that would form the basis of denying the permit (such as being charged with certain crimes or convicted of certain crimes); or for any other violation of the concealed handgun permitting laws. **Introduced by Representative Adams, and assigned to the House Committee on Judiciary 3.**

[HOUSE BILL 203, Extend Deadline for Police Telecommunicators](#), would extend the deadline to July 1, 2022 for anyone employed by a municipal police department as a telecommunicator to become certified as a telecommunicator by the North Carolina Sheriffs' Education and Training Standards Commission. Currently, telecommunicators employed by a municipal police department must obtain their certification by July 1, 2021. **Introduced by Representative Faircloth, and assigned to the House Committee on Judiciary 2.**

[HOUSE BILL 210, Restrict Cash Bail for Certain Misdemeanors](#), would prohibit a judicial official from requiring a defendant to post a cash bond if the defendant is charged with only misdemeanor criminal offenses, including the more severe Class 1 and Class A1 misdemeanors, unless the judicial official first considers whether an unsecured appearance bond is not sufficient to ensure the defendant's appearance and the judicial official makes written findings supporting the decision of requiring a cash bond.

The bill would also eliminate a judicial official's ability to consider whether the release of a defendant charged with a Class 2 or Class 3 misdemeanor is likely to result in subornation of perjury or result in the intimidation of a witness when setting a cash bond. The bill would also require a judicial official to reduce to writing the reason an appearance bond would be insufficient in the case of a defendant charged with a Class 2 or Class 3 misdemeanor.

Currently, a judicial official's order must contain a statement of the conditions imposed, the penalties for violating any conditions imposed and that the defendant will be arrested immediately for violating a condition of release, but the order does not have to contain a basis for the type of bond given.

Finally, when setting a defendant's bond for any crime, current law allows judicial officials to consider whether a defendant's conduct would: (1) pose a danger to any person; (2) likely result in destruction of evidence; (3) likely result in the defendant failing to appear in court as required, (4) likely suborn perjury, or (5) likely intimidate a witness. This bill would still allow judicial officials to consider all of these factors when setting a cash bond for Class 1 and Class A1 misdemeanors. **Introduced by Representative Morey, and assigned to the Committee on Rules, Calendar, and Operations of the House.**

[HOUSE BILL 213](#), [Kelsey Smith Act](#), would require the provider of a wireless service (such as a cellular telephone or an in-car security service like "On-Star") to give the highest-ranking person on duty with a law enforcement agency the location of a wireless device (such as a mobile telephone), upon request. The highest-ranking person on duty for the law enforcement agency would only be authorized to make the request in an emergency situation where there is a risk of imminent death or serious bodily injury and would only be able to request the amount of data necessary to prevent the death or harm. The highest-ranking person on duty would not be required to obtain a warrant for the disclosure of this information.

The bill would also require all wireless service providers doing business in this State to provide the North Carolina State Bureau of Investigation (SBI) with contact information so that law enforcement officers could contact the wireless service provider in an emergency situation. The SBI would be required to maintain a database containing this emergency contact information and would be required to release the contact information to a law enforcement agency. **Introduced by Representative Hurley, and assigned to the House Committee on Judiciary 3.**

[HOUSE BILL 225](#), [Prosec. Discretion/A-G Felonies/Juveniles](#), would allow a prosecutor to decline to prosecute a juvenile matter in superior court that would otherwise be subject to mandatory transfer to superior court under current law. Currently, the juvenile court is required to transfer juvenile matters to superior court where the juvenile was 16 years of age or older at the time the juvenile committed an offense that would be a Class A through Class G felony offense if committed by an adult.

If the prosecutor declines to prosecute the Class A through Class G felony offense in superior court, the bill specifies that the juvenile court would maintain jurisdiction over the juvenile following a finding of probable cause. However, the bill would give the prosecutor the authority to transfer the matter to superior court at any time prior to adjudication. **Introduced by Representative Morey.**

[HOUSE BILL 227](#), [Mandate Misdemeanor First Appearance/48 Hours](#), 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.

Further, the bill would mandate that when a defendant being held on any criminal charge does not make bail, first appearance before a district court judge must be held within 48 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first.

Currently, 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. **Introduced by Representative Morey.**

[SENATE BILL 165](#), [North Carolina CROWN Act](#), is identical to [House Bill 170](#), which is summarized above in this Weekly Legislative Report. **Introduced by Senators Murdock, Salvador and Foushee, and assigned to the Committee on Rules and Operations of the Senate.**

[SENATE BILL 172](#), [2021 COVID-19 Response & Relief](#), is identical to [House Bill 196](#), which is summarized above in this Weekly Legislative Report. **Introduced by Senators B. Jackson, Harrington and Hise, and assigned to the Committee on Rules and Operations of the Senate.**

[SENATE BILL 180](#), [Restricted DL for Undocumented Immigrants](#), would allow an immigrant or illegal alien that does not possess a valid Social Security number to apply for and receive a restricted drivers license from the North Carolina Division of Motor Vehicles (DMV). The applicant for the restricted drivers license would be required to provide one of the following forms of identification to the DMV: (1) a valid Individual Taxpayer Identification Number; (2) a current passport issued by the United States or a foreign government; or (3) a valid, unexpired consular identification document issued from the applicant's country of citizenship.

The bill would also require the applicant to live in North Carolina for one year prior to applying for the restricted drivers license, would require proof of motor vehicle liability insurance and would require the person to have complied with the filing of State income tax if required by State law to file. The bill would also require the applicant to complete the ordinary tests administered by the DMV, such as the road sign test, vision test and written knowledge test.

The restricted license would cost \$50 and would expire on the birthday of the licensee in the second year after the restricted license was issued. However, the bill would allow the person to renew the restricted license for additional two-year periods at a cost of \$50 each renewal.

In addition, the restricted license could not be used for any other purpose other than to demonstrate licensure to drive a motor vehicle. Therefore, the restricted license could not be used as a basis to establish legitimate residence in the United States or, for example, to establish eligibility to vote, obtain public benefits or to obtain employment. The design and color of the restricted drivers license would be unique to make it easily distinguishable from a Real ID compliant drivers license.

Finally, any information provided by the applicant to the DMV would not be admissible in any criminal or civil trial or in any immigration proceeding, action or trial and the license, standing alone, could not be used as a basis for a criminal investigation, arrest or detention of the immigrant or illegal alien. **Introduced by Representatives Fitch and Mayfield, and assigned to the Committee on Rules and Operations of the Senate.**

[SENATE BILL 186](#), 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 drivers 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 drivers license was restored. **Introduced by Senators Edwards, Sanderson and Corbin.**

BILL STATUS

[SENATE BILL 43](#), Protect Religious Meeting Places, 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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