

# North Carolina Sheriffs' Association

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Weekly Legislative Report

April 16, 2021

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The “spring break” taken by the House last week seems to be over and both chambers are back to the business of moving bills through the legislative process. Since the Senate’s filing deadline has passed, the efforts of the Senators have shifted this week to moving bills through committee and continuing their work on the much-awaited budget.

Likewise, the House committees have seen packed calendars which have kept bills racing towards the crossover date of May 13, 2021. With the bill drafting deadline now passed, House members will be able to focus their attention on the bill filing deadline of May 4, 2021. With this date still a few weeks away, Representatives still have plenty of time to decide which bills they want to introduce during this Session.

The House and Senate adjourned on Thursday and will reconvene Monday, April 19, 2021.

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## BILLS OF INTEREST

[HOUSE BILL 525](#), Allow ERPOs to Prevent Suicides & Save Lives, would create a process to temporarily restrict a person’s access to firearms if there is evidence the person poses a danger to themselves or others by possessing a firearm. Among the significant provisions of this bill:

1. A family or household member, current or former spouse or dating partner, health care provider, law enforcement officer, or a law enforcement agency would be allowed to petition a district court for an Extreme Risk Protection Order (ERPO).

A family or household member would be defined as any person related by blood, marriage, or adoption to the Respondent, including step-parents and step-children; a current or former dating partner; a person who has a child in common with the Respondent; a domestic partner of the Respondent; or a person who is acting as the Respondent’s legal guardian.

The petition for an ERPO must include facts to show the Respondent is a danger to himself or herself or others by having firearms in their possession.

2. An ERPO would require the Respondent to surrender all firearms, ammunition, permits to purchase firearms and permits to carry a concealed handgun to the sheriff. A district court would also have the authority to order a Respondent to undergo any mental evaluation or chemical dependency evaluation deemed appropriate.

3. A district court would have the authority to issue an *ex parte* ERPO, without the Respondent being present in court, if the court finds that the Respondent poses an imminent danger of causing physical injury to himself or herself or others by having firearms in their possession.

An *ex parte* ERPO would be effective for ten days unless the district court has a hearing on the full ERPO sooner. The Chief District Court Judge would have the authority to designate at least one judge or magistrate in each county to issue *ex parte* ERPOs when the court is not in session.

4. A full ERPO would be effective for one year and could be renewed as necessary, provided the court makes findings that the Respondent is still a danger to himself or herself or to others with firearms.
5. The sheriff would be allowed, but not required, to charge the Respondent a reasonable fee for the storage of any firearms and ammunition taken pursuant to an ERPO. These fees would be required to be used by the sheriff in carrying out his or her duties related to an ERPO or for other law enforcement purposes.
6. The sheriff would be required to provide “prompt” entry of the ERPO, and any subsequent changes to the ERPO, into the National Crime Information Center registry (NCIC).
7. A Respondent who violates any term of the ERPO would be guilty of a Class A1 misdemeanor. A person who knowingly makes a false statement when petitioning for an ERPO or who knowingly makes a false statement to a law enforcement agency or officer that an ERPO remains in effect, would be guilty of a Class 2 misdemeanor.

**Introduced by Representatives Morey, Autry, Gill and Martin, and assigned to the Committee on Rules, Calendar, and Operations of the House.**

[HOUSE BILL 532](#), Criminal Justice Equity Act of 2021, is substantially similar to [Senate Bill 656](#), which is summarized in the April 9, 2021 Weekly Legislative Report. The bill would make a variety of changes to State law that would impact the criminal justice system, many of which are provisions contained within other bills currently before the General Assembly. **Introduced by Representative Morey, and assigned to the Committee on Rules, Calendar, and Operations of the House.**

[HOUSE BILL 536](#), Law Enforcement Duty to Intervene, would establish a duty for law enforcement officers in the line of duty who observe what they reasonably believe to be another law enforcement officer’s excessive use of force to attempt to intervene, if there is a reasonable and safe opportunity to do so. The bill would also require the officer who observed what was reasonably believed to be the excessive use of force to report the observation within 72 hours after the observation to a superior law enforcement officer within the agency.

If the head of the law enforcement agency is involved in or is present during the observation of what is reasonably believed to be excessive use of force, the bill would require the observing officer to report the use of force to the highest ranking law enforcement officer of that officer's agency who was not involved or present.

Currently, courts have held a law enforcement officer has a duty to intervene when he or she (1) knows an officer is violating an individual's constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act. **Introduced by Representative Szoka, and assigned to the House Committee on Judiciary 2.**

[HOUSE BILL 543](#), Expedite Venue Choice of Mass Shooting Cases, would prohibit a judge from granting the State's motion to change venue of a case involving the discharge of a firearm and with 10 or more victims if 90 days have passed from the date of the defendant's initial arrest on the criminal charge. However, this prohibition would not apply if the defendant consents to the change in venue.

Currently, there is no North Carolina General Statute that authorizes the State to file a motion to change venue in a criminal case. However, the Supreme Court of North Carolina has ruled that a trial judge has the inherent authority to grant a change of venue on the State's motion as both the State and the defendant are entitled to a fair trial.

Motions to change venue must currently be filed at or before the time of arraignment. In addition, if arraignment is to occur during the session the case is set for trial, the motion to change venue must be filed no later than by 5:00 PM on the Wednesday before the session is set to begin. **Introduced by Representative A. Jones, and assigned to the Committee on Rules, Calendar, and Operations of the House.**

[HOUSE BILL 544](#), Revise Animal Fighting Laws, would make it a Class I felony to cause a person under the age of 18 to be present at a cock fight, and a Class H felony to cause a person under the age of 18 to be present at a dog fight. It would be a Class 2 misdemeanor to cause a person under the age of 18 to be present at a fight between any other types of animals. Currently, this type of conduct would be considered contributing to the delinquency of a juvenile, which is a Class 1 misdemeanor. If enacted into law, an officer would be able to charge a person for violating one of the offenses listed above involving a juvenile, in addition to contributing to the delinquency of a juvenile.

The bill would also make it a Class I felony for a person to own, possess, train, buy, sell, offer to buy or sell or to transport a cock, with the intent that the cock be used in a fighting exhibition. It would be a Class 2 misdemeanor to own, possess, buy, sell, transfer or manufacture "cock fighting paraphernalia" for the purpose of engaging in or otherwise promoting or facilitating the fighting or baiting of cock. Cock fighting paraphernalia would be defined as gaffs, slashers, heels or any other sharp implement designed to be attached in place of the cock's natural spur. Finally, the bill would make these separate criminal offenses that would not merge with the current Class I felony offense of cockfighting. **Introduced by Representative C. Smith, and assigned to the House Committee on Judiciary 2.**

[HOUSE BILL 547](#), Use Law Enf. Decert Index/Clarify APA, would require the North Carolina Sheriffs' Education and Training Standards Commission and the North Carolina Criminal Justice Education and Training Standards Commission (the Commissions) to use the National Decertification Index (NDI) maintained by the International Association of Directors of Law Enforcement Standards and Training, and would require the Commissions to use the search results from the NDI in determining whether an applicant qualifies for certification or a lateral transfer.

The NDI is a national registry of law enforcement officer certificate or license revocation actions related to law enforcement officer misconduct. The records contained in the NDI are provided by participating state and local government agencies. The fact that a law enforcement officer is included in the NDI does not automatically bar that officer from obtaining certification as a law enforcement officer.

In addition, the bill would exclude the Commissions from the provisions in Chapter 150B of the General Statutes governing administrative hearings for occupational licensing agencies and several other listed entities. By specifically excluding the applicability of these provisions to the Commissions, the bill would prohibit the Commissions from making final decisions in contested cases and would instead make the decision of the administrative law judge final.

Currently, the Commissions review the entire record in each contested case in addition to the written proposed final agency decision from the administrative law judge prior to the entry of a final agency decision by the Commissions. **Introduced by Representative Szoka, and assigned to the House Committee on Judiciary 2.**

[HOUSE BILL 548](#), Duty to Report Giglio Information, would require any person certified by the North Carolina Sheriffs' Education and Training Standards Commission or the North Carolina Criminal Justice Education and Training Standards Commission, or who has received a conditional offer of employment, to report to their respective Commission if they have been notified that they may not be called to testify because of bias, interest or lack of credibility. This notification is commonly known as a "*Giglio* notification."

The bill would require the person so notified to report this in writing to their respective Commission and their agency head (such as the sheriff) within 30 days of receiving the *Giglio* notification. This would only apply to *Giglio* notifications that were made as follows: (1) In writing by a superior court judge, district court judge, federal judge, district attorney, assistant district attorney, United States attorney, assistant United States attorney, or the person's agency head; or (2) were made in open court by a superior court judge, district court judge, or federal judge, and documented in a written order.

The bill would also require the persons described above who issued the *Giglio* notification (such as a judge) to report the notification to the standards division overseeing the person's certification, or prospective certification, within 30 days of issuing the *Giglio* notification and would also require the person to provide a copy of the written document or order to the standards division. In addition, the bill would require the agency head that was notified of the *Giglio* notification to also report to the standards division in writing within 30 days of receiving the report that the employee received a *Giglio* notification.

In the event a person's certification is transferred to another agency, the bill would require the applicable standards division to notify in writing both the head of the new agency and the elected district attorney in the prosecutorial district where the agency is located that the person is subject to a *Giglio* notification issued as described above.

Finally, the bill would require the Commissions to report annually to the Joint Legislative Oversight Committee on Justice and Public Safety, no later than March 1, regarding the number of *Giglio* notifications that were received during the previous calendar year. The bill would also require the report to include whether action was taken against the person's certification (such as through the entry of a final agency decision by either Commission following an administrative hearing). The report would not include the name of any person receiving a *Giglio* notification or any other identifying information of that person.

Currently, law enforcement officers who receive *Giglio* notifications are not required to report the notification to the Commissions, and there is no formal procedure (i.e. due process) in existence for a law enforcement officer to challenge (such as through an administrative hearing) the underlying basis or receipt of a *Giglio* notification. **Introduced by Representative Szoka, and assigned to the House Committee on Judiciary 2.**

[HOUSE BILL 549, Reinstatement of Inmate Litter Crews](#), would require the North Carolina Department of Public Safety (DPS) to reinstate inmate litter crews. The use of inmate litter crews was discontinued by DPS in 2017. **Introduced by Representative D. Hall and assigned to the House Committee on Environment.**

[HOUSE BILL 559, Repeal of Pistol Purchase Permit Requirement](#), would repeal (eliminate) the requirement of obtaining a pistol purchase permit to sell, give away, transfer, purchase, or receive a pistol in this State. Currently, a pistol purchase permit issued by the sheriff is required to sell, give away, transfer, purchase, or receive a pistol in North Carolina. **Introduced by Representative Kidwell, and assigned to the House Committee on Judiciary 2.**

[HOUSE BILL 560, Public Safety Reform](#), would make various changes to the laws pertaining to inmates at a confinement facility, probation conditions and probation officers. The provisions of interest to the criminal justice community include:

1. Any inmate confined in a prison, jail, detention center, or other confinement facility who knowingly and willfully exposes genitalia to an employee while the employee is performing their duties is currently guilty of a Class I felony.

The bill would require a mandatory minimum term of 6 months and a maximum term of 12 months to be served in the State's prison that would commence at the expiration of any sentence currently being served by the inmate.

2. Any inmate confined in a prison, jail, detention center, or other confinement facility who possesses a letter, weapon, tool, good, article of clothing, device, or instrument to effect an escape or aide in an assault or insurrection is currently guilty of a Class F felony.

The bill would require a mandatory minimum term of 12 months and a maximum term of 24 months to be served in the State's prison that would commence at the expiration of any sentence currently being served by the inmate.

3. Inmates in the custody of the Department of Public Safety (DPS), Division of Adult Correction and Juvenile Justice, would be prohibited from possessing personal property while in custody that exceeds \$250 in total. The bill would also require DPS, through a specified process, to either replace or reimburse inmates for personal property that is lost, destroyed, or damaged through negligent handling by its correctional facility or correctional facility staff members.
4. Probation officers would be given the authority of law enforcement officers on prison property for the purpose of protecting life and property, transferring prisoners and for apprehending and returning to prison escaped prisoners. This authority would not apply while on the property of jails.
5. Probation officers would have the authority to assist law enforcement officers in making arrests and preventing escapes from custody, when requested to assist by law enforcement officers, or when, in the judgment of the probation officer, such assistance is necessary. Therefore, a probation officer could exercise this authority without receiving a request for assistance from a law enforcement officer and would have the authority to arrest and take other law enforcement action in these circumstances.
6. As a regular condition of post-release supervision, a defendant would be required to submit to a warrantless search by a post-release supervision officer of the defendant's person, vehicle, and premises while the defendant is present. Currently, defendants on post-release supervision are only required to submit to searches of the defendant's person. The statute does not currently specify whether these searches require a warrant.

**Introduced by Representative Boles, and assigned to the House Committee on Judiciary 2.**

[HOUSE BILL 561](#), Local Confinement Facility Inspection Appeals, would allow a governing body (such as a board of county commissioners), sheriff, or other administrator of a local confinement facility to file an appeal of any or all findings made following an inspection of a local confinement facility by the State. The bill would require such an appeal to be filed within 30 days of receiving the inspection report and the appeal would take place in our State's administrative courts. **Introduced by Representative Greene, and assigned to the House Committee on Judiciary 2.**

[HOUSE BILL 566](#), Mattress Transport on Vehicle Roof Prohibited, would prohibit the operation of a passenger vehicle on the State's highways with a mattress loaded on top of the vehicle's roof. Passenger vehicle would mean a motor vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The prohibition would not apply to the transport of a mattress secured in a truck's rear cargo area. **Introduced by Representative Zachary, and assigned to the House Committee on Transportation.**

[HOUSE BILL 576](#), Marijuana Justice and Reinvestment Act, is identical to [Senate Bill 646](#), which is summarized in the April 9, 2021 Weekly Legislative Report. **Introduced by Representative Meyer.**

[HOUSE BILL 578](#), Concealed Carry/Lawful Purpose, would authorize any person to carry a concealed pistol or gun (handgun) about their person without first obtaining a concealed handgun permit. This would not apply to a person carrying a concealed handgun for an unlawful purpose, such as to commit an assault or robbery.

Currently, a person must apply for and obtain a concealed handgun permit from the sheriff in the county where the person resides in order to lawfully carry a concealed handgun when not on their own property.

The bill would not repeal (eliminate) North Carolina's concealed handgun permitting statutes. Therefore, if enacted into law, a person would still be able to obtain a concealed handgun permit, which could be useful for reciprocity with states who require these permits for concealed carry. Finally, if enacted into law, the bill would not authorize the carrying of a concealed handgun by a person that is prohibited by State or federal law from possessing firearms. **Introduced by Representative Pittman.**

[HOUSE BILL 579](#), School Self-Defense Act, would allow either a part-time or full-time member of the faculty or staff of a school to possess a handgun on school grounds if the member obtains a valid North Carolina Concealed Handgun Permit and meets the criteria to become a "volunteer school faculty guardian" (VSFG).

The VSFG would be required to provide their employer with annual proof of a valid North Carolina concealed handgun permit, submit to an annual drug test, complete 16 hours of active shooter training and demonstrate proficiency with the use of the handgun in order to qualify to possess a handgun on school grounds. The VSFG would only be allowed to possess the handgun on school grounds while engaged in employment activities and would be required to keep the handgun concealed unless responding to an imminent threat of violence, which would be an act that a reasonable person believes would lead to injury or death.

The North Carolina Criminal Justice Education and Training Standards Commission would be required to develop and administer the active shooter training necessary for the VSFG to carry a concealed handgun on school grounds. **Introduced by Representative Pittman.**

[HOUSE BILL 581](#), Drivers License Designation/Autism, would require the North Carolina Division of Motor Vehicles (DMV), in consultation with the North Carolina Department of Public Safety and the North Carolina State Highway Patrol, to develop a drivers license designation that can be granted to a person with autism spectrum disorder.

Upon the request of a person with autism spectrum disorder who provides specified verification of their diagnosis, the DMV would place a unique symbol on the front of the person's drivers license and record this designation in the electronic record associated with the person's drivers

license. The person would also be able to request that the symbol and descriptor be entered into the electronic record of any motor vehicle registered in their name. The person would be able to have this designation removed at any time.

The bill would also require the North Carolina Sheriffs' Education and Training Standards Commission and the North Carolina Criminal Justice Education and Training Standards Commission to include within their minimum educational and training standards training concerning the recognition and appropriate interaction with persons with autism spectrum disorder, and drivers license and vehicle registration identifiers of persons with autism spectrum disorder. **Introduced by Representative Penny.**

[HOUSE BILL 583](#), Give LGERS Retirees 2% Bonus, would provide a one-time cost of living supplement of 2% for retirees of the Local Governmental Employees' Retirement System (LGERS) who retired on or before September 1, 2021. The payment would be 2% of the beneficiary's annual retirement allowance, payable as of September 1, 2021, and would not be prorated for date of retirement commencement. **Introduced by Representative Hardister.**

[HOUSE BILL 585](#), Fail to Report Crime/Privilege Exemption, would exempt licensed marriage and family therapists, or their employees and associates, with a client communication disclosure privilege under the State Rules of Evidence from the requirement to report crimes against juveniles to law enforcement if the privilege would prevent them from doing so. The bill specifies that this privileged relationship would only apply to communications with and information acquired from the primary client, and not other members of the family. This means that the therapist would still be required to report the crime if the information came from a family member outside the privileged relationship with the primary client. The primary client would mean a person who consults or is interviewed by a marriage and family therapist for the purpose of diagnosis and treatment.

Currently, anyone 18 years of age or older who knows or should have reasonably known that a juvenile has been or is the victim of a violent offense, sexual offense, or misdemeanor child abuse is required to immediately report the case of that juvenile to the appropriate local law enforcement agency in the county where the juvenile resides or is found. A failure to do so is a Class 1 misdemeanor. Under current law, this reporting exemption also applies to client or patient communications with psychiatrists, social workers, mental health counselors, agents of rape crisis centers, and attorneys. **Introduced by Representative K. Baker.**

[HOUSE BILL 586](#), Allow Public Employee Collective Bargaining, would repeal (eliminate) the prohibition on State and local government public employee collective bargaining. If enacted into law, the bill would allow public employees to form labor unions in North Carolina. **Introduced by Representative K. Brown.**

[HOUSE BILL 589](#), Prohibit LEO Use of Chemical Agents on Minors, would prohibit all law enforcement officers in the State, including officers of the North Carolina State Highway Patrol, North Carolina State Bureau of Investigation (SBI), company police agencies, campus police agencies, and county and city law enforcement agencies from using a chemical agent on any person they know or should know to be younger than 18 years of age.

Chemical agents would include but not be limited to: (1) oleoresin; (2) capsicum; (3) pepper spray; and (4) tear gas. The bill would also require any State or local department or office, campus police agency, or company police agency employing a law enforcement officer to develop a mandatory policy incorporating this prohibition. **Introduced by Representative K. Smith.**

### **BILL STATUS**

[HOUSE BILL 145](#), Property Protection Act/DVPO, which was summarized in the February 26, 2021 Weekly Legislative Report, has been amended in the House to eliminate the language in the prior version of the bill authorizing a judge to order the surrender of firearms and ammunition to a federally licensed firearms dealer (FFL) rather than a sheriff when issuing an emergency or *ex parte* domestic violence protective order (DVPO).

The bill, as amended, would authorize a qualified licensed firearms dealer to take custody of the surrendered firearms and ammunition from the sheriff if the defendant is the owner of the items and the items have been in the custody of the sheriff for at least 15 days. A qualified licensed firearms dealer would mean an FFL who operates a business in a commercial building located in the State that is open to the public, who regularly engages in the purchase and sale of firearms with members of the public.

The bill, as amended, now specifies that in the event the surrendered firearms and ammunition are sold by the sheriff or the qualified licensed firearms dealer, the defendant is entitled to the sale proceeds, less any costs associated with the sale and any storage fees owed to the sheriff or qualified licensed firearms dealer.

[HOUSE BILL 194](#), Federal Court Official/Concealed Carry, which is summarized in the March 5, 2021 Weekly Legislative Report, has passed the House and has been sent to the Senate for consideration.

[HOUSE BILL 341](#), Protection from Online Impersonation, which is summarized in the March 26, 2021 Weekly Legislative Report, has passed the House and has been sent to the Senate for consideration.

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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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