

North Carolina Sheriffs' Association

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Weekly Legislative Report

June 24, 2022

Everyone eagerly awaiting a State budget bill this week was disappointed. However, there was plenty of other attention-getting legislation to steal the spotlight from the budget. Two of those bills were a sports wagering bill, which did not receive a favorable vote from the House on Wednesday evening and a bill containing a House Medicaid plan that was discussed in a House Committee on Thursday after session. The sports wagering bill previously received a favorable vote in the Senate, as did a bill which would expand Medicaid.

On Thursday, as the House session drew to a close, Speaker of the House Tim Moore indicated that a budget bill would be forthcoming next week. He went so far as to say he believed budget negotiations between the House and Senate chambers were in their final hours. Speaker Moore also announced there would likely be votes every day next week in the House, including on Friday. He also did not rule out a Monday evening vote.

All of those who have any business needing to be wrapped up this session will probably be hastily attempting to get any last bit of legislation they need or want tightly wrapped into a bill being heard in a committee next week. It may be too late for some though. At least one Senate committee chairman announced this week that there may be no more meetings of his committee this Session.

The House and Senate adjourned on Thursday and will reconvene on Monday, June 27, 2022.

BILLS OF INTEREST

[SENATE BILL 916](#), Safeguard Fair Elections Act, would enact various new laws related to elections. Of interest to the criminal justice community, the bill would:

1. Make it a Class H felony for any person to threaten or attempt to threaten any person for (1) voting or attempting to vote; (2) voting or attempting to vote for or against a particular candidate; (3) registering to vote; (4) lawfully urging or aiding others to vote; or (5) exercising any lawful powers or duties as an election official.

The bill would define “threaten” as expressing an intention to harm another and would consider an offender to have threatened another person if the offender knew or should have reasonably known that their actions would produce that effect.

2. Make it a Class H felony for any person to (1) knowingly challenge another person's right to vote on fraudulent or spurious grounds; (2) engage in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voters from voting or to delay the orderly administration of an election; or (3) fraudulently advise another person that the person is not eligible to vote or not registered to vote when, in fact, that person is eligible to vote or registered to vote.
3. Make is a Class H felony for any employer, in paying its employees, to (1) enclose the employees' pay in envelopes upon which or in which the name of any candidate, political motto, device or argument containing threats appears, which is intended or calculated to influence the political opinions or actions of the employees; or (2) communicate in any way that the employees' pay or continued employment is conditioned on voting or not voting, or voting or not voting for a specific candidate.

Currently, threatening to discharge employees on account of votes is punishable as a Class 2 misdemeanor under State law.

4. Make it a Class A1 misdemeanor for any person to intimidate or coerce another person or to attempt the same for (1) voting or attempting to vote; (2) voting for or against a particular candidate; (3) lawfully urging or aiding others to vote; or (4) exercising any lawful powers or duties as an election official.

The bill would define "coercion" to mean compelling another person's conduct using force or threat of force (whether that force is physical or economic). In addition, the bill would define intimidation as willfully engaging in conduct without legal purpose that would cause a reasonable person to fear for the person's safety or the safety of their immediate family or close personal associates by placing the person in fear of death, bodily injury, or continued harassment.

An offender would be considered to have coerced or intimidated another person if the offender knew or should have reasonably known that their actions would produce that effect.

Currently, voter intimidation is illegal under several federal statutes and is a Class 2 misdemeanor under State law.

5. Provide that any person who intimidates, threatens, or coerces an election worker or attempts to do so with the intent to impede or interfere with the election worker's duties is liable in civil damages to the election worker for any injury or loss resulting from said conduct. The person would be subject to a fine of not more than \$100,000, and subject to imprisonment for up to five years.

The bill would define an "election worker" as any individual who is an election official, poll worker, or election volunteer performing duties in connection with an election. The bill would also grant immunity from liability to an election worker acting in good faith to prevent election interference or to preserve ballot access.

Currently, intimidation of election officials is punishable as a Class I felony under State law.

6. Make it a Class 1 misdemeanor, punishable by a fine of up to \$10,000, for any public official to perform or communicate the intention to perform an official act in which that official, without substantial evidence, refuses to certify the actual results or count of an election.

The bill would also provide that any public official who engages in the above-described conduct shall be considered to have resigned from office upon engaging in the conduct and for the nullification or voiding of any official act performed while engaging in the conduct.

Introduced by Senators Chaudhuri and Murdock, and assigned to the Committee on Rules and Operations of the Senate.

BILL STATUS

[HOUSE BILL 560](#), Public Safety Reform, which is summarized in the April 16, 2021 Weekly Legislative Report, has been amended in the Senate to replace several sections from the previous version of the bill with new provisions. The bill, as amended, would make the following changes of note to the criminal justice community:

1. The bill would allow the Secretary of the North Carolina Department of Public Safety to assign probation officers to perform additional duties during a declared state of emergency or natural disaster. The bill would specify that probation officers assigned to additional duties during a declared state of emergency would not have any additional powers of arrest or other authority beyond their current authority to supervise probationers. Currently, the jurisdiction of State probation officers is limited to the supervision and arrest of probationers they are tasked with supervising.
2. The bill would give the Post-Release Supervision and Parole Commission (Commission) authority to issue orders of temporary or conditional revocation of post-release supervision and parole subjecting supervisees and parolees to arrest by a law enforcement officer or a post-release supervision and parole officer. The bill would require these orders to be entered into the Criminal Justice Law Enforcement Automated Data System (CJLEADS). Currently, the Commission has the authority to simply revoke and terminate individuals on post-release supervision.
3. The bill would add emergency personnel officers to the definition of peer counselors. The bill would define “emergency personnel officers” as firefighting, search and rescue, or emergency medical service personnel, or any employee of any duly accredited State or local government agency possessing authority to enforce the criminal laws of the State who is (1) actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the

State; and (2) possesses the power of arrest by virtue of an oath administered under the authority of the State.

The bill also expands the “peer counselor” definition to include both active or retired law enforcement officers. Currently, the definition of peer counselors only includes law enforcement officers and civilian employees of a law enforcement agency.

4. The bill would increase the maximum set for compensation payable to a victim and all other claimants sustaining economic loss because of injury to or the death of the victim, from \$30,000 to \$45,000, in addition to allowable funeral, cremation, and burial expenses.

The bill would also increase the maximum for allowable funeral, cremation, and burial expenses under the Crime Victims Compensation Act from \$5,000 to \$10,000.

5. The bill would allow the North Carolina Department of Public Safety (DPS) to use up to \$500,000 in nonrecurring funds from the surplus funds in the Crime Victims Compensation Fund to establish and implement an online application for claimants.
6. The bill would increase the maximum on inmate pay for prisoners who are employees of Correction Enterprises to \$5.00 per day for assignments that require special skill or training. Currently, the pay limit is \$3.00 per day.

The bill, as amended, would allow the pay rate to be higher than the \$5.00 maximum if specifically approved by the Secretary of the Department of Adult Correction (Secretary). Currently, the statute does not provide the authority for the Secretary to increase the pay beyond the maximum.

7. The bill would also exempt wardens of adult correction facilities from the vast majority of the provisions in the North Carolina Human Resources Act and, instead, classify them as “public servants” under Chapter 138A of the General Statutes.
8. Finally, the bill would make technical corrections to replace the North Carolina Department of Public Safety (DPS) with the Department of Adult Correction in several statutes to reflect the upcoming January 1, 2023 split between DPS and the Division of Adult Correction and the reorganization of that division as a separate cabinet-level department.

[HOUSE BILL 674, Require DNA for Various Convictions](#), which is summarized in the April 30, 2021 Weekly Legislative Report, has been amended in the Senate to require that a DNA sample be obtained from any person who is convicted of or found not guilty by reason of insanity for committing assault on a female (by a male at least 18 years of age), assault on a child under the age of 12, or a violation of a valid domestic violence protective order.

Currently, DNA testing is required of persons who are convicted of or found not guilty by reason of insanity for all felonies and for various serious misdemeanor crimes (such as assaults on individuals with a disability) that are specified in the North Carolina General Statute governing mandatory DNA collection for certain crimes.

The bill, as amended, would expand the definition of “sexual assault” for purposes of the State Assistance Program for Victims of Rape and Sex Offenses (Program) to include statutory rape of a child by an adult, statutory sexual offense with a child by an adult, sexual activity by a substitute parent or custodian, sexual activity with a student, sexual battery, and sexual contact or penetration under pretext of medical treatment as these crimes are defined in the North Carolina General Statutes, as well as any other act defined to be sexual assault pursuant to the United States Code.

The United States Code defines sexual assault as “any nonconsensual sexual act or sexual contact proscribed by Federal, Tribal, or State law, including when the individual lacks capacity to consent.”

Finally, the bill, as amended, would make various changes to the Program. Among these changes, the bill would prohibit medical facilities and medical professionals that perform victims’ forensic medical examinations from billing the victim, the victim’s personal insurance, Medicaid, Medicare, or any other collateral source not only for the examination but also for other expenses, such as equipment, supplies, and facility fees.

Currently, the law prohibits billing these victims for the forensic medical examination but does not specify that associated costs are included within the definition of “forensic medical examination.”

[HOUSE BILL 807, Uniformed Heroes Voting Act](#), which is summarized in the May 7, 2021 Weekly Legislative Report, has passed the House and has been sent to the Senate for consideration. The bill would clarify that any law enforcement officer, first responder, correctional officer, or member of the military may wear their uniform when entering a voting place “seeking to vote.”

[HOUSE BILL 1008, Clarify Sex Offender Registration](#), which is summarized in the May 20, 2022 Weekly Legislative Report, has been amended in the Senate to add additional content to the bill and to rename the bill “Sex Offender/Probation/Victims Changes.” Of interest to the criminal justice community, the bill, as amended, would:

1. Allow the court to delegate the court’s authority to reduce a term of supervised probation to a probation officer by written order filed with the clerk of superior court. The probation officer would be authorized to reduce a term of supervised probation under this delegated authority if the officer finds that the offender (1) is currently in compliance with the terms of the offender’s probation; and (2) has made diligent progress regarding the offender’s probation.

“Diligent progress” would be defined under the amended bill as one or more of the following: (1) successful completion of a validated drug or mental health treatment program, evidence-based program, or other vocational or life skills program; (2) successful completion of at least 6 months active enrollment in a qualifying education program; or (3) successful completion of 6 months of employment, demonstrated by proof of wages.

A probation officer would not be authorized under this delegated authority to reduce an offender’s term of supervised probation by more than one-fourth of the amount of

time the offender was originally required to serve on supervised probation. The delegated authority given to the probation officer could be revoked at any time by written order of a judge.

2. Clarify that individuals under post-release supervision may be required to submit to warrantless searches of their person by a probation/parole officer for purposes reasonably related to and as a condition of their post-release supervision.
3. Clarify that individuals under post-release supervision may be required to submit to warrantless searches of their vehicle(s) and premises by a probation/parole officer while they are present for purposes reasonably related to their post-release supervision.
4. Expand certain rental protections, including early termination of rental agreements, for victims of attempted homicide or household members of victims of homicide where the rental property was the location of the crime. Currently, only victims of domestic violence under Chapter 50B of the North Carolina General Statutes, or of sexual assault or stalking are afforded these protections.

The bill would also allow a victim to terminate a rental agreement early by attaching to the required written notice documentation from a law enforcement agency, a court, or a federal agency indicating that the individual is a victim of attempted homicide or a household member of a victim of homicide.

Currently, a valid protective order, valid restraining order, or valid Address Confidentiality Program card must be attached to the written notice.

5. Create a privilege from disclosing the information that an agent of a victim assistance center acquires during the provision of services to a victim and that was necessary to enable the agent to render those services. Currently, there is no such privilege from disclosure under the law. The privilege created by the bill could be waived by the victim and it would also automatically terminate upon the death of the victim.

The bill would also allow a court to compel disclosure of the information if the court finds by a preponderance of the evidence that the information is (1) relevant and material to a civil proceeding or relevant, material, and exculpatory in a criminal offense proceeding; (2) not merely sought for character impeachment; and (3) not cumulative of other evidence.

The court would be required to order the records produced for the court under seal and would be required to review those records privately in chambers before entering an order to disclose only those portions of the records meeting the above three requirements.

Finally, the bill would also specify that the new privilege would not relieve any person of the duty to report child or disabled adult abuse or neglect as currently required under law.

6. Exempt all sheriffs' offices in the State from the formal and informal public contract bidding requirements contained in Article 8 of Chapter 143 of the North Carolina General Statutes for contracts for the purchase of food and food services supplies for the county detention facility. Currently, the exemption only extends to 35 counties, which are listed in the bill.
7. Allow the North Carolina Division of Motor Vehicles (DMV) to extend the term of an individual's limited driving privilege until the date set by the DMV to determine whether the individual meets the conditions for reinstatement of their driver's license. Currently, the DMV is not authorized to extend the term of a limited driving privilege.
8. Make it a Class 2 misdemeanor for an individual to impersonate a taxicab driver and a Class H felony for a person to impersonate a taxicab driver during the commission of a separate felony offense. Currently, persons are only prohibited from impersonating a "transportation network company," defined as "any person that uses an online-enabled application or platform to connect passengers with drivers who provide prearranged transportation services." The bill does not define "taxicab driver."

[SENATE BILL 38](#), [Small Business Owners/S Corp Fairness Act](#), which was filed on February 1, 2021, has been amended in the House to change the entire content of the bill and to rename the bill "Sports Wagering Amendments." The bill, as amended, would make various amendments to [Senate Bill 688](#), a bill currently pending in the House that would, if enacted, legalize sports wagering in the State for persons 21 years of age and older who are in compliance with certain conditions established in the bill.

The bill would provide that if [Senate Bill 688](#) is enacted into law, any sports wagering (such as betting on amateur sports and professional sports) conducted lawfully under the terms of that bill would not constitute a crime under Article 37 of Chapter 14 of the North Carolina General Statutes, "Lotteries, Gaming, Bingo and Raffles."

The bill would also allow transmission or reception of interstate or intrastate simulcasting of greyhound races for commercial purposes in this State if authorized under [Senate Bill 688](#), provided that bill is enacted into law.

[SENATE BILL 762](#), [North Carolina Farm Act of 2022](#), which is summarized in the May 27, 2022 Weekly Legislative Report, has been amended in the House to remove from the bill all content related to marijuana, hemp and hemp products. Therefore, the bill would no longer change the definition of marijuana in the North Carolina Controlled Substances Act to exclude hemp and hemp products.

Currently, "industrial hemp" and "hemp products" are defined in our General Statutes under the North Carolina Industrial Hemp Pilot Program (which expired December 31, 2021) that was governed by the North Carolina Industrial Hemp Commission. These terms are set to expire on June 30, 2022. Because of this, hemp and hemp products will be unlawful under State law on June 30, 2022, unless further action by this year's General Assembly changes the current law.

[SENATE BILL 766](#), Organized Retail Theft, which is summarized in the June 3, 2022 Weekly Legislative Report, has passed the House with amendment and has been sent back to the Senate for consideration of the House amendment.

[SENATE BILL 909](#), Lexington UDO/Jail Com. Changes, has passed the Senate with amendment and has been sent to the House for consideration. The bill, as amended, would require the Lexington City Council to appoint one City Council member and one staff member to the Davidson County Jail Committee and would allow these members to participate, discuss, and vote on matters related to the façade, exterior, sidewalks, streetscapes, and plantings of the jail. The bill would not allow these members to participate, discuss, or vote on building programming or on the operation of the jail by the sheriff.

This bill would only apply to the City of Lexington. Since the bill applies to fewer than 15 counties, it is considered a local bill. Local bills do not require the signature of the Governor and become law if approved by the General Assembly.

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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