
Sheriffs' Quick Reference Guide to Obscure Statutes



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March 2022

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1. Introduction

The Sheriff's Quick Reference Guide to Obscure Statutes is just that -- a quick and easy reference for Sheriffs to identify obscure and little known or rarely utilized statutes pertaining to their duties.

Many of these statutes have origins in the nineteenth century and some have not been amended from their original language. As you review a statute, if you have questions, please direct your questions to your agency legal counsel or the North Carolina Sheriffs' Association legal division.

Users should bear in mind that this publication is valuable only as a reference tool. It is not intended to serve as a substitute for a careful review of the actual statutes themselves, nor as a substitute for consultation with your own legal counsel.

2. Civil Procedure

2.1 Tax Deficiency Sales

2.1.1 Failure of Sheriff to Execute Order from Secretary of Revenue

If any sheriff of this State shall willfully fail, refuse, or neglect to execute any order directed to him by the Secretary of Revenue and within the time provided in this Subchapter, the official bond of such sheriff shall be liable for the tax, penalty, interest, and cost due by the taxpayer. G.S. § 105-245.

2.1.2 Sheriff to Levy Upon and Sell Property of Delinquent Taxpayer Upon Order of Commissioner of Agriculture

Chapter 106 of the North Carolina General Statutes contains a section regarding the imposition and collection of taxes, including a provision for the attachment, garnishment, and sale of a delinquent taxpayer's property.

G.S. § 106-9.4(a) provides, in relevant part, that "if any fee or tax imposed by this Chapter, or any other fee or tax levied by the State and payable to the Commissioner of Agriculture or the Department of Agriculture and Consumer Services, or any portion of such fee or tax, be not paid within 30 days after it becomes due and payable, and after it has been assessed, the Commissioner of Agriculture shall issue an order under his hand and official seal, directed to the sheriff of any county of the State commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the Commissioner of Agriculture the money collected by virtue thereof within a time to be therein specified, not less than 60 days from the date of the order.

The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner."

G.S. § 106-9.4(b) further authorizes the Commissioner of Agriculture to garnish intangible property belonging to or becoming due to a delinquent taxpayer. Such intangible property includes

bank deposits, wages, rents, salaries, property incapable of manual levy and deliver, and any property entitled to recovery in a lawsuit.

To garnish such intangible property, the Commissioner must serve on the taxpayer and the person owing or having in his control such intangible property a notice as prescribed by G.S. § 106-9.4(b). The notice may be served by an employee of the Commissioner or by any officer with the authority to serve summonses. Thus, a member of the sheriff's office may be called upon to perform this service.

2.1.3 Sheriff to File Memorandum of Delinquent Land Registration Tax; Liability for Failure to do so in Time; Tax Deficiency Sale

2.1.3.1 Notice of Delinquent Taxes Filed

It shall be the duty of the tax collector of each taxing unit, not later than June 30 following the date the taxes became delinquent, to file an exact memorandum of the delinquency, if any, of any registered land for the nonpayment of the taxes or assessments thereon, including interest, in the office of the register of deeds for registration; and if such officer fails to perform such duty, and there shall be subsequent to such day a transfer of the land as hereinbefore provided, the grantee shall acquire a good title free from any lien for such taxes and assessments, and the collector and his sureties shall be liable for the payment of the taxes and assessments with the interest thereon.

The register of deeds shall enter the notice of delinquency on the record copy of the certificate of title, and the tax lien shall be valid against the registered estate from the time it is noted on the record copy. The register of deeds shall enter the notice of cancellation of the tax lien on the record copy of the certificate of title upon presentation of satisfactory evidence of payment. G.S. § 43-46.

2.1.3.2 Foreclosure of Tax Lien

The lien for ad valorem taxes may be foreclosed and the property sold pursuant to G.S. § 105- 375. A note of the sale under this section shall be duly registered, and a certificate shall be entered, and an owner's certificate issued in favor of the purchaser in whom title shall be thereby vested as registered owner, in accordance with the provisions of this Chapter. Nothing in this section shall be so construed as to affect or divert the title of a tenant in reversion or remainder to any real estate which has been returned delinquent and sold on account of the default of the tenant for life in paying the taxes or assessments thereon. G.S. § 43-48.

2.2 Executions and Collections

2.2.1 Sheriff to Levy Upon Execution Issued by Industrial Commission

The North Carolina Industrial Commission is effectively a court for the purpose of hearing and determining tort claims against departments, institutions, and agencies of the State. G.S. § 143-291(a).

The sheriff should be aware that the Industrial Commission, when acting as a tribunal, is authorized to order costs to be taxed against the losing party, just as costs are taxed in the General Court of Justice. G.S. § 143-291.1(a).

While the State department, institutions, and agencies may evidently not be compelled to pay costs taxed against them, other parties must comply with the Commission's order to pay costs.

If a party fails to pay the costs when required to do so, the Commission will issue an execution for the costs, with a bill of such costs attached.

It is the sheriff's duty to levy upon this execution in the manner provided in North Carolina General Statutes. G.S. § 143-291.2.

2.2.2 Sheriff to Serve Executions and Make Collections Under State Employment Security Law; Liability on Official Bond

Chapter 96 of the North Carolina General Statutes finds it in the best interest of the public to establish unemployment reserves to be set aside for individuals who are involuntarily unemployed. The Division of Employment Security (DES) is charged with administering this law.

2.2.2.1 Contributions; Default; Collection

When an employer defaults in the payment of any required contribution, or penalties and interest thereon, the Commission will commence a civil action to recover the payments due under G.S. § 96-10.

2.2.2.2 Certificate of Delinquency

A procedure also exists whereby the Commission may certify to the superior court of the county in which the delinquent resides, with additional copies provided for counties in which the Commission believes he owns property, that the employer's required payment was not satisfied within 30 days of its due date. G.S. § 96-10.

Upon receiving this certificate, the clerk of superior court will immediately docket the certificate and index it on the cross index of judgment. The certificate, from the date of its docketing, will constitute a preferred lien on any property owned by the delinquent employer in the above referenced county or counties. This lien will have the same force and effect as a judgment rendered by the superior court.

2.2.2.3 Sheriff's Duties

The Commissioner will forward a copy of the certificate of delinquency to the sheriff or sheriffs of the appropriate counties, or to an agent of the Commission. Upon receipt, the certificate will have the force and effect of an execution issued by the clerk of superior court upon a duly docketed judgment of the superior court.

If the certificate or execution is returned unsatisfied, the Commission has the authority to issue subsequent process. A subsequent certificate, like the first, will have the same force and effect as if issued upon a judgment of the superior court. G.S. § 96-10(b)(1).

No court or judge may grant an injunction to restrain the sale of property subject to execution under this statute. G.S. § 96.10(f).

A sheriff of any county may circumvent the Commission's power to authorize its own agent to serve the above-mentioned executions by filing a written notice with the Commission. Upon doing so, the sheriff

“shall have the sole and exclusive right to serve all executions and make all collections mentioned in [G.S. § 96-10(b)].” G.S. § 96-10(b)(1). The execution, together with all payments collected, will be returned to the Commission upon satisfaction.

2.2.2.4 Sheriff’s Liability

If a sheriff willfully fails or neglects to execute an order when directed to do so by the Commission, the sheriff’s official bond will be liable for the payments due from the delinquent taxpayer. G.S. § 96- 10(b)(1).

2.2.2.5 Overpaid Benefits

Persons who obtain increased unemployment benefits by false representation, deception, and the like are penalized. The Commission is authorized to collect such overpaid benefits in various ways. G.S. § 96-18(g).

2.2.2.6 Certificate of Overpayment

G.S. § 96-18(g)(3)(b) sets forth a procedure whereby the Commission can certify to the superior court where the overpaid claimant resides or has property, with additional copies provided for counties in which the Commission believes he owns property, that the claimant has not repaid the amount due within 30 days of its due date.

2.2.2.7 Sheriff’s Duties

Once docketed, the certificate becomes a preferred lien on the claimant’s property, with the same force and effect of a judgment rendered by the superior court. From this point forward, this procedure for collection tracks the previously discussed law regarding the collection of contributions from delinquent employers. See G.S. § 96-10. The sheriff’s duties, authority and liability as set forth in that statute are identical to those set forth in this statute for collecting overpayments. G.S. § 96-18(g)(3)(b).

2.2.3 Sheriff to Execute on Property of Sureties Who Join Stay of Execution; Dissenting Sureties Absolved of Liability

When there are two or more sureties for the performance of a contract, and a judgment is obtained against the principal debtor, such principal debtor may seek to stay the execution by taking certain legal measures to delay the immediate enforcement of the judgment (an appeal, for example). If any surety opposes the stay of execution, such surety will be absolved of all liability to the surety or sureties who joined in the stay of execution, by entering his dissent to the stay with the judge or clerk.

Should the sheriff later execute on the judgment, he shall derive the proceeds for payment of the judgment out of the principal’s property and the property of the surety or sureties who joined the stay of execution, before resorting to the property of any dissenting surety. G.S. § 26-6.

2.2.4 Sheriff to Pay Money Collected on Execution

Pursuant to G.S. § 162-18, in all cases where a sheriff has collected money upon an execution placed in his hands, if there is no bona fide contest over the application thereof, the sheriff shall immediately pay the same into the office of the clerk of the court from which the execution issued.

2.3 Service of Process

2.3.1 Sheriff to Serve Process on Commissioner of Insurance as Alternative to Rule 4

Chapter 58 of the North Carolina General Statutes, Articles 1 through 64, contains a voluminous set of technical provisions which comprise the “Insurance Law” of North Carolina. The Department of Insurance is charged with execution of the insurance laws.

The sheriff should be aware that this law authorizes various classifications of insurance companies to become licensed or admitted to conduct business in North Carolina. On occasion, service of legal process will be required upon such companies.

While Rule 4 of the Rules of Civil Procedure sets forth the usual procedure for service of legal process, sheriffs should be aware that the “Insurance Law” provides an alternative to that procedure.

Namely, G.S. § 58-16-30 provides, “[a]s an alternative to service of legal process under . . . Rule 4 of the Rules of Civil Procedure, service of such process upon any company licensed or admitted and authorized to do business in this State under [the Insurance Law] may be made by the sheriff delivering and leaving a copy of such process in the office of the Commissioner [of Insurance]...”

2.3.2 Sheriff to Process Necessary for Establishing a Right to a Public Office

Article 41 of the North Carolina General Statutes, Chapter 1, provides a civil cause of action for establishing a right to public office.

Such action may be brought by the attorney general, upon the complaint of a private party or upon his own information, when “a person usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this State, or any office in a corporation created under authority of this State” G.S. § 1-515(1).

2.3.2.1 Judgement by Default

After a plaintiff files a complaint alleging facts sufficient to entitle him to the office, he may move the judge to require the defendant to give an undertaking as provided in G.S. § 1-523. The judge will require the defendant to pay the undertaking within 10 days. If the defendant fails to so pay, the judge will render judgment by default in favor of the plaintiff for recovery of the office.

2.3.2.2 Sheriff's Duty

Sheriffs should be aware that upon filing the judgment for recovery of office with the clerk, “it is his [the clerk’s] duty to issue and the sheriff’s duty to serve the necessary process to put the plaintiff into possession of the office.” G.S. § 1-525.

2.3.2.3 Judgement on the Merits

If judgement is rendered for the plaintiff other than by default (as described above), the court will issue the necessary process to carry the judgment into effect. G.S. § 1-528.

While this statute does not affirmatively place upon the sheriff any duty regarding the service of such process, it is nevertheless likely that such process would be directed to the sheriff or other law enforcement official, with adequate instructions for the proper service or execution thereof.

2.3.2.4 When Sheriff a Party

Since the sheriff's office is a public office within the scope of Article 41, a sheriff could become a party to an action to establish a right to an office. General Statutes provide elsewhere that where the sheriff is a party to an action, the coroner, or other officer specified in the statutes, will serve process and carry out other duties otherwise the responsibility of the sheriff.

2.3.3 Sheriff to Serve Process Related to Incompetency Proceedings, Guardianship, Without Demanding Advance Payment of Fees

Chapter 35A of the North Carolina General Statutes sets forth the exclusive procedure for adjudicating a person to be an incompetent.

Incompetency proceedings begin with the filing of a petition with the clerk of superior court. Venue for such proceedings shall be in the county where the respondent (the person alleged to be incompetent) resides or is domiciled or is an in-patient in a treatment facility. If the county of residence or domicile cannot be determined, venue shall be in the county where the respondent is present. G.S. § 35A-1103.

Any person, corporation, or disinterested public agent may file with the clerk, at the time of filing a petition for adjudication of incompetence or subsequent to such filing, an application for the appointment of a guardian for an incompetent person. G.S. § 35A-1210.

After receiving the petition, the clerk shall issue a notice containing the date, time, and place for a hearing on the petition. G.S. § 35A-1108. Copies of the petition and notice must be personally served on the respondent pursuant to Rule 4 of the Rules of Civil Procedure. A sheriff who serves the petition and notice shall do so without demanding his fees in advance. G.S. § 35A-1109.

When the application for appointment of a guardian is joined with a petition for adjudication of incompetency, the application must be served with, and in the same manner as, the petition for incompetency. G.S. § 35A-1211. Thus, a sheriff who serves such application, petition, and notice, will do so without demanding his fees in advance.

Any person or corporation, including a state or local human resource agency, may apply to the clerk for appointment of a guardian of the estate for any minor or for the appointment of a guardian of the person or general guardian for any minor who has no natural guardian. G.S. § 35A-1221.

A copy of such application, along with notice of hearing must be served on each parent, guardian and legal guardian of an applicant, as well as the minor himself. G.S. § 35A-1222. Such service shall be in accordance with G.S. § 1A-1, Rule 4 of the Rules of Civil Procedure, unless otherwise directed by the clerk. When the sheriff serves the application and notice, he must do so without demanding his fees in advance.

2.3.4 Sheriff to Serve Order of Tender, Deliver Property

Black's Law Dictionary defines a "tender" as "an unconditional offer of money or performance to satisfy a debt or obligation." Black's Law Dictionary, 10th Ed. (2014). Tender may also refer to an offer of property other than money in satisfaction of a claim or demand.

The North Carolina General Statutes contain a provision regarding one manner of tender, that of an order of tender issued by the clerk of court. This statute should be of interest to the sheriff, as it requires the sheriff to serve the order, tender the property in question, and to make his return thereon.

Pursuant to G.S. § 1-543.1, "in all matters in which it is proper or necessary to make or serve a tender, the clerk of the superior court...shall, upon request of the tendering party, direct the sheriff...to serve an order of tender, together with the property to be tendered, upon the party...upon whom said tender is to be made."

If the above referenced property is unable to be manually tendered (such as real estate, a submarine, etc.) the order of tender will so indicate, and service of the order will have the same effect as if the property was manually tendered.

The sheriff must make his return on the order to the clerk who issued it. The information required on the return is specified in the statute.

2.3.5 Sheriff Shall Not Serve or Execute Process in Action to Which He is a Party

Sheriffs, like other persons, may prosecute and defend claims in civil cases, and may be prosecuted in criminal cases for wrongdoing. When the sheriff is placed in the position of being a plaintiff or a defendant in a judicial proceeding, he is said to be a "party" to the action, in the strict sense of the word.

Whenever the sheriff is required to serve or execute any summons, order, or judgment regarding an action to which he is a party, the sheriff's duties in this respect will be performed by either the county coroner, the clerk of court, or a special coroner, depending on the circumstances.

In counties where the coroner's office is vacant or abolished, the clerk of court, or his designee, will serve or execute any process related to an action to which the sheriff is a party. G.S. § 162-16.

In counties having a coroner, the coroner will be responsible for serving process related to an action to which the sheriff is a party. G.S. § 162-16.

Interestingly, G.S. § 152-8 provides that if the coroner is a party to a judicial proceeding to which the sheriff is also a party, then "the clerk of court from which such process issued shall appoint some suitable person to act as special coroner to execute such process."

2.3.6 Sheriff Who Leaves Office has Duty to Deliver to his Successor Unexecuted Process Still Remaining in his Possession

G.S. § 162-17 provides that it shall be the duty of any sheriff who shall have received a precept (generally considered to be a writ, warrant, or order), and shall go out of office before the return

day thereof, without having executed the same, to deliver same to the succeeding sheriff with sufficient time allowed for it to be executed by him.

2.3.7 Unlawful Withholding of Information by Sheriff's Office

When service of subpoena or other court process is sought upon any law enforcement officer of the State, or any political subdivision of the State, pursuant to the Rules of Civil Procedure (G.S. § 1A-1, Rule 5; Rule 45) or any other statute, it is unlawful for any officer or employee of the agency by whom the law enforcement officer sought to be served is employed to willfully withhold the address or phone number of the law enforcement officer sought to be served. G.S. § 1-589.1.

2.4 Civil Arrest

2.4.1 Witness Exempt from Civil Arrest

G.S. § 8-64 provides every witness shall be exempt from arrest in civil actions or special proceedings during his attendance at any court, or before a commissioner, arbitrator, referee, or other person authorized to command the attendance of such witness, and during the time such witness is going to and returning from the place of such attendance, allowing one day for every thirty miles such witness has to travel to and from his place of residence.

Interestingly, this exemption from civil arrest has been held in previous cases to apply to the service of process as well, in which event such service is voidable on motion. *Dell School v. Pierce*, 163 N.C. 424 (1913); *Cooper v. Wyman*, 122 N.C. 784 (1898).

2.4.2 Jurors Exempt from Civil Arrest

A juror may not be arrested under civil process by the sheriff or other officer during the juror's attendance at the district or superior court, or while going to or returning from any session of the district or superior court. Any such arrest is invalid, and the arrested juror will be discharged on motion. G.S. § 9-16.

2.4.3 Persons Entering State in Obedience to Summons Exempt from Arrest or Service of Process

Furthermore, G.S. § 15A-814 provides that if a person comes into this State in obedience to a summons directing him to attend and testify in this State he shall not, while in this State pursuant to such summons, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

If a person passes through this State while going to another state in obedience to a summons to attend and testify in that state, or while returning therefrom, he shall not while so passing through this State be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

The policy behind this statute is to promote the testimony of persons who, but for the exemption conferred by this enactment, would refuse to comply with the court's summons for fear of being arrested or served with process, concerning matters arising before the person's entrance in the State in compliance with such summons.

2.5 Criminal Violations

2.5.1 Concealing Property to Hinder Enforcement of Lien, Security Interest

Any person who, with intent to prevent or hinder the enforcement of a lien or security interest after a judgment or order has been issued for possession for that personal property subject to said lien or security interest, either refuses to surrender such personal property in his possession to a law enforcement officer, or removes, or exchanges, or secretes such personal property, shall be guilty of a Class 2 misdemeanor.

G.S. § 14-115.

2.5.2 Failing to Return Process, Making False Return, Misdemeanors

If any sheriff, deputy or other officer...willfully refuses to return any precept (generally considered to be a writ, warrant, or order), notice or process, to him tendered or delivered, which it is his duty to execute, or willfully makes a false return thereon, the person who willfully refused to make the return or willfully made the false return shall be guilty of a Class 1 misdemeanor. G.S. § 14-242.

3. Criminal Procedure

3.1 Arrest and Criminal Process

3.1.1 Sheriffs Shall No Longer Issue Certain Criminal Process

The district court division of the General Court of Justice, consisting of district court districts throughout the State, was created by the General Assembly in 1965 legislation.

The powers of mayors, law enforcement officers, and other persons not officers of the General Court of Justice to issue arrest, search, or peace warrants, or to set bail, is terminated in any district court district upon establishment of a district court therein. G.S. § 7A-274.

Since there are currently no district court districts without an established district court, non-judicial officers, including sheriffs, who were once able to issue certain criminal process, as referenced above, can no longer do so.

3.1.2 Persons Entering State in Obedience to Summons Exempt from Arrest or Service of Process

G.S. § 15A-814 provides that if a person comes into this State in obedience to a summons directing him to attend and testify in this State he shall not, while in this State pursuant to such summons, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

If a person passes through this State while going to another state in obedience to a summons to attend and testify in that state, or while returning therefrom, he shall not while so passing through this State be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

The policy behind this statute is to promote the testimony of persons who, but for the exemption conferred by this enactment, would refuse to comply with the court's summons for fear of being

arrested or served with process concerning matters which arose before the person's entrance in the State in compliance with such summons.

3.1.3 Sheriff Entitled to Accept Rewards

G.S. § 15-54 provides that any sheriff or other officer who shall make an arrest of any person charged with crime for whose apprehension a reward has been offered is entitled to such reward and may sue for and recover the same in any court of this State having jurisdiction. The only exception to this rule is that a sheriff or officer/deputy shall not be paid a reward when the arrest is for a crime committed in the sheriff's or officer's/deputy's own county.

3.2 Disposition of Contraband

3.2.1 Disposition of Confiscated Weapons; Sheriff May No Longer Sell

G.S. § 14-269.1 provides for the following dispositions of confiscated deadly weapons, including firearms:

- a. The court may order the weapon returned to its rightful owner, other than the defendant, who has satisfied the court that he was unlawfully deprived of such weapon without his consent.
- b. The court may order the weapon turned over to the sheriff, for destruction, but only if the firearm does not have a legible, unique identification number or it is unsafe to use because of wear, damage, age, or modification. The sheriff must maintain a record of such destruction.
- c. By ordering the weapon turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order disposition of the firearm pursuant to this subdivision only upon the written request of the head or chief of the law enforcement agency or a designee of the head or chief of the law enforcement agency, and only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. § 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision.
- d. The court may order the weapon turned over to the North Carolina State Crime Lab for official use.
- e. The court may order the weapon turned over to the North Carolina Justice Academy for official use.

See form AOC-CR-218, Side 2.

3.2.2 Disposition of firearms in circumstances not covered by G.S. § 14-269.1

Under this subsection, if a district attorney determines that the confiscated firearm is no longer necessary or useful as evidence in a criminal trial, he must apply to the court for an order of disposition. The district attorney will first give notice to the defendant and all other parties known or believed to have a possessory interest in such firearm.

The court, after hearing the matter, may order the disposition of the firearm in any of the following ways:

- a. The court may order that the firearm be returned to its rightful owner, other than the defendant, if the court determines the rightful owner is not prohibited from possessing a firearm and the rightful owner was unlawfully deprived or was not aware of defendant's intention to use the firearm unlawfully.
- b. The court may order the firearm returned to the defendant if the court finds the defendant is the rightful owner and not otherwise ineligible to possess the firearm.
- c. The court may order that the firearm be turned over to the sheriff for destruction. The sheriff must retain a record of such destruction.
- d. By ordering the firearm turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only upon the written request of the head or chief of the law enforcement agency and only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. § 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision. G.S. § 11-11.1(b1).

See Form AOC-CR-218, Side 1.

This statute does not apply to seizures under G.S. § 113-137 for violations of State wildlife or hunting enforcement provisions (Article 22 of Chapter 113) or any local wildlife or hunting ordinance.

3.2.3 Head of Law Enforcement Agency May Sell Vehicles, Aircraft, Vessels Seized Under Controlled Substances Act

G.S. § 90-112 provides an exhaustive list of the property subject to forfeiture under the "Controlled Substances Act" and sets forth the manner in which property subject to forfeiture may be seized. G.S. § 90-112(a) and (b).

Property confiscated under this statute may be disposed of or used in several possible ways. For instance, the law enforcement agency having custody of the property may retain it for official use; sell it, if it is not harmful to the public and it is not required by law to be destroyed; or, the agency may transfer forfeited conveyances to the North Carolina Department of Justice.

The head of a law enforcement agency may sell forfeited conveyances as surplus property if such conveyances cannot be put to official use by the agency. If a conveyance has been modified to increase speed, then the conveyance shall only be used for official duties and shall not be sold or transferred. G.S. § 90-112(d)(4). In that regard, G.S. § 90-112(d)(4) provides:

The sheriff should be aware that, notwithstanding the provisions for the disposal of seized property under G.S. § 90-112(d)(1) through (4), a law enforcement agency having custody of money forfeited under this statute must pay such money to the proper official authorized to receive it for use in the school fund of the county in which the money was seized.

3.3 Custody of Prisoners

3.3.1 Care and Custody of County Prisoners; Administration of County Jail

Chapter 162 (“Sheriffs”) provides several noteworthy statutes related to the care and custody of county prisoners, as well as to the administration of county confinement facilities.

3.3.1.1 Sheriff to Prevent Person Entering Jail to Kill or Injure

When the sheriff of any county has good reason to believe that the jail of his county is in danger of being broken or entered for the purpose of killing or injuring a prisoner placed by the law in his custody, it shall be his duty at once to call on the commissioners of the county, or some one of them, for a sufficient guard for the jail, and in such case, if the commissioner or commissioners fail to authorize the employment of necessary guards to protect the jail, and by reason of such failure the jail is entered, and a prisoner killed, the county in whose jail the prisoner is confined shall be responsible in damages, to be recovered by the personal representatives of the prisoner thus killed, by action begun and prosecuted before the superior court of any county in this State. G.S. § 162-23.

3.3.1.2 Prisoner May Furnish Necessaries

With the sheriff's approval, prisoners shall be allowed to purchase and procure such necessaries, in addition to the diet furnished by the jailer, as they may think proper. G.S. § 162-33.

3.3.1.3 Injury to Prisoner; Treble Damages; Misdemeanor

If the keeper of a jail shall do, or cause to be done, any wrong or injury to the prisoners committed to his custody, contrary to law, he shall not only pay treble damages to the person injured but shall be guilty of a Class 1 misdemeanor. G.S. § 162-55.

3.3.2 Secret Listening to Prisoner and Attorney

G.S. § 14-227.1 provides:

- a. It shall be unlawful for any person willfully to overhear, or procure any other person to overhear, or attempt to overhear any spoken words between a person who is in the physical custody of a law-enforcement agency or other public agency and such person's attorney, by using any electronic amplifying, transmitting, or recording device, or by any similar or other mechanical or electrical device or arrangement, without the consent or knowledge of all persons engaging in the conversation.

- b. No evidence procured in violation of this section shall be admissible over objection against any person participating in such conference in any court in this State.

3.3.3 Allowing Prisoner to Escape; District Attorney Shall Prosecute Officer

G.S. § 14-239 and G.S. § 14-240, which should be read together, places the duty on the district attorney to prosecute sheriffs and jailers who allow prisoners to escape.

G.S. § 14-239, Allowing Prisoners to Escape, provides:

If any sheriff, deputy sheriff, jailer, or other custodial personnel shall willfully or wantonly allow the escape of any person committed to that person's custody who is (i) a person charged with a crime, (ii) a person sentenced by the court upon conviction of any offense, or (iii) committed to the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, that person shall be guilty of a Class 1 misdemeanor. No prosecution shall be brought against any such officer pursuant to this section by reason of a prisoner being allowed to participate pursuant to court order in any work release, work study, community service, or other lawful program, or by reason of any such prisoner failing to return from participation in any such program.

G.S. § 14-240, District Attorney to Prosecute Officers for Escape, provides:

It shall be the duty of district attorneys, when they shall be informed or have knowledge of any felon, or person otherwise charged with any crime or offense against the State, having within their respective districts escaped out of custody of any sheriff, deputy sheriff, coroner, or jailer, to take the necessary measures to prosecute such sheriff or other officer so offending.

4. Courtroom Procedure

4.1 Sheriff to Adjourn Court When Judge Not Present

If the judge of superior court is not present to hold any session of court at the scheduled time, he may order the sheriff to adjourn the court (postpone the court's activities) to another specified time during the session. If the sheriff fails to hear from the judge regarding this matter, it is the sheriff's duty to adjourn the court from day to day, unless he is notified earlier that the judge will not be present to hold the session. G.S. § 7A-96.

4.2 Law Enforcement Officer Summoned as Witness Entitled to Reimbursement for Travel Expenses

Under G.S. § 7A-314, a law enforcement officer who qualifies as a witness in certain proceedings is entitled to receive reimbursement for travel expenses as follows:

1. If his residence is outside the county of appearance but within 75 miles of the place of appearance, he will be entitled to daily mileage reimbursement at the rate authorized for State employees; or

2. If his residence is outside the county of appearance but more than 75 miles from the place of appearance, he will be entitled to mileage reimbursement at the rate currently authorized for State employees for one round trip. If the witness is required to appear more than one day, he is entitled to reimbursement for meals and lodging reimbursement as authorized for State employees, instead of daily mileage.

4.3 Sheriff to Summon Supplemental Jurors

After receiving the list of prospective jurors from the register of deeds, it is the duty of the sheriff to summon jurors. G.S. § 9-10.

The summons must be served either by personal delivery, by leaving a copy of the summons at the juror's residence, by telephone, or by first class mail. G.S. § 9-10.

If necessary, to ensure a speedy and orderly trial, the court may order the sheriff to summon additional jurors, without using the jury list, to supplement the original panel of jurors. G.S. § 9-11. When so ordered, the sheriff has a duty to select persons of "intelligence, courage, and good moral character," using his best judgment. *State v. White*, 6 N.C. App. 425 (1969).

While the sheriff will have some discretion in whom he chooses to summon as a supplemental juror, he must act with "entire impartiality." *Id.*

If the judge decides that it would be inappropriate for the sheriff to summon supplemental jurors due to a direct or indirect interest the sheriff may have in the outcome of the action to be tried, the judge may select another suitable person instead of the sheriff to summon supplemental jurors. G.S. § 9-11(a).

The mere fact that deputy sheriff testifies in the case, or that a defendant feels that the sheriff is harassing him, is insufficient to disqualify the sheriff from selecting the extra jurors. *State v. Yancey*, 58 N.C. App. 52 (1982).

4.4 Prisoner Not to be Tried in Prison Uniform; Sheriff Guilty of Misdemeanor Violation

G.S. § 15-176 is an important enactment of special relevance to the sheriff as keeper of the county jail. This statute, which prohibits a prisoner from being compelled to attend trial in prison clothing or with shaved head, provides:

It shall be unlawful for any sheriff, jailer or other officer to require any person imprisoned in jail to appear in any court for trial dressed in the uniform or dress of a prisoner or convict, or in any uniform or apparel other than ordinary civilian's dress, or with shaven or clipped head. And no person charged with a criminal offense shall be tried in any court while dressed in the uniform or dress of a prisoner or convict, or in any uniform or apparel other than ordinary civilian's dress, or with head shaven or clipped while such person was serving a term of imprisonment for the commission of a crime. G.S. § 15-176.

A sheriff, jailer or other officer violating this statute is guilty of a Class 1 misdemeanor.

It is significant that this statute applies to prisoners appearing in court "for trial." As such, it would seem that the prisoner could still be required to appear in prison clothing, etc., at probable cause

hearings, first appearances, and other such proceedings occurring before or after “trial.”

An interesting question to consider is whether this enactment has meaningful applicability in “bench trials” (trials without a jury, in which the judge acts as both trier of fact and law), since the judge presumably will not be negatively influenced by the appearance of a defendant outfitted in prison dress, as might a common jury.

Note: The North Carolina Court of Appeals in *State v. Johnson*, 128 N.C. App. 361 (N.C. Ct. App. 1998), held that wearing required jail identification wristband to trial was not a violation of this statute.

4.5 Sheriff Authorized to Release Prisoner When Civil Contempt No Longer Continues

When a court orders a person held in civil contempt, the order must specify how the person may purge himself of the contempt. G.S. § 5A-22.

The sheriff or other officer having custody of a person held in civil contempt is authorized to release the person without further order of the court upon finding compliance with those specifications. G.S. § 5A-22(a).

Otherwise, the contemnor may seek his own release upon motion directed to the judge who found him in civil contempt, or by other lawful procedures. G.S. § 5A-22(b).

4.6 Sheriff’s Inability to Arrest Juror Under Civil Process

A juror may not be arrested under civil process by the sheriff or other officer during the juror’s attendance at the district or superior court, or while going to or returning from any session of the district or superior court. Any such arrest is invalid, and the arrested juror will be discharged on motion. G.S. § 9-16.

5. Criminal Law

5.1 Sheriff to Take “Appropriate Action” in Response to Report of Involuntary Servitude Arising under Labor Contract

G.S. § 14-41.11 thru G.S. § 14-43.20 contain provisions pertaining to the enforcement of various human trafficking offenses.

One means by which an offender may violate the human trafficking law is by holding another person in “involuntary servitude.” Pursuant to G.S. § 14-43.10(a)(3), involuntary servitude means the performance of labor, whether or not for compensation, or whether or not for the satisfaction of a debt by deception, coercion, or intimidation using violence or the threat of violence or by any other means of coercion or intimidation.

Violations of the involuntary servitude law may arise during the performance of a labor contract. Should a violation of the involuntary servitude law come to the attention of a party to such labor contract, said party shall immediately report the violation “to the sheriff of the county in which the violation is alleged to have occurred.”

5.2 Gambling Law Enforcement

Sheriffs should consult their designated agency legal counsel or county attorney with questions concerning gambling and lottery related law enforcement issues.

5.3 Bingo Law: Regulations, Violations

G.S. § 14-309.5 and those statutes that follow contain detailed and elaborate provisions related to the regulation of bingo operations and to the enforcement of related laws.

While the sheriff's regulatory function is minimal, he should nevertheless be familiar with the general licensing scheme requirements, as violations of such requirements must be dealt with through appropriate law enforcement action.

5.3.1 Criminal Violations

Pursuant to G.S. § 14-309.5, under this regulatory scheme, certain "exempt organizations" as defined in G.S. § 14-309.6(b) may lawfully conduct bingo games, so long as they do so within the bounds provided in the statutes. Any violation of this provision is a misdemeanor.

More serious felony punishment is permissible under G.S. § 14-309.5(b) for any person who:

- a. Operates a bingo game without a license, or while his license is revoked or suspended; or
- b. Willfully misuses or misapplies moneys received in connection with any bingo game; or
- c. Contracts with or provides consulting services to any licensee.

It is lawful to advertise a bingo game in accordance with G.S. § 14-309.5 through G.S. § 14-309.15.

5.3.2 Licensing

Pursuant to G.S. § 14-309.7(a), an exempt organization may not operate a bingo game at a location without a license.

Application for such license must be made to the Alcohol Law Enforcement Division of the Department of Public Safety (ALE). G.S. § 14-309.7(a). A copy of the application and license shall be furnished to the local law enforcement agency in the county or municipality in which the licensee intends to operate before bingo is conducted by the licensee. G.S. § 14-309.7(a).

In accordance with G.S. § 14-309.7(e), an exempt organization that wants to conduct only an annual or semiannual bingo game may apply to the ALE for a limited occasion permit. In lieu of the reporting requirements of G.S. § 14-309.11(b) (discussed below) such exempt organization shall file with the licensing agency and local law-enforcement a report on prescribed forms no later than 30 days following the conduct of the bingo game for which the permit was obtained. G.S. § 14-309.7(e).

5.3.3 Account and Audit

Under G.S. § 14-309.11(a), all funds received in connection with a bingo game shall be placed in a separate bank account.

An audit of the account shall be prepared annually or otherwise as directed by the ALE and shall be filed with the ALE and the local law-enforcement agency at a time directed by the ALE. The audit shall be prepared on a form approved by the ALE. G.S. § 309.11(b).

All books, papers, records, and documents relevant to determining whether an organization has complied with G.S. § 14-309.11 (“Accounting and Use of Proceeds”) shall be open to inspection by the local law enforcement agency, among others. G.S. § 14-309.11(d).

5.3.4 Other Provisions

The provisions regarding the regulation of bingo operations and the enforcement of related laws are elaborate and detailed, and range from subject such as the types of locations in which bingo can be held, G.S. § 14-309.7(c), to the use of proceeds derived from bingo operations, G.S. § 14-309.11.

Sheriffs are advised to consult their designated agency legal advisor prior to any enforcement or regulatory action being taken with respect to bingo operations.

5.4 Crimes of Special Interest to County Law Enforcement Officers

A number of obscure and seldom enforced criminal offenses are of special interest to law enforcement officers who work in rural areas.

Before taking any enforcement action under any of these statutes, officers should examine the full text of such statutes to determine whether all essential elements of an offense have been met.

Certain statutes have been repealed since the publication of the first edition of *Obscure Statutes*. However, conduct formerly prohibited under the repealed laws may still be criminal under other provisions of the criminal law. Sheriffs are therefore advised to consult the statutes themselves, their local District Attorney's Office, or agency legal counsel in the event questions arise concerning criminal violations.

5.4.1 Article 4A. Prohibited Secret Societies and Activities

1. G.S. § 14-12.4: use of signs, grips, passwords, or disguises, or taking or administering oaths, for illegal purposes.
2. G.S. §§ 14-12.7 to 14-12.10: unlawful wearing of masks, hoods, etc.; unlawful burning of cross.
3. G.S. §§ 14-12.12 to 14-12.14: unlawful burning of cross or placing of exhibit.

5.4.2 Article 22. Damages and Other Offenses to Land and Fixtures

1. G.S. § 14-128: injury to trees, crops, land, etc., of another.
2. G.S. § 14-144: injury to houses, churches, fences and walls.
3. G.S. § 14-145: unlawful posting of advertisements.
4. G.S. §§ 14-147 to 14-149: defacing landmarks, and defacing, desecrating, or plowing over graves.
5. G.S. § 14-159.2: interference with animal research.

5.4.3 Article 22A. Trespassing Upon “Posted” Property to Hunt, Fish, or Trap

5.4.4 Article 22C. Cave Protection Act

1. G.S. § 14-159.21: vandalism to cave, etc.
2. G.S. § 14-159.22: sale of speleothems unlawful.

5.4.5 Article 23. Trespass to Personal Property

1. G.S. § 14-163: poisoning livestock.
2. G.S. § 14-163.1: assaulting or killing law enforcement animal.

5.4.6 Article 35. Offenses Against the Public Space

1. G.S. § 14-275.1: disorderly conduct at bus or railroad station or airport.

5.4.7 Article 36. Offenses Against Public Safety

1. G.S. § 14-284.2: dumping of toxic substances.
2. G.S. § 14-287: leaving unused well open and exposed.

5.4.8 Article 37. Lotteries, Gaming, Bingo, and Raffles

5.4.9 Article 39. Protection of Minors

1. G.S. § 14-315: selling or giving weapons to minor.
2. G.S. § 14-315.1: storage of firearms to protect minors.
3. G.S. § 14-316: permitting young children to use dangerous firearms.
4. G.S. § 14-317: permitting minors to enter barrooms or billiard rooms.
5. G.S. § 14-318.1: discarding or abandoning iceboxes; precautions required.

5.4.10 Article 41. Alcoholic Beverages

1. G.S. § 14-329: manufacturing, trafficking in, transporting, or possessing poisonous alcoholic beverages; felony offense.

5.4.11 Article 44. Sales Regulations

1. G.S. § 14-342: offer to sell/sale of diseased meat.

5.4.12 Article 47. Cruelty to Animals

5.4.13 Article 49. Protection of Livestock Running At Large

1. G.S. § 14-366: molesting or injuring livestock.
2. G.S. § 14-367: misbranding another person's livestock; altering brand.
3. G.S. § 14-368: placing poisonous shrubs and vegetables in public places.

5.4.14 Article 52. Miscellaneous Police Regulations

1. G.S. § 14-382: polluting waters or lands used for dairy purposes.
2. G.S. § 14-385: defacing/destroying public notices and advertisements.
3. G.S. § 14-400: tattooing; body piercing prohibited.

6. Motor Vehicle Law

6.1 Private License Plates on Publicly Owned Vehicles

The Commissioner of Motor Vehicles is authorized to provide local, State, and federal officers on special undercover assignments with motor vehicle drivers licenses and motor vehicle registration plates under assumed names and false or fictitious addresses. Registration plates provided under this provision can only be used on publicly owned or leased vehicles.

G.S. § 20-39.1(e) states upon approval and request of the Director of the State Bureau of Investigation, the Commissioner shall issue confidential license plates to local, State, or federal law enforcement agencies, the Department of Public Safety, agents of the Internal Revenue Service, and agents of the Department of Defense in accordance with the provisions of this subsection. Applicants in these categories shall provide satisfactory evidence to the Director of the State Bureau of Investigation of the following:

1. The confidential license plate requested is to be used on a publicly owned or leased vehicle that is primarily used for transporting, apprehending, or arresting persons charged with violations of the laws of the United States or the State of North Carolina;
2. The use of a confidential license plate is necessary to protect the personal safety of an officer or for placement on a vehicle used primarily for surveillance or undercover operations; and
3. The application contains an original signature of the head of the requesting agency or department or, in the case of a federal agency, the signature of the senior ranking officer for that agency in this State.

Confidential license plates issued under this subsection shall be issued on an annual basis.

The head of the local, State, or federal law enforcement agency or the Department of Defense shall be responsible for the use of the licenses and license plates and shall return them immediately to the Director for cancellation upon either (i) their expiration, (ii) request of the Director of the State Bureau of Investigation, or (iii) request of the Commissioner.

Failure to return a license or license plate issued pursuant to this subsection shall be punished as a Class 2 misdemeanor.

6.2 Sheriff Authorized to Appoint Civilian Traffic Control Officer

Sheriffs are authorized to appoint persons who are at least 18 years old to serve as traffic control officers. Such traffic control officers direct, control and regulate traffic at times and places specifically designated in writing by the sheriff. Traffic control officers are not peace officers, and they are not considered agents or employees of the sheriff's office. However, they are subject to the rules and regulations of the sheriff's office, as well as to the lawful command of any law enforcement officer. G.S. § 20-114.1(c).

Persons appointed as traffic control officers must complete three hours of training in directing, controlling, and regulating traffic under the supervision of a law enforcement officer. Further, before a sheriff can appoint traffic control officers under this provision there must be indemnity against liability of the traffic control officer for any wrongful death, bodily injury, or property damage proximately caused by the negligence of the traffic control officer while acting within the scope of his authority, in the amount provided by G.S. § 20-114.1(d).

A traffic control officer shall serve at the will of the appointing sheriff, and appointment can be terminated at any time with or without cause. G.S. § 20-114.1(c).

The appointing sheriff will not be liable for any act or omission of a traffic control officer. G.S. § 20-114.1(c).

6.3 Seizure of Motor Vehicle Used in Race; Delivery to Sheriff; Sheriff to Return Vehicle to Owner on Posting of Satisfactory Bond

It is a misdemeanor for any person to operate a motor vehicle on a street or highway willfully in a prearranged speed competition with another motor vehicle. G.S. § 20-141.3(g).

If a law enforcement officer finds that any person has driven or is driving a motor vehicle willfully in a prearranged speed competition with another motor vehicle on a street or highway in violation of this statute, he must seize the vehicle and deliver it to the sheriff of the county in which the offense occurred. G.S. § 20-141.3(g).

If it is impractical to deliver the seized motor vehicle into the actual possession of the sheriff, it must be placed in the sheriff's constructive possession. The sheriff will hold the vehicle pending the driver's trial. G.S. § 20-141.3(g).

Before trial, however, the owner of the seized vehicle may execute a bond, with sufficient sureties, in double the value of the motor vehicle, conditioned on the return of the motor vehicle to the custody of the sheriff on the day of the driver's trial. Once such bond is given and approved by the sheriff, the sheriff must return the vehicle to the owner.

If the driver charged with violating G.S. § 20-141.3(a) is acquitted, the sheriff shall return the seized vehicle to the owner.

On the other hand, if the driver is convicted, the court will order a sale of the seized motor vehicle at public auction, pursuant to G.S. § 20-141.3(g). Any vehicle subject to sale under this section which

has been modified to increase its speed will not be sold until it is restored to its original condition. However, if such restoration is impossible due to the extensiveness of the modifications, the court may instead order the vehicle to be used by a government agency for official purposes. G.S. § 20-141.3(g).

Notwithstanding the driver's conviction, the court will return the vehicle to the owner if the owner satisfies the court that the vehicle was used in the prearranged speed competition without his knowledge or consent, and that he had no reasonable grounds to believe the vehicle was used for such purpose. G.S. § 20-141.3(g).

7. Livestock and Wildlife

7.1 Livestock

7.1.1 Sheriff to Assist in Enforcing Tick Eradication Laws

G.S. § 106-351 provides that the systematic dipping of all cattle or horses infested with the cattle tick must be conducted, under the supervision of the State Veterinarian, in all counties or portions of counties found to be partially or totally infested with the cattle tick.

The county commissioners of the affected counties must provide the dipping vats, chemicals, and other materials necessary to conduct the required dipping, as instructed by the State Veterinarian. These expenses are paid out of the general county fund. G.S. § 106-353.

Upon being notified by a quarantine inspector, anyone owning or in charge of any cattle, horses, or mules where tick eradication is in progress must have the animals dipped pursuant to G.S. § 106-356.

If the owner of cattle, horses, or mules exposed to or infested with cattle tick fails to have such animals dipped when required to do so, such animal will be placed in quarantine, dipped, and cared for at the owner's expense. G.S. § 106-358. These expenses shall constitute a lien on any animal quarantined, dipped, and cared for under this provision. G.S. § 106-359.

If the owner fails or refuses to pay for these expenses after three days' notice, the sheriff is required to sell the animals at public auction, in accordance with G.S. § 106-359.

G.S. § 106-360 provides a clear statement of the sheriff's duties with regard to the systematic tick eradication laws. This section states:

It shall be the duty of the sheriff, in any county in which the work of tick eradication is in progress, to render all quarantine inspectors any assistance necessary in the enforcement of G.S. § 106-351 to G.S. § 106-363 [the systematic tick eradication laws] and the regulations of the North Carolina Department of Agriculture and Consumer Services. If the sheriff of any county shall neglect, fail, or refuse to render his assistance when so required, he shall be guilty of a Class 1 misdemeanor.

Law enforcement officers should be aware that it is a misdemeanor for any person, firm, or corporation to violate any provision of the systematic tick eradication laws (G.S. § 106-351 to G.S. § 106-363). G.S. § 106-360. However, it is a felony for any person to willfully damage or destroy by any means any dipping vat erected or being erected for the purposes of tick eradication. G.S. § 106-363.

7.1.2 Sheriff Shall Destroy Livestock Running at Large

G.S. § 106-307.7 provides that whenever the State Veterinarian is informed or reasonably believes that certain livestock is infected with or has been exposed to any contagious or infectious disease, that such livestock is running at large and that such livestock cannot be captured with the exercise of reasonable diligence, the State Veterinarian shall have the authority to direct the appropriate sheriff or other proper officer to destroy such livestock in a reasonable manner and such sheriff or other officer shall make diligent effort to destroy such livestock.

7.1.3 Health Certificate of Imported Livestock to be Furnished to Law Enforcement Officer Upon Request

Pursuant to G.S. § 106-317, the Board of Agriculture may promulgate rules and regulations governing the transportation and importation of swine and other livestock into North Carolina in order to prevent the spread of disease.

This regulatory function includes the authority to establish a system of health certificates for the protection of swine and other livestock.

In addition, health certificates required under the rules and regulations of the Board of Agriculture and of the Commissioner of Agriculture, pursuant to G.S. § 106-317, shall be issued by a veterinarian certifying that the swine or other livestock being transported or imported have not been infected with or exposed to infectious or communicable disease. G.S. § 106-318. The owner or agent in charge of the swine or other livestock must possess any certificates or permits so issued until delivery of the swine or other livestock is completed. The owner or agent in charge must present any certificate or permits to any law enforcement officer of the State or any county upon request.

7.2 Wildlife

7.2.1 Law Enforcement Officer to Seize, Destroy, Poisonous Reptiles; Investigate Violations

Chapter 14 of the General Statutes regulates the possession and handling of poisonous reptiles. Under this Article, the handling of venomous reptiles is a criminal offense, and punishable as a Class 2 misdemeanor. See G.S. § 14-416 to G.S. § 14-418; G.S. § 14-422. In addition, under G.S. § 14-422(b), if a person, other than the owner is seriously injured or killed as a result of a violation of these laws, they are guilty of a Class A1 misdemeanor.

Pursuant to G.S. § 14-421, these laws do not apply to the possession, exhibition, or handling of poisonous reptiles by duly constituted museums, laboratories, educational, or scientific institutions.

The sheriff should be aware of two important sections which place certain duties on law enforcement officers with respect to: (i) the investigation of offenses under this Article; (ii) seizure, examination, and disposition of poisonous reptiles; (iii) arrest of persons offending this Article.

These two provisions are as follows:

G.S. § 14-419 provides: In any case in which any law enforcement officer or animal control officer has probable cause to believe that any of the provisions of this Article have been or are about to be violated, it shall be the duty of the officer and the officer is authorized, empowered, and directed to immediately

investigate the violation or impending violation and to seize the reptile or reptiles involved, and the officer is authorized and directed to deliver:

1. A reptile believed to be venomous to the North Carolina State Museum of Natural Sciences or to its designated representative for examination for the purpose of ascertaining whether the reptile is regulated under this Article; and,
2. A reptile believed to be a large constricting snake or crocodilian to the North Carolina Zoological Park or its designated representative for the purpose of ascertaining whether the reptile is regulated under this Article.

In either above case, if the officer determines the animal is an immediate risk to public safety the officer does not have to consult with representations from the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park and may kill the reptile.

If the officer, Museum, or the Zoological Park or their designated representatives find that a seized reptile is a venomous reptile, large constricting snake, or crocodilian regulated under this Article, the Museum or the Zoological Park or their designated representative shall determine final disposition of the reptile in a manner consistent with the safety of the public, until a court determines otherwise. Upon conviction of an Article 55 offense, the court shall order disposition of the animal, to include transferring ownership to the State of North Carolina.

If the reptile is not a venomous reptile, large constricting snake, or crocodilian regulated under this Article, and either no criminal warrants or indictments are initiated in connection with the reptile within 10 days of initial seizure, or a court of law determines that the reptile is not being owned, possessed, used, transported, or trafficked in violation of this Article, then it shall be the duty of the law enforcement officer to return the reptile or reptiles to the person from whom they were seized within 15 days.

7.2.2 Sheriff to Kill Domestic Fowls Running at Large

Pursuant to G.S. § 68-25, if any person shall permit any turkeys, geese, chickens, ducks or other domestic fowls to run at large on the lands of any other person while such lands are under cultivation in any kind of grain or feedstuff or while being used for gardens or ornamental purposes, after having received actual or constructive notice of such running at large, he shall be guilty of a Class 3 misdemeanor.

If it shall appear to any magistrate that after three days' notice any person persists in allowing his fowls to run at large in violation of this section and fails or refuses to keep them upon his own premises, then the said magistrate may, in his discretion, order any sheriff or other officer to kill the fowls when they are running at large as herein provided.

7.2.3 Rabid Animal to be Destroyed

North Carolina General Statutes Chapter 130A, Article 6, Part 6, sets forth law for the control and prevention of rabies.

Specifically, G.S. § 130A-197 states when the local health director reasonably suspects that an animal required to be vaccinated under this Part has been exposed to the saliva or nervous tissue of a proven rabid animal or animal reasonably suspected of having rabies that is not available for laboratory diagnosis, the animal shall be considered to have been exposed to rabies.

The recommendations and guidelines for rabies post-exposure management specified by the National Association of State Public Health Veterinarians in the most current edition in the Compendium of Animal Rabies Prevention & Control shall be the required control measures.

7.2.4 Sheriff to Safeguard Property Seized by Wildlife, Fisheries Officers

Pursuant to G.S. § 113-136, marine fisheries inspectors and officers of the Wildlife Resources Commission possess all powers of arrest, search, and seizure when dealing with offenses falling within their jurisdiction.

As stated in G.S. § 113-137, any such officer who “arrests a person for an offense as to which he has enforcement jurisdiction is authorized to search the person arrested and the surrounding area for weapons and for fruits, instrumentalities, and evidence of any crime for which the person arrested is or might have been arrested.”

Included in G.S. § 113-137(c), it is within such officers’ law enforcement authority and power to seize “fish, wildlife, weapons, equipment, vessels, or other evidence...of the crime,” even if the offender has departed the area or the officer otherwise fails to arrest the offender.

Furthermore, sheriffs should be aware pursuant to G.S. § 113-137(e) that one of the authorized methods of safeguarding such seized property is for the officer making the seizure to “deposit [it] with the sheriff of the county in which the trial is to be held for custody pending trial.”

This statute contains a provision for the reimbursement of any storage or handling charges incurred in the safeguarding of property held for trial in this manner.

7.2.5 Sheriff Shall Investigate Unlawful Hunting, Fishing, on Registered Lands

Article 21A of the North Carolina General Statutes, Chapter 113 provides regulatory and enforcement provisions regarding hunting and fishing on property, which has been registered with the North Carolina Wildlife Resources Commission by a person who controls the hunting and/or fishing rights to that property. G.S. § 113-285 makes it a Class 3 misdemeanor to hunt or fish on the registered property of another without an entry permit for a first offense, and a Class 2 misdemeanor for a subsequent conviction within a three- year period.

The sheriff has a duty to enforce the provisions of this Article.

As stated in G.S. § 113-287(c), “it is the duty of sheriffs and their deputies to investigate reported violations of this Article and to initiate prosecutions when they determine that violations have occurred.”

7.2.6 Sheriffs Shall Enforce “Criminally Negligent Hunting” Provision

Sheriffs should become familiar with the offense of Criminally Negligent Hunting, contained in Article 21B of North Carolina General Statutes Chapter 113, as they have subject matter jurisdiction to enforce it.

G.S. § 113-290 provides the elements of the offense:

It is unlawful for any person, while hunting or taking wild animals or wild birds as those terms are defined in G.S. § 113-129 and G.S. § 113-130, to discharge a firearm:

- a. Carelessly and heedlessly in wanton disregard for the safety of others; or
- b. Without due caution or circumspection, and in a manner so as to endanger any person or property; and
- c. Resulting in property damage or bodily injury.

This offense constitutes a misdemeanor, the class of which varies depending upon the damage or injury inflicted. G.S. § 113-290.1(a). In addition, a person convicted of this offense would lose his hunting privilege for between one and five years depending on the damage or injury inflicted. G.S. § 113-290.1(c).

7.2.7 Sheriff May Lodge Criminal Charges for Unlawful Removal or Destruction of Electronic Dog Collars

Pursuant to G.S. § 14-401.17(a), it is a misdemeanor for another to intentionally remove or destroy an electronic collar or other electronic device placed on a dog by its owner to maintain control of the dog.

This law is enforceable by sheriffs and deputy sheriffs.

8. Agriculture and Environmental

8.1 Law Enforcement Officer to Verify Sampling Technique of Grain Dealer; May Send Sample to Department of Agriculture Upon Request

G.S. §§ 106-122, 106-628.

The North Carolina Food, Drug, and Cosmetic Act enumerates prohibited acts involving adulterated foods, drugs, and cosmetics.

It is a Class 2 misdemeanor to commit certain such prohibited acts with adulterated grain. G.S. § 106-122. Under these provisions, it is unlawful to sell, offer for sale, or deliver, any adulterated grain not intended to be used for planting purposes.

The sheriff's office should be aware that its law enforcement officers may be called upon to play a unique but limited role in the gathering of evidence for purposes of prosecutions under these statutory provisions.

As stated at G.S. § 106-627, for purposes of evidence under this Article, the grain dealer or his agent, upon receipt or pending receipt of suspected adulterated grain, may, at his discretion, call any law-enforcement officer to verify the sampling technique, [and] origin of sampled grain and subsequently send or request the law enforcement officer to send the sample of grain in a sealed package to the Department of Agriculture for inspection and analysis in order to protect only the chain of evidence.

Any further proceedings are the responsibility of the Department of Agriculture and would not involve the sheriff's office. G.S. § 106-623.

8.2 Sheriff to Serve “Stop-Work Order” on Land-Disturbing Activity

Article 4 of Chapter 113A establishes a regulatory scheme intended to prevent pollution of streams, lakes, and other waters by sedimentation.

The North Carolina Sedimentation Control Commission (hereinafter “Commission”), in cooperation with other agencies, is charged with developing a comprehensive State erosion and sedimentation control program. G.S. § 113A-54. The Secretary of Environment and Natural Resources (hereinafter “Secretary”) is responsible for the administration of this program, under the direction of the Commission. G.S. § 113A-55.

The Commission is authorized to regulate land-disturbing activity, defined at G.S. § 113A-52(6) as “any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.” There are exceptions for certain agricultural, timber, and mining activities.

If the Secretary finds that a land-disturbing activity is being conducted in violation of the law, he may issue a “stop-work order.” G.S. § 113A-65.1(a).

The sheriff should be aware that it is the duty of the sheriff, or other officer authorized to serve process, to serve any “stop-work order.” The order “shall be served on the person at the site of the land-disturbing activity who is in operational control of the land-disturbing activity.” G.S. § 113A-65.1(c). A copy of the order must also be posted in a conspicuous place at the site of the prohibited activity. G.S. § 113A-65.1(e).

The Secretary will designate an employee of the Department of Environmental Quality to monitor compliance with the “stop-work order.” The name of such employee shall be included in the order. G.S. § 113A-65.1(e).

8.3 Sheriff to Seize and Sell Contraband Oil, Gas, and Product

Article 27 of Chapter 113 relates to the conservation of oil and gas.

The Oil and Gas Conservation Act is intended to protect the environment from the “imminent evils that can occur in the production and use and waste of natural oil and/ or gas...” G.S. § 113-382. The Department of Environmental Quality (hereinafter “Department”) is charged with administering and enforcing this law. G.S. § 113-391.

Included within the environmental protection scheme promoted by this Article are provisions prohibiting the “sale, purchase or acquisition, or transportation, refining, processing or handling in any other way of illegal oil, illegal gas, or illegal product [of such illegal oil and/or illegal gas].” G.S. § 113-411(a).

Whether oil, gas, or product is illegal depends on whether the oil or gas in question came from a well which was producing an amount exceeding the limits imposed by the Department. See G.S. § 113-389 for definitions.

1. Contraband

G.S. § 113-412 sets forth the procedure for determining whether oil, gas, or product is illegal, and thus contraband, and the manner in which such contraband is to be seized and sold. The sheriff

should be aware of this procedure, as summarized below, since the sheriff has certain duties and responsibilities regarding the seizure and sale of contraband oil, gas, and product.

2. In Rem Action

When the Department believes illegal gas, oil, or product is subject to seizure and sale, it will bring an action “in rem” (against the thing) in the superior court of the county where the oil, gas, or product is located. G.S. § 113-412.

3. Summons

When the complaint is filed, the clerk of court will issue a summons directed to the sheriff, or other authorized official, requiring him to summon any and all persons who may have an interest in the oil, gas, or product in question. G.S. § 113-412.

The summons shall be served by posting one copy at the door of the courthouse of the county in which the oil, gas, or product is located, and another near the place where the oil, gas, or product is located. G.S. § 113-412.

Copies of the summons must be posted at least five days preceding the return date of such summons. This posting is significant in that it will establish the State’s constructive possession of the oil, gas, or product in question.

A copy of the summons must also be published once a week for four consecutive weeks in a newspaper published and circulated in the county where the suit is pending. The court will not condemn any oil, gas, or product as contraband until at least five days have passed since the last publication of the summons. G.S. § 113-412.

4. Warrant of Attachment

If, based on affidavit, oral testimony, or the plaintiff’s pleading, the grounds for seizure and sale exist, the clerk will issue a warrant of attachment directing the sheriff to take custody (actual or constructive) of the oil, gas, or product described therein. The sheriff will hold such seized oil, gas, or product subject to the orders of the court. G.S. § 113-412.

5. Delivery by the Sheriff to Commissioner

The court may, when it deems appropriate, direct the sheriff to deliver the custody of any illegal oil, gas, or product seized under a warrant of attachment to a court appointed commissioner. G.S. § 113-412.

6. Sales

Sales of illegal gas, oil, or product, and notice of such sales, should be in accordance with the usual procedures for the sale and disposition of attached property. However, where the property in question is in the custody of a court-appointed commissioner, he, and not the sheriff, will hold the sale.

The proceeds of the sale will be paid to the State Treasurer, after the costs incurred in conducting the sale have been deducted.

8.4 Sheriff's Duties in Administration of the North Carolina Drainage Law

Chapter 156 of the North Carolina General Statutes contains detailed and elaborate provisions regarding the broad subject of "drainage law."

The sheriff plays an important role in enforcing these laws, and the outline below provides merely an overview.

Sheriffs are advised to consult Chapter 156 for a full and complete understanding of their role in the administration of this body of law.

8.4.1 Landowners May Petition the Clerk of Court on Land Drainage Construction Activities

Whenever a majority of the landowners, or the persons owning three-fifths (3/5) of all lands, in any well-defined swamp or lowlands agree in writing to give a part of the land as compensation to another for digging a drainway through such lands, the person or company digging such drainway must file with the clerk of superior court the names of the landowners together with other important information. G.S. § 156-26(a).

The clerk will issue a notice to all landowners who did not join in the above referenced agreement, directing them to appear at a hearing and state their objections to the proposed drainway construction. The notice to appear will be served by the sheriff. However, the clerk may publish such notice in a newspaper instead of requiring personal service by the sheriff. G.S. § 156-26(b).

After completion of the main drainway, upon application of the person or corporation who completed such digging, the clerk will issue a notice to be served by the sheriff on the landowners who failed to agree upon a compensation for the construction. G.S. § 156-28.

The notice will inform such landowners of the date when three viewers appointed by the clerk will assess the construction done on the lands of such landowners. The viewers will report the amount to be paid by these landowners, as well as the amount of damages, if any, to be paid to the objecting landowners where injury to the lands outweighs the benefits conferred by the construction. G.S. § 156-28.

8.4.2 Drainage by Drainage Districts

Drainage districts are established by the clerks of superior court. G.S. § 156-54. Article 8 of this Subchapter 156 provides for the assessment of drainage costs by the board of drainage commissioners. G.S. § 156-94.

8.4.2.1 Assessment Liens and Sheriff's Duty to Collect

G.S. § 156-105 provides assessments shall constitute a first and paramount lien, second only to State and county taxes. The assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by [December 31] it shall be the duty of the sheriff or tax collector to sell the lands so delinquent.

The procedure for sale is somewhat different than that for executions, and sheriffs should refer to the statute or to the county attorney for specifics.

"The sheriff who executes upon property for the collection of drainage assessments...shall not be liable...civilly or criminally if he shall sell such property in good faith, even though such sale is irregular or for any cause illegal." G.S. § 156-107.

The clerk must prepare a receipt book in accordance with G.S. § 156-108 for the drainage assessments due in each track of land as referenced in the assessment rolls. This book must be delivered to the sheriff or tax collector each year on the first Monday of September. G.S. § 156-108.

If land lies in more than one county, the clerk of court of the county in which the drainage was established will prepare a receipt book in accordance with G.S. § 156-109, containing an order directed to the sheriff or tax collector in the county where the lands are located. The order will provide the date on which the assessments are due and must be paid, and other information as provided in G.S. § 156-109.

Significantly, the drainage assessments will have the force and effect of a judgment. G.S. § 156-109.

8.4.2.2 Sheriff to Make Monthly Settlements; Failure to Comply a Misdemeanor

G.S. § 156-111 provides:

The sheriff or tax collector shall be required to make settlements with the treasurer on the first day of each month of all collections of drainage assessments for the preceding month, and to pay over to the treasurer the money so collected [. . .]. If any sheriff or treasurer shall fail to comply with the law for the collection of drainage assessments, or in making payment thereof to the treasurer, he shall be guilty of a misdemeanor...and he shall be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of the bonds.

8.4.2.3 The Sheriff's Fees for Collection of Drainage Tax

In limited circumstances sheriffs are allowed to charge a fee of two percent of the amount collected for the drainage tax. G.S. § 156-113.

8.4.2.4 Procedure for Change in Assessment Roll Procedure

The sheriff's duty in regard to a change in the assessment roll procedure is described in G.S. § 156-114(g).

This subsection provides, in relevant part:

Any amendment to the assessment roll ordered after the last day of August in each year shall not become effective until the first day of September of the following year, and the assessment roll as it appears on the first day of September of each year shall constitute the assessment roll to be delivered to the sheriff on the first Monday in September, and he shall collect the drainage assessments as they appear thereon without regard to any changes in title or ownership or any changes made by the court after the thirty-first day of August.

8.4.2.5 Adjustments Authorized by the Board of County Commissioners

Pursuant to Article 9 of Chapter 156, the board of commissioners of any drainage district may "adjust the uncollected delinquent installments of the assessment made upon property in the district." G.S. § 156-125.

The sheriff should be aware that upon adjustment of delinquent installments of any assessments, payment may be extended over a period of time as provided in G.S. § 156-126. Any extension will be made by the preparation of assessment rolls, which shall be filed with the sheriff. Collection on the assessments are conducted in the same manner as other drainage assessments in the district (see G.S. § 156-105). G.S. § 156-126.

8.4.2.6 Auditing the Sheriff

The auditor for the drainage district will be required to examine the assessment roll and the records and accounts of the sheriff or tax collector as to the assessment roll which went into his hands on the previous first Monday in September and for all previous years as to which the records and accounts of the sheriff or tax collector have not been audited. G.S. § 156-134.

Further, “[i]t shall be the duty of the sheriff...to permit the auditor to examine [his] official books and records and to furnish all necessary information, and to assist the auditor in the discharge of his duties.” G.S. § 156-134.

8.4.2.7 Sheriff May be Prosecuted by the District Attorney

If the sheriff has not collected all drainage assessments or has failed to pay over all collections to the treasurer, the auditor will report the same to the superior court. The district attorney has a duty to examine such report, and to institute a civil or criminal action against the sheriff when appropriate. G.S. § 156-134.

9. Legal Relationships

9.1 Husband and Wife – Year’s Allowance

Pursuant to G.S. § 30-15, every surviving spouse of an intestate or of a testator, whether or not he or she has petitioned for an elective share, shall, unless the surviving spouse has forfeited his or her right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of sixty thousand dollars (\$60,000) for the surviving spouse's support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse. The year’s allowance shall be paid out of the money or personal property of the deceased spouse. G.S. §§ 30-15, 30-18. Children of a deceased parent may be similarly entitled to a \$5,000 allowance in some cases. G.S. § 30-17.

The value of the personal property assigned to the surviving spouse and children shall be ascertained by a magistrate or the clerk of court of the county in which administration was granted or the will probated. The clerk of court, or magistrate upon assignment, shall ascertain the person or persons entitled to an allowance according to the provisions of this Article, and determine the money or other personal property of the estate, and pay over to or assign to the surviving spouse and to the children, if any, so much thereof as they shall be entitled to as provided in this Article. G.S. §§ 30-19, 30-20.

If a surviving spouse or child prefers, they may apply to the superior court for assignment of the year’s allowance G.S. § 30-27. If the superior court, based on the complaint filed by plaintiff spouse or child, finds that the material allegations of the complaint are true, then the court shall order the sheriff or other appropriate county official to summon a magistrate and two persons qualified to act as jurors, to ascertain the money or other personal property of the decedent’s estate, and to assign to the plaintiff a sufficient amount of such money or property for support. G.S. § 30-30.

9.2 Landlord and Tenant – Sheriff to Deliver Crops to Landlord on his Undertaking

When land is rented or leased under written or oral agreement for agricultural purposes, all crops raised, or cultivated by a cropper, on such land are, unless otherwise agreed by the parties, deemed to belong to the lessor (the person who conveyed the land by lease) until:

- a. The rents for the land are paid, and
- b. The stipulations contained in the lease agreement are performed, or damages for the non-performance are paid to the lessor instead, and
- c. The lessor is compensated for all loans made and expenses incurred in growing and preserving the crops. G.S. § 42-15.

When the lessor, having actual possession of all or part of the crop, does not make a fair division of the crop or deliver the amount of crop agreed upon in the lease after being properly notified by the tenant or cropper, such aggrieved tenant or cropper is entitled to appropriate relief in an action upon a claim for the delivery of such property to which he is entitled. G.S. § 42-16.

If neither party takes advantage of these provisions to resolve a controversy, either party may proceed to have the matter tried in a general court of justice. G.S. § 42-17.

Should the matter then be continued or appealed to the district court, the tenant or cropper, in order to retain the property, will be required to give an undertaking to the adverse party (i.e., the lessor). G.S. § 42-18.

If the tenant or cropper fails to give the required undertaking at the time of the appeal or continuance, the sheriff or other lawful officer shall deliver the property into the actual possession of the lessor upon the lessor giving the adverse party (the tenant) an undertaking as prescribed in G.S. § 42-18, to assure the tender of such property, or value thereof, in the event judgment is rendered against the lessor. G.S. § 42-19.

9.3 Debtor and Creditor – Sheriff to Discharge Debtor from Custody

Persons committed to confinement for failing to pay fines and costs incurred in any criminal prosecution commenced in North Carolina, persons taken or charged on an order of arrest for the default and surrender of bail in any action, and persons taken or charged in execution of arrest for any debt or damages rendered in any action whatever, may petition the court for discharge from custody. G.S. §§ 23-23 through 25 and G.S. §§ 23-29 through 30.

Any of the above debtors entitled to be discharged may tender a bond to the sheriff or other officer who has him in custody, at the time of filing a petition for discharge or any time thereafter. If the bond is satisfactory to the sheriff, the debtor shall be released from custody. Such bond must be in double the amount due any creditor or creditors at whose suit the debtor was taken or charged, secured by sufficient surety, and conditioned for the appearance of the debtor before the court where the petition for discharge was filed. G.S. § 23-40.

The surety in the bond may surrender the debtor, or the debtor may surrender himself, to the sheriff in discharge of the bond, as provided in the Arrest and Bail Article of Chapter 1 (Civil Procedure) of the North Carolina General Statutes. G.S. § 23-41.

When a debtor is actually confined on an order of arrest in default of bail or otherwise, the jailer must furnish the prisoner with necessary food during his confinement, for which the jailer must charge the fees as for other prisoners. If the debtor is unable to pay such fees, the jailer may recover them from the party (the plaintiff) who caused the debtor to be confined. G.S. § 23-42.

After the debtor's arrest, the sheriff or jailer may notify the plaintiff regarding the plaintiff's liability for the jail fees, and demand from the plaintiff security for the fees that accrue after such notice. If the plaintiff fails to provide the requested security, the sheriff may discharge the debtor from custody. G.S. § 23-42.

10. Regulation and Licensing of Businesses and Nuisance Abatement

10.1 Sheriff to Issue Exhibition Permit to Carnival Companies, etc.

Any person, firm, or corporation engaged in the business of a carnival company or a show of like kind, operated for profit, must, before exhibition in any county which holds an annual agricultural fair, apply to the sheriff for a permit to exhibit. G.S. § 106-516.1.

If the intended exhibition date is less than 30 days before an advertised agricultural fair, the sheriff shall not issue the requested exhibition permit. Otherwise, the sheriff must issue the permit, without charge.

Exhibition without a permit from the sheriff of the county in which the exhibition is held constitutes a misdemeanor G.S. § 106-516.1.

The provisions of this section apply to persons, firms, and corporations intending to conduct, for profit, exhibitions such as menageries, merry-go-rounds, Ferris Wheels, riding devices, circus and similar amusements, and the like.

This section will not prevent veterans' organizations chartered by Congress, or which are organized and operated on a statewide or nationwide basis, from holding fairs or tobacco festivals on any dates they choose, so long as such fairs or festivals have previously been held as annual events.

10.2 Law Enforcement Officers Required to Detain Mobile Home and Offender Failing to Satisfy Tax Permit Requirement

It is unlawful for any person other than a mobile home manufacturer or retailer to move a mobile home without first obtaining a tax permit from the county in which the mobile home is located. G.S. § 105-316.1(a). The tax permit must be conspicuously displayed on the rear of the mobile home, near the license tag, during transportation. G.S. § 105-316.1(a).

Manufacturers, retailers, and licensed carriers are generally not required to obtain tax permits. However, if the mobile home is being repossessed by a holder of a lien on such mobile home, such permit is required. G.S. § 105-316.4.

Failure to obtain, or properly display, a tax permit when required to do so constitutes a misdemeanor. G.S. § 105-316.6(a).

Any manufacturer or retailer of mobile homes who aids or abets an owner of a mobile home to defeat the purpose of the tax permit requirements (G.S. § 105-316.1 through G.S. § 105-316.8) will be guilty of a misdemeanor. G.S. § 105-316.6(b).

Law enforcement officers should be aware that upon apprehending violators of these provisions (G.S. § 105-316.1 through G.S. § 105-316.8), they must detain the offender and the mobile home “until satisfactory arrangements have been made to meet the requirements of G.S. § 105-316.1 through G.S. § 105-316.8.” G.S. § 105-316.6(d).

10.3 Pawnbroker’s Records Shall be Open for Inspection by Sheriff

Article 45 of Chapter 66 of the General Statutes provides for the regulation and licensing of pawnbrokers for purposes of fairly governing the making of loans and the acquisition and disposal of personal property via pawnshops. The Act also serves to prevent transactions in stolen property.

As part of this regulatory scheme, every pawnbroker, defined at G.S. § 66-387, is required to keep numbered records of all pawn transactions. G.S. § 66-391. Further, every pawnbroker, at the time a transaction is made, is required to complete a pawn ticket for each transaction, containing information such as the name of the pledgor (the person delivering property to a pawnbroker to secure a loan), a description of the property, the date of the transaction, the monthly pawn charges, and other information prescribed by G.S. § 66-391.

The completed pawn tickets must be attached to the numbered record and shall correspond to the transactions contained in the numbered record. Moreover, a copy of the completed ticket must be signed by the pawnbroker or his agent, and given to the pledgor, who must also sign the ticket. G.S. § 66-391.

Pawnbrokers must make their records available for inspection and pick-up each workday during regular business hours by the sheriff of the county in which the pawn business is located. These records may be electronically reported to the sheriff of the county or the chief of police of the municipality in which the pawnshop is located by transmission over the Internet or by facsimile transmission in a manner authorized by the applicable sheriff or chief of police. G.S. § 66-391.

Anyone who knowingly violates a provision contained in this Chapter shall be guilty of a misdemeanor and will be subjected to a penalty as provided in G.S. § 66-396.

10.4 Nonferrous Metals

10.4.1 Issuance of Nonferrous Metals Purchase Permits by Sheriff; Form; Fees; Record Keeping

The sheriff of each county shall issue a nonferrous metals purchase permit to an applicant if the applicant:

1. Has fixed site in sheriff’s county;
2. Declares on a form provided by sheriff that applicant is informed of and will comply with the provisions of this Part 3;
3. Does not have a permit that has been revoked by G.S. § 66-429(b) at the time of application; and
4. Has not been convicted of more than three violations of this Part.

A permit is valid for 12 months and shall be valid only for a fixed site at which nonferrous metals are purchased. G.S. § 66-426. The form shall contain at a minimum the date and the name and the address of the permit holder.

The Attorney General shall prescribe a standard application form and standard permit form to be used by the sheriff. G.S. § 66-426. The Sheriff shall not charge a fee for a permit and shall retain a copy of any permit issued. G.S. § 66-426.

10.5 Issuance of Business Permits to Dealers in Precious Metals; Accept Bond; Keep Records Confidential

Article 45 of North Carolina General Statutes, Chapter 66 provides for the regulation of precious metal dealers (defined in G.S. § 66-406) in order to prevent theft, transactions in stolen property, and similar wrongdoing. Sheriffs not familiar with the intricacies of this statute should examine it closely before issuing such permits.

Before a person may engage as a dealer in the business of purchasing precious metals, he must obtain a permit from the local law enforcement agency, in accordance with G.S. § 66-407.

The definition of local law enforcement agency includes sheriffs' offices and other agencies. Local law enforcement agencies as defined in G.S. § 66-406 are:

- The county police force, if the dealer's business is located within a county with a county police force and outside the corporate limits of a municipality.
- The municipal police force, if the dealer's business is located within the corporate limits of a municipality having a police force.
- The county sheriff's office of the county in which the dealer's business is located, if neither subdivision a. nor b. of this subdivision applies.

The local law enforcement agency may issue special occasion permits, which allow the holder to purchase precious metals as a dealer in trade shows and the like. G.S. § 66-407.

10.5.1 Bond/Trust Account

Before being issued any permit under G.S. § 66-407, the dealer must execute a cash or surety bond, or establish a trust account with a bank or savings institution, in an amount prescribed by law. See G.S. § 66-409.

Any bond obtained in accordance with this section must be delivered to the local law enforcement agency which first issued the dealer's current valid permit.

Any law enforcement agency may revoke the permit and sue for forfeiture of the bond or trust account if the dealer breaches his statutory obligations under Article 25. G.S. § 66-409.

10.5.2 Records

Every dealer in precious metals must keep detailed records of his purchases containing specific information enumerated at G.S. § 66-410.

A copy of each record book entry must be filed within 48 hours of the transaction with the local law enforcement agency. Records shall be filed in the manner authorized by the local law enforcement agency, which may include reporting electronically by transmission over a computer network, by facsimile machine, or by hand delivering hard copies to the local law enforcement agency. In any case where a technological failure prevents a dealer from reporting electronically or by facsimile, the dealer shall have the option of hand delivering a hard copy of the record to the local law enforcement agency.

The dealer's records shall be subject to inspection by law enforcement agencies at the place of business at all reasonable times.

When on file with the local law enforcement agency, the copies of the dealer's record book entries shall not be subject to inspection and examination as public records under G.S. § 132-6. Only persons authorized by the sheriff or county police may access these files, and for official purposes only. G.S. § 66-410.

10.5.3 Official Misconduct

It is a misdemeanor for any official or employee of the local law enforcement agency to knowingly and willfully allow unauthorized persons to have access to the precious metal dealers' records on file with said agency. G.S. § 66-410.

However, certain transactions are exempted from the dealer permit requirement per G.S 66-406. Sheriffs are advised to consult the statute and their agency legal advisor for clarification of exempt transactions.

10.5.4 Regulation of Employees

Every employee of a precious metal business must, within two days of being so employed, register his name and address with the local law enforcement agency, and have his photograph taken by such agency. G.S. § 66-407.

10.5.5 Misdemeanor Offense

Law enforcement officers should be aware that a dealer who violates any of the provisions contained in Article 45 Part 2 Precious Metals Businesses, will be guilty of a misdemeanor. G.S. § 66-413.

10.6 Sheriff May Investigate Public Nuisance Upon Request & Make Recommendation Regarding Abatement

Chapter 19 of the North Carolina General Statutes contains provisions pertaining to "offenses against public morals."

Article 1 of this chapter authorizes a civil court action for the "abatement of nuisances." Such proceedings may be maintained by the Attorney General, district attorney, county, municipality, or any private citizen of the county in order to stop (abate) the nuisance and to prohibit (enjoin) persons and places and things from being involved in those activities. G.S. § 19-2.1.

Examples of nuisances include:

1. The use, ownership, leasing, or maintenance of any building or place in order to engage in prostitution, gambling, illegal possession or sale of alcoholic beverages, controlled substances or obscene or lewd matter;

2. The use, ownership, leasing, or maintenance of any building or place to engage in repeated acts which create and constitute a breach of the peace;
3. The use, ownership, leasing, or maintenance of any building or place to engage in any “chop shop” activities in violation of G.S. § 14-72.7;
4. The use, ownership, leasing, or maintenance of any building or place to engage in repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses.

Sheriffs may receive a request from the Attorney General, district attorney, county or municipality to investigate alleged public nuisances and to “make recommendations regarding actions to abate the public nuisances.” G.S. § 19-2.1.

Sheriffs may likewise request the Alcohol Law Enforcement Branch of the North Carolina Department of Public Safety or any other law enforcement agency with jurisdiction to investigate alleged public nuisances occurring within the county. G.S. § 19-2.1.

Sheriffs should review G.S. § 19-1, G.S. § 19-1.1 (“definitions”), G.S. § 19-1.2 (“types of nuisances”), and G.S. § 19-1.3 (“personal property as a nuisance”) for further clarification if requested to act under this Article.

11. Sheriff’s Office Administration

11.1 The Sheriff’s Office

11.1.1 Sheriff Entitled to Two Deputies; Sheriff May Dismiss at Will; Duty to File Reports with County Board

Under G.S. 153A-103, the sheriff has the “exclusive right to hire, discharge, and supervise the employees in his office.” However, the board of county commissioners must approve the appointment by the sheriff of: (i) a relative by blood or marriage of nearer kinship than first cousin; or (ii) a person who has been convicted of a crime involving moral turpitude. G.S. § 153A-103(1).

The sheriff is entitled to at least two deputies, who will be reasonably compensated by the county. G.S. § 153A-103(2). Such deputies will serve at the will of the elected sheriff.

Under G.S. § 153A-104, the sheriff may be required to file regular or special reports to the county board of commissioners. The board of commissioners may require any officer, employee, or agent of the county to make to the board, either directly or through the county manager, periodic or special reports concerning any matter connected with the officer’s, employee’s or agent’s duties. The board may require that such a report be made under oath.

Furthermore, if a person fails or refuses to obey a reasonable order to make a report issued pursuant to this section, the board may apply to the appropriate division of the General Court of Justice for an order requiring that its order be obeyed.

11.1.2 Sheriff's Office Shall Operate "TDD" in Central Communications Office

A "TDD", or "telecommunications device for the deaf," is a "keyboard mechanism attached to or in place of a standard telephone...used to transmit or receive signals through telephone lines." G.S. § 143B-216.30(7).

Such device essentially allows messages to be sent to and from deaf persons using a keyboard and screen. Each sheriff's office is required to have at least one telecommunications device that is "functionally equivalent in providing equal access to services for individuals who are deaf, hard of hearing, deaf-blind, and speech impaired." G.S. § 143B-216.34.

11.2 Occupational Prohibitions

11.2.1 Sheriff Shall Not Engage in the Practice of Law

G.S. § 84-2

The practice of law involves performing legal services for any other person, firm, or corporation, with or without compensation. Examples of such legal services are contained in G.S. § 84-2.1, and include such acts as the preparation of deeds, wills, petitions or orders in a court proceeding, and other legal documents, as well as the giving of advice regarding the legal rights of others.

While the statute prohibits the sheriff from performing such legal services for "any other" person, this language does not prevent him from performing some such services for himself as a private citizen, or as a part of a transaction in which he as a private citizen has a primary interest, unless otherwise prohibited by law. *State v. Pledger*, 257 N.C. 634 (1962).

11.2.2 Sheriff Shall Not Serve as a Member of General Assembly

G.S. § 162-2

11.2.3 Sheriff Shall Not Serve as the County Budget Officer

G.S. § 159-9

11.3 Official Bond

11.3.1 Sheriff's Bond and Approval of the Bond

G.S. § 162-8 requires sheriffs to furnish a bond payable to the State of North Carolina for the due execution and return of process, the payment of fees and moneys collected, and the faithful execution of his office as sheriff. The amount of the bond shall be determined by the board of county commissioners but shall not exceed twenty-five thousand dollars (\$25,000).

G.S. § 153A-39 requires the board of county commissioners to meet on the first Monday in December of even-numbered years. This required meeting includes the year in which new sheriffs are elected and sworn in to office.

In addition, G.S. § 162-9 requires the board of county commissioners in every county to take and approve the official bond of the sheriffs on the first Monday in December after the election.

The bond, upon approval of the county commissioners, shall be deposited by the commissioners with the clerk of superior court for safekeeping. G.S. § 162-9.

11.3.2 Insufficient Bond

Whenever the board of county commissioners finds that the sheriff has been unable to provide the bond prescribed by the board, the board shall give written notice to the sheriff to appear before the board within ten days and provide a sufficient bond.

If the sheriff fails to appear or provide a sufficient bond, the sheriff shall forfeit his office, and the commissioners shall elect a suitable person in the county as sheriff for the unexpired term, pursuant to G.S. § 162-5 or G.S. § 162-5.1, as appropriate. G.S. § 162-10.

11.3.3 Failure to Give Bond

If the sheriff attempts to discharge any of his official duties before executing an official bond, he is liable to a forfeiture of \$500.00 for each such attempt. G.S. § 58-72-5.

11.3.4 Failure to Renew Bond

If the sheriff fails to renew his bond, the board of county commissioners has the duty to declare the office vacant, and to take appropriate action to fill the office. G.S. § 58-72-25.

11.3.5 Judicial Determination of Insufficient Bond

Even if the county commissioners have accepted the sheriff's bond, five "respectable citizens" of the county, who, after diligent inquiry, sincerely believe the sheriff's bond is insufficient in either its amount or in its sureties, may swear to such belief and underlying facts before a superior court judge. The judge will then order the sheriff to appear at a particular time and place with sufficient independent evidence to justify his bond.

If the judge still finds the bond deficient, the sheriff will be given up to 20 days to post another bond in the amount set by the judge. In the event the sheriff fails to give such satisfactory bond within 20 days, the judge will declare the office vacant, and will take appropriate action to have the office filled. G.S. § 58-72-35. The successor sheriff is required to give bond to the judge. G.S. § 58-72-40.

11.3.6 Right of Action on Bond

11.3.6.1 Cause of Action Established

Every person injured by the neglect, misconduct, or misbehavior in office of any sheriff may institute a suit against such sheriff on his official bond. Every sheriff and the sureties on his official bond are liable to the injured person for acts committed by virtue or under color of office. G.S. § 58-76-5.

11.3.6.2 Summary Remedy on Bond

When a sheriff collects or receives any money by virtue of his office, and on demand fails to pay such money to the person entitled to it, the aggrieved party may move for judgment in the superior court against the sheriff and his sureties for the amount due. The court must render judgment on the motion at the session during which the motion is made. The sheriff is entitled to written notice at least 10 days prior to such motion. G.S. § 58-76-15.

11.3.6.3 Additional Damages Recoverable for Money Unlawfully Detained

When a person is entitled to money unlawfully withheld by the sheriff, he (the aggrieved party) is entitled to recover not only the amount detained, but damages at a rate of 12% per year from the time of detention until payment. This provision applies regardless of the manner in which the plaintiff sued to recover such money (i.e., full civil suit versus summary remedy). G.S. § 58-76-20.

11.3.6.4 Sheriff Liable for Negligence in Collecting Debt

G.S. § 58-76-30 provides, in full, when a claim is placed in the hands of any sheriff or coroner for collection, and he does not use due diligence in collecting the same, he shall be liable for the full amount of the claim notwithstanding the debtor may have been at all times and is then able to pay the amount thereof.

11.3.7 Sheriff Carrying Out Official Duties Before Giving Bond a Misdemeanor

G.S. § 14-229 provides, in full, if any officer shall enter in the duties of his office before he executes and delivers to the authority entitled to receive the same the bonds required by law, and qualifies by taking and subscribing and filing in the proper office the oath of office prescribed, he shall be guilty of a Class 1 misdemeanor and shall be ejected from his office.

11.4 Official Misconduct and Removal from Office

11.4.1 Unlawful Withholding of Information by Sheriff's Office

When service of subpoena, or any other court process, is sought upon any law enforcement officer pursuant to any statute, it shall be unlawful for any officer or employee of the agency by whom the officer sought to be served is employed willfully to withhold the address or telephone number of the officer sought to be served with subpoena or other process. G.S. § 1-589.1.

11.4.2 Obligations Taken by Sheriff Payable to Himself

Modern pretrial release procedures, which are quite elaborate, require persons effecting a prisoner's release, such as a magistrate, to file any bond, deposit, or mortgage with the Clerk of Court. G.S. § 15A-537.

In the late 1700's when this statute originated, pretrial release procedures were less structured, and sheriffs were afforded wider procedural discretion in releasing prisoners. To prevent abuse, G.S. § 162-25 provided that sheriffs:

- a. Were forbidden from taking any obligation (i.e., bail, money, or promise) payable to someone other than himself as sheriff. Thus, a sheriff could avoid being tempted by an "under the table" arrangement whereby the prisoner might pay money into a private trust, to the sheriff's wife, corporation, or other entity not readily visible or accountable;
- b. Could not take an obligation unless it was dischargeable upon the prisoner's subsequent appearance in court, as is of course consistent with the modern concept of bail--money posted as bail is returned upon the defendant's appearance in court, pursuant to his release order. Thus, the sheriff would not be tempted to release prisoners before trial for personal gain.

While modern release procedures and practices render this enactment somewhat less relevant than it was hundreds of years ago, it nevertheless remains "on the books" as good law.

11.4.3 Swearing Falsely to Official Reports

Pursuant to G.S. § 14-232, “if any . . . sheriff, . . . shall willfully swear falsely to any report or statement required by law to be made or filed, concerning or touching the county, State or school revenue, he shall be guilty of a Class 1 misdemeanor.”

11.4.4 Failing to Return Process, Making False Return

Pursuant to G.S. § 14-242, if any sheriff, deputy or other officer...willfully refuses to return any precept (generally considered to be a writ, warrant, or order), notice or process, to him tendered or delivered, which it is his duty to execute, or willfully makes a false return thereon, the person who willfully refused to make the return or willfully made the false return shall be guilty of a Class 1 misdemeanor.

11.4.5 Embezzlement, Wrongful Conversion, etc.

Any sheriff who embezzles or wrongfully converts to his own use, corruptly uses, or misapplies for any purpose other than that for which the same are held, or fails to pay over and deliver to the proper persons entitled to receive the same when lawfully required to do so, any moneys, funds, securities, or other property which he received by virtue or color of his office in trust for any person or corporation, will be punished as a felon. G.S. § 14-92.

If the value ... is one hundred thousand dollars (\$100,000) or more, the person is guilty of a Class C felony. If the value is less than one hundred thousand dollars (\$100,000), the person is guilty of a Class F felony. G.S. § 14-92.

Any sheriff who leaves office and fails to account to, or deliver over to, his successor in office or other person lawfully entitled to receive any moneys, funds, securities, or other property which he received by virtue or color of his office in trust for any person or corporation, will be punished as a felon. G.S. § 14-92.

11.4.6 Sheriff Shall Keep Funds Received in Trust Separate from His Own

In relevant part, G.S. § 128-11 provides that “any sheriff...receiving, by virtue of his office, public money or money to be held by him in trust shall keep or deposit such money or the credits or other evidence thereof separate and apart from his own funds and shall not, at any time, apply such money to his own use or benefit or intermingle the same in any manner with credits or funds of his own.”

Violation of this section is a misdemeanor. G.S. § 128-12.

11.4.7 Sheriff May be Imprisoned in Jail of Adjoining County

Pursuant to G.S. § 15-6, no person may be imprisoned except in the common jail of the county, unless otherwise provided by law. Provided, that whenever the sheriff of any county shall be imprisoned, he may be imprisoned in the jail of any adjoining county.

11.4.8 Removal of Sheriff from Office – Grounds for Removal

In accordance with G.S. § 128-16, the sheriff can be removed from office by a superior court judge based on certain charges. This statute provides, in relevant part:

Any sheriff...shall be removed from office by the judge of superior court...of the district where said officer is resident upon charges made in writing, and hearing thereunder, for the following causes:

- a. Willful or habitual neglect or refusal to perform the duties of his office
- b. Willful misconduct or maladministration in office
- c. Corruption
- d. Extortion
- e. Upon conviction of a felony
- f. Intoxication, or upon conviction of being intoxicated

11.4.9 Petition for Removal

In accordance with G.S. § 128-17, a petition for removal from the office of sheriff may be filed by:

- a. Five qualified electors, upon the approval of the county attorney or district attorney; or
- b. The county attorney; or
- c. The district attorney.

The above referenced petition must be filed with the clerk of superior court. G.S. § 128-18. The accused may, at any time before the hearing, file a verified answer with the clerk of court. G.S. § 128-18.

11.4.10 Suspension Pending Hearing

Pursuant to G.S. § 128-19, a judge may suspend the sheriff pending hearing and set forth the manner in which the vacancy will be filled. This statute provides, in full:

Upon the filing of the petition in the office of the clerk of superior court, and the presentation of the same to the judge, the judge may suspend the accused from office if in his judgment sufficient cause appears from the petition and affidavit, or affidavits, which may be presented in support of the charges contained therein. In case of suspension, as herein provided, the temporary vacancy shall be filled in the manner provided by law for filling vacancies in such office. See G.S. §§ 162-5, 162-5.1 for filling vacancy in the office of sheriff.

11.4.11 Removal from Office for Failing to Discharge Duties

G.S. § 14-230 provides, in relevant part, that if any...sheriff...shall willfully omit, neglect or refuse to discharge any of the duties of his office...[where] it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor.

If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office...such officer shall be guilty of misbehavior in office, and shall be punished by removal...under the sentence of the court...and shall also be fined or imprisoned in the discretion of the court.

11.5 Vacancy in Office; Duties and Privileges Upon Retirement

11.5.1 Coroner or Chief Deputy to Act as Sheriff During Vacancy in Office

When a permanent vacancy occurs in the office of sheriff during the term, the sheriff's duties must be performed by the county coroner (where the county has a coroner's office), or the chief deputy sheriff pending the county commissioner's appointment of an individual to fill the office of sheriff for the remainder of the term.

In counties where the office of coroner has been abolished, the chief deputy sheriff (or deputy having served the longest if there is no chief deputy) will perform all duties of the sheriff. G.S. § 162-5.

In counties where the coroner's office has not been abolished, the coroner is authorized, pursuant to G.S. § 162-5, to "execute all process directed to the sheriff until the first meeting of the county commissioners next succeeding such vacancy when the board shall elect a sheriff to supply the vacancy for the residue of the term... If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled." G.S. § 162-5.

G.S. § 162-5, which focuses especially on the coroner's authority to execute process when the sheriff's office is vacant, should be read in light of G.S. § 152-8, which states that "any time [there is] no person properly qualified to act as sheriff in the county, the coroner of the county is hereby required to execute all process and in all other things to act as sheriff, until some person is appointed sheriff"

Construing these two statutes together, it would appear that in those counties having an office of coroner, such coroner has all powers and duties vested in the sheriff until the office of sheriff is filled. G.S. § 162-17.

The method for filling depends on the county. See G.S. § 162-5 and G.S. § 162-5.1.

11.5.2 Sheriff Who Leaves Office Has a Duty to Deliver to his Successor Unexecuted Process Still Remaining in his Possession

Pursuant to G.S. § 162-17, it shall be the duty of any sheriff who shall have received a precept (generally considered to be a writ, warrant, or order), and shall go out of office before the return day thereof, without having executed the same, to deliver the same to the succeeding sheriff with sufficient time allowed for it to be executed by him.

11.5.3 Ex-Sheriff Authorized to Execute Proper Deed; Successor Authorized to Execute Proper Deed for Former Sheriff

When a sheriff sells any property, real or personal, by virtue of his office, and then leaves office before properly executing a deed for such sale of property, he is authorized to execute a proper deed for such sale even though his term of office has expired.

When a sheriff sells any real or personal property by virtue of his office and dies or leaves the State before properly executing a deed, his successor in office shall execute such deed. G.S. § 39-5.

11.5.4 Retiring Member of Sheriff's Office Entitled to Badge; May be Awarded Service Weapon

Upon request, any retiring member of a State, county, or city law enforcement agency shall receive, at no cost, the badge worn or carried by him while in service.

If a member of a law enforcement agency dies while he is still a member of the agency, or is slain in the line of duty, the surviving spouse of the deceased member shall receive, upon the request and at no cost, the badge worn or carried by the deceased member. If the member dies without a surviving spouse, the member's surviving children, if any, will be similarly entitled to receive the member's badge.

A retiring member of a law enforcement agency, or a deceased member's surviving relatives, as mentioned above, may request the service side-arm issued to the retiring or deceased member. In this event, the governing body of the law enforcement agency (for instance, the Board of County Commissioners for peace officers with county-wide authority) may, in its discretion, award the side-arm to the retiring member or surviving relative, at a price set by the governing body, upon securing a permit, or without a permit if the weapon is incapable of being discharged. G.S. § 20-187.2(a).

12. Interaction with Other Government Entities

12.1 Sheriff to Store Seized Fuel, Tankers, etc. Upon Request of Gas/Oil Inspector

The Gasoline and Oil Inspection Board is responsible for carrying out the regulatory scheme provided in this Article. G.S. § 119-26. G.S. § 119-32 sets forth the enforcement powers and authority of gasoline and oil inspectors.

Of particular interest to the sheriff is the authority of inspectors to deliver to the sheriff of the proper county all motor or other vehicles and all containers used in transporting motor fuels and/or other liquid petroleum products in violation of or without complying with the provisions of the Article or the rules, regulations or requirements of the Commissioner of Agriculture and/or the Gasoline and Oil Inspection Board and also all motor fuels contained therein. G.S. § 119-32.

In addition to their authority to seize and deliver to the sheriff the above referenced property, inspectors also have the duty to arrest persons who violate the motor fuel tax and inspection laws of the State, or who fail to furnish inspectors with certain required records and other documentation upon request.

The sheriff should be aware that inspectors, upon effecting such an arrest, are legally bound to take the arrestee "before some proper peace officer of the county in which the offense was committed and institute proper prosecution." G.S. § 119-32.

Thus, a deputy sheriff may be called upon to assist a gasoline and oil inspector in processing an arrestee charged in violation of the motor fuel tax and inspection laws.

12.2 Sheriff to Execute Processes and Sentences Issued by Military Courts of this State

G.S. § 127A-57 and G.S. § 127A-59 are important statutes regarding the execution of processes and sentences issued by a military court of the State.

As provided in G.S. § 127A-57:

All warrants and other processes authorized by this Chapter and sentences of any of the military courts of this State shall be executed by any sheriff, deputy sheriff, or police officer into whose hands the same may be placed for service or execution, and such officer shall make return thereof to the officer issuing or imposing the same. The service or execution of process or sentence shall be made by the officer without tender or advancement of fee therefor; but all costs in such cases shall be paid from funds appropriated by the North Carolina Department of Public Safety.

As provided in G.S. § 127A-59:

When any sentence to fine or imprisonment shall be imposed by any military court of this State, it shall be the duty of the military judge, president of the court or summary court officer, upon approval of the court's findings and sentence, to make out and sign a certificate entitling the case, giving the name of the accused, the date and place of trial, the date of approval of sentence, and the terms of the sentence. The trial counsel shall deliver the certificate to the Clerk of Superior Court of Wake County and shall thereupon be the duty of the clerk to take the actions necessary to carry the sentence into execution in the same manner as prescribed by law for the collection of fines, or commitment to service of terms of imprisonment, in a criminal cases determined in the courts of this State. The Administrative Office of the Courts shall ensure that the State's criminal history records include pertinent information relating to a court martial under this Chapter in a like manner as a comparable offense under the State's criminal laws would be recorded.

12.3 Sheriff to Take Absent County Commissioner into Custody

Article 4 of North Carolina General Statutes, Chapter 153A contains several provisions regarding the organization and administration of county boards of commissioners. Part 3 of Article 4 details the requirements and procedures to be followed in holding board meetings.

A rarely used statute, but one that should be of interest to sheriffs, is G.S. § 153A-43, setting forth the attendance requirements for board members. This statute imposes on the sheriff the duty to arrest an absent commission member when directed to do so by the board. As stated in G.S. § 153A-43, “[t]he board may compel the attendance of an absent member by ordering the sheriff to take the member into custody.”

12.4 Sheriff to Furnish County Board List of Deputies

A provision of interest to sheriffs is buried in the “definitions” section of the North Carolina Worker's Compensation Act.

According to G.S. § 97-2(2), the sheriff shall furnish the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable...

Sheriffs should refer to the General Statutes, or to the county attorney, for specific details regarding their obligations under the North Carolina Worker's Compensation Act.

12.5 Sheriff Shall Execute Lawful Orders of State and County Boards of Elections

Article 3 of Chapter 163 sets forth the statutory provisions related to the administration of the State Board of Elections and delineates and defines the scope of its powers and duties.

G.S. § 163-24 provides that “[t]he State Board of Elections shall possess full power and authority to maintain order, and to enforce obedience to its lawful commands during its sessions and shall be constituted an inferior court for that purpose.”

If any person refuses to obey the lawful commands of the Board or its chairman or interrupts its proceedings by disorderly conduct committed within the Board’s hearing or presence, the Board may commit the person to the county jail for up to 30 days. G.S. § 163-24. The Board’s order must be executed by a sheriff or the Board’s deputy if a sheriff is not present or fails to act.

An identical provision in Article 4 of Chapter 163, dealing with the power of county boards of elections to maintain order during their sessions, similarly authorizes any such board to commit disorderly persons and persons disobeying the lawful commands of the board, to jail. This order must also be executed by a sheriff or by a deputy of the board if a sheriff is not present or fails to act. G.S. § 163-34 and G.S. § 163-48.

12.6 Sheriff Shall Obey Lawful Orders of County Board of Elections Officials

County boards of elections are required to appoint one person to act as registrar, and two other persons to act as judges of election, for each voting precinct in the county. G.S. § 163-41(a). These election officials are responsible for conducting primaries and elections within their precincts.

Registrars and judges of election are required to enforce peace and good order in and about the place of registration and voting. G.S. § 163-47(a) and G.S. § 163-48.

This duty includes the following responsibilities:

1. They must keep the places of registration and voting free of obstruction and accessible by persons seeking to register or vote;
2. They must prevent, and halt, improper attempts to intimidate or interfere with any person registering or voting;
3. They must protect challengers (see Article 8, Challenges) and witnesses against violence, and they may eject challengers and witnesses from the place of voting for violating any provisions of the election laws; and
4. They must take appropriate actions to prevent riots, violence, and disorder. G.S. § 163-48.

As part of their duties to keep peace and order, registrars and judges may call upon the sheriff or other peace officers to aid them in enforcing the law. Moreover, they may order the arrest of any person violating any provisions of the election laws. G.S. § 163-48.

The sheriff and other peace officers, when called upon to assist the registrar and judges in enforcing the laws and keeping the peace, have a duty to immediately obey and aid in the enforcement of any lawful order made by such precinct election official. G.S. § 163-48.

12.7 Sheriff to Deliver Absentee Ballot List to Voting Precincts Upon Request

Under G.S. § 163-226, qualified voters of the State may be allowed to vote by absentee ballot in certain elections, such as statewide primaries and general elections, and elections conducted by the county board of elections.

G.S. § 163-232 sets forth the manner in which the absentee ballots are to be executed and returned to the chairman of the county board of elections.

The chairman is responsible for preparing a list of all executed absentee ballots returned to the county board of elections. G.S. § 163-232. He must then deliver copies of the list to the registrar of each voting precinct in the county.

The sheriff should be aware of the chairman's duty to deliver copies of the absentee ballot list to each precinct registrar, for the chairman is authorized to call upon the sheriff to distribute the appropriate lists to the precincts. G.S. § 163-232.

12.8 Violation of Post-Terrorism "Quarantine/Isolation" Order and Judicial Selection of Detention Facility Following Denial of Pretrial Release

Chapter 130A of the General Statutes contains the "Public Health Law of North Carolina." The purpose of this law is "to promote and contribute to the highest level of health possible for the people of North Carolina." G.S. § 130A-1.1.

Article 22, which was enacted subsequent to the "9/11" attack on the World Trade Center, is entitled "A Terrorist Incident Using Nuclear, Biological, or Chemical Agents." This article recognizes the potential public health consequences that may be caused "by a terrorist incident using nuclear, biological, or chemical agents." G.S. § 130A-475.

In doing so, the General Assembly has provided the State Health Director several options with which to deal with such public health risk, including:

1. Ordering any person to submit to tests to determine possible exposure to the nuclear, biological, or chemical agents.
2. Test any real or personal property necessary to determine the presence of nuclear, biological, or chemical agents.
3. Evacuate or close any real property to investigate suspected contamination of the property.
4. Limit the freedom of movement or action of a person that is contaminated with, or suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons.
5. Limit access by any person to an area or facility that has been secured under this article.

G.S. § 130A-475 (a).

The State Public Health Director may request law enforcement assistance in enforcing their orders. Sheriffs should be aware that it is a criminal offense to violate or fail to obey any lawful order of the State Public Health Director and is punishable as a misdemeanor. G.S. § 130A-25.

Sheriffs should likewise be aware that in the event an individual is arrested for a violation of an order limiting freedom of movement or access issued pursuant to G.S. § 130A-475, pretrial release must be denied if it is determined during the initial appearance that the arrested poses a threat to the health or safety of others. G.S. § 15A-534.5. Such determination must be made by the judicial official holding initial appearance “only after the State Health Director or local health director has made recommendations to the court.” G.S. § 15A-534.5.

In the event pretrial release is denied, the judicial official may designate the area or facility to which the arrestee may be confined. G.S. § 15A-534.5.

The sheriff, having care and custody of the jail in his county, and being the “keeper thereof,” G.S. § 162-22, should keep in mind the above provisions when planning for such events.

12.9 Disruption of Official Meetings of Public Bodies

Disrupting official meetings of public bodies is criminalized in our statutes. “Any person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a Class 2 misdemeanor.” G.S. § 143-318.17.

The presiding officers of several public bodies are also described by statute.

For local boards of education:

“The chairman of the local board of education shall preside at the meetings of the board, and in the event of his absence or sickness, the board may appoint one of its members temporary chairman.” G.S. § 115C-41.

For local boards of county commissioners:

“The chairman is the presiding officer of the board of commissioners.” G.S. § 153A-39. On the first Monday in December or each even-numbered year, or at its first regular meeting in December of each odd-numbered year, the board of county commissioners shall choose one of its members as chairman for the ensuing year, unless the chairman is elected as such by the people or otherwise designated by law. G.S. § 153A-39.

On some occasions, deputies attending public meetings may be called upon to enforce this statute and may do so if the deputy has probable cause to believe the statute has been violated by:

1. An individual who willfully interrupts, disturbs, or disrupts an official meeting (by, for example, yelling, speaking out-of-turn, failure to conform to meeting rules, etc.); and
2. Who is directed to leave the meeting by the presiding officer of the meeting and willfully refuses to leave.

12.10 Sheriff to Serve Subpoenas for Attorney General

The Governor has the authority to direct the Attorney General to investigate any state agency. “The Governor is hereby authorized and empowered to call upon and direct the Attorney General to investigate the management of or condition within any department, agency, bureau, division or institution of the State, or any other matters pertaining to the administration of the Executive Department, when the Governor shall determine that such an investigation shall be necessary.” G.S. § 143-159.

When the Attorney General is so called by the Governor to investigate, the Attorney General is given the power to issue subpoenas, which pursuant to statute are to be served by the sheriff or other county officer. “He shall have power to issue subpoenas . . .” G.S. § 143-160. “All subpoenas issued by [the Attorney General] shall be served by the sheriff or other officer of any county to which they may be directed.” G.S. § 143-160.

13. Cooperation Between Law Enforcement Agencies

13.1 Federal Officers May Enforce State Laws Upon Request

A federal law enforcement officer listed at G.S. § 15A-406(a), (1) through (13), is authorized to enforce the criminal laws of North Carolina when (i) asked by the head of a local law enforcement agency, such as a sheriff, to provide temporary assistance, and such request is within the scope of the local law enforcement agency’s subject matter and territorial jurisdiction; or (ii) when asked by a local law enforcement officer, such as a deputy sheriff, and at the time of the request the local law enforcement officer is acting within the scope of his territorial and subject matter jurisdiction. G.S. § 15A-406(b)(1) and (2).

The federal law enforcement officers listed at G.S. § 15A-406(a) are:

1. United States Secret Service special agents;
2. Federal Bureau of Investigation special agents;
3. Bureau of Alcohol, Tobacco and Firearms special agents;
4. United States Naval Investigative Service special agents;
5. Drug Enforcement Administration special agents;
6. United States Customs Service officers;
7. United States Postal Service inspectors;
8. Internal Revenue Service special agents;
9. United States Marshals Service marshals and deputies;
10. United State Forest Service officers;
11. National Park Service officers;
12. United States Fish and Wildlife Service officers;

13. Immigration and Naturalization Service officers;

14. Tennessee Valley Authority Officers; and

15. Veterans Administration Police Officers.

13.2 County May Request State Law Enforcement Officers to Provide Local Police Protection Upon a Sheriff's Advice

G.S. § 160A-288 sets forth statutory guidelines regarding the cooperation between law enforcement agencies.

Under S. 160A-288.1(a), the governing body of any city or county may request the Governor to temporarily assign State law enforcement officers to provide local law enforcement protection, when the local law enforcement officers:

1. Are on strike; or
2. Are engaged in an organized "slowdown;" or
3. Otherwise refuse to fulfill their law enforcement duties; or
4. Submit mass resignations.

A request for assistance from a county governing board must be upon the advice of the sheriff of the county. G.S. § 160A-288.1(a).

13.3 Local Law Enforcement Agency May Provide Assistance to State Law Enforcement Agency

The head of a local law enforcement agency may provide temporary assistance to a State law enforcement agency in enforcing the laws of North Carolina. G.S. § 160A-288.2. The assistance may comprise allowing officers of the local agency to work temporarily with officers of the State agency (including in an undercover capacity) and lending equipment and supplies.

In order for the head of a local law enforcement agency to provide such assistance he must (i) request assistance, in writing, by the head of the State agency, to provide assistance; and (ii) act pursuant to rules and regulations officially adopted by the governing body of the county or city by which he is employed. G.S. § 90-95.2 (1975).

13.4 Law Enforcement Agency May Provide Officers and Equipment to Other Agency for Enforcement of Controlled Substances Act

As set forth in G.S. § 90-95.2, "the head of any law enforcement agency may temporarily provide assistance to another agency in enforcing the provisions of [the Controlled Substances Act, Article 5 of N.C.G.S. § Chapter 90] if so requested in writing by the head of the other agency."

The above referenced law enforcement agencies include sheriff offices, local police departments, State law enforcement agencies, and any other State or local agency responsible for enforcing the criminal laws. G.S. § 90-95.2(b)(2).

The inter-agency cooperation contemplated by this statute includes providing officers of one agency to another agency for undercover projects or otherwise, and lending equipment and other supplies of one agency to another.

Officers who work with another law enforcement agency under this enactment will have the same powers and privileges as the officers who are regularly employed by the requesting agency, in addition to those they normally possess. G.S. § 90-95.2(a).

While on duty with another agency, an officer will be responsive to the orders of the other agency's commands but will remain under the control of his regular employer for purposes of compensation and other administrative matters. G.S. § 90-95.2(a).

13.5 Highway Patrol Authorized to Perform General Peace Officer Duties Upon Request

Pursuant to G.S. § 20-188, the State Highway Patrol shall have full power and authority to perform such additional duties as peace officers as may from time to time be directed by the Governor, and such officers may at any time and without special authority, either upon their own motion or at the request of any sheriff or local police authority, arrest persons accused of highway robbery, bank robbery, murder, and other crimes of violence.

This section further provides that a patrolman who begins investigating an accident or collision will not be relieved of his duties until a local law enforcement officer, such as a deputy sheriff, assumes full responsibility for any remaining investigation. When a local law enforcement officer does assume such responsibility, the highway patrolman must render reasonable assistance upon request.

13.6 Wildlife Resources Commission Protectors Authorized to Perform General Peace Officer Duties Upon Request

Sworn law enforcement officers of the North Carolina Wildlife Resources Commission (designated as Protectors pursuant to G.S. § 113-128 (7) and (9)), have law enforcement authority granted to them by virtue of their office.

In addition, they have the authority to enforce criminal laws otherwise not within their subject matter jurisdiction, when (i) requested by the head of a local law enforcement agency, such as a sheriff, to provide temporary assistance, and (ii) such request is within the local agency's subject matter jurisdiction. G.S. § 113-136(d1)(2).

While providing temporary assistance under this statute, the Wildlife Resources Commission officer (a Protector) will have the same powers vested in law enforcement officers by statute and common law. G.S. § 113-136(d1).

13.7 Company Police May Enter Mutual Aid Agreement with County Upon Consent of Sheriff

North Carolina General Statutes, Chapter 74E, the “Company Police Act,” permits certain public and private institutions, such as hospitals and college campuses, to become “company police agencies” for the purposes of hiring their own on-site law enforcement personnel. G.S. § 74E-2.

Colleges and universities which qualify as company police agencies may, with the consent of the sheriff, enter into a mutual aid agreement with the county, pursuant to G.S. § 160A-288(d). G.S. § 74E-6(d).

13.8 UNC Constituent Institution Campus Police; UNC Affiliated Teaching Hospital Police; NC Arboretum Campus Police May Enter Aid Agreement with County Upon Consent of Sheriff

The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, may establish a campus law enforcement agency and employ campus police officers. G.S. § 116-40.5 (a).

The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any county, and with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted. G.S. § 116-40.5(c).

13.9 Community College Campus Police Enter Mutual Aid Agreement with County Upon Consent of Sheriff

The board of trustees of any community college may establish a campus law enforcement agency and employ campus police officers. G.S. § 115D-21.1(a).

The board of trustees of any community college that establishes a campus law enforcement agency under G.S. § 115D-21.1(a) may enter into joint agreements with the governing board of any county, with the consent of the sheriff, to extend the law enforcement authority of campus police officers into the county's jurisdiction and to determine the circumstances under which this extension of authority may be granted. G.S. § 115D-21.1(c).

13.10ABC Officers May Enter Mutual Aid Agreements; Officers of Sheriff's Office May be Authorized as ABC Officers

Local ABC boards are required to hire one or more ABC enforcement officers. G.S. § 18B-501(a). The local ABC officers employed by a local board shall constitute a “law enforcement agency” for purposes of approving and providing law enforcement assistance to other law enforcement agencies, such as a sheriff's office, at the written request of the head of such other law enforcement agency, in accordance with G.S. § 160A-288. G.S. § 18B-501(d).

Instead of hiring local ABC officers, a local board may contract with a sheriff's office or other local law enforcement agency to provide for the enforcement of ABC laws within that agency's territorial jurisdiction. G.S. § 18B-501(f).

When such a contract is executed between an ABC board and another law enforcement agency, such as a sheriff's office, the officers of the other law enforcement agency have the same authority to inspect licensed premises under G.S. § 18B-502 as ABC officers specially hired by the local board. G.S. § 18B-501(f).