

Additional Statutory Updates for 2016

Below are additional statutory updates that may be of interest to law enforcement. These were not included in the body of the Legal Update lesson plan due to time limitations or their passage after the completion of the materials. This list is by no means exhaustive of all possibly relevant statutes. Some new statutes were not included due to their applicability only to certain counties or agencies or because they deal with primarily administrative matters. Please see the North Carolina Sheriffs' Association's Final Legislative Report for a complete list.

HOUSE BILL 97 – State Budget Bill

Expands the list of crimes for which officers must obtain a DNA sample. Currently, law enforcement officers are required to collect a DNA sample from arrestees for crimes such as murder, manslaughter, rape, sex offenses, kidnapping, and armed robbery. Funding is provided to expand the list of offenses to include assault with a deadly weapon on executive, legislative, or court officers, castration and maiming, aggravated assaults on handicapped persons, patient abuse, discharging a firearm from within an enclosure, malicious injury or damage by use of explosives, assaulting a law enforcement agency animal, secret peeping, and felony child abuse.

Effective: December 1, 2015

HOUSE BILL 6 - Autocycle Definition and Regulation

Amends G.S. 20-4.01 and defines a new type of motor vehicle called an "autocycle." An autocycle is a three-wheeled motorcycle that has a steering wheel, pedals, seat safety belts for each occupant, antilock brakes, air bag protection, completely enclosed seating that does not require the operator to straddle or sit astride, and is otherwise manufactured to comply with federal safety requirements for motorcycles. The operator of an autocycle is required to have a Class C regular driver's license and is not required to have a motorcycle endorsement. An autocycle is not considered a motorcycle in the sense that the operator is not required to wear a helmet or to burn the autocycle's headlight during operation.

Effective: October 1, 2015

HOUSE BILL 134 - Soliciting Prostitution/Immunity for Minors

Expands G.S. 14-205.1 to provide that a minor (someone under the age of 18) who is suspected of or charged with soliciting as a prostitute is immune from criminal prosecution. Instead, the minor is to be taken into temporary protective custody as an "undisciplined juvenile." A law enforcement officer who takes a minor into custody for soliciting as a prostitute has to report the suspected violation to the director of the Department of Social Services (DSS) in the county where the minor lives or is found. The director of DSS has to start an investigation into child abuse or child neglect within 24 hours of the report.

Effective: August 5, 2015

HOUSE BILL 765 - Regulatory Reform Act of 2015

Makes various administrative and regulatory changes of interest to criminal justice agencies, including the following:

- Repeals obsolete statutes that make it a crime to use profane or indecent language on public highways (G.S. 14-197) or to refuse to relinquish a party telephone line in an emergency (G.S. 14-401.8).
- Amends G.S. 14-56, effective December 1, 2015 unless House Bill 765 is vetoed by Governor McCrory, to provide that any person who enters or attempts to enter any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind would not be criminally or civilly liable for doing so if one or more of the following circumstances exist:
 - The person acts in good faith to access a person inside to provide first aid or emergency health care treatment, or because the person inside is, or is in imminent danger of becoming unconscious, ill, or injured;
 - It is reasonably apparent that the circumstances require prompt decisions and actions in medical care, other health care, or other assistance; or
 - The necessity of immediate health care treatment or removal of the person is so reasonably apparent that any delay in the rendering of treatment or removal would seriously worsen the physical condition or endanger the life of the person.

Effective: When it becomes law unless vetoed by the Governor

HOUSE BILL 792 - Privacy/Protection from Revenge Postings

Enacts new G.S. 14-190.5A in which makes it a criminal offense to disclose certain images in which there is a reasonable expectation of privacy. A person commits this offense if all of the following exist:

- The person knowingly discloses an “image” (defined as photo, film, video, recording, digital, or other reproduction) of another person with the intent to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person, or cause others to do so;
- The depicted person is identifiable from the disclosed image itself or information offered in connection with the image;
- The depicted person’s “intimate parts” (defined as male or female genitals, pubic areas or anus, or the nipple of a female over the age of 12) are exposed or the depicted person is engaged in “sexual conduct” (defined as vaginal, anal, or oral intercourse; masturbation, excretory functions, or lewd exhibition of uncovered genitals; an act or condition that depicts torture, physical restraint by being fettered or bound, etc.) in the disclosed image;
- The person discloses the image without the affirmative consent of the depicted person; and
- The person discloses the image under circumstances such that the person knew or should have known that the depicted person has a “reasonable expectation of privacy” (defined as when a depicted person has consented to the disclosure of an image within the context of a personal

relationship as defined in G.S. 50B-1(b) and the depicted person reasonably believes the disclosure will not go beyond that relationship).

The punishment for this offense is as follows: (1) A Class H felony if the person is 18 years old or older at the time of the offense; (2) A Class 1 misdemeanor for a first offense by a person under 18 years old at the time of the offense; and (3) A Class H felony for a second or subsequent offense by a person under 18 years old at the time of the offense.

The offense is not applicable to (1) images involving voluntary exposure in public or commercial settings; (2) disclosures made in the public interest, including reporting of unlawful conduct or the lawful and common practices of law enforcement, criminal reporting, medical treatment, scientific or educational activities, etc.; and (3) providers of an interactive computer service for images provided by another person. A civil action is authorized for a violation of the statute with specified damages, and the action must be brought within one year after the initial discovery of the disclosure, but in any event must be brought no more than seven years from the most recent disclosure of the private image.

The bill also amends G.S. 14-190.9 to make indecent exposure that occurs on private premises a criminal offense. Unless the conduct is prohibited by another law providing greater punishment: (1) a person who willfully exposes his or her private parts in the presence of anyone other than a consenting adult on the private premises of another or so near thereto as to be seen from the private premises for the purpose of arousing or gratifying sexual desire is guilty of a Class 2 misdemeanor; (2) a person located in a private place who willfully exposes his or her private parts with the knowing intent to be seen by a person in a public place is guilty of a Class 2 misdemeanor; and (3) a person at least 18 years old who willfully exposes his or her private parts in a private residence of which the person is not a resident, and in the presence of any other person less than 16 years old who is a resident of that private residence is guilty of a Class 2 misdemeanor.

Effective: December 1, 2015

HOUSE BILL 924 - Highway Safety/Other Changes

Amends G.S. 20-139.1(b5) to clarify that the requirement that a law enforcement officer request a blood sample when charging the offense of misdemeanor death by vehicle is amended to apply “at any relevant time after the driving.”

The bill also amends G.S. 20-130.1 to clarify that the use of prohibited red or blue lights on vehicles does not require those lights to be “forward facing.”

Effective: December 1, 2015

SENATE BILL 78 - Off-Duty Correctional Officers/Conceal Carry

Amends G.S. 14-269(b) to allow State correctional officers, when off duty, to carry a concealed weapon in the same locations as a law enforcement officer. While carrying a concealed weapon off-duty, the State correctional officer is not allowed to consume alcohol or an unlawful controlled substance or while

alcohol or an unlawful controlled substance remains in the correctional officer's body. If the concealed weapon is a handgun, the correctional officer must meet the firearms training standards of the Division of Adult Correction of the Department of Public Safety. This authority applies to all State correctional officers but does not extend to detention officers employed by a sheriff.

Effective: December 1, 2015

SENATE BILL 238 - Stalking by GPS/Criminal Offense

Amends G.S. 14-196.3 providing that it is a Class 2 misdemeanor to knowingly install or cause to be installed, an electronic tracking device without consent to track the location of an individual.

This restriction does not apply to the following:

- A law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Adult Correction, when any such person is engaged in the lawful performance of official duties and in accordance with State or federal law;
- The owner or lessee of any vehicle on which the owner or lessee installs or uses an electronic tracking device, unless the owner or lessee is subject to a domestic violence protective order or any other court order that prohibits them from assaulting, threatening, harassing, following, or contacting a driver or occupant of the vehicle;
- A legally authorized representative of a disabled adult;
- The owner of fleet vehicles, when tracking those vehicles;
- A creditor under a retail installment agreement involving the sale of a motor vehicle or the lessor under a retail lease of a motor vehicle when tracking a motor vehicle identified as security under the agreement;
- An order issued by a State or federal court;
- A motor vehicle manufacturer that installs or uses an electronic tracking device in conjunction with providing a vehicle subscription telematics service, provided the customer subscribes or consents to that service;
- A parent or legal guardian of a minor when the electronic tracking device is used to track the location of that minor unless the parent or legal guardian is subject to a domestic violence protective order or any other court order that prohibits them from assaulting, threatening, harassing, following, or contacting that minor or that minor's parent or legal guardian, custodian, or caretaker;
- An employer, when providing a communication device to an employee or contractor for use in connection with his or her work for the employer;
- A business, if the tracking is incident to the provision of a product or service requested by the person; and
- Licensed private detectives or investigators when engaging in such tracking for the purposes of investigating: crimes or wrongs done or threatened against the United States or any state; the location, disposition, or recovery of lost or stolen property; or the protection of individuals from serious bodily harm or death. The person being tracked could not be under the protection of a

domestic violence protective order or any other court order that protects them from assault, threats, harassment, following, or contact.

Effective: December 1, 2015, unless vetoed by the Governor

SENATE BILL 445 - Burt's Law

Amends G.S. 122C-66 to increase the punishment from a Class 1 misdemeanor to a Class A1 misdemeanor for employees or volunteers of facilities which care for the mentally ill, developmentally disabled, or substance abusers who are convicted of knowingly causing pain or injury to a client. It is a Class 1 misdemeanor for any employee or volunteer to take personal property from a client of the facility. These provisions do not apply to an employee or volunteer who uses reasonable force to protect himself or herself from a violent client. Any employee or volunteer who does not report witnessing a sex crime or an offense against morality committed against a client of such a facility to either the department of social services or the district attorney's office within 24 hours is guilty of a Class A1 misdemeanor. Additionally, the punishment is increased from a Class 3 misdemeanor to a Class 1 misdemeanor for anyone to threaten or harass an employee or volunteer at a facility who reports the intentional injury, theft, or accidental injury of a client.

Effective: December 1, 2015

SENATE BILL 513 - North Carolina Farm Act of 2015

Makes various transportation and environmental reforms including:

- Amends G.S. 20-116 to allow for the transportation of oversized hay bales. Any vehicle carrying baled hay from place to place on the same farm, from one farm to another, or to or from market that does not exceed 12 feet in width may be operated on the highways of this State. The vehicle may be operated during daylight hours only and must display a red flag or a flashing warning light on both the rear and front ends.
- Amends G.S. 20-51 to increase the highway speed limit from 35 to 45 miles per hour for any agricultural spreader vehicle (any vehicle designed for off-highway use on a farm to spread agricultural products).
- Amends G.S. 20-171.22 to provide that any person may operate all-terrain vehicles or utility vehicles on a public street or highway while engaged in farming operations.
- Amends G.S. 113-136(k), effective December 1, 2015, to make it unlawful to refuse to allow inspectors, protectors, or other law enforcement officers to inspect weapons or equipment if the officer reasonably believes them to be possessed incident to an activity regulated by any law or rule as to which inspectors and protectors have enforcement jurisdiction and the officer has a reasonable suspicion that a violation has been committed. An officer may inspect a shotgun to confirm whether it is plugged or unplugged without a reasonable suspicion that a violation has been committed. It is also unlawful to refuse to allow inspectors, protectors, or other law enforcement officers to inspect fish or wildlife for the purpose of ensuring compliance with bag limits and size limits. Except as authorized by G.S. 113-137, nothing gives an inspector,

protector, or other law enforcement officer the authority to inspect, in the absence of a person in apparent control of the item to be inspected, any of the following: (1) weapons, (2) equipment, except for equipment left unattended in the normal operation of the equipment, including, but not limited to, traps, trot lines, crab pots, and fox pens, (3) fish, or (4) wildlife.

Effective: Unless otherwise noted, September 30, 2015