

CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

2017 Legislative Edition

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Forward: This issue contains summaries of legislation selected from UNC School of Government Professor John Rubin's *2017 Legislation Affecting Criminal Law and Procedure* (August 3, 2017), the full version of which is available at

https://www.sog.unc.edu/sites/www.sog.unc.edu/files/additional_files/2017_criminallawlegislation08032017.pdf. There are also reminders addressing recent issues received from Officers by the Police Attorney's Office. Please feel free to contact us should you have any questions raised by the material contained in this issue or that you would like to see addressed in the next. Stay safe and be careful out there, Your Police Attorneys.

2017 LEGISLATION

CHILD CUSTODY

S.L. 2017-22 (S 53): Authorizing a law enforcement officer to take custody of a child when the court determines that the child is in danger. This act, effective for orders for temporary custody issued on or after October 1, 2017, amends G.S. 50A-311(e) to provide that if a court finds based on the testimony of the petitioner or other witness that a less intrusive remedy is not "available" (current law states "effective"), the court may authorize law enforcement officers to enter private property to take physical custody of the child. New provisions to this statutory subsection provide that: (1) an officer executing a warrant to take physical custody of the child that is complete and regular on its face is not required to inquire into the regularity and continued validity of the order; and, (2) an officer executing the warrant does not incur criminal or civil liability for its service. New G.S. 50-13.3(c) provides that notwithstanding G.S. 50-13.3(a) and (b), a warrant to take physical custody of a child issued by a court under G.S. 50A-311 is enforceable throughout the state. Amended G.S. 50-13.5(d)(3) provides that a temporary custody order that requires a law enforcement officer to take physical custody of a minor child must be accompanied by a warrant to take physical custody of a minor child as set forth in G.S. 50A-311.

CRIMINAL LAW

S.L. 2017-30 (H 125): Adding the threatened use of a weapon to one of the elements of first-degree forcible rape and first-degree forcible sexual offense. This act, effective for offenses committed on or after December 1, 2017, amends G.S. 14-27.21(a)(1) to add the threatened use of a dangerous or deadly weapon to the elements of first-degree forcible

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rape and also substitutes the word “uses” for “employs.” The same changes are made to the crime of first-degree forcible sexual offense in G.S. 14-27.26(a)(1).

S.L. 2017-57 (S 257): Assault on hospital security personnel. This act, effective for offenses committed on or after December 1, 2017, amends G.S. 14-34.6, which makes it a Class I felony to commit an assault or affray on emergency medical technicians and providers, medical responders, hospital personnel, and firefighters, to add hospital security personnel to the list of covered personnel. Under the statute, such an affray or assault is a Class H or Class F felony if other factors are present, such as the use of a deadly weapon.

S.L. 2017-89 (H 98): Intentional injury to or interference with firefighting and emergency medical services equipment. This act, effective for offenses committed on or after December 1, 2017, adds G.S. 14-160.3 to make it a Class 1 misdemeanor if a person (1) intentionally, (2) injures, destroys, removes, vandalizes, tampers with, or interferes with the operation of (a) any machinery, apparatus, or equipment used by a fire department or North Carolina Forest Services for fighting fires or protecting human life or property, or (b) any ambulance, rescue squad emergency medical services vehicle, or equipment or apparatus used for emergency medical services as defined in G.S. 131E-155.

S.L. 2017-93 (H 399): Disclosure of private images without consent. This act, effective for offenses committed on or after December 1, 2017, amends G.S. 14-190.5A to broaden the circumstances in which disclosure of private images is a crime. G.S. 14-190.5A(b) lists five elements of the offense. The fifth element, located in subdivision (5), was that the person disclosed the image under circumstances that the person knew, or should have known, that the depicted person had a “reasonable expectation of privacy,” a term that applied only when a person had a personal relationship as defined G.S. 50B-1(b). The revised element is that the person obtained the image without consent of the depicted person, or under circumstances that the defendant knew or should have known that the depicted person expected the images to remain private. The act deletes the requirements of a personal relationship and reasonable expectation of privacy and deletes those terms from the definitions in G.S. 14-190.5A(a). The definition of “image” is also broadened to include live transmissions and any reproduction made by electronic, mechanical, or other means.

S.L. 2017-94 (S 600): Domestic violence homicide. This act, effective for offenses committed on or after December 1, 2017, adds G.S. 14-17(a1) to provide that there is a “rebuttable presumption” that a murder is willful, deliberate, and premeditated and is a Class A felony—that is, first-degree murder—if the following circumstances are present: (1) the murder was perpetrated with malice as described under G.S. 14-17(b)(1), which defines malice for purposes of that subdivision as “an inherently dangerous act or omission, done in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief”; (2) the murder was committed against a spouse, former spouse, a person with whom the defendant lives or has lived as if married, a person with whom the defendant is or has been in a dating relationship as defined in G.S.

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50B-1(b)(6), or a person with whom the defendant shares a child in common; and, (3) the defendant has previously been convicted of one of the following offenses involving the same victim: an act of domestic violence as defined in G.S. 50B-1(a); a violation of a domestic violence protective order under G.S. 50B-4.1 or G.S. 14-269.8 if the same victim is the subject of the protective order; communicating a threat under G.S. 14-277.1; stalking under G.S. 14-277.3A; cyberstalking under G.S. 14-196.3; or, domestic criminal trespass under G.S. 14-134.3.

S.L. 2017-151 (S 548): Massage and bodywork therapy. This act, effective October 1, 2017 adds G.S. 14-202.11(a1) to prohibit massage and bodywork therapy, as defined in Article 36 of G.S. Ch. 90, in an adult establishment; the act deletes from the definitions statute for adult establishments, G.S. 14-201.10, the reference to massage and bodywork therapy. The act adds licensure requirements to operate a massage and bodywork therapy establishment. Amended G.S. 90-629.1 requires applicants for a license to practice massage and bodywork therapy or operate a massage and bodywork therapy establishment to consent to a criminal history check. New G.S. 90-632.15 provides that the North Carolina Board of Massage and Bodywork Therapy may deny, suspend, revoke, or refuse a license if the person has pled guilty, entered a no contest plea, or been found guilty of a crime involving moral turpitude by a judge or jury in state or federal court. Effective for offenses committed on or after December 1, 2017, new G.S. 90-634(b3) and (b4) make it a Class 1 misdemeanor to engage in various acts involving a person who is not licensed or exempted to provide massage and bodywork therapy services, including employing or contracting with an unlicensed, non-exempt person for such services.

S.L. 2017-162 (H 384): Retail theft. This act, effective for offenses committed on or after December 1, 2017, amends G.S. 14-72.11 on larceny from a merchant and G.S. 14-86.6 on organized retail theft. Amended G.S. 14-72.11(1), which makes it a Class H felony to take property worth more than \$200 by using an exit door in compliance with certain federal regulations, no longer requires a notice on the door about the offense and punishment. New G.S. 14-72.11(5) makes it a Class H felony to exchange property for cash, a gift card, a merchandise card, or some other item of value knowing or having reasonable grounds to believe the property is stolen. Amended G.S. 14-86.6(a) clarifies that a violation of either subdivision (1), which deals with conspiracy to commit retail theft, or subdivision (2), which deals with receiving or possessing stolen retail property, is a Class H felony. New G.S. 14-86.6(a1) creates two crimes, both Class G felonies. It is a violation of subdivision (1) of G.S. 14-86.6(a1) to conspire with another person to steal retail property from one or more retail establishments with a value exceeding \$20,000 aggregated over a 90-day period, with the intent to sell the property for gain, and take or cause the property to be placed in the control of a retail property fence or other person in exchange for consideration. It is a violation of subdivision (2) to conspire with two or more people as an organizer, supervisor, financier, leader or manager to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of property stolen from a merchant in violation of G.S. 14-86.6. New G.S. 14-86.6(c) states that thefts of retail property in more than one county may be aggregated in an alleged violation, and each county where a part of the charged offense occurs has concurrent venue under G.S. 15A-132.

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S.L. 2017-176 (S 384): Habitual breaking and entering. This act, effective for offenses committed on or after December 1, 2017, amends the definition of breaking and entering for purposes of habitual breaking and entering prosecutions to include breaking or entering with intent to terrorize or injure an occupant of the building under G.S. 14-54(a1).

S.L. 2017-179 (H 128): Unmanned aircraft near prison or jail. This act, effective for offenses committed on or after December 1, 2017, adds new G.S. 15A-300.3(a) which prohibits the use of an unmanned aircraft system within a horizontal distance of 500 feet or vertical distance of 250 feet from a local jail or state or federal prison. New G.S. 15A-300.3(b) includes several exceptions, such as written consent from the official in charge of the facility and law enforcement use in accordance with G.S. 15A-300.1(c). New G.S. 15A-300.3(c) establishes three punishment levels. Delivering or attempting to deliver a weapon to a prison or jail by an unmanned aircraft system within the prohibited distances, whether or not within an exception, is a Class H felony, with a mandatory fine of \$1,500. Delivering or attempting to deliver contraband, defined as controlled substances, cigarettes, alcohol, and communication devices, is a Class I felony, with a mandatory fine of \$1,000. Using an unmanned aircraft system in violation of G.S. 15A-300.3(a) and not within an exception is a Class 1 misdemeanor, with a mandatory fine of \$500.

S.L. 2017-194 (H 138): Criminal gangs. This act, effective for offenses committed on or after December 1, 2017, repeals G.S. 14-50.16, which defined criminal street gang and criminal street gang activity, and replaces it with G.S. 14-50.16A, with new definitions of criminal gangs, criminal gang activity, criminal gang leader or organizer, and criminal gang member. To be considered a criminal gang leader or organizer, the person must meet at least two of the five listed criteria, such as recruiting other gang members and receiving larger portions of the proceeds of criminal gang activity. To be considered a criminal gang member, the person must meet at least three of the nine listed criteria, such as admitting to membership, having tattoos associated with a criminal gang, and appearing in any form of social media to promote a criminal gang. In several criminal statutes, the act replaces the terms criminal street gang and criminal street gang activity with criminal gang and criminal gang activity. See G.S. 14-34.9 (discharging firearm within enclosure); G.S. 14-50.17 (encouraging person 16 or older to participate in gang); G.S. 14-50.18 (encouraging person under 16 to participate in gang); G.S. 14-50.19 (detering person from withdrawing from gang); G.S. 14-50.20 (retaliating against person for withdrawing from gang); G.S. 14-50.22 (enhanced offense for misdemeanor gang activity); G.S. 14-50.23 (forfeiture of property derived from gang activity); G.S. 14-50.25 (report of disposition of offense involving gang activity); G.S. 14-50.42 and G.S. 14-50.43 (real property used by gang for gang activity a public nuisance); G.S. 15A-1340.16 (aggravating factor); G.S. 15A-1343(b1)(9b) (special conditions of probation); and G.S. 15A-533(e)(3) (restrictions on pretrial release). Revised G.S. 14-50.19 creates the offense of injuring a person with the intent to deter the person from assisting another to withdraw from a criminal gang, punishable as a Class F felony, and revised G.S. 14-50.20 creates the offense of injuring a person in retaliation against a person for having withdrawn from a criminal gang, a Class F felony.

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MOTOR VEHICLES

S.L. 2017-96 (H 27): Expiration of registration for vehicle with new registration plate. This act, effective July 12, 2017, amends G.S. 20-66(g1) to provide that the registration of a vehicle renewed by a new registration plate expires on the last day of the year on which the registration plate was issued. The amended provision further provides that the vehicle may be lawfully driven through February 15 of the following year.

S.L. 2017-166 (H 469): Regulation of fully autonomous motor vehicles. This act, effective December 1, 2017, enacts new Article 18 in Chapter 20 (G.S. 20-400 to -403) to regulate the operation of fully autonomous vehicles. A fully autonomous vehicle is defined as a motor vehicle that is equipped with an automated driving system that does not require an occupant of the vehicle to perform any portion of the operational or tactical control of the vehicle when the automated driving system is engaged.

Vehicle requirements. New G.S. 20-401(g) permits the operation of fully autonomous vehicles on North Carolina roadways if the vehicle meets all of the following requirements: (1) the vehicle complies with state and federal law and has been certified as being in compliance with federal motor vehicle safety standards; (2) if involved in a crash, the vehicle is capable of stopping at the scene, contacting the appropriate law enforcement agency to report the crash, calling for medical assistance, and remaining at the scene until authorized to leave; (3) the vehicle can achieve a "minimal risk condition;" (4) the vehicle is covered by a motor vehicle liability policy meeting statutory requirements; and, (5) the vehicle is lawfully registered.

Rules of operation. New G.S. 20-401(a) states that the operator of a fully autonomous vehicle with the automated driving system engaged is not required to be licensed to drive. Subsection (d) of this new provision states that the person in whose name a fully autonomous vehicle is registered is responsible for any moving violations involving the vehicle. A person must be at least 12 years old to travel unsupervised in a fully autonomous vehicle. G.S. 20-401(c) makes it unlawful for the parent or legal guardian of a child under 12 to knowingly permit the child to occupy a fully autonomous vehicle that is in motion or that has the engine running unless the child is being supervised by a person who is at least 18 years old.

S.L. 2017-112 (S 182): Light bars on vehicles prohibited. This act, effective for offenses committed on or after October 1, 2017, adds new G.S. 20-130(f) which prohibits a person from driving a motor vehicle on a street or highway while using a light bar lighting device, defined as a bar-shaped lighting device comprised of multiple lamps that project a beam of light of an intensity greater than 25 candlepower. A violation of this provision is an infraction. The light bar ban does not apply to motorcycles, school buses, ambulances, law-enforcement vehicles, fire department vehicles, or other types of vehicles described in G.S. 20-130(d) and G.S. 20-130.1(b). G.S. 20-130(f) does not apply to or restrict use of a light bar lighting device with strobing lights.

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CONTROLLED SUBSTANCES

S.L. 2017-115 (H 464): **Changes to controlled substance schedules; murder by unlawful distribution of certain controlled substances; creation of opioid sentencing task force.** The following changes are effective for offenses committed on or after December 1, 2017.

Definitions. The definition of “isomer” in G.S. 90-87(14a) is revised to include any type of isomer, including structural, geometric, or optical isomers, and stereoisomers. The definition of “narcotic drug” in G.S. 90-87(17)a. is revised to include opioids in addition to opium and opiates. “Opioid” is defined in new G.S. 90-87(18a) as any synthetic narcotic drug having opiate-like activities but not derived from opium.

Opioids. Opioids are included along with opiates as a Schedule I controlled substance in revised G.S. 90-89(1) to the extent that they involve the listed chemical designations, which the act expands. The revised statute excepts levo-alphacetylmethadol, also known as levomethadyl acetate or LAAM, from the chemical designation for alphacetylmethadol, a Schedule I opiate; the substance remains a Schedule II opiate. Opioids also are designated as a Schedule II controlled substance in revised G.S. 90-90(1) and (2) to the extent that they involve the listed substances. Revised G.S. 90-90(1) modifies the definition of hydrocodone, a Schedule II controlled substance, to include any material, compound, mixture, or preparation containing any quantity of hydrocodone.

Synthetic cannabinoids. New G.S. 90-89(7) classifies synthetic cannabinoids, described in the new provision, as a Schedule I controlled substance. G.S. 90-94(3), which classified synthetic cannabinoids as a Schedule VI controlled substance, is repealed. Section 11 of the act revises G.S. 90-95(b) to repeal the provision providing that the transfer of less than 2.5 grams of a synthetic cannabinoid for no remuneration does not constitute delivery in violation of G.S. 90-95(a)(1); and revises G.S. 90-95(d) to repeal the provisions making possession of 7 grams or less of a synthetic cannabinoid a Class 1 misdemeanor and 21 grams or less a Class I felony.

Fentanyl derivatives. Derivatives of fentanyl, described in new G.S. 90-89(1a), are added as a Schedule I controlled substance. Fentanyl remains a Schedule II controlled substance under G.S. 90-90(2).

Other Schedule I controlled substances. Various chemical designations are added in revised G.S. 90-89(3) as Schedule I hallucinogenic substances. Various chemical designations are added in revised G.S. 90-89(4) as Schedule I systemic depressants. The definition of substituted cathinones, a Schedule I stimulant described in G.S. 90-89(5)j. is revised.

Schedule III. Dihydrocodeine is a Schedule II controlled substance under G.S. 90-90(2) unless it is less than a certain quantity, in which case it is a Schedule III controlled substance under G.S. 90-91(d). The act repeals G.S. 90-91(d)3. and 4., which classified certain amounts of dihydrocodeine as a Schedule III controlled substance, but G.S. 90-91(d)5. continues to classify certain amounts of dihydrocodeine as a Schedule III controlled substance. Revised G.S. 90-91(d) also includes buprenorphine as a Schedule III controlled substance; it was a Schedule IV controlled substance under G.S. 90-92(a)(5). Revised G.S. 90-91(k) adds certain substances as Schedule III anabolic steroids.

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Schedule IV. Revised G.S. 90-92(a)(1) adds certain substances as Schedule IV depressants, and revised G.S. 90-92(5) adds tramadol as a Schedule IV narcotic drug and removes buprenorphine.

Schedule V. New G.S. 90-93(a)(4) makes the listed anitconvulsants a Schedule V controlled substance.

Murder by unlawful distribution of certain substances. G.S. 14-17(b)(2) has classified as second-degree murder, a murder proximately caused by the unlawful distribution of certain drugs, including opium, cocaine, and methamphetamine, where ingestion of the drugs caused the death of the user. The revised statute adds opiates and opioids and the depressants described in G.S. 90-92(a)(1).

REMINDERS

Golf Carts

A golf cart is defined as “[a] vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.” G.S. 20-4.01(12b). NC DMV must refuse registration for a golf cart. G.S. 20-54(8). While a city may enact an ordinance to regulate the operation of golf carts on public streets, in the absence of one the operation of golf carts on public streets is limited to crossing from one side to the other. G.S. 20-51; G.S. 160A-300.6. **Note:** the City of Charlotte has NOT enacted a golf cart ordinance. Therefore in Charlotte the operation of golf carts on public streets has not been authorized and operators may be charged with any applicable moving and non-moving violations (ex. no inspection, registration or insurance).

Search Warrants and Court Orders

If an Officer needs to be sworn before a Superior Court Judge for a search warrant or court order, the Officer should e-mail the documents in Word format to one of the Police Attorneys and we will contact the Judges’ assistant to arrange an appointment with a Judge.

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