

# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

2018 Legislative Edition

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**Forward:** This issue contains selected summaries of legislation from UNC School of Government Professor John Rubin's *2018 Legislation Affecting Criminal Law and Procedure* (August 2018), the full version of which is available [here](#). Additionally, please take a moment to watch our short [video](#) for a refresher on *Terry* stops and frisks. Please feel free to contact us should you have any questions. Stay safe and be careful out there, Your Police Attorneys.

## 2018 LEGISLATION

### ARSON

**S.L. 2018-31 (H 325): Arson laws.** Effective for offenses committed on or after December 1, 2018, the act adds G.S. 14-67.2 to make it a Class D felony, unless the conduct is covered under another provision of law providing greater punishment, for a person to:

- during the commission of a felony;
- knowingly damage any dwelling, structure, building, or conveyance referenced in Article 15 (Arson and Other Burnings) of G.S. Chapter 14;
- by means of fire or explosive;
- that results in damages of \$10,000 or more.

The statute states that aiding and abetting the offense is likewise a Class D felony. The act also amends G.S. 14-69.3, which has made it a Class E felony to commit a felony under Article 15 of G.S. Chapter 14 causing serious bodily injury to a firefighter or emergency medical technician. The amended statute adds law enforcement officers and fire investigators to the coverage of the statute. The act also amends the caption of the statute to clarify that it applies to offenses resulting in serious bodily injury, not serious injury (the statute itself has required serious bodily injury).

### ARREST WARRANT AND CRIMINAL SUMMONS

**S.L. 2018-40 (S 168):** Effective for arrest warrants issued on or after October 1, 2018, the act repeals subdivision G.S. 15A-304(b)(2) added in 2017 which significantly limited when an arrest warrant sought by law enforcement officers may be issued. The act restores the language previously in effect which permits the issuing official to decide whether to issue an arrest warrant or criminal summons without the presumption in favor of a summons.

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### CONTROLLED SUBSTANCES

**S.L. 2018-44 (S 616): Controlled substance changes.** As part of a larger act dealing with heroin and opioids, the act makes the following changes, effective for offenses committed on or after December 1, 2018, unless otherwise indicated.

- Sections 2, 3, and 6 correct the names of certain substances in the controlled substance schedules. Section 4 amends G.S. 90-90(2) to add fentanyl immediate precursor chemical, 4-anilino-N-phenethyl-4-piperidine (ANPP), and section 5 amends G.S. 90-95(d2) to add N-phenethyl-4-piperidinone (NPP). Section 7 amends the trafficking statutes by revising G.S. 90-95(h)(3d) to delete MDPV and add substituted cathinones, repealing G.S. 90-95(h)(3e) on mephedrone, and amending G.S. 90-95(h)(4) to cover opioids as well as opium and opiates.
- Section 9 amends G.S. 90-108(a)(14), which makes it an offense for an employee of a registrant or practitioner to unlawfully divert a controlled substance, to add registrants and participants; and adds G.S. 90-108(a)(15) to make it a Class G felony under G.S. 90-108(b)(2) for a person who is not a registrant or practitioner or an employee of a registrant or practitioner to divert a controlled substance. New G.S. 90-108(b)(3) makes it a Class E felony if a person violates subdivision (14) or (15) and intentionally diverts any controlled substance by means of dilution or substitution as those terms are defined in the new provision.
- Section 11 adds 90-113.74(k) creating three new offenses involving individuals authorized to access data in the controlled substances reporting system for the purposes in G.S. 90-113.74(a). A person who is convicted of any of the new offenses is permanently barred from accessing the controlled substances reporting system.
  - A person who knowingly and intentionally accesses prescription information in the controlled substances reporting system for an unauthorized purpose is guilty of a Class I felony.
  - A person who knowingly and intentionally discloses or disseminates prescription information from the system for an unauthorized purpose is guilty of a Class I felony.
  - A person who willfully and maliciously obtains, discloses, or disseminates prescription information for an unauthorized purpose and with the intent to use the information for commercial advantage or personal gain or maliciously harm any person is guilty of a Class H felony.
- Several sections of the act address certified diversion investigators and certified diversion supervisors, new law enforcement positions addressing the diversion of controlled substances from legitimate channels. Effective July 1, 2019, new G.S. 90-107.1 authorizes such investigators to obtain pharmacy records in connection with an active investigation and establishes procedures for such requests; and new G.S. 90-113.74(i) authorizes the Department of Health and Human Services to release data in the controlled substance reporting system to such investigators under the conditions in that subsection. Effective June 22, 2018, new G.S. 90-113.74E requires the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission to develop standards and training for diversion investigators and supervisors. Amended G.S. 17C-6(a) and G.S. 17E-4(a) elaborates on the standards and training.

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### HEMP OIL

**S.L. 2018-36 (S 124): Disposal of hemp oil.** Effective December 1, 2018, the act adds G.S. 90-94.1(d) to require anyone who possesses or uses hemp extract to dispose of residual oil at a secure collection box managed by a law enforcement agency. The subsection states that no criminal penalty attaches to a violation.

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### HUMAN TRAFFICKING

**S.L. 2018-68 (H 776): Human trafficking and juveniles.** Effective October 1, 2018, the act adds G.S. 14-43.15 to require that a minor victim of a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or 14-43.13 (sexual servitude) be alleged to be abused and neglected under G.S. Chapter 7B.

**S.L. 2018-75 (S 162): Human trafficking.** The act makes several changes to statutes related to human trafficking, with effective dates as indicated below.

- Amended G.S. 14-43.10 defines “victim” for purposes of Article 10A (Human Trafficking) of G.S. Ch. 14 as a person subjected to the practices set forth in G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13. Effective June 15, 2018.
- New G.S. 14-43.15 makes it an affirmative defense to a prosecution under Article 10A that the person charged with the offense was a victim at the time of the offense and was coerced or deceived into committing the offense as a direct result of the person’s status as a victim. Effective December 1, 2018.
- New G.S. 14-43.16 makes confidential the name, address, and other information that reasonably could be expected to lead directly to the identity of any victim, alleged victim, or immediate family member (as defined in the statute) of a victim. The statute provides some exceptions, such as use in a law enforcement investigation or criminal prosecution. Presumably, the term “criminal prosecution” includes providing information to the defense in discovery. A knowing violation of the confidentiality requirement is a Class 3 misdemeanor. Effective December 1, 2018.
- Amended G.S. 7B-101 includes in the definition of “abused juvenile” any juvenile less than 18 years of age who is a victim of an offense under G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13, regardless of the relationship between the victim and the perpetrator. Effective December 1, 2018.

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### INTELLECTUAL DISABILITY AND MENTAL INCAPACITATION

**S.L. 2018-47 (S 768): People first language; changes to definition of mental incapacity for sexual assaults.** The act amends numerous statutes in two basic respects: (1) by eliminating outdated terminology describing people with a disability, for example by substituting intellectual disability for mental retardation and disability for handicap and (2) by referring to a person with a disability, mental illness, or other condition as a person with such a condition instead of defining the

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person by that condition, for example, as a disabled or mentally ill person. For the statutes related to criminal cases, the changes are effective for hearings or trials commenced on or after December 1, 2018, or offenses committed on or after December 1, 2018, depending on the particular statute amended.

Section 4(a) of the act also amends the definition of “mentally incapacitated” in G.S. 14- 27.20, the definitions section for rape and other sexual offenses, to specify that a poisonous or controlled substance provided to a victim without his or her knowledge or consent may render the victim mentally incapacitated. This change applies to offenses committed on or after December 1, 2018.

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### MUTUAL AID

**S.L. 2018-87 (H 388): Mutual assistance between law-enforcement agencies and to State law-enforcement agencies.** Effective June 25, 2018, the act amends G.S. 160A-288 and G.S. 160A-288.2 to allow the head of a law-enforcement agency to provide assistance on request to another law-enforcement agency or a State law-enforcement agency unless prohibited or limited by a city or county ordinance (was, rules, policies, or guidelines adopted by city or county).

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### PRISONERS

**S.L. 2018-67 (H 969): Prisoner offenses.** Effective for offenses committed on or after December 1, 2018, the act adds a new definitions section, G.S. 14-254.5, in Article 33 (Prison Breach and Prisoners) in G.S. Chapter 14. An employee is defined as any person hired or contracted to work for the State or a local government. A prisoner is defined as any person in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, any law enforcement officer, or any local confinement facility as defined in G.S. 153A-217 or G.S. 153A-230.1, whether pending trial, appellate review, or presentence diagnostic evaluation.

The act broadens G.S. 14-258.4, which has made it a Class F felony for a prisoner to throw, emit, or cause to be used as a projectile bodily fluids at an employee, to cover that conduct with an unknown substance. The amended statute also adds a new offense of a prisoner knowingly and willfully exposing genitalia to an employee while the employee is in the performance of the employee’s duties, a Class I felony.

The act rewrites G.S. 14-258, which dealt with conveying messages and weapons to or trading with prisoners. Under the revised statute, it is a Class H felony for a person to sell, trade, convey, or provide to a prisoner (1) an article forbidden by prison rules or (2) a letter, oral message, weapon, tool, good, clothing, device, or instrument to make an escape, or aid in an assault or insurrection. A violation involving the items in (2) is a Class F felony if an escape, assault, or insurrection occurs. The revised statute also makes it a Class H felony for a prisoner who possesses a letter, weapon, tool, good, article of clothing, device, or instrument to affect an escape or aid in an assault or insurrection. This part of the statute does not require that the items be unlawfully provided to the prisoner, but such a requirement may be implied.

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### RAFFLES

**S.L. 2018-100 (H 500): Raffles.** Effective October 1, 2018, the act amends G.S. 14-309.6, a section within the part on bingo and raffles, to define nonprofit organization as an organization recognized as tax-exempt by the North Carolina Department of Revenue and as any bona fide branch, chapter, or affiliate. Amended G.S. 14-309.15 allows any regional or county chapter of a nonprofit organization to conduct a raffle independently of its parent organization, increases the number of raffles that a nonprofit organization may hold from two to four per year, and increases the prize that a nonprofit organization may offer from \$125,000 to \$250,000. Amended G.S. 18B-308 allows the sale and consumption of alcohol at a raffle; the prohibition remains in effect for bingo. Effective December 1, 2018, new G.S. 18B-903A authorizes the reissuance of a limited special occasion permit or a special one-time permit to a nonprofit organization as provided in that section and, effective for offenses on or after that date, makes it a Class 1 misdemeanor to knowingly make a false statement in an application for reissuance of the permit.

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### SEXUAL ASSAULT KITS

**S.L. 2018-70 (H 945): Tracking of sexual assault evidence collection kits.** Effective June 25, 2018, the act adds G.S. 114-65 to establish the Statewide Sexual Assault Evidence Collection Kit Tracking System in the State Crime Lab, with the following requirements. All sexual assault evidence collection kits purchased or distributed on or after October 1, 2018, must be trackable and comply with the requirements of the system. (Amended G.S. 143B-1201 imposes the same requirement.) All medical providers, law enforcement agencies, forensic laboratories, and others having custody or use of any such kit must participate in and comply with the new system. Victims should be able to track the location of the kit and determine whether testing of the kit has been completed. Previously untested kits should be entered into the system in compliance with system protocols.

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### THREAT OF MASS VIOLENCE

**S.L. 2018-72 (H 670): Threat of mass violence at school and religious place of worship.** Effective for offenses committed on or after December 1, 2018, the act creates two new offenses. New G.S. 14-277.6 makes it a Class H felony for a person to:

- by any means of communication;
- to any person or group of people;
- threaten to commit an act of mass violence as defined in G.S. 14-277.5;
- on educational property or at a curricular or extracurricular activity sponsored by a school as defined in G.S. 14-277.5.

New G.S. 14-277.7 makes it a Class H felony for a person to:

- by any means of communication;
- to any person or group of people;
- threaten to commit an act of mass violence as defined in G.S. 14-277.5;
- at a place of worship as defined in the new statute.

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