

Legislative Update July 2018

House Bill 325: This Bill strengthens criminal laws regarding arson. These changes are effective December 1, 2018.

- Section 1 amends § 14-67.2: Burning caused during a commission of another felony.
 - It is a class D felony for any person:
 - who during the commission of a felony
 - knowingly damages any dwelling, structure, building, or conveyance,
 - by means of fire or explosive,
 - that results in damages valued at \$10,000.00 or more.
- Section 2 amends § 14-69.3: Arson and other unlawful burning that result in serious bodily injury to firefighter, law enforcement officer, fire investigator or, emergency medical technician.
 - It is a class E felony for any person:
 - who commits a felony under Article 15 of Chapter 14 (Arson and other Burnings); and
 - a firefighter, law enforcement officer, fire investigator, or emergency medical technician,
 - suffers serious bodily injury,
 - while discharging or attempting to discharge their official duties.
- <https://www.ncleg.net/Sessions/2017/Bills/House/PDF/H945v4.pdf>

House Bill 945 amends Article 9 of Chapter 114 (North Carolina State Crime Laboratory) by adding a new section entitled Statewide Sexual Assault Evidence Collection Kit Tracking System. This act became effective June 25, 2018.

- Section 1 adds § 114-65: Statewide sexual assault evidence collection kit tracking system.
 - Establishment of Tracking System:
 - To be established within State Crime Laboratory.
 - All Sexual Assault Kits shall be trackable and shall comply with the requirements of the System.
 - The State Crime Lab Director shall implement protocols and administer the system.
 - The Secretary of DPS shall adopt rules, guidelines, and sanctions for agencies required to participate in the System.

- Required Participation. All medical providers, law enforcement agencies, forensic laboratories, or other persons having custody or use of any sexual assault evidence collection kit shall participate in the system.
 - All medical providers, law enforcement agencies, forensic laboratories, or other persons having custody or use of any sexual assault evidence collection kit in the State shall participate in the System and establish with the established protocols, rules, and guidelines.
 - A participating entity shall be permitted to access the entity's tracking information through the System.
- Victim's access to view status of kit.
 - Victim must be able to track the location of the kit.
 - Victim must be able to determine whether testing has been completed.
- Tracking of previously untested kits.
 - Any LEA that has in its custody untested kits must comply with the protocols established by the Director of the State lab.
 - "previous untested sexual assault kit means any kit that has not undergone forensic testing and was identified and included in the 2017 inventory.
 - To the extent practicable, LEA will take reasonable measures to provide appropriate tracking information to the victim.
 - All sexual assault kits purchased or distributed on or after October 1, 2018, must be compatible with the State tracking system.
- <https://www.ncleg.net/Sessions/2017/Bills/House/PDF/H945v4.pdf>

House Bill 388 simplifies process by which one Law Enforcement Agency can provide assistance to another Law Enforcement Agency. ("Mutual Aid") These changes became effective June 25, 2018.

- Section 1 amends § 160A-288 which now provides that a Law Enforcement Agency is presumed to have authority to provide assistance to another agency unless specifically prohibited or limited by an ordinance officially adopted by the Agency's governing body.
 - Previously, this section required that there be an ordinance or resolution in place affirmatively granting the Chief of Police the authority to enter into agreement with another agency to provided law enforcement services.
- Section 2 amends § 160A-288.2 and now provides that unless specifically prohibited or limited by an ordinance officially adopted by the governing body of the city or

county by which the officer is employed, appointed or elected or served, the head of any local law-enforcement agency may temporarily provide assistance to a State law enforcement agency.

- Local law enforcement agency means any municipal police department, a county police department, or a sheriff's office.
- <https://www.ncleg.net/Sessions/2017/Bills/House/PDF/H388v4.pdf>

Senate Bill 630 significantly revises the laws related to involuntary commitments. Limited portions of this bill became effective June 22, 2018. However, the significant changes that effect law enforcement are set out below and become effective October 1, 2019.

- Section 1 amends § 122C-3 and creates a “commitment examiner” who is certified to perform initial evaluation for involuntary commitments.
 - A commitment examiner in many circumstances will replace the role of the physician and/or psychologist.
- Section 1 also amends § 122C-3 and changes the definition of a “Local Management Entity: or “LME.”
 - A LME no longer includes a county program or consolidated human services entity. A LME is now simply an “authority.”
- Section 6 amends § 122C-115.4 Functions of Local Management Entity.
 - LME shall conduct all primary functions. These functions shall not be conducted by another entity unless LME voluntarily enters into a contract with that entity.
- Section 8 amends § 122C-202.2(a) and requires a LME to adopt a community crisis service plan to facilitate initial examination. Each plan shall address the following:
 - Incorporate the involuntary commitment transportation agreement for cities and counties within the local planning areas which identifies the law enforcement officers, designees or individuals or entities required to provide custody and transportation.
 - Identify facilities to provide screenings.
 - Identify training for law enforcement and other persons engaged to provide transportation.
 - Law enforcement required and other partners are required to participate in the development of the local service area crisis plan.
- Section 10 amends § 122C-210.1, Immunity from Liability, to include immunity for LEO's.
 - No LEO who is responsible for the custody and transportation of an individual can be held civilly or criminally liable, personally or otherwise unless they are grossly negligent.

- Section 19 amends § 122C-251: Use of restraints by LEO when taking person into custody and transporting.
 - Use of restraints shall be as “reasonably determined by the officer to be necessary under the circumstances” for the safety of the respondent, the LEO, and other persons.
 - LEO shall use “every effort not to restrain a child under the age of 10... unless the child’s behavior or other circumstances dictate that restrain is necessary.”
 - LEO shall respond to all inquiries from the facility concerning the respondent’s behavior, except in circumstances where providing that information is confidential or would compromise a law enforcement investigation.
- Section 10 amends § 122C- 251(g) and provides the governing body of a city or county shall adopt a plan known as an “involuntary commitment transportation agreement” or “transportation agreement.”
 - The plan may provide that private personnel or agencies contract for transportation services.
- Section 23 amends § 122C-262 Emergency Procedures for persons needing immediate hospitalization.
 - LEO’s will transport individual who requires immediate hospitalization to a **commitment examiner**. (previously individual was to be examined by physician or eligible psychologist).
 - If commitment examiner exercises the oath, the appearance before the magistrate will be waived.
- Section 24 amends § 122C-263. Duties of law enforcement officer, first examination, IVC.
 - LEO shall take person to a facility or other location identified by LME in community crisis plan that has a commitment examiner.
 - Commitment Examiner may be by person, on call or via telemedicine.
 - If not available the LEO will transport to alternative non-hospital provider or facility based crisis center.
 - If no non-hospital or facility based crisis center is available the LEO may take person to a private hospital, or clinic, a general hospital, an acute care hospital or state facility for mentally ill.
 - The person will not be detained in a jail.
- Section 33 amends § 122C-282 Special Emergency Procedures for Violent Persons.
 - When individual is also violent and requires restraint and the delay in taking individual to commitment examiner would likely endanger life or property, then LEO may take person into custody and take the person immediately before a magistrate or clerk.

- Section 34 amends Section § 122C-283 Duties of LEO; first examination by commitment examiner.
 - Without unnecessary delay the LEO shall take the person to a facility or other location identified by the LME in the community crisis services plan that has available an available commitment examiner.
 - If commitment examiner is not available then the LEO will take the person to a non-hospital provider or facility based crisis center.
 - If they are not available then LEO shall take to a private hospital or clinic, a general hospital, an acute care hospital or a State facility for the mentally ill.
- <https://www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S630v5.pdf>

Senate Bill 616 or the “The Heroin and Opioid Prevention and Enforcement Act (HOPE) amends laws pertaining to controlled substances and related areas..

- Effective December 1, 2018, Section 2 rewrites § 90-89(3)ee Scheduled I Controlled Substances, Hallucinogenic substances to include:
 - 5-Methoxy-N,N-diisopropyltryptamine.
- Effective December 1, 2018, Section 4 adds a new subdivision, §90-90(2)h1, to include a new Schedule II controlled substance:
 - Fentanyl immediate precursor chemical, 4-anilino-N-phenethyl-4-piperidine (ANPP).
- Effective December 1, 2018, Section 5 adds a new subdivision § 90-95(d2) (29a) to include.
 - N-phenethyl-4-piperidinone (NPP).
- Effective December 1, 2018, Section 6 rewrites § 90-95(d2)(31) to read:
 - Phenyl-2-propanone.
- Effective December 1, 2018, Section 7 of § 90-95(h)(3d) is amended:
 - To remove the substance MDPV and replace with “any substituted cathinone as defined in § 90-98(5)(j).
 - To add the word “opioid ” to § 90-95(h)(4).
 - To rewrite § 90-95(h)(4b) to read: “MDA/MDMA.”
- Effective July 1, 2019, Section 8 Amends Article 5 of Chapter 90 by adding a new section which permits a “certified diversion investigator” with a qualified law enforcement agency access to prescriptions and related records from pharmacies.
 - Access to prescription records.
 - A certified diversion investigator associated with a qualified law enforcement agency shall request and receive from a pharmacy copies of

prescription and records related to prescriptions in connection with a bona fide active investigation related to the enforcement of laws governing the licit or illicit drugs by providing request in writing containing the following:

- Certified diversion investigator's name and certificate number.
 - The name of the qualified law enforcement agency for whom the investigator works.
 - The case number.
 - Nature and purpose of request.
 - Name and date of birth of each individual whose records the investigators is seeking.
- A copy of the request will be sent to the SBI Diversion and Environmental Crimes Unit.
 - The pharmacy receiving the request shall provide the records as soon as possible but no later than 2 days after the request.
 - A certified investigator can only release this information to other law enforcement officials involved in a bona fide active investigation or in connection with the prosecution of the person or pursuant to § 90-113-74.
 - A pharmacy or pharmacist is immune from liability that in good faith provides records pursuant to the investigator's request.
- Effective December 1, 2018, Section 9 amends § 90-108(14) Prohibited acts; penalties to include:
 - It is unlawful (Class E Felony) for a registrant or practitioner who is authorized to possess controlled substances by virtue of their employment to embezzle or divert to his or her own use or other unauthorized or illegal use of any controlled substance which has come into their possession or under his or her care.
 - Effective December 1, 2018, Section 9 also amends § 90-108(15) Prohibited acts; penalties to include:
 - It is unlawful (Class E Felony) for any person who is not a registrant or practitioner, who by virtue of their profession administers medical care or aid to a person who is prescribed a controlled substance, to embezzle or divert to his or her own use any controlled substance prescribed to another..
 - Effective December 1, 2018, Section 11.(a) amends § 90-113.74(k); Confidentiality of Data in Controlled Substances Reporting System, to read:
 - That it is a criminal offense (Class I felony) for anyone to access or disclose or disseminate prescription information in the controlled substances reporting system for a unauthorized purpose. .

- Effective July 1, 2019, Section 11(b) Amends § 90-113.74(c)(5a) and (i) Confidentiality to read:
 - The Department shall release data in the controlled substances reporting system to the following persons:
 - Local law enforcement officers.
 - If the local officer is a certified diversion investigator.
 - The agency that supervises the officers is a qualified law enforcement agency.
 - The request is reasonably related to a bona fide active investigation involving a specific violation of any State or federal law involving a controlled substance.
 - Data obtained by certified diversion investigators may be shared with other law enforcement personnel or prosecutorial officials (i) only upon the direction of the certified diversion investigator who originally requested the information, (ii) in the case of law enforcement agencies, only with the LEO's who are participating in an official joint investigation, or (iii) in the event data provided to LEO indicates transactions outside his or her jurisdiction, the matter will be referred to the SBI or to a certified diversion investigator employed by a qualified Law Enforcement Agency.
 - "Bona fide active investigation" means an investigation of one or more specific persons conducted with a reasonable, good-faith belief based on specific facts and circumstances equivalent to those normally necessary for the issuance of a court order as described in G.S. 90-113.74(c)(5).
 - "Certified Diversion Investigator" means qualified law enforcement affiliated with a qualified law enforcement agency that is certified as a diversion investigator by NC Criminal Justice Education and Training Standards Commission.
 - "Certified diversion supervisor" means designee of head of law enforcement agency who has authority over agency's certified diversion investigators and who is certified as a diversion supervisor by NC Criminal Justice Education and Training Standards Commission.
 - "Qualified law enforcement agency" means a police department that employs one certified diversion investigator and at least one certified diversion supervisor.
 - A certified diversion investigator must register with the controlled substances reporting system.
- Section 13 amends § 90-113.74E and adds a new section Certification of diversion investigators and diversion supervisors.

- Authority to create training programs and minimum standards for program assigned to NC Criminal Justice Education and Training Standards Commission.
- <https://www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S616v7.pdf>

Senate Bill 162 is an Act amending laws related to victims of human trafficking.

- Effective December 1, 2018, Section 2.(a) amends §14-43.15 and provides an affirmative defense to a prosecution under this article.
 - A person charged under this law has an affirmative defense if the person was also a victim of human trafficking 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, Section 3.(a) amends § 14-43.16. Human trafficking victim confidentiality; penalty for unlawful disclosure.
 - Except as otherwise provided in (b) below the name, address, or other information that reasonably **could** be expected to lead to the identity of a victim, an alleged victim, or an immediate family member of an alleged victim is confidential and shall not be considered a public record as defined in G.S. 132.1.
 - Exceptions (b) The above information may be disclosed only for the following purposes:
 - Use in Law Enforcement investigation or criminal prosecution.
 - To ensure the provision of medical care, housing, or family services.
 - As required by federal law or court order.
 - Class 3 misdemeanor for violating confidentiality.
- Effective December 1, 2018, Section 5(a) amends § 7B-101 definition of “abused juveniles” to include all human trafficking victims less than 18 years of age.
 - Abused juvenile includes:
 - Any juvenile less than 18 years of age who is a victim or is alleged to be a victim of an human trafficking offense regardless of the relationship between the victim and the perpetrator.
- <https://www2.ncleg.net/BillLookup/2017/S%20162>

Senate Bill 124 requires that any individual who possess or uses hemp extract shall dispose of all residual oil from the extract at a secure collection box managed by a law enforcement agency.

- <https://www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S124v5.pdf>