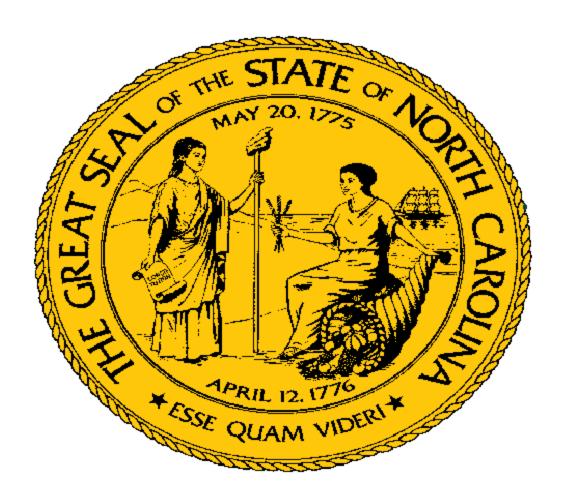
# LEGISLATIVE UPDATE 2004



NORTH CAROLINA DEPARTMENT OF JUSTICE

### **INTRODUCTION**

The Legislative Update for Law Enforcement is a review of laws enacted during the 2004 Session of the North Carolina General Assembly. It contains a summary of selected legislation of interest to law enforcement agencies. Individuals who would like more details about certain bills may receive a copy of the bill, at no cost, by calling the North Carolina General Assembly Printed Bills Office at (919) 733-5648 or by writing to the Printed Bills Office, State Legislative Building, Raleigh, North Carolina 27603. You may also get more information from the General Assembly's Website at <a href="https://www.ncga.state.nc.us">www.ncga.state.nc.us</a>.

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#### **ABC LAW**

# ASHEVILLE ABC BOARD MEMBERSHIP INCREASED

HB 1543; SL 2004-36

This Act provides that if the operation of a city liquor control store is authorized, the mayor and Asheville City Council shall immediately create a city board of alcohol control composed of a chairman and four members.

Effective Date: June 29, 2004.

# CURRITUCK ABC BOARD MEMBERSHIP INCREASED

HB 1722; SL 2004-45

This Act amends the Charter of the County of Currituck to increase the membership of the Alcohol Control Board of Currituck County from three to five members for three year terms.

Effective Date: June 30, 2004.

# KANNAPOLIS ABC STORE ELECTION

HB 1347; SL 2004-92

Pursuant to **N.C.G.S. § 18b-600(d)** this Act enables the City of Kannapolis to hold a referendum on the establishment of ABC stores. If ABC stores are approved the Rowan County ABC Board would be operated by the Rowan/Kannapolis ABC Board.

Effective Date: July 13, 2004.

#### **RUTHERFORDTON ABC DISTRIBUTIONS**

SB 1205; SL 2004-90

This legislation amends the Charter of the Town of Rutherfordton to allow net profits from the Alcohol Beverage Control Board to be distributed according to a resolution duly adopted by the Town Council. Previously, specific distribution of profits were set out to be used for different town services, including 25% for law enforcement through the Town Police Department.

Effective Date: July 13, 2004.

This Act redefines fortified wine to mean wine, of more than 16% and no more than 24% alcohol by volume. Unfortified wine means wine of 16% or less by volume. Further, the holder of an unfortified winery permit may receive and sell at the winery, wine produced inside or outside North Carolina under contract with the winery.

Effective Date: October 1, 2004.

# 2003 TECHNICAL CORRECTIONS ACT

HB 281; SL 2004-203

This Act makes numerous technical changes to the General Statutes and is set forth in more detail in the Miscellaneous section of this publication. Changes to ABC laws contained in this Act include:

- (1) Limits ABC township elections to malt beverages, unfortified wines and mixed beverages propositions and would not allow townships to hold ABC store election. The statute that allowed the recreation district in Swain County and the economic development zones in Halifax County to receive ABC permits without election is repealed.
- (2) Redefines "historic ABC establishment" to include a restaurant or hotel located within a State historic district, along with the other requirements.
- (3) Provides that any revocation of an ABC permit based solely on failure to pay a registration or inspection fee will not prohibit a person from obtaining a subsequent permit within three years of the revocation.
- (4) Allows a brewery that meets specific quantity limitations to sell malt beverages at three additional locations within the State if they have received the appropriate permits. The brewery will also be required to offer a reasonable selection of competitive malt beverages at its retail locations.
- (5) Repeals the authority of the Alcohol Beverage Control Commission to issue permits for the sale of alcoholic beverages within the Lumberton Economic Development and Tourist District without an election.

Effective Date: July 1, 2004.

# 2004 TECHNICAL CORRECTIONS ACT

This Act makes changes and corrections to a variety of laws and is outlined in more detail in the Miscellaneous section of this publication. The changes in this Act to ABC laws include:

- (1) Allows Tourism ABC establishments, which include restaurants of hotels within 1.5 miles of a ram on the Blue Ridge Parkway, to sell on-premises fortified wine and mixed beverages.
- (2) Requires an establishment to be located within one-quarter mile of a hotel with 70 or more rooms to qualify for an ABC permit for certain establishments located within a mile of an interstate highway and within a mile of a residential private club or sports club.

Effective Date: August 17, 2004.

#### **CRIMINAL PROCEDURE**

### CLARIFICATIONS REGARDING MEDIATION/ OPEN FILE DISCOVERY

SB 52; SL 2004-154

This Act consists of two parts, personnel matters/mediation rules and open discovery in all felony cases. The first part clarifies that personnel mediations by the University of North Carolina System are not considered the "practice of law" and that records created as part of these personnel mediations are not public records. The remainder of this Act modifies **G.S. §§ 15A-903** and **14-907** and deals with open file discovery in all felony criminal cases. Upon motion of the defendant, the court must order the State to make the following information available to the defendants.

- (1) The complete files of all law enforcement and prosecutorial agencies involved in the investigation to be made available for inspection by the defendant's attorney. "File" includes statements, investigating officer's notes, test results and examinations, and any other evidence obtained during the investigation. The defendant has the right to inspect and copy or photograph any materials contained therein.
- (2) If there is material in the file that should remain confidential and not be disclosed to the defendant's attorney, the District Attorney can make a motion and have a hearing before a Judge to have those documents sealed. The Judge can seal documents in the file if the

Judge finds good cause that there is a "substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment." The District Attorney can file for an ex parte order, meaning that it can be issued after a hearing held by the Judge with the District Attorney that does not include the presence of the defendant's attorney. If the ex parte order is granted, the defendant's attorney will be notified that the order was issued, but will not be notified of the subject matter of the order. This provision can be used to prohibit the discovery of the names, addresses, etc. of witnesses who may be intimidated prior to the trial or information that might prove embarrassing for innocent parties that is not necessary for the prosecution or defense of the criminal case.

- (3) The State must give the defense notice of any expert witness that the State expects to call at trial.
- (4) Requires the State to give the defendant at the beginning of jury selection a written list of the names of all other witnesses who the State expects to call during trial.
- (5) The State is not required to disclose written materials drafted by the prosecuting attorney or their staff for their own use at trial.
- (6) There is a continuing duty for law enforcement agencies to "make available" to the District Attorney and for District Attorney's office to "make available" to the defendant's attorney any new documents or information under this new statute.
- (7) There are reciprocal open file discovery requirements placed on the defendant as well.

#### Effective Date:

Personnel mediation provisions are effective August 2, 2004. The open file discovery provisions are effective October 1, 2004, and apply to cases where the trial date is on or after October 1, 2004.

# CRIME VICTIM FINANCIAL RECOVERY ASSISTANCE ACT

HB 1519; SL 2004-159

This Act prevents criminals from profiting from their crimes and improves a victim's ability to recover restitution from the offender. Specifically, this Act adds a new Article 2 in Chapter 15B of the General Statutes which provides that entities which owe moneys in excess of \$10,000 to offenders must notify the North Carolina Crime Victims' Commpensation Commission who will in turn notify

crime victims of such. Crime victims are then authorized to bring an action to recover such assets.

Effective Date: October 1, 2004.

# REQUIRE PAYMENT OF RESTITUTION OF EXPUNCTION

HB 1518; SL 2004-133

This Act modifies **G.S. § 15A-145** and requires a person to pay any outstanding restitution orders or civil judgments prior to the expunction of a criminal record.

Effective Date: September 1, 2004, and applies to petitions for expunction

filed on or after that date.

### 2003 TECHNICAL CORRECTIONS ACT/SEIZURE OF VIDEO GAMING MACHINES

HB 281; SL 2004-203

This Act makes numerous technical corrections to the General Statutes. It also clarifies the due process requirements for the seizure and destruction of illegal gaming machines. The Act directs a law enforcement agency in possession of a video gaming machine to retain the machine pending a disposition order from a district or superior court judge. Upon application by the law enforcement agency, district attorney, or owner, and after notice and opportunity to be heard by all parties, if the court determines that the item is unlawful to possess, it shall enter an order releasing the machine to the law enforcement agency for destruction or for training purposes. If the court determines that the item is not unlawful to possess and will not be used in violation of the law, the item shall be ordered released to its owner upon satisfactory proof of ownership. The procedures for release shall not apply, however, with respect to an item seized for use as evidence in any criminal action or proceeding until after entry of final judgment.

Effective Date: October 1, 2004.

#### CRIMINAL LAW

#### **INCREASE METHAMPHETAMINE PENALTIES**

SB 1054; SL 2004-178

This Act significantly strengthens the criminal penalties associated with the manufacture of methamphetamine. Provisions include:

Section 1: adds methamphetamine ("meth") to the list of controlled substances for which an overdose death can lead to a charge of second-degree murder (a B2 felony). Under current law, a person who proximately causes a death by the unlawful distribution of methamphetamine could be charged with involuntary manslaughter (a Class F felony).

Section 2: creates an aggravating factor for sentencing purposes when it is established that a child was present, exposed to, or endangered by exposure to the manufacture of methamphetamine. In conjunction with Section 3, offenders convicted of this offense with the aggravating factor would be sentenced in the aggravated range for Class C.

*Section 3:* increases the penalty for the manufacture (other than packaging/labeling) of methamphetamine from a Class H to a Class C felony.

Sections 4 and 5: increase the felony punishment level from Class H to Class F for possession of a precursor chemical with intent to manufacture methamphetamine or possession or distribution of a precursor chemical knowing or having reasonable cause to believe that it will be used to manufacture methamphetamine. Precursors are component substances used in drug manufacture, and are listed in G.S. § 90-95.

**Section 6:** adds new precursor chemicals used to make meth to the list in G.S. § 90-95.

Section 7: directs the Commission for Health Services to adopt rules establishing the decontamination standards for a residence or place of business where a meth lab was found before it can be re-inhabited. Failure to comply could result in an individual being subject to the general penalties that apply to public health laws, G.S. § 130A-18 and § 130A-25.

Section 8: creates a 24-month sentence enhancement for the serious injury of a law enforcement officer, probation/parole officer, emergency medical services employee or firefighter, during the commission of their duties, directly caused by one of the hazards associated with methamphetamine manufacture. It

also sets out the procedure for making the factual finding that might result in the greater prison sentence.

**Section 9:** provides immunity from civil and criminal liability to retail merchants who, as part of a "Methamphetamine Watch Program," report the purchases or theft of ingredients used to manufacture meth to law enforcement, cooperate in any law enforcement investigation of meth manufacture, or testify in judicial proceedings concerning meth manufacture.

Effective Date: Sections 1 though 6 and Section 8: December 1, 2004. Section

7: January 1, 2005. The remainder is effective August 3, 2004.

### ASSAULTING A PRIVATE CONTRACTOR EMPLOYED AS A PUBLIC TRANSPORTATION EMPLOYEE

HB 1373; SL 2004-26

This Act amends **G.S. § 14-33(c)** to make it a Class A1 misdemeanor to assault a public transit operator, including a public employee or a private contractor employed as a public transit operator, when the operator is discharging or attempting to discharge his duties.

Effective Date: December 1, 2004 and applies to all offenses committed on or

after that date.

#### **SECRET PEEPING**

SB 1167; SL 2004-109

This Act provides that it is a Class 1 misdemeanor for any person to secretly or surreptitiously peep underneath or through the clothing of another person using a mirror or other device.

Effective Date: December 1, 2004 and applies to offenses committed on or

after that date.

# 2004 TECHNICAL CORRECTIONS ACT

SB 1225, SL 2004-199

This Act makes changes and corrections to a variety of laws and is covered in more detail in the Miscellaneous section of this publication. This Act makes it a Class A1 misdemeanor for a person to commit an assault that inflicts serious

injury in the presence of a minor. If sentenced to community punishment, a person convicted of this offense will be placed on supervised probation.

Effective Date: August 7, 2004.

#### **DOMESTIC VIOLENCE**

# STRENGTHEN DOMESTIC VIOLENCE LAWS

HB 1354; SL 2004-186

This legislation represents a comprehensive modification to domestic violence laws in North Carolina. The pertinent provisions are as follows:

A new Class H felony is created at **G.S. § 14-32.4** and prohibits assault by strangulation inflicting physical injury unless the conduct is covered under some other provision of the law providing greater punishment;

Amends the habitual misdemeanor assault statute (G. S. § 14-33.2) so that it is a Class H felony for a third assault conviction, when the assault causes physical injury, but only if the previous convictions occurred in the last fifteen years. A conviction under this section could not be used as a prior conviction for any other habitual offense statute;

Amends the portion of the Criminal Procedure Act (G. S. § 15A-1340.16) that applies to aggravating the sentence for a defendant who has been convicted of a felony offense when the defendant took advantage of the trust or confidence in a domestic relationship to commit the offense;

Creates a system for tracking domestic violence cases, in cases involving assault or communicating a threat by requiring the Judge to determine whether a personal relationship existed and whether the offense was domestic violence;

Authorizes a warrantless arrest pursuant to **G.S. § 15A-401(b)** for a violation of a pretrial release order;

Amends the state firearms law to conform to federal law which provides that it is unlawful for any person who has been convicted of a felony to purchase, own, possess or have in custody, care or control any firearm. A complete summary of this provision is located under the "Weapons" section of this publication;

A magistrate or judicial officer is prohibited from refusing to issue a warrant for arrest solely because a prior warrant has been issued for the arrest of another person involved in the same matter.

This legislation also provides that no employer will discharge, demote or deny a promotion or discipline an employee because the employee took time off of work to obtain a domestic violence order. The employee must follow the employer's usual time-off policy or procedures, unless an emergency prevents the employee from doing so. An employer may require documentation of any emergency that prevented the employee from complying with the employer's usual time-off policy. The Commissioner of Labor will enforce the provisions regarding employment discrimination.

Requires domestic violence offenders to complete an abuser treatment program that will now be a regular condition of probation instead of a special condition of probation;

Directs the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriff's Education and Training Standards Commission to modify the Basic Law Enforcement Training curriculum to include education, training, and response to and investigation of domestic violence cases as well as training in evidence-based prosecutions. Any new training established will be available no later than March 1, 2005.

Effective Date: December 1, 2004 for the criminal law provisions and October

1, 2004 for the employment discrimination provision.

#### **CIVIL NO-CONTACT ORDERS**

HB 951; SL 2003

This Act adds new Chapter 50C to allow victims of nonconsensual sexual conduct or stalking to seek a civil no-contact order against another person not involved in a personal relationship with the person as defined in **G.S. § 50B-1(b)**.

<u>Effective Date</u>: December 1, 2004 and applies to actions that give rise to civil no-contact orders issued under this Act on or after that date.

### CIVIL WORKPLACE NO-CONTACT ORDERS

SB 916; SL 2003

This Act creates a new Article 23 to Chapter 95 of the General Statutes and allows an employer to file for a civil no-contact order in district court on behalf of an employee who has suffered unlawful conduct (such as an attempt to cause bodily injury; harrassment pursuant to **G.S. § 14-277.3**; or threats) from a person

that could have been or was intended to be carried out at the employee's workplace.

Effective Date: December 1, 2004 and applies to actions that give rise to civil

no-contact orders issued under this Act on or after that date.

#### **LOCAL LAWS**

### ABOLISH JOHNSTON COUNTY CORONER

SB 1125; SL 2004-18

This Act abolishes the office of coroner in Johnston County.

Effective Date: June 24, 2004.

#### ABOLISH WILKES COUNTY CORONER

SB 1178, SL 2004-51

This Act abolishes the office of coroner in Wilkes County.

Effective Date: Upon the expiration of the term of the current coroner in

Wilkes County.

#### **BADIN SATELLITE ANNEXATION**

HB 1475; SL 2004-40

This Act extends the limits of the Town of Badin to annex the Albemarle Correctional Institution.

Effective Date: June 30, 2004.

### CITY OF GREENVILLE-ABANDONED/ JUNKED VEHICLES

HB 1447; SL 2004-30

This Act changes the definition of an abandoned/junked vehicle to be one that, in terms of valuation, is more than five years old and worth less than \$500.

Effective Date: June 28, 2004.

HB 1662; SL 2004-63

# CHEROKEE/CLAY/SHOOTING FROM RIGHT OF WAY

This Act makes it a Class 3 misdemeanor to take or kill any wild animal or bird with the use of a firearm or to discharge a firearm from the right of way of a public road, highway, street or other public vehicular area in Clay and Cherokee Counties.

Effective Date: October 1, 2004.

#### **CHOWAN HUNTING LAWS**

HB 1613; SL 2004-60

This Act makes it a Class 3 misdemeanor to hunt, posses, or discharge a center fire rifle on the land of another without written permission of the owner and makes it unlawful to hunt with a center fire rifle unless the barrel of the rifle is eight feet above the ground. This Act also adds Chowan and Anson County to the list of those counties where it is illegal to remove or destroy electronic collars on dogs.

Effective Date: The trespass provision is effective July 7, 2004, and the dog

collar provision is effective October 1, 2004.

### DURHAM VEHICLE TAX SUNSET REPEALED/USERS

HB 1700; SL 2004-103

This Act extends the expiration date of the Durham vehicle tax for an additional four years.

Effective Date: July 15, 2004.

#### LAKE ROYALE POLICE AUTHORITY

HB 1728; SL 2004-71

This Act enables the Lake Royale Police Department to perform duties related to the enforcement of laws on the waters of Lake Royale and gives them access to the shoreline for enforcement purposes. It also allows participation in the process for awarding grants for the purchase of law enforcement equipment.

Effective Date: July 8, 2004.

HB 1422; SL 2004-108

### MINT HILL-POLICE ALL TERRAIN VEHICLES

This Act allows law enforcement officers in Mint Hill and the City of Kings Mountain to use unregistered all-terrain vehicles to enforce the law on public highways where the speed limit is 35 mph or less.

Effective Date: July 16, 2004.

### MORGANTON/BURKE/BROUGHTON MUTUAL AID

HB 1425; SL 2004-29

Allows the Broughton Police Department, (a "joint security force" for Broughton Hospital) to be considered a law enforcement agency so that it can now enter into agreements for mutual aid with the City of Morganton Police Department and the Burke County Sheriff's Office.

Effective Date: June 28, 2004.

# PERQUIMANS HUNTING STAND 2004-AMENDMENT

HB 1659; SL 2004-62

This Act amends current hunting laws in Perquimans County to change the required hunting stand level from eight feet to five feet for hunting with a center-fire rifle.

Effective Date: October 1, 2004.

# ROBESON/NO HUNTING OR FISHING FROM ROADWAY

SB 1201; SL 2004-52

This Act makes it a Class 3 Misdemeanor to hunt, take, or kill any wild animal or bird, or to attempt to hunt, take, or kill any wild animal or bird with the use of a firearm or bow and arrow from, on, across, or over the roadway or right-of-way of a public road, street or highway in Robeson County.

Effective Date: October 1, 2004.

SEVEN DEVILS -REGULATE GOLF HB 1462; SL 2004-58 CARTS/UTILITY VEHICLES

This Act allows the Town of Seven Devils to adopt ordinances regulating golf carts and utility vehicles on any public street or road within the town.

Effective Date: July 7, 2004.

TRANSYLVANIA LAND ACQUISITION/CONVEYANCE

HB 1364; SL 2004-28

This Act gives power to Transylvania County to acquire and convey property for use as a correctional facility.

Effective Date: June 28, 2004.

**VANCE FOX SEASONS** 

HB 1684; SL 2004-44

This Act allows for fox hunting via weapons and trapping in Vance County from October 1<sup>st</sup> through January 31<sup>st</sup>.

Effective Date: October 1, 2004.

WAKE IMPAIRED HUNTING REGULATION

HB 1649; SL 2004-87

This Act enables Wake County to regulate, control, restrict and prohibit hunting with firearms by a person under the influence of an impairing substance as defined by **G.S. § 20-4.01**.

Effective Date: July 9, 2004.

#### MOTOR VEHICLE LAW

#### TECHNICAL CORRECTIONS

HB 281; SL 2004-203

Amended N.C.G.S. § 20-7(b1) now requires that those seeking a State identification card or learner's permit must go through the same application

process as those seeking a driver's license. Amended **N.C.G.S. § 20-140 (o)** provides that a violation of **N.C.G.S. § 123.2** (requirement that a vehicle operating on the highway shall be properly equipped with a functioning speedometer) will carry no driver license or insurance points. This Act also Clarifies that a violation of the faulty speedometer statute, which is a lesser-included offense under a speeding violation, will not result in driver's license or insurance points.

Effective Date: August 17, 2004.

# PENALTIES FOR PERSONS CAUSING SERIOUS INJURY BY FAILING TO YIELD

HB 965; SL 2004-172

Unless the conduct is covered under some other law which provides a greater punishment, a person who fails to yield 1) when approaching or entering an intersection, 2)while turning at a stop or yield sign, 3) while entering a roadway, 4) upon the approach of an emergency vehicle, or 5) at highway construction or maintenance, and who causes serious bodily injury as defined in this section without a death, shall be fined \$500.00 and shall have their CDL or driver license suspended for 90 days.

Amended **N.C.G.S. § 20-158(b)** to clarify when one may turn right on red and requires yielding to pedestrians. Failure to yield to pedestrians is an infraction punishable by a penalty of up to \$500.00, but not less than \$100.00. Amended **N.C.G.S. § 20-16(c)** requires an assessment of 4 driver license points for failing to yield to a pedestrian, bicycle, motor scooter or motorcycle while turning right on red in a non-commercial vehicle. Commercial vehicles are assessed 5 points. Also, 1 insurance point is assigned to persons who fail to yield to a pedestrian while turning right on red.

Effective Date: December 1, 2004.

#### AGGRESSIVE DRIVING

HB 1046; SL 2004-193

A new Class 1 misdemeanor offense of aggressive driving is created in **N.C.G.S. § 20-141.6**. Aggressive driving is defined as a combination of any speed violation and driving which is carelessly and heedlessly in willful or wanton disregard of the rights or safety of others. For the purposes of proving driving which is carelessly and heedlessly in willful or wanton disregard of the rights or safety of others, the State must show in addition to a speeding violation that the person committed two or more specified violations, including 1) running a red light, 2) running a stop sign, 3) improper passing, 4) failing to yield right-of-way, or 5) following too closely.

Amended N.C.G.S. § 20-16 (a) (9), N.C.G.S. § 20-16 (c), N.C.G.S. § 20-17 (a) (6), and N.C.G.S. § 20-17 (a) (7) to authorize DMV's authority to suspend a violator's license and assign certain driver license points for aggressive driving.

Effective Date: December 1, 2004.

# CURRENT OPERATIONS AND CAPITAL APPROPRIATIONS ACT

HB 1414; SL 2004-124

(Unless Otherwise Stated below, all changes are effective July 1, 2004.)

Rewritten N.C.G.S. § 20-183.10 clarifies weigh stations are to be operated by Crime Control and Public Safety, Division of State Highway Patrol, who shall assign both sworn and non-sworn personnel. Both sworn and non-sworn personnel shall have authority to weigh vehicles and assess civil penalties. The non-sworn personnel shall be suprvised by the sworn personnel.

Amended **N.C.G.S. § 20-119** adds subsection (g) which requires the Department of Transportation to issue annual overwidth permits for vehicles carrying agricultural equipment or machinery from the dealer tot he farm or from the farm to the dealer that do not exceed 14 feet in width. The permits shall be valid for unlimited movement without escorts on all State highways where the overwidth vehicles do not exceed posted bridge and load limits. **N.C.G.S. § 20-119(f)** is also updated to require the Department of Transportation to develop and implement an in-house training program for agricultural machinery escorts by September 1, 2004.

New **N.C.G.S. § 20-147.1** requires noncommercial passenger vehicles towing other vehicles to keep to the right half of the highway, or if the highway is divided into tow or more lanes, in the right-most lane of travel. (As modified by Section 56 of SB 1225; SL 2004-199)

Effective Date: December 1, 2004.

# ADDITIONAL FEE PAID TO COMMISSION CONTRACT AGENTS

HB 1555; SL 2004-77

Sections 1 and 2, N.C.G.S. § 20-63 and N.C.G.S. § 20-85, are amended to add two new subsections (N.C.G.S. § 20-63(h1) and N.C.G.S. § 20-85(a1)) to provide an additional fee to be paid to Commission contract agents for transactions related to motor vehicle titles.

Effective Date: July 9, 2004 except Sections 1 and 2 which become effective

October 1, 2004, and apply to fees assessed on or after that date.

# ARREST AUTHORITY FOR DMV AND MOTOR CARRIER OFFICERS

HB 1345; SL 2004-148

Amended **N.C.G.S. § 20-49.1** provides to DMV officers arrest authority over persons they have probable cause to believe have committed a crime in their presence when the officer is engaged in the enforcement of laws within their jurisdiction; or when asked to provide temporary assistance by the head of a State or local law enforcement agency or his designee and the request is within the scope of the agency's subject matter jurisdiction. The section further authorizes DMV officers to investigate and make arrests for drivers license fraud and identity thefts related to drivers license fraud.

In addition to the statutory authority previously granted to such officers, Motor Carrier Enforcement Officers of the State Highway Patrol, now have the authority to enforce criminal laws when they have probable cause to believe that a person has committed a crime in their presence and the officer is engaged in the enforcement of laws otherwise in their jurisdiction; or when asked by the head of a State or local law enforcement agency to provide temporary assistance and the request is within the scope of the agency's subject matter jurisdiction. This statute does not expand a MCE Officer's authority to initiate or conduct an independent investigation into criminal violations outside the scope of their subject or territorial jurisdiction.

Effective Date: August 2, 2004.

#### **NEW REGISTRATION PLATES**

SBs 464, 754, 1118, and 1144 SLs 2004-182, 185, 200, and 131

Pursuant to amended **N.C.G.S. § 20-79.4(b)**, the following specialty license tags are authorized: National Rifle Association, Retired SHP surviving spouse, El Pueblo, N.C. public high school, HOMES4NC, commercial fishing, sport fishing, N.C. 4-H Development Fund, Daughters of the American Revolution, In God We Trust, and themes of professional stock car racing so long as DMV is able to obtain a license to use copyrighted or registered items without paying a royalty for their use. First in Forestry plate fee increased.

Effective Date: Upon becoming law (except October 1, 2004–Stock Car Racing).

### ACCESS TO DMV ORGAN DONATION **INFORMATION**

DMV must now establish and maintain a statewide, online Organ Donor Internet site that federally designated organ procurement organizations and eye banks can access. Fees for driver licenses are increased by \$.05 per year and the cost of a duplicate driver license is increased by \$.05. The additional revenue generated is to be retained by DMV to fund the development, maintenance and funding of the internet site and trust fund. Amended N.C.G.S. § 20-43.1 authorizes DMV to release organ donation information and to protect it from liability for the good-faith release of such information. Amended N.C.G.S. § 20-7.3 requires DMV to make organ donation information available to each applicant for a drivers license. N.C.G.S. § 20-7.4 is created to establish the License to Give Trust Fund, and N.C.G.S. § 20-7.5 and N.C.G.S. § 20-7.6 are created to establish the License to Give Trust Fund Commission and the powers of the Commission.

Effective Date: Driver license fee increases and Trust Fund establishment are

effective November 1, 2004; the remaining sections become

effective January 1, 2005.

### ADJUSTED WEIGHT LIMITS FOR TRUCKS HAULING CERTAIN MATERIALS

SB 1043; SL 2004-145

Amended N.C.G.S. § 20-118(c)(15) increases the weight tolerances for certain vehicles and combinations of vehicles hauling specified materials from a site that does not have a certified scale for weighing the vehicle and when the qualified vehicle is not being operated on an interstate road, posted light traffic road or posted bridge. Amended N.C.G.S. § 20-118(e) reduces the civil penalties for dump trucks and dump trailer vehicles when those vehicles are hauling specified materials in intrastate transport when the load is being transported from a site that does not have a certified scale for weighing the vehicle. Amended N.C.G.S. § 20-119 provides that no citation shall be issued for a violation of the statute if it can be determined electronically that a valid permit has been issued but the person does not have the permit in their possession. In addition, if a citation is issued to a person who does not have a permit in their possession, but who had a valid permit when the citation was issued, the Department of Crime Control and Public Safety may not impose a fine if evidence of the valid permit is submitted within 30 days of the date of the violation.

Effective Date: Section 3 becomes effective January 1, 2005. The remaining

sections took effect on July 29, 2004.

# MODIFY CHILD SAFETY RESTRAINT SYSTEM REQUIREMENTS

Rewrites **N.C.G.S. § 20-137.1(a1)** and **(c)** requires that a child less than eight years of age (previously five years) and less than 80 pounds (previously 40 pounds) must be properly secured in a weight-appropriate child passenger restraint system. Further, if no seating position equipped with a lap belt and shoulder belt to properly secure the weight-appropriate child passenger restraint system is available, a child less than eight years of age and between 40 and 80 pounds may be restrained by a properly fitted lap belt only.

Effective Date: January 1, 2005.

### UNLAWFUL TO COVER LICENSE PLATES TO PREVENT CLEAR TRAFFIC CONTROL SYSTEM PHOTOGRAPHY

HB 26; SL 2004-79

Rewritten **N.C.G.S.** § 20-63(g) now clarifies the unlawful covering of license plates for the purpose of preventing clear traffic control system photography. Violators commit an infraction and are fined pursuant to **N.C.G.S.** § 14-3.1.

Effective Date: October 1, 2004.

STAGGERED ISSUANCE OF COMMERCIAL
LICENSE PLATES, DEALER PLATES, AND MOTOR
VEHICLE DEALERS AND MANUFACTURES LICENSES
AND EXEMPT HISTORIC VEHICLES FROM SAFETY
INSPECTIONS

This bill amends **N.C.G.S.** § 20-79 to stagger the expiration of motor vehicle dealer license plates which currently expire annually on December 31st and to make other technical changes to that statute. This bill also amends **N.C.G.S.** § 20-87, Passenger vehicle registration fees, to provide that these are due annually depending on their origination date as opposed to January 1st as currently set. Additionally **N.C.G.S.** § 20-288 is rewritten to provide that motor vehicle dealer licenses will expire in staggered terms. Motor vehicle dealer licenses currently expire on June 30th of each year. Finally, a new subsection (a1) is added to **N.C.G.S.** § 20-183.2 which allows a Safety Inspection Exception for Historic vehicles, as defined in **N.C.G.S.** § 20-79.4(b)(17).

Effective Date: January 1, 2005. Session Law 2004-167 (S.B. 1083) changed

the effective date for the safety inspection exception for historic vehicles to October 1, 2004.

#### PUBLIC TRANSIT FLASHING LIGHTS

SB 1086; SL 2004-82

N.C.G.S. § 20-130 is amended by adding a new subsection (e) which reads:

High Mounted Flashing Deceleration Lamps - Public transit vehicles may be equipped with amber, high mounted, flashing deceleration lamps on the rear of the vehicle.

Effective Date: July 1, 2004.

### TECHNICAL CORRECTIONS AND CONFORMING CHANGES

SB 1225; SL 20-199

**N.C.G.S. § 20-16.1(b)** is rewritten to allow an individual convicted out of state to apply to a N.C. district court judge where he/she resides for limited driving privileges. Upon such application the judge shall have the authority to issue such limited driving privileges in the same manner as if he had been the trial judge.

Effective Date: August 17, 2004.

COURT MUST GIVE NOTICE OF RIGHTS TO CONTEST MECHANICS' LIEN STORAGE CHARGES OF VEHICLES SEIZED UNDER THE DWI FORFEITURE LAWS

SB 577; SL 2004-128

N.C.G.S. § 20-28.4 is amended to include that the court shall include in its order notice to the owner of the seized motor vehicle still being held, that within 30 days of the date of the court's order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs. Furthermore, notice, made pursuant to the amended law, of the right to a judicial hearing on the validity of the mechanics' lien given to the owner of the motor vehicle in open court or delivery to the owner of the vehicle of a copy of the court's order entered shall satisfy the notice requirement of N.C.G.S. § 44A-

**4(b)**. **N.C.G.S. § 44-4(b)** is rewritten to reflect the changes made in **N.C.G.S. § 20-28.4**.

Effective Date: October 1, 2004, and apply to orders entered on or after that

date.

### INCREASE FEES/QUALIFICATIONS FOR DWI ASSESSMENTS

HB 1356; SL 2004-197

This Act specifically states which individuals are authorized to conduct a substance abuse assessment. Those included are: (1) a Certified Substance Abuse Counselor, (2) a Certified Clinical Addiction Specialist (3) a Substance Abuse Counselor Intern who is supervised by a Certified Clinical Supervisor who meets the minimum qualifications established by the Commission for individuals performing substance abuse assessments (4) a person licensed by the North Carolina Medical Board or the North Carolina Psychology Board (5) a physician certified by the American Society of Addiction Medicine. The Act also increases the fee from \$50.00 to \$100.00 for conducting a substance abuse assessment for the purpose of obtaining a certificate of completion.

Effective Date: Fee increase is effective October 1, 2004 and the authorization

for assessments is effective October 1, 2005.

### **WEAPONS LAW**

# DISCHARGING FIREARM ON SCHOOL PROPERTY

HB 1453; SL 2004-198

When a person willfully discharges a firearm on any educational property that person shall be guilty of a Class F felony. It also makes it legally permissible to have a weapon for hunting purposes on education property with the written permission of the governing body of the school that controls the property.

Effective Date: December 1, 2004.

HB 817; SL 2004-183

# GUN SALE LEGAL WITH CONCEALED CARRY PERMIT

This Act makes it permissible for a resident of North Carolina to purchase a pistol or crossbow without first obtaining a license or permit if the purchaser has a valid North Carolina concealed handgun permit at the time of purchase.

Effective Date: August 10, 2004.

STRENGTHEN DOMESTIC VIOLENCE LAWS/POSSESSION OF FIREARM BY A FELON

HB 1354; SL 2004-186

Amends **N.C.G.S. § 14-415.1**, *Possession of a Firearm by a Felon*, to conform to federal law. Specifically, this Act amends the current criminal offense so that it applies to all firearms, not just handguns and firearms with an overall length of less than twenty-six inches or a barrel length of less than eighteen inches. This Act also removes the exemption under current law that allowed felons to possess firearms in their home or lawful place of business.

Effective Date: December 1, 2004. The old law will apply to prosecutions

commenced prior to the effective date of the new law.

#### **RETIREMENT BENEFITS AND DISABILITY**

# RETIREMENT BENEFITS/DISABILITY INCREASE RETIREES'S CONTRIBUTORY DEATH BENEFITS

HB 1624; SL 2004-147

This Act increases the contributory death benefit for retired members of the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, the Legislative Retirement System and the Consolidated Judicial Retirement System. Upon proof of the death of a retired member of the Retirement System a death benefit lump sum of \$9,000 dollars shall be paid to the spouse or designated representative provided that the retired member has elected to, and has continuously made, required contributions to a group death benefit trust fund.

Effective Date: July 1, 2004.

### HB 1513; SL 2004-136

# INCREASE LOCAL GOVERNMENT DEATH BENEFIT

This Act increases the maximum death benefit payable from the Local Government Employees' Retirement System from the current maximum of \$20,000.00 to a minimum \$25,000.00 and a maximum of \$50,000.00.

Effective Date: July 1, 2004.

# LOCAL GOVERNMENT EMPLOYEES/457

SB 1312; SL 2004-137

This Act authorizes participation in 457 plans (a tax-deferred retirement savings plan offered by many non-profit entities) by employees of the state, any county or municipality, the North Carolina Community College System, and any political subdivision of the State if approved by the governing board where the employee is employed. This Act also gives the Board of Trustees of the N.C. Public Employee Deferred Compensation Plan power to create and administer a deferred compensation plan for local government employees, community college employees, and other governmental employees.

Effective Date: January 1, 2005.

#### **AMEND DISABILITY LAWS**

HB 354, SL 2004-78

This Act changes the definition of disability in the State Disability Income Plan by adding a provision for "mental incapacity" for the further performance of duty. Long term disability benefits are restricted to those who are unable to perform any occupation which is in keeping with the participant's education, training, or experience, which is available in the same commuting area and which the participant can be expected to earn not less than 65% of that participant's predisability earnings.

Effective Date:

Retroactively with respect to the addition of "mental incapacity" and the change in definition for long-term disability is effective August 1, 2005.

#### **MISCELLANEOUS**

# UNAUTHORIZED USE OF CITIZENS BAND (CB) EQUIPMENT

HB 257; SL 2004-72

Provides that it is unlawful to use any CB radio equipment not authorized by the Federal Communications Commission. Violation is a class 3 misdemeanor.

Effective Date: December 1, 2004.

#### INCREASE SERVICE OF PROCESS FEE

HB 918; SL 2004-113

For each civil process served, the fee is increased from \$5.00 to \$15.00. At least fifty percent of the fees collected must be used by the county to ensure timely service of process, which may include the hiring of additional law enforcement personnel on the recommendation of the sheriff.

Effective Date: September 1, 2004.

## INVOLUNTARY COMMITMENT WARRANT CLARIFICATION

HB 1366; SL 2004-23

Provides that an order issued by the Clerk of Court, Magistrate, or the Court for custody relating to involuntary commitment is valid throughout the State.

Effective Date: June 25, 2004.

#### ALARM SYSTEMS LICENSURE FEES

HB 1594; SL 2004-201

This Act allows the Alarm Systems Licensing Board to increase new or renewal licensing fees from a maximum of \$350.00 to \$500.00. The maximum amount the Board can charge for a registration fee is changed from twenty dollars to fifty dollars and a fee not to exceed fifty dollars has been set for the reconsideration of a permit that has been filed or returned for correctable errors.

Effective Date: July 16, 2004.

#### INCREASE PENALTY-TRANSIT OPERATOR

This Act increases the classification from a Class 2 misdemeanor to a Class A1 misdemeanor for assaulting a public transit officer, whether they are government employees or a private contractor employed as a public transportation operator.

Effective Date: December 1, 2004.

### RESPIRATORY CARE BOARD/ BACKGROUND CHECKS

SB 1254; SL 2004-89

This Act authorizes the Department of Justice to provide criminal record checks to the Respiratory Care Board for applicants for licensure and to charge a fee for the cost associated with conducting the check.

Effective Date: July 1, 2004.

### PUBLIC HEALTH PREPAREDNESS AND RESPONSE

SB 582; SL 2004-80

This Act improves Public Health preparedness and response to persons or animals that are infected or reasonably suspected to be infected with a communicable disease. It amends the definition of "isolation authority" to permit isolation orders to be issued for persons or animals who are reasonably suspected of being infected with a communicable disease or condition. It also increases the period of quarantine from ten to thirty days. All records containing privileged medical information or information under 45 C.F.R. Parts 160 and 164 shall be confidential and shall not be public record pursuant to **N.C.G.S. § 132-1**. This information can only be disclosed when authorized or required by State or federal law. The State Health Director is authorized to issue temporary orders requiring health care providers to report specific health information when necessary for the investigation or monitoring of a disease or condition that presents a danger to the public or a health hazard that may have been caused by a terrorist incident using nuclear, biological or chemical agents.

Effective Date: July 8, 2004.

# ADJUST COURT JURISDICTION/ADJUST MAGISTRATE TERM

This Act includes a variety of changes in the jurisdiction of district court magistrates and clerks and some minor changes in the criminal justice system. The Act raises the limit on civil claims that can be brought in a small claims court from \$4,000 to \$5,000. It clarifies that Superior Court will have exclusive jurisdiction over all hearings where a defendant is facing the revocation of probation from a felony conviction except that the District Court may have jurisdiction to hear these cases when the District Attorney's Office and the defendant have consented. It adds drug treatment court programs to the list of intermediate punishments that a court may use when sentencing a defendant. In addition, the parental rights of any person who is convicted of first or second-degree rape for the child conceived as a result of the rape are removed. Finally, it proposes a constitutional amendment to extend the term of magistrates from a two-year term to an initial two-year term and then a four-year term.

#### Effective Date:

Provisions relating to the monetary limit increase on civil claims are effective October 1, 2004, and apply to actions filed on or after that date. The provisions regarding parental rights are effective December 1, 2004, and apply to offenses committed on or after that date. The proposed constitutional amendment to extend the term of a magistrate would have to be approved by voters in the November election. If approved, it becomes effective January 1, 2005, and applies to appointments that take effect after that date.

# LOCKSMITH CRIMINAL HISTORY RECORD CHECK FEES

SB 1128, SL 2004-177

The Act authorizes the North Carolina Locksmith Licensing Board to charge each locksmith license applicant or apprentice applicant for a criminal history record check.

Effective Date: August 2, 2004.

# CONDO AND PLANNED COMMUNITY CLARIFICATIONS/SECRET PEEPING LAW

SB 1167, SL 2004-109

This Act includes a provision that amends the secret peeping law to provide that any person who secretly peeps underneath or through the clothing of another person using a mirror or other device without the other person's consent is guilty of a Class 1 misdemeanor. This offense is also included under sex offenses that are "reportable convictions" for purposes of the Sex Offender Registry laws if the court issues an order requiring such registration.

Effective Date: December 1, 2004.

# 2004 TECHNICAL CORRECTIONS ACT

SB 1225, SL 2004-199

This Act makes changes and corrections to a variety of laws. The changes of interest are below:

- (1) Clarifies that a person who commits an assault that inflicts serious injury in the presence of a minor is guilty of a Class A1 misdemeanor and if sentenced to community punishment will be placed on supervised probation.
- (2) Allows Tourism ABC establishments, which include restaurants of hotels within 1.5 miles of a ram on the Blue Ridge Parkway, to sell on-premises fortified wine and mixed beverages.
- (3) Requires an establishment to be located within one-quarter mile of a hotel with 70 or more rooms to qualify for an ABC permit for certain establishments located within a mile of an interstate highway and within a mile of a residential private club or sports club.
- (4) Permits a district court judge instead of a resident superior court judge, to issue limited driving privileges to those who have a license suspended in North Carolina for an out-of-state speeding violation.
- (5) Permits Pitt County to have open season on fox hunting with weapons between December 1<sup>st</sup> and January 1<sup>st</sup> of each year and open season of fox hunting by trapping between January 2<sup>nd</sup> and January 31<sup>st</sup> of each year.
- (6) Amends a local act to allow the motor vehicle laws to be enforced in the Martian's Point subdivision in Dare County.
- (7) Requires local jails to submit an invoice for housing Department of Correction inmates within 90 days of the date of commitment.
- (8) Amends House Bill 951, Create Civil No-Contract Order by deleting the definitions of sexual penetration. Without a definition, the case law definition will apply.
- (9) Clarifies a provision in the budget, which requires passenger vehicles (not tow trucks) towing other vehicles to keep right. The provision clarifies that on any highway having four or more lanes, the vehicle shall not be driven in the left motor vehicle lane of the right half of the highway, except when overtaking and passing

- another vehicle, preparing for a left turn or when the right lanes are obstructed.
- (10) Clarifies that Senate Bill 916, Prevent Workplace Violence does not alter any existing duties of employers to provide a safe workplace.
- (11) Changes the effective date for exempting historic vehicles from the safety inspection to October 1, 2004. (Additional information about this exemption can be found in the Motor Vehicles section, SB 1083; SL 2004-167)

Effective Date: August 17, 2004.

# MODIFY YOUTH FACILITY DEBT AUTHORIZATION

HB 1795; SL 2004-126

This Act reduces the amount of available bond money to be used for construction of thirteen youth development centers totaling 512 beds from \$6.78 million to \$4.46 million.

Effective Date: July 22, 2004.

### SALTWATER FISHING FUND/ HOLDOVER APPOINTMENTS

HB 831, SL 2004-187

This Act creates the North Carolina Saltwater Fishing Fund to help manage the state's fishery resources. This Act makes it unlawful for any individual to engage in recreational fishing in coastal fishing waters without having purchased a saltwater fishing license. These licenses will cost \$15 per year or \$1 for each seven-day period. Law enforcement officers will be permitted to verify the licensure of a person fishing from a charterboat or headboat but only after the vessel has returned to shore and the person has disembarked from the charterboat or headboat.

Effective Date: January 1, 2006.

### 2003 TECHNICAL CORRECTIONS ACT

This Act serves to correct errors in recently enacted legislation. The changes are as follows:

- (1) Clarifies that the law forbidding school personnel who take indecent liberties with a student also apply to situations where the student is present for a school related or school sponsored activity at another school and to those situations where the perpetrator is employed or volunteering or present at the school for a school sponsored activity.
- (2) Clarifies the due process requirements for the seizure and destruction of illegal gaming machines. Directs a law enforcement agency in possession of a video gaming machine to retain the machine pending a disposition order from a district or superior court judge. Upon application by the law enforcement agency, district attorney, or owner, and after notice and opportunity to be heard by all parties, If the court determines that the item is unlawful to possess, it shall enter an order releasing the machine to the law enforcement agency for destruction or for training purposes. If the court determines that the item is not unlawful to possess and will not be used in violation of the law, the item shall be ordered released to its owner upon satisfactory proof of ownership. The procedures for release shall not apply, however, with respect to an item seized for use as evidence in any criminal action or proceeding until after entry of final judgment. This provision becomes effective October 1, 2004.
- (3) Provides that the names of persons who are designated to carry out a death penalty execution are confidential and are not subject to discovery under the public records law.
- (4) Requires the Department of Correction to reimburse local jails for housing those with criminal sentences of 30 days or more. Local jails will not be paid for those being confined for civil sentences or for criminal sentences less than 30 days. Local jails must submit their invoices within 90 days of the date of commitment.
- (5) Clarifies the ability of a judge to order the disposal of firearms in certain circumstances.
- (6) Clarifies that a violation of the faulty speedometer statute, which is a lesser-included offense under a speeding violation, will not result in driver's license or insurance points.
- (7) The statute that prohibited fortune telling, palm reading or clairvoyance in 61 counties is repealed.
- (8) Limits ABC township elections to malt beverages, unfortified wines and mixed beverages propositions and would not allow townships

- to hold ABC store election. The statute that allowed the recreation district in Swain County and the economic development zones in Halifax County to receive ABC permits without election is repealed.
- (9) Redefines "historic ABC establishment" to include a restaurant or hotel located within a State historic district, along with the other requirements.
- (10) Provides that any revocation of an ABC permit based solely on failure to pay a registration or inspection fee will not prohibit a person from obtaining a subsequent permit within three years of the revocation.
- (11) Allows a brewery that meets specific quantity limitations to sell malt beverages at three additional locations within the State if they have received the appropriate permits. The brewery will also be required to offer a reasonable selection of competitive malt beverages at its retail locations.
- (12) Allows Calabash to adopt ordinances regulating swimming, surfing, personal watercraft operation and littering in the Atlantic Ocean and other waterways adjacent to or within its boundaries.
- (13) Repeals the authority of the Alcohol Beverage Control Commission to issue permits for the sale of alcoholic beverages within the Lumberton Economic Development and Tourist District without an election.
- (14) Substitutes the term "service animal" for "assistance dog" to conform to the Federal Americans With Disability Act and adds a "person with a seizure disorder" to the list of persons allowed to have a service animal accompany them in a public facility of accommodation.
- (15) Allows military personnel who are called to active duty to have their occupational licenses extended for up to 90 days.

Effective Date: July 1, 2004.

### INCREASE IN JURISDICTIONAL AMOUNT FOR SMALL CLAIMS COURT AND PARENTAL RIGHTS OF RAPISTS

SB 577; SL 2004-128

This Act, among other charges, raises the jurisdictional amount for small claims court from \$4,000 to \$5,000 dollars. Further, a person convicted of 1st or 2nd degree rape has no right to custody of or right of inheritance from any child born as a result of the connession of the rape.

<u>Effective Date</u>: December 1, 2004 and applies to offenses committed on or after that date.

#### **STUDIES ACT 2004**

This Act provides for the study of numerous topics and issues of interest to the General Assembly. Among the issues to be studied:

- Fire safety in local confinement facilities;
- Regulate ticket brokers;
- Alcoholic beverage brokers;
- Commercial driver's license requirements and emergency situations;
- Towing laws, salvage laws and lien holder notification when vehicles are abandoned or seized;
- Review of sentencing guidelines;
- Judicial approval for pleas in certain cases;
- Reclassify statutory rape;
- Amend habitual felon law;
- Restructure prior criminal record points;
- Sentence lengths;
- Adjust penalties for B1 to E offenses;
- Arson offenses;
- Drug trafficking laws;
- Trafficking of persons;
- Youthful offenders;
- Street gang terrorism;
- Giving notice of right to contest mechanic's lien storage charges of vehicles seized under the DWI forfeiture laws;
- Optional graduated 25-Year retirement plan for local governments;
- Casino nights for non-profit organizations;
- Charitable beach bingo;
- Pawnbrokers and those non-regulated retail outlets engaged in similar businesses and acting as pawn brokers;
- Availability and delivery of government services to the State's increasing Hispanic population with a particular focus on services in education, health, and public safety;
- Comprehensive first and second responder statewide communications planning that includes law enforcement, fire, medical, utilities and emergency management agencies;
- The Joint Legislative Transportation Oversight Committee may study the registration and regulation of all-terrain vehicles;
- The Joint Legislative Transportation Oversight Committee may study whether any motor vehicle that is declared a total loss shall have the registration care and back of the title marked total loss claim vehicle;
- The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee may study the federal structured sentencing system and compare it with the State's current system of structured sentencing;

- The North Carolina Sentencing and Policy Advisory Commission will study North Carolina sentencing guidelines in light of the Unites States Supreme Court decision which required all issues of fact to be determined by a jury and not a judge, including issues of sentencing;
- The Office of State Personnel will conduct a reclassification study of all sworn law enforcement officers employed in the Division of Parks and Recreation of the Department of Environment and Natural Resources;

Effective Date: August 2, 2004.

#### **BUDGET PROVISIONS**

#### 2004 APPROPRIATIONS ACT

HB 1414; SL 2004-124

Following is a short summary of pertinent provisions contained in the approved State Budget for 2004:

- (1) SBI Methamphetamine Response Team, provides over \$850,000 to add 14 sworn agent positions to the SBI to combat illegal methamphetamine lab operations in North Carolina. This funding also provides for the SBI, through a lease, to expand by an additional 5,000 square feet the laboratory space at the Western Crime Laboratory to help combat the growing meth epidemic in Western North Carolina.
- (2) Authorizes the expansion of the SBI Crime Lab, provides \$4.5 million to expand the crime laboratory at the State Bureau of Investigation in Raleigh to expand DNA testing capacity and accommodate increase in staff.
- (3) Provides \$250,000 to allow the Department of Justice to contract with private parties to reduce the backlog of rape kits in storage at local law enforcement agencies. The private agencies will analyze bodily fluids, DNA evidence or both from rape kits that are evidence in cases in which a suspect has not been identified.
- (4) Salary Adjustments, provides up to \$5 million for salary adjustments for State Bureau of Investigation (SBI) Agents, Alcohol Law Enforcement Division (ALE) Agents, Marine Fisheries Officers, Park Rangers and Forestry Law Enforcement Officers to bring salaries in line with other law enforcement personnel.
- (5) Methamphetamine Training for Child Protective Services, provides over \$200,000 to train Child Protective Services staff who are required to respond to reports of abuse and neglect that are linked to methamphetamine drug use.

- (6) Response to Domestic Violence, provides over \$1.5 million to the Court System to enhance its response to domestic violence problems, methamphetamine caseloads and to assist the Court System with increasing caseloads. Three Superior Court Judges, four District Court Judges, eleven Assistant District Attorneys and two roving Official Court Reporters will be added to assist the Court System. Funds will also be used to enhance the automated court information system (ACIS) to track domestic violence offenders and to provide training to judicial officials throughout the State on domestic violence matters.
- (7) Videoconferencing Pilot, provides funding for a pilot program in Superior Court District 27B, serving Cleveland and Lincoln Counties, that will allow the State Bureau of Investigation lab analysts to provide testimony by videoconferencing. The Department of Justice and the Administrative Office of the Courts will study the feasibility of a statewide program to allow lab analysts with the State Bureau of Investigation to provide their testimony by videoconferencing or other remote means.
- (8) Study Cost of the DCI-PIN System, requires the Office of State Budget and Management to study the costs of the DCI-PIN System, which allows state and local law enforcement agencies to access criminal information. The findings of the study will be reported to the General Assembly by March 1, 2005. The study will include a review of the Division's operational, personnel and overhead costs on a per unit basis. The study will also look at the funding sources for the DCI-PIN System in other states.
- (9) Forensic evidence admissible without testimony of lab analyst, the General Assembly authorized the results of a forensic analysis that is signed and sworn by the person performing the analysis to be admissible as evidence, so long as an affidavit is attached to the report. The State Bureau of Investigation (SBI) will establish rules regarding the analysis and admissibility of the evidence. A copy of the laboratory report and the affidavit will be served on the defendant prior to using the evidence and the defendant or the defendant's attorney can require the presence and testimony of the person who signed the report.
- (10) The North Carolina General Assembly recommends that the Department of Justice hire only non-sworn personnel to fill vacant positions in the State Bureau of Investigation laboratory if their duties do not include serving warrants, responding to crimes prior to the crime scene being secured by other law enforcement officers, or entering hazardous situations that may require the use of force.

- (11) Adds domestic violence training positions for law enforcement, adds a Criminal Justice Training Coordinator position at the North Carolina Justice Academy and an Investigator to the Sheriffs' Standards Division to oversee law enforcement training on domestic violence issues.
- (12) Domestic Violence Center Fund, provides \$2 million for additional grants to combat domestic violence.
- (13) Emergency Programs/Department of Agriculture, includes 28 new positions in the Department of Agriculture paid for with federal grants in the following areas: Office of Emergency Management, Mental Health Contracts, North Carolina Threat Reduction Grant, Food Security, and Homeland Security.
- (14) Homeland Security Funding, creates five new positions in the Department of Crime Control and Public Safety with federal funding from the Department of Homeland Security. The new positions will incorporate the new requirements for Homeland Security and Domestic Preparedness into existing education and training courses provided by the Community College System. Five new positions will also be provided to the Governor's Crime Commission to respond to the increasingly specialized training requirements for law enforcement personnel in Homeland Security and Domestic Preparedness and will enable the Community College System to develop specific training for North Carolina.
- (15) Program Support/Training for Multiple Response System (MRS), provides \$750,000 for counties that are participating in the Multiple Response System Pilot Program through Child Protective Services.
- (16) Area Mental Health Programs, decreases funding to area mental health programs by \$2 million.
- (17) Housing Support for the Mentally ill, provides \$750,000 to expand housing options for persons with mental illness. This funding will assist in receiving federal matching funds of \$13 million.
- (18) Funds for PATH Program Residence Purchase, provides \$500,000 from the Trust Fund for Mental Health, Developmental Disabilities and Substance Abuse Services to provide a residence for the PATH Program at the Murdoch Center.
- (19) Expansions at ADACT Centers, provides \$3.5 million from the Trust Fund for Mental Health, Developmental Disabilities and Substance Abuse Services for expansion of the State's Alcohol and Drug Abuse Treatment Centers (ADACT).
- (20) Mental Health Treatment Courts, establishes pilot programs in Judicial Districts 15B, 26 and 28 that serve Orange, Chatham, Mecklenburg and Buncombe Counties to add a mental health treatment program to the existing drug treatment courts. The purpose of the pilot program is to provide cooperation between the

- State mental health system, mental health service providers and the judicial system to provide repeat adult offenders that need mental health services with treatment and other mental health services to improve their ability to function in the community with the goal of reducing recidivism and easing the work load of the courts.
- (21) Hospital Emergency Department Data Reporting, requires the State Health Director to develop a surveillance program for hospital emergency departments to detect and investigate public health threats that may result from a terrorist incident, an epidemic or other infectious diseases. Each hospital is required to submit electronic information as required by the Commission for Health Services.
- (22) Criminal History Record Checks for Local Child Care Centers, allows the Division of Child Development to conduct criminal history record checks for local child-care centers. The Division will add three temporary positions to eliminate the current backlog and keep the criminal history record checks current.
- (23) Long Term Care Criminal Record Checks, provides \$400,000 to start a program for conducting criminal record background checks for potential employees in long-term care facilities. The Department of Justice will receive \$250,000 to upgrade the billing system currently used for criminal record checks.
- (24) Mental Health Services, requires the Department of Health and Human Services to work with area mental health authorities and county programs to eliminate administrative and physical barriers created by current policies and procedures in delivering community based mental health, developmental disabilities and substance abuse services.
- (25) Centralize Criminal Record Check Functions, requires the Department of Health and Human Services to centralize all of the activities in the Department relating to criminal records checks to better manage the information.
- (26) Interpreters in Courtrooms, provides \$1 million for constitutionally required interpreter services in court proceedings.
- (27) Complete North Carolina AWARE Warrant Repository, provides \$500,000 to continue work on the statewide Warrant Repository System that provides access to court information for law enforcement agencies across the State.
- (28) Women at Risk, provides \$25,000 to Western Carolinians for Criminal Justice for the operation of the Women-at-Risk Program.
- (29) Warren Correctional Center, provides almost \$2 million to operate the new wing of the Warren Correctional Center that will house 168 maximum-security beds. The funding will also be used to restart the inmate education program through Vance Community College.

- (30) Maury Correctional Center, provides almost \$1 million for 56 startup positions for the Maury Correctional Center, which will have 1,000 close custody beds.
- (31) Bertie Correctional Center, provides almost \$200,000 in start-up funds for the new 1,000-bed prison under construction in Bertie County.
- (32) Convert Temporary Prison Beds to Permanent, provides almost \$1 million to convert temporary beds into permanent beds by authorizing 31 new positions which will allow capacity to increase by 754 beds.
- (33) Increase Prison Bed Capacity, provides over \$1.7 million to double cell two of three tiers at a prison to be determined by the Secretary of Correction. The anticipated increase in capacity is 336 beds.
- (34) Disaster Recovery Staff, provides over \$200,000 to convert four temporary staff positions in the Hazard Mitigation and Public Assistance Section to permanent positions within the Office of Emergency Management.
- (35) Crime Victims' Compensation Funds, provides \$2.5 million to eliminate the backlog of approved, but unpaid claims for crime victims. This State funding will allow the program to receive an additional \$1.5 million in federal matching funds.
- (36) Juvenile Recidivism, requires the North Carolina Sentencing and Policy Advisory Commission to prepare biennial reports on juvenile recidivism in North Carolina.
- (37) Electronic Monitoring of Juveniles, requires the Department of Juvenile Justice and Delinquency Prevention to study the use of electronic monitoring of juveniles and electronic house arrest programs for juvenile offenders. The Department will provide recommendations on ways to expand the use of all electronic monitoring programs as an alternative to admitting juveniles to youth development centers.
- (38) Alternatives to Juvenile Commitment, requires the Juvenile Crime Prevention Council to identify alternative community programs for juvenile offenders who would otherwise be committed to youth development centers. The Department will develop a competitive grant award for these programs and will award up to 10 grants to Juvenile Crime Prevention Councils.
- (39) Inmate Custody and Classification System, requires the Department of Correction to review the current inmate custody and classification system in consultation with the National Institute of Corrections. The review will focus primarily on the classification used to determine inmate custody and the policies used when overriding the custody level.

- (40) Nonprofit Programs, requires nonprofit programs, including Harriet's House, Summit House and the Women at Risk Program to provide information on the number of clients who have been rearrested within three years of successfully completing the individual programs.
- (41) Victims' Compensation and Medical Treatment, provides that the Crime Victims Compensation Fund will only pay a healthcare provider sixty-six and two-thirds percent (66 2/3%) of the amount usually charged for medical care, counseling, rehabilitation, medically related property and other remedial treatments for victims who apply for benefits from the Crime Victims Compensation Fund. If the provider accepts payment from the Fund, the provider is required to accept the reduced compensation as payment in full for the treatment or care and may not hold the claimant responsible for the costs of the services.
- (42) New Magistrates, includes funding for two new Magistrate positions in Macon and Davie Counties. The Administrative Office of the Courts will evaluate the increased need for Magistrates throughout the State and will re-examine the caseload formula currently used to decide how Magistrate positions should be assigned.
- (43) Drug Treatment Court, provides \$279,000 to continue operation of three (3) drug treatment court programs in Durham, Mecklenburg and Randolph Counties.
- (44) Our Children's Place, provides \$150,000 to "Our Children's Place" which is a nonprofit organization that develops treatment programs for nonviolent incarcerated female offenders and their children.
- (45) Drug Court Services, requires the Administrative Office of the Courts to develop a plan to continue providing drug treatment services in districts where they are currently being offered. The funding is currently provided through federal grants. A report on this plan will be made to the Chairs of the Appropriations Subcommittees on Justice and Public Safety by March 1, 2005.
- (46) Public Defenders Offices, provides \$4.4 million to add a public defender office in the 10th Defender District, which serves Wake County and in the 1st Defender District, which serves Camden, Chowan, Currituck, Dare, Gates, Pasquotank and Perquimans Counties.
- (47) Confidentiality of Identity, protects the identity of persons who carry out executions or are witnesses to executions. Identifying information will not be subject to discovery and will not be considered a public record. The Senior Resident Superior Court Judge for Wake County may order the disclosure of the information, if necessary for the administration of justice.

- (48) Reserve for Pamlico Correctional Center, provides over \$200,000 to be used to increase the inmate bed capacity by 336 beds at Pamlico Correctional Center.
- (49) State Highway Patrol Authority, allows weigh stations to be operated by the Department of Crime Control and Public Safety, Division of State Highway Patrol. Sworn personnel will supervise all nonsworn personnel assigned to weigh stations. Personnel will have the authority to weigh vehicles, assess civil penalties, and complete various reports to record violations regarding the weight of vehicles and their loads. The officers assigned to the permanent weigh stations as under current law, will have the powers of peace officers for the purpose of enforcing the weigh station provisions, making arrests, serving process and appearing in court on all matters and things related to the weight of vehicles and their loads.
- (50) VIPER System, provides \$500,000 to expand the Voice Interoperability Plan for Emergency Responders (VIPER) program and requires the Criminal Justice Information Network (CJIN) and the Department of Crime Control and Public Safety to provide a report on the VIPER system. The report will include projected costs, revenue sources, total state funding, highway fund support and recommendations.
- (51) Courthouse Telephone Systems, provides over \$400,000 for the installation of telephone systems in new courthouses in Haywood and Union Counties and the replacement of the telephone system in Craven County.
- (52) Eliminate Boxing Commission, eliminates all funding for the Boxing Commission and transfers all of the Boxing Commission's duties to the Alcohol Law Enforcement Division (ALE). ALE will regulate live boxing and kick boxing matches if an admission is charged or if there is a prize over \$25.
- (53) Continuing Education Requirements for Bail Bondsman, reduces the requirements for continuing education regarding the duties and responsibilities of a runner or bail bondsman from 6 hours to 3 hours.
- (54) Wireless Board Receipt Supported Position, creates a Network Technician position to provide training and support to the Public Safety Answering Points (PSAPS) to be funded by the Wireless 911 Board's 1% administrative fee.
- (55) Revenue Law Enforcement Officers, authorizes the Secretary of Revenue to appoint up to 11 employees of the Motor Fuels Tax Division to serve as Revenue Law Enforcement Officers, who will have jurisdiction to enforce the taxes on motor fuels.
- (56) State Retirement Contribution Rate, provides a 1.7% cost of living increase to retirees of the Teachers' and State Employees' Retirement

- System effective July 1, 2004.
- (57) Salary Increase for State Employees, provides either \$1,000 a year or a 2.5% increase, whichever is greater, for full-time permanent employees.
- (58) Passenger Vehicles Towing Other Vehicles, requires that noncommercial passenger vehicles (not tow trucks) that tow other vehicles should at all times travel on the right half of the highway or in the right most lane of travel unless the lane is obstructed or impassable. These vehicles will also have to comply with all sign requirements for vehicles with three or more axles.
- (59) Transportation Related Drug and Alcohol Tests, requires the Joint Legislative Transportation Oversight Committee to study whether public transit operators and employers should be required to report to the Division of Motor Vehicles (DMV) the names of any employee who fails a transportation related drug or alcohol test.
- (60) State Retirement System Retiree Health Benefit Fund, establishes a fund which will accumulate contributions from employers and any earnings on those contributions to provide health benefits to retired and disabled employees of the Teachers' and State Employees' Retirement System and their beneficiaries.
- (61) Trust Fund for Mental Health, Developmental Disabilities and Substance Abuse Services, provides \$10 million to the Mental Health, Developmental Disabilities and Substance Abuse Services Trust Fund to continue mental health reform efforts to transition from institutional based treatment to community-based treatment.
- (62) Employer Contribution Rates, changes the employer contribution rate for retirement and related benefits from 5.77% to 5.815% for Teachers and State Employees and from 10.77% to 10.815% for State Law Enforcement Officers. Both contribution rates include 3.2% for hospital and medical benefits and .445% for the Disability Income Plan. The rate for State Law Enforcement Officers includes 5% for Supplemental Retirement Income.
- (63) Death Benefits, clarifies that probation and parole officers are eligible for the Law Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefit Act.
- (64) Liability of Third Parties, allows the State Health Plan to exercise an insured employee's rights against a third party (subrogation).
- (65) Local Governments Optional Coverage, allows a local government employee to participate in the benefits provided by the North Carolina Teachers' and State Employees' Health Plan. Participation is voluntary for local government employers.

- (66) Residential Treatment Centers, requires the State Health Plan to provide coverage for facilities that have 24-hour onsite care provided by a registered nurse.
- (67) Disability Income Plan, reduces the State's contribution to the Disability Income Plan from .52% to .445% for State employees, which will provide savings of over \$6 million.
- (68) Study Mandatory Retirement for Judges, requires the Administrative Office of the Courts to study the mandatory retirement age for judges. The study will evaluate whether the mandatory retirement age should be eliminated, increased, or whether judges should be permitted to finish out their elected or appointed terms.