

2009 Sausage Report – Part One

September 11, 2009
Volume 8, Number 19

A Look at New NC Legislation
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"Laws are like sausages. It is better not to see them being made."

-- German Chancellor Otto von Bismarck¹

The State Legislature passed approximately 575 laws during their 2009 Session which sounds like a lot, well, because it is a lot.² As you know, many of these new laws will have a direct impact on how you do your job as a law enforcement officer. The 2009 General Assembly passed laws in most of our hot-button areas of interest, including traffic issues, probation reform, protection of children, domestic violence, and sex crimes. Below is part one of a summary of what you need to know:³

Traffic

We spend an enormous amount of time driving or riding on public streets and highways. In fact, over the course of our lives, we will spend approximately two weeks waiting for traffic lights to change.⁴ So it's no surprise that each year there are lots of laws passed that effect the rules of the road. All of these new laws become effective on December 1, 2009 unless otherwise noted.

1. No Texting While Driving: New N.C.G.S. 20-137.4A makes it unlawful to either send or read texts or emails over your mobile phone while operating a vehicle on a street, highway, or public vehicular area. You may still read (for some reason) a name or number stored in the phone or the caller id information. This law doesn't apply to lawfully stopped vehicles, law enforcement officers, fire or ambulance personnel in the performance of their duties,⁵ the use of GPS or "digital dispatch systems," or voice operated technology.

It is an infraction carrying a \$100 fine and costs but no driver's license points unless you are a school bus driver – for them it is a Class 2 misdemeanor.⁶

¹ This has always been one of my favorite quotes. I had an old prosecutor friend who pointed out that the same sentiment applied to negotiating plea deals in criminal cases. Unfortunately, he was absolutely correct.

² In fact, we are going to make this a two part miniseries. I suspect the ratings will be huge. Part two "drops" in two weeks.

³ And, as always, a lot you either didn't need to know, didn't want to know, or both.

⁴ Following up on footnote #3, this falls under the category "Didn't Need To Know." I'll let you mark the rest.

⁵ This means that the email or text must be part of the performance of your duties, not just that the text or email happened to be sent while you were driving your marked patrol car. In either case, it is a very BAD idea to text or email or read texts or email while driving. Advice from the Legal Advisor: JUST DON'T DO IT.

⁶ And probably will cost them their job, I would imagine.

2. Covering License Tags: N.C.G.S. 20-63 has been amended to make it an infraction to cover the State name, year sticker or month sticker on a registration plate. This law is effective 12/1/09 as stated above, but for the first year (through 11/30/10) you may only write warnings for this infraction. Starting December 1 of 2010, you can write honest-to-God citations for it, but not until then.⁷

3. Habitual DWI License Reinstatement: On or after 12/1/09, a person whose license is revoked for a Habitual DWI conviction may apply to get his license back if it has been 10 years since his conviction and during that time he has had no convictions for any motor vehicle, alcohol, drug, or other criminal offense and he is not currently a user of alcohol, unlawful controlled substances, or excessive prescription drugs.⁸

4. Larceny of Motor Vehicle Parts:⁹ This new statute (G.S. 14-72.8) states that the larceny of a motor vehicle part is a Class I felony if the cost of repairing the motor vehicle is \$1000 or more.

5. Video Screens In Vehicle: While previous law only outlawed television screens that could be seen by the driver, this enhanced version prohibits any television, computer, or video screen which is positioned so that it is visible by the driver. As you might expect, exceptions are made for GPS or navigation devices, digital dispatch systems, audio system information, weather, traffic, or safety information, vehicle safety information, or displays that aid the driver's vision in any direction. And of course, law enforcement officers and emergency personnel using screens in the course of their duties are also excepted. Violation of this section is an infraction.

6. Newly Annexed Streets: Remember the long-standing rule that unless otherwise posted, the speed limit inside city limits is 35mph and outside city limits is 55mph? So what happens when a country road becomes a city street overnight through annexation? Until this year, the answer was that the road suddenly had its speed limit reduced from 55 to 35mph. However, G.S. 20-141(f) has been amended to provide that newly annexed streets will now remain at their current speed limit until both the city and the Department of Transportation pass concurrent ordinances to change it.

7. Vehicle Inspection Without A License: New G.S. 20-183.8(b1) now provides that a person who performs a vehicle safety inspection without being properly licensed by the Division of Motor Vehicles commits a Class 3 Misdemeanor.

And finally,

8. Handicapped Placard Changes: In a boon to near-sighted cops everywhere, the legislature has decided to make the expiration date on handicapped placards easier to read. Effective for placards issued or renewed after January 1, 2010, they must have an expiration date with a month and year notation that is visible from at least 20 feet.¹⁰

⁷ This is because the legislature realizes that those citizens who use their license tag covers to proclaim "I 'heart' my schnauzer!" or provide free advertisement for the small car lot where they purchased the car are not smart enough to keep up with new laws and don't have the luxury of witty legal updates to stay up to date. The hope is that in a year's time, police all over the state can stop every person in violation of this statute and warn them.

⁸ There's been some outcry from drunk driving watchdog groups about this law, but I can't imagine that many people are going to actually be able to get their license back under these criteria.

⁹ I know this is technically not a traffic offense unless the daring thief steals the part while the car is moving, but I didn't want to make another category just for this law. It's these types of weighty decisions I have to make whenever I write one of these updates.

¹⁰ And that's three feet longer than a standard Ford Crown Vic.

Magistrates

Magistrates featured prominently in this year's session for whatever reason. Two laws that apply to them are summarized below:

1. Magistrates Appointing Attorneys: Effective since July 1, 2009, Chapter 7A of the General Statutes was amended to give magistrates the power to appoint an attorney to a criminal defendant IF the magistrate is also a duly licensed attorney and they are authorized by the Chief District Court Judge to make these appointments. Even if those conditions are met, the magistrate may not appoint counsel for potentially capital cases (in other words, murder) and they cannot accept a waiver of counsel.
2. Magistrates Carrying Concealed Handguns: You should always be nice and courteous to the magistrates you deal with, of course, but now there is another reason – they may be armed. Effective since August 26, 2009, magistrates are permitted to carry a concealed firearm in any portion of a building housing a court if all of the following are true:
 - a. The magistrate is in the building to discharge official magistrate duties
 - b. The magistrate has a carry concealed permit
 - c. The magistrate has successfully completed a one-time weapons retention training substantially similar to that provided to certified law enforcement officers
 - d. The magistrate secures the weapon in a locked compartment when it is not on his or her person.

Even if all of the above are true, the magistrate may NOT carry a concealed firearm into a courtroom that he or she is not presiding over.

Sex, Drugs, and Guns

Sex, drugs, and guns are always ripe areas of new legislation and this session was no different:

1. Taking Indecent Liberties with a Student: A conviction for this crime (G.S. 14-202.4) now requires the defendant to register as a sex offender. This is effective for persons convicted or released from prison on or after 12/1/09.
2. Drug Paraphernalia Control Act: This law (new G.S. 90-113.80 through -113.84) places several restrictions on the sale of glass tubes¹¹ and splitters:¹²

¹¹ A glass tube, according to the statute, is a hollow glass cylinder, open or closed at either end, no less than 2 or more than 7 inches long, no less than 1/8 inch or more than 3/4 inch in diameter sold individually or in connection with another object such as a flower vase or pen which may be used to facilitate a violation of the N.C. Controlled Substances Act. You may have thought that you knew what a glass tube was or that "glass tube" was fairly easy to understand. Obviously, you know nothing about practicing law. We go to law school for three years to learn how to make a little phrase like "glass tube" into a paragraph in the General Statute book. In fact, I cut out quite a bit of the ACTUAL definition to save space. It's a 118 word definition in the actual statute. I am not making that up.

¹² A splitter, according to the statute, is a ring-shaped device which allows the insertion of a wrapped tobacco product so that it can be pulled through the device and cuts or slices the wrapping of the tobacco product along the product's length as it is drawn through the device. Only 50 words for this one.

- a. They must be sold from behind the counter where the public cannot access them without assistance;
- b. The person that buys it must present photo identification, write down his name and current address, and sign a statement saying he will not use it as drug paraphernalia;¹³ and
- c. The retailer must keep this document for 2 years;

A retailer who violates this statute is guilty of a Class 2 misdemeanor while a buyer/drug addict who lies when he promises not to use it illegally is guilty of a Class 1 misdemeanor.¹⁴ This law is effective¹⁵ on or after 12/1/09.

3. Serial Numbers on Firearms: Effective December 1, 2009, it will be Class H felony to alter, deface, or remove a serial number or other permanent identification mark from a firearm or to sell, buy or be in possession of any such firearm. It is still a Class 1 misdemeanor to alter, deface, or remove a serial number from other types of personal property with the intent to conceal or misrepresent the identity of the item.

Two Additional Items

1. Domestic Violence Protective Orders: One more reminder that effective July 24, 2009, you may (and must) arrest for violations of an ex parte domestic violence protective order. This clears up the confusion left behind after the N.C. Supreme Court's decision in State v. Byrd.

2. Theft of Timber: It has long been against the law to cut, injure, or remove another's timber¹⁶ according to G.S 14-135. But effective December 1, 2009, the punishment for this crime will be the same as larceny meaning that if the value of the timber is over \$1000.00, it will be a Class H felony. Otherwise, it remains a Class 1 misdemeanor and a crime evincing some serious moral turpitude.

Remember to tune in two weeks from now when we'll cover some new legislation. I'm thinking I'll have something for just about everybody.

ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR&S Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith, Rodgers, & Strickland, PLLC but he thinks they're pretty cool guys.

¹³ Insert your own joke here. The one I came up with was "Is the legislature really trying to put drug addicts on the honor system?"

¹⁴ So the next time you charge someone with paraphernalia after the effective date of this statute, ask him where he purchased it. If he can tell you (unlikely) and agrees to tell you (unlikely) and he purchased it from a retail establishment (unlikely), then you can go to the establishment and ask to see the paperwork. If he signed the statement that said he wouldn't use it for drug paraphernalia and you can prove that he did, you can now charge him with a Class 1 misdemeanor for that in addition to the Class 1 misdemeanor for the paraphernalia. Then when he goes to court, he will get one of them dismissed or have them consolidated for one judgment. Oh, and by the way, if he's in custody when you ask him where he purchased his crack pipe, you better Mirandize him first.

¹⁵ And I use that term loosely here.

¹⁶ As it should be! This sounds like a heinous thing to do. Although, now that I think about it, I have a cousin who would get his annual Christmas tree from a neighbor's yard by going out in the middle of the night, cutting it down, and dragging it back home. I'm not sure how he did all that very quietly though.



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