

2009 Sausage Report – Part Two

September 25, 2009
Volume 8, Number 20

A Look at New NC Legislation

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"But I know I'll be a law someday. At least I hope and pray that I will, but today I am still just a bill."
-- Schoolhouse Rock¹

Welcome back to part two of the 2009 Sausage Report – our look back at those laws passed by this year's General Assembly that directly affect your life as a law enforcement officer. As I promised a couple of weeks ago, we've got a little something for almost everybody in this edition.

For the Property Crimes Unit:

1. More Secondary Metals Recycler Amendments (N.C.G.S. Chapter 66): Last year we talked about a new law which placed some restrictions and requirements on so-called "secondary metals recyclers."² That law was strengthened this year with some additional requirements. Effective October 1, 2009, purchases of metals by these businesses will require a receipt that is signed by the deliverer and documents which employee handled the transaction. If the property in question is a catalytic converter³ or the evaporator coils or condenser to an air conditioner, the receipt must contain an inked or electronic fingerprint of the deliverer.⁴ Finally, there are several new limitations on what property a secondary metals recycler can purchase and purchases that just involve beverage containers⁵ are not subject to these enhanced documentation requirements.

For the Animal Control Unit:

2. Animals Protected Under Domestic Violence Protective Orders: Chapter 50B is amended to provide that Domestic Violence Protective Orders may also order either party to refrain from abusing or cruelly treating pets⁶ and the order may provide for which party gets "custody" of the pets.⁷ This law went into effect on August 5, 2009.

¹ If you know this song, good luck getting it out of your head now. If you don't know it, that's just sad.

² Read: places that buy aluminum, copper, and other metals.

³ Which does not have a car attached to it, of course.

⁴ For those who don't know, this provision is a response to the fact that these items are the preferred ones for crackheads to steal and sell or "recycle" to get money for their habit.

⁵ The lawyer way to say "Coke or Pepsi cans."

⁶ I've always said it's the pets who pay the biggest price when a relationship goes south. So tragic.

For the School Resource Officers:

3. New School Bus Laws: Effective December 1, 2009, if a person passes a stopped school bus and strikes someone causing their death, they have committed a Class H felony.⁸ In addition, N.C.G.S. 20-27.1 now makes it a Class F felony for a person required to register as a sex offender to drive a school bus or commercial passenger vehicle without a license and a person required to register as a sex offender may not be issued such a license or have one renewed.

For the Property Room and Crime Lab:

4. New DNA evidence requirements: Effective December 1, 2009, G.S. 15A-268 is amended (again) to lengthen the amount of time that “biological evidence” must be retained by law enforcement agencies. Biological evidence is about anything you could think of that would reasonably contain DNA evidence – this new law also includes fingerprints and other identifiable human biological material.⁹ The SBI will be publishing minimum guidelines that meet the state requirements for retention and preservation of this evidence, which I’m sure our property room will promptly memorize and follow.

For the Traffic Unit:

5. Misdemeanor Death By Vehicle Penalty: I spent most of the last update talking about traffic issues, so all you get this week is that Misdemeanor Death By Vehicle is a Class A1 Misdemeanor instead of a Class 1 Misdemeanor as of December 1, 2009.

For the Professional Standards Division:

6. The Racial Justice Act: This legislation now gives defendants facing capital murder charges or already on death row the right to attempt to prove that race was a significant factor in the decision to seek or impose the death penalty.¹⁰

For the Information Technology Department:

7. Cyber-bullying: A new criminal offense called “cyber-bullying” has been enacted as G.S. 14-458.1. Effective December 1, 2009, it is unlawful for a person to use a computer with the intent to torment a minor and build a fake profile or web site; pose as a minor in a chat room, email message, or instant message; follow a minor online or into a chat room;¹¹ or post or encourage others to post on the internet private, personal, or sexual information pertaining to a minor.

In addition, it is unlawful for a person to use a computer with the intent to torment a minor or the minor’s parent or guardian and post a real or doctored image of a minor on the internet; steal passwords,

⁷ I apologize to all you animal lovers out there, but I am still unable to say that sentence without rolling my eyes. A District Court Judge is deciding who gets “custody” of Spot and Rover? Really?

⁸ In addition to whatever else we might charge them with based on the particular circumstances, such as death by vehicle or murder.

⁹ Our recruiting office decided not to include “dealing with identifiable human biological material” in the pamphlet which advertised a career as a lab or property room technician.

¹⁰ I know this one is a stretch, since PSD will probably not have to deal with these types of claims directly, but if race is playing a significant factor in your charging or enforcement decisions, you are going to end up in PSD eventually.

¹¹ I’m not sure how you prove someone was “following” someone else online but the concept intrigues me. Can the TRON storyline of being sucked into a computer to play video games with your real life at stake be far behind?

break into a password protected account, or otherwise access, alter, or erase any computer network, data, program, or software; or use a computer system for repeated electronic communications to a minor.

Finally, regardless of intent to torment anyone, it is unlawful for a person to use a computer to plant any statement tending to provoke a third party to stalk or harass a minor, copy and disseminate or cause to be made an unauthorized copy of data pertaining to a minor for the purpose of intimidating or tormenting the minor; sign up a minor for a pornographic internet site; or sign up a minor for mailing lists or to receive junk emails and instant messages, resulting in intimidation or torment of the minor.

Violation of this new law is a Class 1 misdemeanor if the defendant is 18 or older and a Class 2 misdemeanor if the defendant is under 18.

For the Records and Police Information Technicians:

8. Intelligence Information to Schools: New G.S. 14-50.27A, effective December 1, 2009, allows a law enforcement agency to disseminate criminal intelligence information¹² to the principal of a school when necessary to avoid imminent danger to the life of a student or employee of the school or to school property.

For the Violent Crimes Unit:

9. Solicitation of Child By Computer changes: G.S. 14-202.3 (soliciting child by computer to commit unlawful sex act) has been amended to include not only computers but other devices which are capable of electronic data storage or transmission. The other change is that law now applies to situations where the child is less than 16 and the defendant is at least 5 years older (instead of 3 years under the old law) or defendant believes the child is less than 16 and the defendant is five years older (instead of three.) These changes are effective December 1, 2009.

For the Arson Unit:

10. Sale of Novelty Lighters: A novelty lighter is one “designed to resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, food or beverage, or similar articles or that plays musical notes.” Effective October 1, 2009, new G.S. 66-16.1 makes it an infraction to sell, offer to sale, give, or distribute these for retail sale or promotion. There are exceptions for lighters manufactured prior to 1/1/80, devices primarily used to ignite fuel for fireplaces or grills, and standard lighters that are printed or decorated with logos/artwork that do not otherwise resemble a novelty lighter.¹³

For the Payroll Department:

11. Survivor’s Benefit for Death in the Line of Duty: Effective for the beneficiaries of those killed after January 1, 2007, the State provides a retirement benefit for survivors of law enforcement officers killed in the line of duty after the officer has completed 15 years of service. Previous law required an officer to complete 20 years of service prior to being eligible for this benefit.¹⁴

¹² Criminal intelligence information is defined in Chapter 132 as “records or information that pertain to a person or group of persons that is compiled by a public law enforcement agency in an effort to anticipate, prevent, or monitor possible violations of the law.” Generally this information is not public record.

¹³ So kids – be sure and hit the stores quickly and buy these things up! In a few more days it will be illegal to sell any more of them, so imagine what a collector’s item you will have!

¹⁴ I hope and pray that we never have to concern ourselves with this particular law. Be safe.

For the Administrative Assistant to the Court:

12. Structured Sentencing Changes: For the first time in over 10 years, there have been some changes made to the Structured Sentencing chart. Some of the numbers in the grid have changed slightly, but probably the biggest change is the calculation of the defendant's prior record level points. These changes are effective for crimes committed on or after December 1, 2009.

For the Personnel and Training Unit:

13. Firearms Qualifications for Retired LEOs: Ever since qualified retired law enforcement officers have been allowed to carry concealed firearms, there has been some confusion on where and how they should be qualified on those firearms. The legislature cleared that up this year by requiring the Criminal Justice Education and Training Standards Commission to coordinate with law enforcement agencies and community colleges to provide multiple firearms qualification sites where qualified retired law enforcement officers can satisfy the requirements for a concealed carry permit. As soon as we learn where those sites are, we'll let you know.

For the Street Crimes Unit:

14. Salvia Divinorum:¹⁵ This is a psychoactive herb that can produce dissociative effects. Effective December 1, 2009, it is unlawful to manufacture, sell, deliver or possess salvia divinorum with the intent to sell or deliver. The first or second offense is an infraction – after that it is a Class 3 misdemeanor. There are exceptions for pharmacies at universities performing medical or pharmacological research and the possession, planting, cultivation, growing, or harvesting of a plant strictly for aesthetic, landscaping or decorative purposes.¹⁶

For the Vice and Narcotics Unit:

15. Meth/Amphetamine Trafficking: Due to the way the law was written, amphetamine and the much more dangerous methamphetamine were treated the same under the trafficking laws. The legislature has now changed that by creating much less severe punishments for trafficking in amphetamine, as follows:

- (1) 28 grams or more but less than 200 grams, a Class H felony with a minimum term of 25 months and a maximum term of 30 months in prison and a minimum \$5,000 fine;
- (2) 200 grams or more but less than 400 grams, a Class G felony with a minimum term of 35 months and a maximum term of 42 months in prison and a minimum \$25,000 fine; and
- (3) 400 grams or more, a Class E felony and a minimum term of 90 months and a maximum term of 117 months in prison and a minimum \$100,000 fine.

In addition, the legislature made clear that for methamphetamine, the weight for trafficking considerations includes any mixture containing methamphetamine. These provisions went into effect on September 1st.¹⁷

¹⁵ Remember the Huey Lewis & the News song "I Want A New Drug?" Well – here it is. Only I bet it still has some of those side effects that Huey was trying to avoid. No word on whether it makes me feel like I feel when I'm with you - when I'm alone with you, yeah, yeah.

¹⁶ Can you imagine if this were a defense to growing marijuana? "But officer, I'm just growing it because it looks pretty – I'm not going to smoke it!"

¹⁷ By the way, I googled "I Want A New Drug" to determine whether it was correct to say "I Want A New Drug" or "I Wanna New Drug." (This is the attention to detail that you expect from the legal office.) While doing so, I learned that Huey Lewis (and the News

For the Patrol Teams:

16. Minor Children Present At Time of Arrest: Effective January 1, 2010, when a law enforcement officer arrests an adult who is supervising children/minors who are present at the time of the arrest, they must place them with a responsible adult approved by the parent or guardian of the minor(s). If this is not possible, the law enforcement officer must contact the Department of Social Services.¹⁸

For Users of Blackberries and Tobacco Products:

17. Cell Phones/Tobacco Products in Jail: Effective March 1, 2010, it is a Class 1 misdemeanor to provide tobacco products or cell phones to Department of Correction or local jail inmates and it is also a Class 1 misdemeanor for inmates of the local jail or Department of Correction to possess tobacco products or cell phones.¹⁹ (G.S. 14-258.1)

Okay – I know that a promised a little something for everyone and maybe you are feeling left out, so this next category is for you...

For People That Use The Bathroom Once In A While:

18. Vandalism of Portable Toilets: New G.S. 14-86.2 makes it a Class 1 misdemeanor to steal, destroy, deface, or vandalize portable toilets or pumper trucks. This valuable legislation is effective December 1, 2009.

And let me end by saying that vandalizing a portable toilet is really a crappy thing to do.

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.



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as well, I suppose) sued Ray Parker Jr. because the theme to Ghostbusters sounded like the melody of “I Want A New Drug.” Probably not the legal information you were looking for, but interesting nonetheless.

¹⁸ I would hope that we were already doing this. If we were arresting adults and leaving the children to fend for themselves, I don’t want to hear about it.

¹⁹ Up until now I had it on my bucket list to turn to a life of crime and spend some time in the pokey, but I’ve decided not to. If I can’t have my blackberry while I’m languishing in jail, it’s just not worth it.

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