



SENATE BILL 384: Criminal Law Changes.

2017-2018 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	June 26, 2017
Introduced by:	Sens. Britt, Rabon, Meredith	Prepared by:	Wendy Ray* Staff Attorney
Analysis of:	PCS to Third Edition S384-CSSU-34		

OVERVIEW: *The Proposed Committee Substitute would make the following changes to laws related to criminal law and procedure:*

- *Make various changes in the law relating to motions for appropriate relief under Chapter 15A of the General Statutes, as recommended by the North Carolina Courts Commission, and would make clarifying and technical changes to G.S. 7A-451 regarding the entitlement of an indigent person to services of counsel.*
- *Clarify what prior criminal convictions may be used to establish habitual felon status and remove the sunset on driver's license eligibility for persons convicted of habitual impaired driving.*
- *Add the offense of felony breaking or entering with intent to terrorize or injure to the list of offenses defined as "breaking and entering" for purposes of habitual breaking and entering.*
- *Create a process to insure that defendants subject to the fingerprint requirement get fingerprinted.*
- *Amend the law regarding arrest and Citizen's Warrants.*

[The PCS incorporates the original contents of House Bill 131 and Senate Bills 223, 224, 559, and 560.]

BILL ANALYSIS: The PCS for Senate Bill 384 would make changes to laws related to criminal law and procedure, as set out in the parts below:

PART I. MOTIONS FOR APPROPRIATE RELIEF

Article 89 of Chapter 15A of the General Statutes governs motions for appropriate relief. A motion for appropriate relief (MAR) is a motion made after judgment in a criminal case to correct any errors that occurred before, during, or after a criminal trial or proceeding, including errors related to the entry of a guilty plea. *See, Motions for Appropriate Relief*, by Jessica Smith, 2013, at <http://benchbook.sog.unc.edu/sites/benchbook.sog.unc.edu/files/pdf/Motions for Appropriate Relief.pdf>.

Section 1(a) would provide that, upon the filing of an MAR in superior court, the senior resident superior court judge must enter a scheduling order for disclosure of certain expert witness information for expert witnesses who are reasonably expected to be called at a hearing on the motion.

Section 1(b) would clarify the procedure to be followed by a judge assigned to a motion that was filed with the clerk of superior court, as follows:

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- Requires the assigned judge to review the motion and to deny it upon a determination that all the claims are frivolous.
- Requires the judge to appoint counsel for an unrepresented indigent defendant upon a determination that a hearing is warranted or the interests of justice so require.
- Requires appointed counsel to review the motion and to adopt it or to file an amended motion.
- Allows the judge to require the State to file an answer to the motion.
- Allows the State to request leave to file a limited answer.

Section 1(c) would clarify that an indigent person is entitled to services of counsel in proceedings on a motion for appropriate relief under Chapter 15A if the defendant has been convicted of a felony, has been fined \$500 or more, or has been sentenced to a term of imprisonment *and* the judge has reviewed the motion and determined that counsel should be appointed in accordance with Chapter 15A. This section also makes technical (formatting) changes.

This part would become effective December 1, 2017, and would apply to all motions for appropriate relief filed on or after that date.

PART II. HABITUAL FELONS/CLARIFY PREVIOUS CONVICTIONS

Section 2(a)

Under current law, G.S. 14-7.1 provides that habitual felon is a status declared by a court when a defendant has been convicted of or pled guilty to three felony offenses. In order for a conviction to be used to establish habitual felon status, the prior offense must be for “an offense which is a felony under the laws of the State or other sovereign” where the conviction took place, “regardless of the sentence actually imposed.”

This section would clarify the definition of 'felony offense' as it is used to establish habitual felon status.

Aside from specific exceptions, a "felony offense" would include:

- A felony in this State.
- A felony in another state or sovereign, that is substantially similar to a felony in North Carolina.
- An offense substantially similar to a felony in North Carolina, punishable by imprisonment for more than a year in a state or sovereign that does not use the classification of felony.
- A felony under federal law.

This section would become **effective** December 1, 2017, and apply to offenses committed on or after that date and that is the principal felony offense for a charge of a status offense of habitual felon. Prosecutions for offenses committed before the effective date of this act would not be abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Section 2(b)

Background: In **S.L. 2009-369**, the General Assembly enacted statutes authorizing a person convicted of habitual impaired driving to petition to have their driver's license conditionally reinstated. Under that law, the person could petition 10 years after completion of their sentence for habitual impaired driving, and was eligible to obtain a license if the Division of Motor Vehicles found both of the following:

- In the 10 years preceding the application the person had not been convicted of any motor vehicle, alcohol, drug, or other criminal offense.

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- The person was not currently a user of alcohol, unlawfully using any controlled substance, or an excessive user of prescription drugs.

S.L. 2009-369 was enacted with a sunset of **December 1, 2014**. In section 61.5 of **S.L. 2014-115** the sunset was extended to **December 1, 2016**. That sunset expired on December 1, 2016 without further action by the General Assembly.

This section would remove the December 1, 2016 sunset **effective retroactively to December 1, 2016**. This would have the effect of reviving those statutes that allowed the reinstatement of a driver's license for habitual impaired driving offenders. No new sunset would be placed on these statutes.

PART III. INCLUDE BREAKING AND ENTERING WITH INTENT TO TERRORIZE IN HABITUAL BREAKING AND ENTERING

Article 2D of Chapter 14 creates a habitual breaking and entering status offense. For purposes of the Article, the term "breaking and entering" is defined as any of the following felony offenses:

- First degree burglary (G.S. 14-51).
- Second degree burglary (G.S. 14-51).
- Breaking out of dwelling house burglary (G.S. 14-53).
- Breaking or entering of buildings generally (G.S. 14-54(a)).
- Breaking or entering a building that is a place of religious worship (G.S. 14-54.1).
- Any repealed or superseded offense substantially equivalent to any of the above offenses.
- Any offense committed in another jurisdiction substantially similar to any of the above offenses.

Generally, a person who has previously been convicted of or pled guilty to one or more of these above offenses may be charged with the status offense of habitual breaking and entering upon being charged with a subsequent felony breaking and entering offense. Upon conviction of the status offense, the defendant must be sentenced as a Class E felon.

This section would add G.S. 14-54(a1) (breaking or entering with intent to terrorize or injure an occupant of the building) to the above list of offenses that constitute felony breaking and entering for purposes of the habitual breaking and entering status offense. G.S. 14-54(a1) states that any person who breaks or enters any building with intent to terrorize or injure an occupant of the building is guilty of a Class H felony.

This section would become effective December 1, 2017 and apply to offenses committed on or after that date.

PART IV. FINGERPRINTING UPON ARREST

G.S. 15A-502, as amended in 2015, requires an arresting law enforcement agency to fingerprint defendants when charged with certain misdemeanors.

G.S. 90-95(a)(3) prohibits the possession of 1.5 ounces of marijuana or less. It is a misdemeanor that requires the defendant to be fingerprinted. Officers however, often issue a citation for this misdemeanor instead of making an arrest.

This section would create a process to obtain fingerprints from a defendant that has been issued a citation (not placed under arrest) for a misdemeanor that, by statute, requires fingerprinting. The court would be required to order fingerprinting. Noncompliance with the court's order could lead to a charge of criminal contempt.

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This section would become effective December 1, 2017, and would apply to offenses committed on or after that date.

PART V. CITIZEN'S WARRANTS

This section would:

- Define warrants for arrest resulting from probable cause supplied by law enforcement.
- Define warrants for arrest resulting from probable cause of a private citizen.
- Provide a presumption that a summons is preferable over an arrest warrant where probable cause is provided solely by a private person.
- Describe the circumstances that require a magistrate to issue an arrest warrant rather than a summons, where probable cause is provided solely by a private person.

This section would become effective December 1, 2017, and would apply to warrants issued on or after that date.

EFFECTIVE DATE: Each part of the bill provides its own effective date as noted above. The remainder of the bill would be effective when it becomes law.

**Brad Krehely, Susan Sitze, and Jennifer Bedford substantially contributed to this summary.*