



SENATE BILL 384: Criminal Law Changes.

2017-2018 General Assembly

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| Committee: | | Date: | August 16, 2017 |
| Introduced by: | | Prepared by: | Wendy Ray |
| Analysis of: | S.L. 2017-176 | | Staff Attorney |

OVERVIEW: *S.L. 2017-176 makes the following changes to laws related to criminal law and procedure:*

- *Makes 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 makes clarifying and technical changes to G.S. 7A-451 regarding the entitlement of an indigent person to services of counsel.*
- *Clarifies what prior criminal convictions may be used to establish habitual felon status and removes the sunset on driver's license eligibility for persons convicted of habitual impaired driving.*
- *Adds 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.*
- *Creates a process to insure that defendants subject to the fingerprint requirement get fingerprinted.*
- *Amends the law regarding arrest and Citizen's Warrants.*
- *Amends the Sheriff's Supplemental Pension Fund.*

This act has various effective dates and applicability provisions. Please see the full summary for more detail.

BILL ANALYSIS: This act makes 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](http://benchbook.sog.unc.edu/sites/benchbook.sog.unc.edu/files/pdf/Motions%20for%20Appropriate%20Relief.pdf).

Section 1(a) of the act provides 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) clarifies 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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Director



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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) clarifies 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 becomes effective December 1, 2017, and applies 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 clarifies the definition of 'felony offense' as it is used to establish habitual felon status.

Aside from specific exceptions, a "felony offense" includes:

- 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 becomes **effective** December 1, 2017, and applies 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 are not 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.
- The person was not currently a user of alcohol, unlawfully using any controlled substance, or an excessive user of prescription drugs.

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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 removes the December 1, 2016, sunset **effective retroactively to December 1, 2016**. This has the effect of reviving those statutes that allowed the reinstatement of a driver's license for habitual impaired driving offenders. No new sunset is 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 of the act adds 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 becomes effective December 1, 2017, and applies 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 creates 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 is required to order fingerprinting. Noncompliance with the court's order could lead to a charge of criminal contempt.

This section becomes effective December 1, 2017.

PART V. CITIZEN'S WARRANTS

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This section amends G.S. 15A-304 regarding the issuance of arrest warrants to provide as follows:

- An arrest warrant should not be issued unless the judicial official finding probable cause finds that the accused should be taken into custody. Circumstances to be considered in making that determination are provided.
- A judicial official shall only find probable cause based solely on information provided by a person who is not a sworn law enforcement officer if that information is provided by written affidavit.
- If a judicial official finds probable cause based solely on a written affidavit from someone who is not a sworn law enforcement officer, the official shall not issue an arrest warrant unless specific circumstances exist.

This section becomes effective December 1, 2017, and applies to warrants issued on or after that date.

PART VI. SHERIFF'S SUPPLEMENTAL PENSION FUND CHANGES

In 1985, the General Assembly established the Sheriff's Supplemental Pension Fund, "to supplement local government retirement benefits which will attract the most highly qualified talent available within the State to the position of sheriff and to fully recognize that sheriffs are constitutional officials elected by the people and are also officers of the court enforcing the laws of the State of North Carolina." G.S. 143-166.80.

Eligible to receive benefits from the Sheriff's Supplemental Pension Fund are:

- A county sheriff who has retired from the Local Governmental Employees' Retirement System, and who has attained the age of 55 years or attained 30 years of creditable service regardless of age, and who has completed at least 10 years of eligible service as sheriff.
- A county sheriff who withdrew any service standing to his credit in the Local Governmental Employees' Retirement System prior to July 1, 1986, and who has attained the age of 55 or attained 30 creditable years of service regardless of age, and who has completed at least 10 years of eligible service as sheriff, if the sheriff is not eligible to receive any retirement benefit from any State or locally sponsored plan.
- A county sheriff who has been approved for disability benefits from the Local Governmental Employees' Retirement System, regardless of age, provided the retiree has at least 10 years of eligible service as sheriff.

The benefits are an annual pension benefit, payable in equal monthly installments. This section amends the formula used to calculate the benefits, from one share for each full year of eligible service as sheriff multiplied by his total number of years of eligible service with a cap, to an amount that, when added to a retired allowance at retirement from the Local Governmental Employees' Retirement System or to the amount the sheriff would have been eligible to receive if service had not been forfeited by the withdrawal of accumulated contributions, is equal to seventy-five percent (75%) of a sheriff's equivalent annual salary immediately preceding retirement computed on the latest monthly base rate, to a maximum amount that does not exceed one of the following:

- (i) \$1,500.00
- (ii) The sheriff's equivalent annual salary immediately preceding retirement computed on the latest monthly base rate when the benefit is added to the amount of the special separation allowance the sheriff receives as a sworn local law enforcement officer and the amount of the sheriff's retired allowance at retirement from the Local Governmental Employees' Retirement

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System or the amount the sheriff would have been eligible to receive if service had not been forfeited by the withdrawal of accumulated contributions.

This section is effective January 1, 2018.

EFFECTIVE DATE: Each part of this act provides its own effective date as noted above. The remainder of this act became effective July 21, 2017.

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